THE MINNESOTA BASIC CODE OF ORDINANCES

2014 Edition
OFFICIAL COPY

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See Title III of the Minnesota Basic Code.

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[Reserved for local legislation]

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Editor's note:
See Title VII of the Minnesota Basic Code.

CHAPTER 174: GENERAL REGULATIONS

Editor's note:
The provisions of this chapter amend or replace corresponding sections of Title IX of the Minnesota Basic Code.

Section

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174.01 Owners responsible for trimming, removal and the like
174.02 Abatement by city

§ 174.01 OWNERS RESPONSIBLE FOR TRIMMING, REMOVAL AND THE LIKE.

Section 92.38 of the Minnesota Basic Code shall be amended to read:

(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 9 inches in height.

(B) These provisions shall not apply to an area established with meadow vegetation if:

(1) A permit has been obtained from the city council; and

(2) The prior vegetation is eliminated and the meadow vegetation is planted through transplanting or seed by human or mechanical means; and

(3) 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.
(August 2017)

§ 174.02 ABATEMENT BY CITY.

Section 92.42 of the Minnesota Basic Code shall be amended to read:

In the event that the property owner shall fail to comply with the "Destruction Order" within seven regular business days and has not filed a notice within 48 hours to the City Clerk of an intent to appeal, the City Council may employ the services of city employees or outside contractors and remove the weeds to conform to this subchapter by all lawful means.
(August 2017)

CHAPTER 175: BUSINESS REGULATIONS

[Reserved for local legislation]

Editor's note:
See Title XI of the Minnesota Basic Code.

CHAPTER 176: GENERAL OFFENSES

Editor's note:

The provisions of this chapter amend or replace corresponding sections of Title XIII of the Minnesota Basic Code.

Section

General Provisions

176.01 Discharging firearms

§ 176.01 DISCHARGING FIREARMS.

Section 130.02 of the Minnesota Basic Code shall be amended to read:

(A) Shooting upon, over or near a cemetery. Except as provided by M.S. § 97A.137, for wildlife management areas that are 40 acres or greater, no person shall, without permission from the proper officials, discharge a firearm upon or over a cemetery or within 100 yards thereof, unless the person is upon his or her own land.

(B) Hunting near a city park. Except as provided by M.S. § 97A.137, for wildlife management areas that are 40 acres or greater, no person shall hunt, shoot, or kill game within 1/2 mile of a city park unless the City Council has granted permission to kill game not desired within the limits prohibited by this division.

(C) Discharge of firearms prohibited in certain places. No person shall discharge a firearm on a lawn, park, playground, orchard, or other ground appurtenant to a school, church, or an inhabited dwelling, the property of another, or a charitable institution.

(D) Discharging firearms on highways prohibited. No person shall discharge a firearm upon or over a public road or highway.

(E) Exceptions. This section shall not prohibit the firing of a military salute or the firing of weapons by persons of the nation's armed forces acting under military authority, and shall not apply to law enforcement officials in the proper enforcement of the law, or to any person in the proper exercise of

the right of self defense, or to any person otherwise lawfully permitted by proper federal, state or local authorities to discharge a firearm in a manner contrary to the provisions of this section.

(F) If any of the above provisions are found to be in conflict with M.S. § 624.717, as it may be amended from time to time, the provisions of that statute shall prevail.
(August 2017) Penalty, see § 130.99

CHAPTER 177: LAND USAGE

Editor's note:
The provisions of this chapter amend or replace corresponding sections of Title XV of the Minnesota Basic Code.

Section

Zoning

177.001 Manufactured homes

§ 177.001 MANUFACTURED HOMES.

Section 151.24 of the Minnesota Basic Code shall be amended to read:

The city authorizes the placement of manufactured homes in residential districts within the city if such manufactured homes comply with the following conditions:

(A) Manufactured homes shall comply with all zoning regulations for the district in which they are located.

(B) A building permit and any other required permits shall be obtained for manufactured homes.

(C) All dwellings shall be constructed or placed upon a permanent foundation, which is located along the entire length of all exterior walls of the dwelling and is approved by the Uniform Building Code.

(D) All dwellings shall have a pitched roof no less than a 12X4 pitch, and shall be covered with shingles, tiles, or a standing seam metal roofing system and have eaves of not less than six inches.

(E) All such manufactured homes shall be built in compliance with any Minnesota Statutes regulating manufactured homes.

(F) Connection to city utilities, if available, shall be required.
(August 2017) Penalty, see § 151.99

A new chapter shall be added to the Minnesota Basic Code, as follows:

CRIME FREE RENTAL HOUSING

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IN GENERAL

§ 177.101 PURPOSE.

The purpose of this section is to protect the public health, safety, and the general welfare of the citizens of the City of Hartland who have as their place of abode, a room or rooms furnished to them for payment of a rental charge (including money, services, or other type of consideration) to another. The general objectives include:

(A) To maintain a quality of character and stability of rental housing within the city;

(B) To correct and prevent rental housing conditions that adversely affect or are likely to adversely affect the life, safety, general welfare and health of persons occupying rental dwelling units within the City of Hartland;

(C) To assist in enforcing minimum standards for cooking, heating, sleeping and sanitary equipment necessary to the health and safety of the occupants of rental dwelling units;

(D) To assist in enforcing minimum standards of light and ventilation necessary to health and safety;

(E) To prevent overcrowding of rental dwelling units;

(F) To assist in enforcing minimum standards for the maintenance of rental housing; and

(G) To preserve and promote tax base growth throughout the city.
(August 2017)

§ 177.102 INTENT.

It is the intent of this section to establish a permanent mode of protecting and regulating the living conditions of the residents of the city who rent dwelling units.
(August 2017)

§ 177.103 DEFINITIONS.

The following words and terms, as used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

AGENT. A person appointed by the rental housing license holder, who resides within a 60 mile radius of the city measured from the Hartland City Hall, to whom the city may service notices pertaining to the administration of the provisions of the City Code pertaining to such rental housing.

DORMITORY. Buildings or spaces in buildings where group sleeping accommodations are provided; or a series of closely associated rooms without individual cooking facilities and with common toilet and bathroom facilities.

DWELLING UNIT. A single unit providing complete, independent living facilities for one person or persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

ENFORCEMENT OFFICER. Law enforcement, fire and inspection department, city engineer, superintendents or any other city employee designated by the Hartland City Council to enforce the provisions of the City Code.

LEASE. An agreement to rent. (For use as a verb, see Rent.)

LONG-TERM HOTEL. Any hotel, as defined in M.S.A. § 157.01, in which a dwelling unit is held out or available to the public for sleeping or residential purposes for periods of one week or more.

MAIL SERVICE BY MAIL. By depositing the item with the United States Postal Service addressed to the intended recipient at his or her last known address with first class postage prepaid thereon.

MAINTENANCE. An individual who is hired or is applying to be hired by an owner and who has or would have the means, within the scope of the individual's duties, to enter a tenant's dwelling unit(s). Duties include, but are not limited to, performing specified repairs or maintenance to common areas as well as the inside of tenants' units of the premises.

MANAGER. An individual who is hired or is applying to be hired by an owner and who has or would have the means, within the scope of the individual's duties, to enter a tenant's dwelling unit(s). The manager may also act as the property agent.

OCCUPANT. Any person living, sleeping, cooking or eating in or having actual possession of a dwelling unit or rooming unit for more than ten days in a consecutive 30-day period.

RENT. Any consideration paid for the exclusive use of the dwelling unit, including but not limited to, money, services or a combination thereof, paid or delivered at fixed intervals periodically as agreed upon.

RENTAL HOUSING. Any building structure or enclosure, including any dwelling, dwelling unit, mobile home, apartment, long-term hotel or rooming house, wholly or partly used or intended to be used for living, sleeping, cooking or eating purposes by human occupants, rented or offered for rent by any person to any other person or persons for residential purposes by such other person or persons. RENTAL HOUSING does not include rest homes, convalescent homes, nursing homes, hotels, motels, dormitories or facilities currently licensed by the State of Minnesota.

ROOMING HOUSE. Any building or structure with rooms used or furnished for living and sleeping, but not cooking purposes, along with private or shared sanitation facilities, by or to the public as regular roomers for periods of one week or more.

UNRELATED. Individuals who are not related by blood, marriage, or adoption. For the purposes of this chapter, "related by blood" shall mean whole or half relation between a common ancestor or descendant, husband, wife, son, daughter, father, mother, brother, sister, uncle, aunt, niece, nephew, stepchildren, legally adopted children, grandmother, grandfather, state assigned foster children, first cousin, or any combination of the above persons.
(August 2017)

§ 177.104 LICENSE REQUIRED.

(A) It is unlawful for any person, as the owner, manager, or other person having control of any dwelling unit, to lease, rent, offer for rent or lease, or permit to be leased, or permit the occupancy of any dwelling unit as defined in this section within the city without first having obtained a rental housing license for such dwelling unit as hereafter provided.

(B) It shall be unlawful for any person to occupy a dwelling unit within the city that is found to be in violation of this chapter.

(C) A rental housing license shall be required in the following situations:

(1) A dwelling unit rented or leased as defined by this chapter;

(2) A dwelling unit not occupied by the owner, but has one or more occupants that are unrelated to the owner of said unit; or

(3) A dwelling unit is not occupied by the owner, but has an occupant related by blood to the owner and more than one occupant that is unrelated to the owner.

(D) Licensing of owner occupied dwelling units.

(1) A dwelling unit is occupied by the owner and rented or leased by more than one occupant unrelated to the owner.

(2) An owner occupying a dwelling unit with more than one unrelated occupant shall not be required to obtain a rental license provided the property is not rented or leased as defined by this chapter.

(E) For the purposes of determining occupancy for rental purposes, the following standards shall apply:

(1) A guest may occupy a licensed or unlicensed dwelling unit provided the guest does not reside in the dwelling unit for more than ten days within a consecutive 30-day period and the guest has a documented permanent residence other than the dwelling unit in which they are considered a guest.

(2) The occupancy of a dwelling unit shall comply with the occupancy restrictions of the residential districts as stated in Chapter 151, Zoning Ordinance, of the City of Hartland.
(August 2017)

§ 177.105 APPLICATION.

Any property owner who desires to rent a dwelling unit located in the City of Hartland must obtain a rental housing license. Each application for a rental housing license as required by this section shall be made at the office of the Hartland City Clerk.

(A) New license applicants will be issued a provisional rental housing license after completing the application and determining a date for the required inspection. A provisional license is valid up to six months from the date of issue. A provisional license may be granted an extension by the inspection department.

(B) Certification of owner or agent. Prior to approving an application for a provisional rental housing license or rental housing license, the property owner shall provide certification of an agent and address upon which agent the city may serve notices pertaining to the property, which service shall be effective as if made upon the rental housing license holder.

(C) Certification of taxes and utilities paid. Prior to approving an application for a rental housing license, the property owner shall provide certification to the city that either:

(1) There are no delinquent property taxes and special assessments or the owner is current on a payment plan approved by the Freeborn County Treasurer; and

(2) There are no delinquent city utility fees or other financial claims of the city due upon the parcel of land to which the rental housing license application relates.

(D) Any false statement or omission shall render the application, and any license issued pursuant thereto, invalid and of no effect.
(August 2017)

§ 177.106 INSPECTION REQUIRED.

Upon receipt of an application for any rental housing license, an enforcement officer shall have access to and shall inspect the property to be licensed to determine whether such property complies with the provisions of applicable codes, statutes, and this chapter. For the purpose of making such inspections, the enforcement officer may enter, examine and survey all rental housing at reasonable times after obtaining consent from the resident of the premises or after the owner has given the resident reasonable prior notice of the inspection. All sections shall be uniformly enforced and may not exceed the applicable requirements of the Minnesota State Building Code.
(August 2017)

§ 177.107 LEASE AND LEASE ADDENDUMS.

All licensed rental housing shall have a written lease. All written leases shall contain a clause providing that conduct which would be a violation of this chapter shall constitute a material breach of the lease and grounds for termination of such lease.
(August 2017)

§ 177.108 LICENSE EXPIRATION.

(A) Rental housing licenses issued under this chapter shall be variable terms based on a point system determined by the council and fixed by resolution, a copy of which shall be in the office of the inspection division and uniformly enforced.

(B) All license terms will expire on the 31st day of January. Renewal applications and payment of license fees are due and payable on or before the date of expiration specified on the license. All rental licenses for which payment of license fees is over 30 days past due shall be automatically cancelled. Reissuance of a rental license for any property past due shall be handled as if the property were a new license.
(August 2017)

§ 177.109 TRANSFER.

To transfer the rental housing license from one property owner to another, the licensee shall give written notice including the name, address and phone number of the transferee and agent. The transferee must make an application to the city within 30 days of the transfer. Failure to complete this application prior to any transfer of the license property will result in the automatic forfeiture of the license.
(August 2017)

§ 177.110 LICENSE FEES.

Fees for rental housing licenses issued under this chapter shall be determined by the council and fixed by resolution, a copy of which shall be in the office of the city clerk and uniformly enforced.
(August 2017)

§ 177.111 LICENSE POSTING.

Every license of a rental dwelling shall be conspicuously posted in the main entryway or other approved conspicuous location. Every license holder or their agent shall provide a copy of the current license to any tenant or prospective tenant.
(August 2017)

§ 177.112 PROOF OF OCCUPANCY.

Each rental license holder, or their agent, shall maintain proof of occupancy for each rental housing license. This register shall be reasonably available for examination by authorized law enforcement and fire and inspection officials relating to an investigation, and shall contain the following information:

(A) The address of the dwelling unit;

(B) The number of bedrooms in the dwelling unit;

(C) The names of the current tenants of the dwelling unit; and

(D) The telephone numbers of the current tenants of the dwelling unit.
(August 2017)

§ 177.113 BACKGROUND CHECK REQUIRED.

The license holder shall provide the office of the city clerk with any agent, manager and maintenance person's full name, date of birth, address and telephone number of such person(s), and required copy of background check, if required by M.S.A. § 299C.68. Whenever the agent, manager or maintenance person for a licensed property is changed, the license holder shall provide the office of the inspection division with the required information within 48 hours of such change.
(August 2017)

§ 177.114 REFUSE REMOVAL AND RECYCLING.

(A) Every tenant or occupant of a dwelling unit shall dispose of all his or her rubbish and recyclable materials in a clean and sanitary manner by placing it in the appropriate containers. License holders of rental units shall inform their tenants of the curbside recycling program provided by Freeborn County.

(B) The rental license holder shall provide garbage and recyclable facilities or containers where more than four dwelling units share the same premises. In all other cases it shall be the responsibility of the occupant to furnish such facilities or containers.

(C) At the time of application for a rental housing license, the applicant shall certify to the name and identity of the responsible party providing the removal of garbage and recyclables. The office of the inspection division shall be notified within ten days of any change in the identity of the party providing a removal service.
(August 2017)

§ 177.115 OWNER, AGENT AND MANAGER TRAINING.

(A) The City of Hartland shall offer rental property training sessions at least once per year. All tenants, license holders, their agents and managers will be invited to attend.

(B) License holders, or their agents or managers, are required to attend a training session upon receipt of their first notice of violation of this chapter, city codes or state statutes for a rental housing unit.

(C) Failure to attend required training sessions will be reasonable cause for the city council to refuse to grant or renew a rental housing license.
(August 2017)

§ 177.116 INFORMATION PACKET.

The City of Hartland will provide to each license holder an informational packet which the license holder, their agent or manager shall provide to each tenant or prospective tenant. The packet shall provide contact information on how the tenant may obtain details regarding disturbance notices pending against the property, and the potential effect disturbance notices may have.
(August 2017)

§ 177.117 CONDUCT BY TENANTS ON LICENSED PREMISES.

(A) The license holder shall use their best efforts to cause tenants or occupants to conduct themselves in such a manner as to not cause the premises to be a nuisance as provided for in this chapter, city codes or state statutes.

(B) Upon determination by the enforcement officer that the licensed premises were used by a tenant or occupant in violation of this chapter, city codes or state statutes, the enforcement officer shall notify the license holder and tenant or occupant by regular mail of such violation and direct them to take steps to prevent further violations.

(C) If another instance of violation of this chapter, city codes or state statutes, occurs on the premises by the same tenant(s) or occupant(s) within 12 months of an incident for which a notice in division (B) of this section was given, the license holder and tenant(s) or occupant(s) shall be notified of the violation of and shall also be required to participate in a Problem Solving Conference (PSC), scheduled and conducted by Hartland City Council and/or law enforcement. The purpose of the PSC shall be to develop, by consensus, a plan of action to reasonably ensure that future incident will not occur at the premises.

(D) If a third violation of this chapter, city codes or state statutes on the premises occurs by the same tenant(s) or occupant(s) within a 12-month period after receipt of notices pursuant to divisions (B) and (C), the rental license may be suspended or revoked by the city council. Such suspension or revocation will only be for the involved tenant's/occupant's unit(s).

(E) No suspension or revocation shall be imposed where the violation of this chapter, city codes or state statutes of the premises occurred during the pendency of eviction proceedings (unlawful detainer) or within 30 days of notice given by the license holder to a tenant to vacate the premises. Eviction proceedings shall not be a bar to sanctions unless diligently pursued by the license holder.

(F) It shall be irrelevant to proceedings hereunder that the tenant or others were not criminally prosecuted or were acquitted of criminal charges for the incidents serving as the basis of the suspension or revocation.

(G) New tenants are not subject to enforcement action for previous tenants' nuisance violations.

(H) Public information of violation notices sent pursuant to this section is available on request. Landlords participating in the safe and crime free housing program will have access to information permitted by the Minnesota Data Privacy Act.
(August 2017)

§ 177.118 ENFORCEMENT OF HOUSING AND OTHER CODE VIOLATIONS.

(A) Generally. The enforcement officer is authorized and directed to make lawful inspections to determine the condition of rental housing within the city in order to safeguard the health and safety of the residents of dwellings units and of the general public.

(B) Owners, license holders and/or occupants of rental housing or dwelling units that are found to be in violation of this chapter shall be issued a notice and order. The notice and order shall contain statements advising that if the property is not brought into compliance by the completion date of the notice and order that the city council or designee may take appropriate legal action that:

(1) May impose administrative penalties as established by council resolution;

(2) May charge the owner, license holder, agent, and/or occupants with a criminal violation;

(3) May suspend or terminate city utility services to the property; and

(4) May proceed to cause the work to be done and charge the costs thereof against the property or its owner.

(C) Any notice and order may be served by personal service or by mail upon the owner, license holder and agent. Occupants may be served by personal service or United States Postal Service to at least one occupant of the dwelling unit. If unable to serve the license holder, agent or occupant(s) by other means, the notice and order may be posted on the property.
(August 2017)

§ 177.119 RIGHT OF ENTRY.

(A) When it is necessary to make an inspection to enforce the provisions of the Hartland City Code, or when there is reasonable cause to believe a violation of the Hartland City Code exists within the particular structure, an enforcement officer may enter the building or premises at reasonable times to inspect or to perform the duties imposed by the Hartland City Code.

(B) Resident to give access to owner or operator. Upon receiving reasonable prior notice, every resident of rental housing or a dwelling unit must give the owner, or the owner's agent or employee, access to any part of such rental housing or dwelling unit, or its premises, at all reasonable times for the

purpose of making repairs or alterations as are necessary to bring the dwelling into compliance with this section or with any other city code or state statute, rule or regulation.

(C) Search warrant. If consent is refused and if there is probable cause to believe a violation exists within the particular structure, a search warrant may be obtained. No warrant is needed for entry where an emergency condition or serious health and safety issue exists and sufficient time is not available to obtain a warrant and protect persons or property.

(D) Entry under this section is subject to M.S.A. § 504B.211.
(August 2017)

§ 177.120 ENFORCEMENT AUTHORITY.

The city council, or designee, is hereby authorized and directed to enforce all of the provisions of the Hartland City Code. For such purposes they shall be known and appointed as enforcement officers having the authority to issue notices of violation, issue citations for violations of the Hartland City Code, issue administrative penalties as established for violations of the Hartland City Code, cause work to be done to correct violations, issue orders for occupants to vacate a dwelling unit found to be in violation of the Hartland City Code, and order suspension of city services for properties found to be in violation of the Hartland City Code.
(August 2017)

§ 177.121 APPEALS; VARIANCES.

(A) Any person affected by any notice which has been issued in connection with the enforcement of any provision of this article may request and shall be granted a hearing on the matter before the board of appeals. This hearing and appeals therefrom and actions thereon shall be held and conducted according to provisions governing the board of appeals. Any order of the housing inspection shall be stayed pending disposition of the appeal.

(B) Upon application, the board of appeals shall hear appeals from and review any order of requirements or determination made by the housing inspector and shall determine whether there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this article. The board may recommend that the council vary or modify any of the provisions relating to minimum housing standards, in a given instance on a temporary basis, so that substantial justice may be done and the intent of this article carried out.
(August 2017)

§ 177.122 VIOLATIONS.

Every person who violates this chapter when he performs an act thereby prohibited or declared unlawful or who fails to act when such failure is thereby prohibited or declared unlawful, upon conviction, shall be punished as for a misdemeanor in accordance with this chapter.
(August 2017)

§ 177.123 RESERVED.

HOUSING CODE

§ 177.124 DEFINITIONS.

(A) Whenever the terms "dwelling," "dwelling unit," "rooming," "rooming unit," "premises" are used in this article, they shall be construed as though they were followed by the phrase "or any part thereof."

(B) 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:

BASEMENT. That portion of a building located partly underground, but having less than half its clear floor-to-ceiling height below the average grade of the adjoining ground or having one sidewall area two-thirds exposed and above the average grade of the adjoining ground and the two walls adjoining the above side having one-third or more of wall area above the average grade of the adjoining ground.

BUILDING. Any structure used or intended for supporting or sheltering any use or occupancy.

CELLAR. That portion of the building partly underground having half or more than half of its clear height below the average grade of the adjoining ground.

DWELLING. Any building which is wholly or partly used or intended to be used for living or sleeping by human occupants, provided that temporary housing, as defined in this section, shall not be regarded as a dwelling.

DWELLING UNIT. Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

EXTERMINATION. The control and elimination of insects, 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 a representative of the city health office.

GARBAGE. Discarded material resulting from the handling, preparation or consumption of food.

HABITABLE ROOM. A room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers or communicating corridors, closets and storage spaces.

HOUSING INSPECTOR. The person so designated by the city council or any authorized representative of the housing inspector, including the public works director, a representative of the city clerk's office or fire chief.

INFESTATION. The presence, within or around a dwelling, of any insects, rodents or other pests.

MULTIPLE DWELLING. Any dwelling containing more than two dwelling units.

OCCUPANT. Any person living, sleeping, cooking or eating in or having actual possession of a dwelling unit or rooming unit.

OPERATOR. Any person who has charge, care or control of a building or part thereof in which dwelling units or rooming units are let.

OWNER. Any person who, alone or jointly or severally with others, shall have title to any dwelling or dwelling unit, with or without accompanying actual possession thereof, which entitles him to the charge, care, control or right of management of any dwelling or dwelling unit, either as owner or agent of the owner or as executor, administrator, trustee or guardian of the estate of the owner. All such persons shall be bound to comply with this article.

PLUMBING. Includes all of the following supplied facilities and equipment: water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, showerbaths, installed clothes-washing machines, catchbasins, drains, vents, and any other similar supplied fixtures, together with all connections to water, sewer, or gas lines.

REFUSE. Putrescible and nonputrescible solid wastes, including garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, and market and industrial wastes and including municipal treatment wastes which do not contain free moisture.

ROOMING UNIT. Any room or group of rooms forming a single habitable unit or intended to be used for living and sleeping, but not intended for cooking purposes.

ROOMINGHOUSE. Any hotel, motel or dwelling or that part of any dwelling containing one or more rooming units, in which space is let by the owner or operator to three or more persons who are not husband or wife, son or daughter, mother or father, or sister or brother of the owner or operator.

SUPPLIED. Paid for, furnished or provided by or under the control of the owner or operator.

TEMPORARY HOUSING. Any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure or to any utilities system on the same premises for more than 30 consecutive days.
(August 2017)
Cross-reference:
Definitions generally, see § 177.103.

§ 177.125 PURPOSE.

The purpose of this article is to:

(A) Establish minimum standards which shall govern the condition and maintenance of dwellings and make dwellings safe, sanitary and fit for human habitation;

(B) Fix certain responsibilities and duties of owners and occupants of dwellings;

(C) Authorize the inspection of dwellings and the condemnation of dwellings unfit for human habitation; and

(D) Fix penalties for violations.
(August 2017)

§ 177.126 HOUSING INSPECTOR.

A housing inspector, designated by the city council, shall have the duty of enforcing this article.
(August 2017)

§ 177.127 INTERFERENCE WITH INSPECTOR.

It is unlawful for any person to refuse entrance or impede an inspector in the performance of his or her duties, and all such inspectors shall have the right to enter, examine and survey all dwellings and

premises at all reasonable times to make necessary repairs or alterations to effect compliance with this article.
(August 2017)

§ 177.128 WORK DONE BY CITY; LIEN.

If the person served with notice under this article fails to comply with the notice within a reasonable time, the city council shall be authorized to employ the necessary labor and materials to perform emergency repairs or any demolition to the damaged building, dwelling or dwelling unit or portion thereof as may be deemed necessary for the general public health and safety. The city shall cause such expenses thus incurred in the repair or demolition of buildings or dwellings to be a lien upon such real estate. The city clerk shall certify to the county auditor a statement of the amount of the cost incurred by the city. Such amount together with interest shall be entered as a special assessment against such lot or parcel of land and shall be collected in the same manner as real estate taxes.
(August 2017)

§ 177.129 APPEALS; VARIANCES.

(A) Any person affected by any notice which has been issued in connection with the enforcement of any provision of this chapter may request and shall be granted a hearing on the matter before the board of zoning appeals. This hearing and appeals therefrom and actions thereon shall be held and conducted according to provisions governing the board of zoning appeals. Any order of the housing inspection shall be stayed pending disposition of the appeal.

(B) Upon application, the board of zoning appeals shall hear appeals from and review any order of requirements or determination made by the housing inspector and shall determine whether there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter. The board may recommend that the council vary or modify any of the provisions relating to minimum housing standards, in a given instance on a temporary basis, so that substantial justice may be done and the intent of this article carried out. No variance shall be granted for a period to exceed two years.
(August 2017)

§ 177.130 DESIGNATION OF UNFIT DWELLINGS AND CONDEMNATION PROCEDURES.

(A) Defects for determination. Any building, dwelling or dwelling unit which shall be found to have any of the defects stated in this subsection shall be condemned as unfit for human habitation and shall be so designated and placarded. All inmates and occupants shall be required to vacate the building, dwelling or dwelling unit, and safeguards shall be taken to prevent the public from entering the building, dwelling or dwelling unit as ordered by the housing inspector. An unfit building, dwelling or dwelling unit is one which:

(1) Is so damaged, decayed, dilapidated, unsanitary, unsafe, vermin-infested or so located that it creates a serious hazard to the health or safety of the occupants.

(2) Lacks illumination, ventilation, is structurally unstable, constitutes a fire hazard, lacks exit and sanitation facilities adequate to protect the health or safety of the occupants or of the public.

(B) Notice of condemnation. Notice of an unfit building, dwelling or dwelling unit shall be given as provided in § 177.118.

(C) Vacation of premises. Any building, dwelling or dwelling unit condemned as unfit for human habitation or which is structurally unsafe and so designated and placarded by the housing inspector shall be vacated within a reasonable time as ordered by the housing inspector.

(D) Restoration. A building or structure or a portion thereof declared unsafe by the housing inspector may be restored to a safe condition for continued occupancy. However, if the damage or cost of reconstruction or restoration is in excess of 50% of the county assessor's market value of the structure on the premises, such building or structure, if reconstructed or restored, shall be made to conform to all provisions of this Code regulating the construction of the type of building to be rebuilt. The restriction on the cost of restoration shall only apply to structural changes, wiring and plumbing and shall not apply to fixtures and appurtenances to the basic structure.

(E) Approval for use as human habitation. No dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from and such placard is removed by the housing inspector. The housing inspector shall remove such placard whenever the defects upon which the condemnation and placarding action were based have been eliminated. No other person shall deface or remove the placard from any dwelling or dwelling unit.

(F) Demolition. Any dwelling declared as unfit for human habitation and which is not restored within a period of six months shall be considered a nuisance and unsafe building and shall be removed as provided by this chapter.
(August 2017)

§ 177.131 RESERVED.

MINIMUM STANDARDS

§ 177.132 RESPONSIBILITIES OF OWNERS AND OCCUPANTS.

(A) Every owner of a dwelling containing two or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof.

(B) Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which he or she occupies and controls.

(C) Every occupant of a dwelling or dwelling unit shall dispose of all his or her rubbish in a clean and sanitary manner by placing it in the rubbish containers required by § 177.133.

(D) Every occupant of a dwelling or dwelling unit shall dispose of all his or her garbage and any other organic waste, which might provide food for rodents, in a clean and sanitary manner by placing it in the garbage disposal facilities or garbage containers required by § 177.133. It shall be the responsibility of the owner to supply such facilities or containers for all dwelling units located on premises where more than four dwelling units share the same premises. In all other cases it shall be the responsibility of the occupant to furnish such facilities or containers.

(E) Every occupant of a dwelling or dwelling unit shall be responsible for hanging all screens and double or storm doors and windows wherever the screens, doors and windows are required under the provisions of this chapter or of any rule or regulation adopted pursuant to this chapter, except where the owner has agreed to supply such service.

(F) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises, and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. However, whenever infestation is caused by failure of the owner to maintain a dwelling in a ratproof or reasonably insectproof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two or more dwelling units, extermination shall be the responsibility of the owner.

(G) Every occupant of a dwelling unit shall keep all plumbing fixtures in the dwelling unit in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.
(August 2017)

§ 177.133 BASIC EQUIPMENT AND FACILITIES.

It is unlawful for any person to occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living, sleeping, cooking or eating therein, which does not comply with the following:

(A) Every dwelling unit shall contain a kitchen sink in good working condition and properly connected to a water and sewer system.

(B) Every dwelling unit shall contain a room which affords privacy to a person within the room and which is equipped with a flush water closet and a lavatory basin in good working condition and properly connected to a water and sewer system.

(C) Every dwelling unit shall contain, within a room which affords privacy to a person within the room, a bathtub or shower in good working condition and properly connected to a water and sewer system.

(D) Every kitchen sink, lavatory basin and bathtub or shower required under this chapter shall be properly connected with hot and cold water lines.

(E) Every dwelling unit shall be supplied with adequate refuse containers with provision for adequate pickup and disposal.

(F) Every dwelling unit shall have adequate garbage disposal facilities or garbage containers, with provision for adequate pickup and disposal.

(G) Every dwelling shall have supplied water heating facilities which are properly installed, which are maintained in safe and good working condition, which are properly connected with plumbing fixtures and which are capable of heating water to a temperature to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than 120 degrees Fahrenheit. Such supplied water heating facilities shall be capable of meeting the requirements of this subsection where the dwelling or dwelling unit heating facilities are not in operation.

(H) Every dwelling unit shall have safe, unobstructed means of egress leading to safe and open space at ground level.

(I) No variance from the requirements of this section shall be granted to any person who lets dwellings or dwelling units for occupancy except in extreme cases of emergency.
(August 2017)

§ 177.134 LIGHT, VENTILATION AND HEATING.

It is unlawful for any person to occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following:

(A) Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be 8% of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light-obstructing structures are located less than three feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least 15% of the total floor area of such room.

(B) Every habitable room shall have at least one window or skylight which can easily be opened or such other device as will adequately ventilate the room. The total of openable window area in every room shall be equal to at least 45% of the minimum window area size or minimum skylight-type window size, except where there is supplied some mechanical device affording adequate ventilation and approved by the housing inspector.

(C) Every bathroom and water closet compartment shall comply with the light and ventilation requirement for habitable rooms contained in divisions (A) and (B) of this section, except that no window or skylight shall be required in an adequately ventilated bathroom and a water closet compartment equipped with a ventilation system which is approved by the housing inspector.

(D) Where there is electric service available from power lines which are not more than 300 feet away from a dwelling, every habitable room of such dwelling shall contain at least two separate floor- or wall-type electric convenience outlets or one such convenience outlet and one supplied ceiling-type electric light fixture; and every water closet compartment, bathroom, laundry room, furnace room and public hall shall contain at least one supplied ceiling- or wall-type electric light fixture. Every such outlet and fixture shall be properly installed, shall be maintained in good and safe working condition and shall be connected to the source of electric power in a safe manner. Plug fuses of the Edison-base type shall be used only for replacements in existing installations where there is no evidence of overfusing or tampering.

(E) Every dwelling shall have heating facilities which are properly installed; are maintained in safe and good working condition; and are capable of safely and adequately heating all habitable rooms, bathrooms and water closet compartments in every dwelling unit located therein to a temperature of at least 70 degrees Fahrenheit at a distance three feet above floor level when the outside temperature is 20 degrees Fahrenheit below zero.

(F) Every public hall and stairway in every multiple dwelling containing five or more dwelling units shall be adequately lighted at all times. Every public hall and stairway in structures containing not more

than four dwelling units may be supplied with conveniently located light switches controlling an adequate lighting system which may be turned on when needed, instead of full-time lighting.

(G) During the portion of each year when the housing inspector deems it necessary for protection against mosquitoes, flies and other insects, every door opening directly from a dwelling unit to outdoor space shall have supplied screens and a self-closing device, and every window or other device with openings to outdoor space used or intended to be used for ventilation shall likewise be supplied with screens. However, such screens shall not be required during such period in rooms deemed by the housing inspector to be located high enough in the upper stories of buildings as to be free from such insects and in rooms located in areas of the city which are deemed by the housing inspector to have so few such insects as to render screens unnecessary.

(H) Every basement or cellar window used or intended to be used for ventilation and every other opening to a basement which might provide an entry for rodents shall be supplied with a screen or such other device as will effectively prevent their entrance.
(August 2017)

§ 177.135 MAINTENANCE OF PARTS OF DWELLINGS AND DWELLING UNITS.

It is unlawful for any person to occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit for the purpose of living therein which does not comply with the following:

(A) Every foundation, floor, wall, ceiling and roof shall be reasonably weathertight, watertight and rodentproof; shall be capable of affording privacy; and shall be kept in good repair. All exterior wood or other material which is susceptible to deterioration by the action of weather must be protected by paint or a similar protective seal unless woods of natural resistance to decay or treated lumber are used. Those areas where the paint is extensively bubbled, cracked or peeled must be scraped and repainted. Woods of natural resistance to decay or treated lumber, if previously painted, must be refinished if the paint is bubbled, cracked or peeling. All interior walls and the ceiling finish must be in good condition.

(B) Every window, exterior door and basement hatchway shall be reasonably weathertight, watertight and rodentproof and shall be kept in sound working condition and good repair.

(C) Every inside and outside stair, every porch and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon and shall be kept in sound condition and good repair.

(D) Every plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition, free from defects, leaks and obstructions.

(E) Every water closet compartment floor surface and bathroom floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.

(F) Every supplied facility, piece of equipment or utility which is required under this article shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition.

(G) No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this article to be removed from or shut off from or discontinued for any occupied dwelling let or occupied by him, except for such temporary interruption as may be necessary while actual repairs or alterations are in process or during temporary emergencies when discontinuance of service is necessary.

(H) No owner shall occupy or let to any other occupant any vacant dwelling unit unless it is clean, sanitary and fit for human occupancy.
(August 2017)

§ 177.136 SPACE, USE AND LOCATION REQUIREMENTS.

It is unlawful for any person to occupy or let to another for occupancy any dwelling or dwelling unit for the purpose of living therein which does not comply with the following:

(A) Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof, the floor space to be calculated on the basis of total habitable room area.

(B) In every dwelling unit of two or more rooms, every room occupied for adult sleeping purposes by one occupant shall contain at least 70 square feet of floor space, and every room occupied for sleeping purposes by more than one adult occupant shall contain at least 45 square feet of floor space for each occupant thereof. In dwelling units of two or more rooms, every room occupied for sleeping purposes by more than one occupant under ten years of age shall contain at least 35 square feet of floor space for each occupant thereof.

(C) No dwelling or dwelling unit containing two or more sleeping rooms shall have such room arrangements that access to a bathroom or water closet compartment intended for use by occupants of more than one sleeping room nor shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room or a bathroom or water closet compartment. However, single-family dwellings may be exempted from this requirement.

(D) At least one-third of the floor area of every habitable room shall have a ceiling height of at least seven feet, and the floor area of that part of any room where the ceiling height is less than five feet shall

not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(E) No cellar space shall be used as a habitable room or dwelling unit. In single-family residences, a bedroom will be allowed in the cellar when it meets the following requirements:

(1) The floors and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness.

(2) The total window area in the bedroom is equal to at least the minimum window area sizes as required in § 177.134.

(3) Such required minimum window area will be in conformance with the schematic of such area, which is on file and available in the city offices.

(4) The total of openable window area in each room is equal to at least the minimum as required under the schematic of such area, which is on file and available in the city offices.

(5) All levels of smoke detection, as outlined in NFPA 101, is achieved plus an additional smoke detector placed in the cellar bedroom.

(6) The bedroom will be separated from the rest of the basement by walls constructed of not less than one-half-inch gypsum wall board on both sides of a two-by-four stud wall, with a door assembly with a 1 3/8-inch solid core bonded wood door.

(F) No basement space shall be used as a habitable room or dwelling unit unless:

(1) The floor and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness;

(2) The total of window area in each room is equal to at least the minimum window area sizes as required in § 177.134;

(3) Such required minimum window area is located entirely above the grade of the ground adjoining such window area; and

(4) The total of openable window area in each room is equal to at least the minimum as required under § 177.134, except where there is supplied some other device affording adequate ventilation and approved by the housing inspector.
(August 2017)

§ 177.137 RESERVED.

SAFE AND CRIME FREE RENTAL HOUSING PROGRAM

§ 177.138 PROGRAM AND PURPOSE.

The crime free rental housing program is a voluntary three-phase certification program for rental properties of all sizes, including single-family rental homes. The program is available to owners and property managers of rental properties located within the corporate limits of the City of Hartland. Necessary training and support of the program is designed to provide for the ease of participation. The program is known to be effective in reducing criminal activity in rental properties. It is the policy of the City of Hartland to encourage active voluntary participation in the program by all rental property owners and property managers.
(August 2017)

§ 177.139 CERTIFICATION.

To obtain and maintain certification from the Hartland City Council, a member of the crime free rental housing program, a rental property owner, or property manager must successfully complete and implement the components of the crime free rental housing program within two years from the date of application to the program.
(August 2017)

§ 177.140 COMPONENTS OF THE PROGRAM.

The crime free rental housing program contains four components:

(A) Attendance at and successful completion of the management training component, consisting of:

(1) The crime free rental housing program and ordinance;

(2) Rental applications and housing discrimination;

(3) Screening and background checks;

(4) Lease and lease addendums;

(5) Unlawful detainer and eviction;

(6) Manager/owner policies and roles;

(7) Data privacy;

(8) Narcotics and gangs;

(9) Section 8 [U.S. Housing and Community Development Act of 1974], rental assistance program or housing choice voucher program;

(10) Rental licensing.

(B) Compliance with crime prevention through environmental design (CPTED) requirements by owners and agents of rental housing located within the City of Hartland. Compliance will be indicated by completion of the following requirements:

(1) Single-cylinder deadbolt locks with one inch throws installed in each entry door for each dwelling unit;

(2) High security strike plate with three-inch screws installed in each entry door for each dwelling unit;

(3) Door viewer 180-degree peephole installed in primary entry door for each dwelling unit;

(4) Anti-lift/slide device installed on all windows and sliding glass doors;

(5) Security lighting adequate to illuminate exterior grounds;

(6) Landscaping in a manner that provides for visual sight lines;

(7) Address numbers shall be visible from the street. The Arabic numbers shall be a minimum of four inches high with a minimum stroke width of one-half inch. The numbers shall contrast with their background.

(8) Compliance with all Minimum Housing Code requirements.

(C) At least once every 12 months make available, in cooperation with the Hartland City Council, training for tenants in respect to the following subject areas:

(1) The crime free rental housing program together with the concept of partnerships and sharing responsibilities.

(2) Crime concerns and prevention awareness techniques.

(3) Application of neighborhood watch program/principles.

(D) Include the crime free rental housing license addendum on implementation and enforcement as part of all written leases for crime free housing.
(August 2017)

§ 177.141 ANNUAL RETRAINING.

Following successful completion of the four-component program described in § 177.140, rental property owner or agents shall attend annual retraining sessions and maintain compliance with all program components.
(August 2017)

§ 177.142 ADDITIONAL RENTAL PROPERTIES.

Rental property owners who acquire additional rental properties following the successful completion of the program described in § 177.140 must bring those properties into compliance within two years from the date of acquisition. Rental property managers who add additional properties for which they are responsible following the successful completion of the program described in § 177.140 must bring those properties into compliance within two years from the date of assumption of management responsibilities.
(August 2017)

§ 177.143 DECERTIFICATION.

Owners or agents who do not maintain compliance with the certification requirements set forth in this section will lose their certification.

(A) The owner or agent will be notified of proposed decertification by mail postmarked at least 14 days prior to the proposed date for decertification. The owner or property manager may appeal the decision to decertify by providing written notice to the Hartland City Council prior to the proposed date for decertification.

(B) Decertification will not occur following an appeal until the owner has been afforded an opportunity for hearing before a crime free rental housing officer. The crime free rental housing officer shall provide a written notice of his determination to the owners and agents written ten days of the hearing date.

(C) Unless the owner or agent appeals the decision of the crime free rental housing officer to the Mayor of Hartland within seven days of issuance of the findings and recommendation, the Hartland City Council will decertify. If the owner or agent appeals the crime free rental housing officer's decision upon a form provided by the Hartland City Clerk within the prescribed time period, the owner or agent will be afforded an opportunity to have the city council review the findings and recommendations.

(D) An owner or agent who is decertified will not be eligible to reapply for crime free rental housing certification for a period of two years following the date of decertification.
(August 2017)

A new chapter shall be added to the Minnesota Basic Code, as follows:

POINT OF SALE BUILDING INSPECTION

177.201 Certificate of housing maintenance compliance for single- and two-family homes
177.202 Certificate required
177.203 Application and inspection
177.204 Issuance of certificate
177.205 Appeal
177.206 Occupancy prohibited
177.207 Occupancy
177.208 Additional inspections
177.209 No warranty by city
177.210 Remedies

§ 177.201 CERTIFICATE OF HOUSING MAINTENANCE COMPLIANCE FOR SINGLE- AND TWO-FAMILY HOMES.

A Point of Sale Inspection is required prior to the sale of any residential property, including single-family homes, condominiums, townhomes, and apartment buildings. During the inspection, the building inspector looks for items in the home that present safety or maintenance concerns and that it meets basic building code standards. Following the inspection, the homeowner receives a "fix it" list that spells out the repairs that will be needed to bring the property into compliance with the city and/or county codes. The home seller must make the specified repairs and have the home reinspected before a Certificate of Housing Maintenance Compliance will be issued for the completion of the sale.
(August 2017)

§ 177.202 CERTIFICATE REQUIRED.

(A) No single- or two-family structure or dwelling unit which is a part of a multiple dwelling located within the city may be voluntarily conveyed for consideration by deed or contract for deed after July 1, 2017, unless the person relinquishing ownership or the agent of such person has first applied for and secured a certificate of housing maintenance compliance.

(B) This section does not apply to any apartment house or rental home licensed under §§ 177.101 et seq. of this code, and has no effect upon the provisions of law or other ordinances related to the issuance of building permits.
(August 2017)

§ 177.203 APPLICATION AND INSPECTION.

(A) Application for the certificate of housing maintenance compliance must be executed upon forms provided by the city and accompanied by the initial fee established in Appendix D of this code.

(B) Upon receipt of a properly executed application, the designated city building inspector, or his or her designee, will cause an inspection to be made of the premises to ensure the structure is in compliance with applicable provisions of the housing maintenance code.
(August 2017)

§ 177.204 ISSUANCE OF CERTIFICATE.

If the structure is in compliance with the requirements of the housing maintenance code, a certificate will be issued to the person relinquishing ownership or the agent thereof, stating that the structure has been inspected and is in compliance with the housing maintenance code. During the period of one year following its issuance, a certificate may be accepted by the city in satisfaction of the requirements of this section without the need for a second inspection.
(August 2017)

§ 177.205 APPEAL.

A determination that the structure is not in compliance with the housing maintenance code may be appealed in the manner provided in § 177.121.
(August 2017)

§ 177.206 OCCUPANCY PROHIBITED.

The person relinquishing ownership or their designated agent must obtain the certificate from the city prior to transfer of ownership. The prospective owner may not occupy the structure prior to issuance of the certificate, except pursuant to subdivision 6.
(August 2017)

§ 177.207 OCCUPANCY.

(A) A person may be granted permission to occupy a dwelling prior to issuance of the certificate upon the approval of the city building inspector, or his or her designee. The approval may be based upon undue hardship or other extraordinary or exceptional circumstances, provided that no such occupancy constitutes an immediate hazard, as determined by the inspector or his or her designee. Approval will not be given until the prospective owner or designated agent has filed on forms supplied by the city, a

statement of intent to comply with the housing maintenance code and submitted the required escrow. Compliance dates in the statement of intent to comply will be established by the city building inspector, or his or her designee.

(B) The inspector may also approve occupancy prior to issuance of the certificate if a cash escrow agreement is signed and submitted to the Hartland City Clerk or designee. The cash escrow agreement must be executed on a form provided by the city and accompanied by the fee established in Appendix D of this code. Failure to make the required corrections by the compliance dates in the statement of intent or within the terms of the cash escrow agreement is a violation of this code and will render void any approval given pursuant to this subdivision. If the city conducts any re-inspections beyond the initial inspection and one follow-up inspection, the applicant for a certificate will be required to pay the re-inspection fee as established in Appendix D of this code.
(August 2017)

§ 177.208 ADDITIONAL INSPECTIONS.

If following the issuance of a certificate, the city finds by complaint or otherwise that the structure may be maintained in a substandard manner, a new inspection will be required in order to satisfy the requirements of this chapter.
(August 2017)

§ 177.209 NO WARRANTY BY CITY.

By enacting and undertaking to enforce this chapter neither the city nor its council, agents or employers warrant or guarantee the safety, fitness or suitability of any dwelling in the city, and any representation to the contrary by any person is a misdemeanor. Purchasers or occupants should take whatever steps they deem appropriate to protect their interests, health, safety and welfare prior to purchase or occupancy of the dwelling, without reliance on this certificate. A warning in substantially the foregoing language will be printed on the face of the certificate.
(August 2017)

§ 177.210 REMEDIES.

Any person who violates the provisions of this chapter, or who makes a knowingly false statement in the application, is guilty of a misdemeanor. In addition, the city may enforce the provisions of this section in any court of competent jurisdiction in law or equity.
(August 2017)

REFERENCES TO LOCAL ORDINANCES AND RESOLUTIONS

Ord. No.	Date Passed	Code Section
- -	8- -2017	174.01, 174.02, 176.01, 177.001, 177.101—177.143, 177.201—177.210

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TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

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10.98 Supplemental administrative penalties
10.99 General penalty and enforcement
Appendix: Notice of code violation

§ 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 "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. Any component code may be referred to and cited by its name, such as the "Traffic Code." 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 repugnant to the intent of the legislative body or of the context of the same ordinance:

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

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

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

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

§ 10.03 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.

§ 10.04 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.

§ 10.05 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 peculiar and appropriate meaning in law shall be understood according to their technical import.

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

CITY. The area within the corporate boundaries of the city as presently established or as amended by ordinance, annexation or other legal actions at a future time. The term ***CITY*** when used in this code may also be used to refer to the City Council and its authorized representatives.

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

COUNTY. The county or counties in which the city is located.

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.

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

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

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

SHALL. The act referred to is mandatory.

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

STATE. The State of Minnesota.

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

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

YEAR. A calendar year, unless otherwise expressed.

§ 10.06 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.

§ 10.07 REFERENCE TO OTHER SECTIONS.

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

§ 10.08 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 functionary.

§ 10.09 ERRORS AND OMISSIONS.

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

§ 10.10 OFFICIAL TIME.

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

§ 10.11 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 Sunday, it shall be excluded.

§ 10.12 ORDINANCES REPEALED.

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

§ 10.13 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.

§ 10.14 EFFECTIVE DATE OF ORDINANCES.

All ordinances passed by the legislative body requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided.

§ 10.15 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 publication of the ordinance repealing or modifying it when publication is required to give effect to it, unless otherwise expressly provided.

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

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

§ 10.16 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

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

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

§ 10.17 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 right-of-ways, 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.

§ 10.18 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 for a reasonable charge.

§ 10.19 ADOPTION OF STATUTES AND RULES AND SUPPLEMENTS BY REFERENCE.

(A) It is the intention of the City Council that, when adopting this Minnesota Basic Code of Ordinances, all future amendments to any state or federal rules and statutes adopted by reference in this code or referenced in this code are hereby adopted by reference or referenced 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.

(B) It is the intention of the City Council that, when adopting the Minnesota Basic Code of Ordinances, all future supplements are hereby adopted as if they had been in existence at the time this Code was enacted, unless there is clear intention expressed in the Code to the contrary.

§ 10.20 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) As permitted by M.S. § 626.862, as it may be amended from time to time, the City Clerk shall have the authority to administer and enforce this code. In addition, under that statutory authority, certain individuals designated within the code or by the Clerk or City Council shall have the authority to administer and enforce the provisions specified. All and any person or persons designated may issue a citation in lieu of arrest or continued detention to enforce any provision of the code.

(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) If the licensee, owner, resident, or other person in control of a premises objects to the inspection of or entrance to the property, the City Clerk, Peace Officer, or any employee or official charged with the duty of enforcing the provisions of this code may, upon a showing that probable cause exists for the issuance of a valid search warrant from a court of competent jurisdiction, petition and obtain a search warrant before conducting the inspection or otherwise entering the property. This warrant shall be only to determine whether the provisions of this code enacted to protect the health, safety and welfare of the people are being complied with and to enforce these provisions only, and no criminal charges shall be made as a result of the warrant. No warrant shall be issued unless there be probable cause to issue the warrant. Probable cause occurs if the search is reasonable. Probable cause does not depend on specific knowledge of the condition of a particular property.

(E) Every licensee, owner, resident or other person in control of property within the city shall permit at reasonable times inspections of or entrance to the property by the City Clerk or any other authorized city officer or employee only to determine whether the provisions of this code enacted to protect the health, safety and welfare of the people are being complied with and to enforce these provisions. Unreasonable refusal to permit the inspection of or entrance to the property shall be grounds for termination of any and all permits, licenses or city service to the property. Mailed notice shall be given to the licensee, owner, resident or other person in control of the property, stating the grounds for the termination, and the licensee, owner, resident or other person in control of the property shall be given an opportunity to appear before the City Clerk to object to the termination before it occurs, subject to appeal of the Clerk's decision to the City Council at a regularly scheduled or special meeting.

(F) Nothing in this section shall be construed to limit the authority of the City to enter private property in urgent emergency situations where there is an imminent danger in order to protect the public health, safety and welfare.

§ 10.98 SUPPLEMENTAL ADMINISTRATIVE PENALTIES.

(A) In addition to those administrative penalties established in this code and the enforcement powers granted in § 10.20, the City Council is authorized to create by resolution, adopted by a majority of the members of the Council, supplemental administrative penalties. The resolution may be in the form established in Appendix VI of the User's Guide to the MBC. Such resolution may not proscribe administrative penalties for traffic offenses designated by M.S. § 169.999.

(B) These administrative penalty procedures in this section are intended to provide the public and the city with an informal, cost effective and expeditious alternative to traditional criminal charges for violations of certain provisions of this code. The procedures are intended to be voluntary on the part of those who have been charged with those offenses.

(C) Administrative penalties for violations of various provisions of the code, other than those penalties established in the code or in statutes that are adopted by reference, may be established from time to time by resolution of a majority of the members of the City Council. In order to be effective, an administrative penalty for a particular violation must be established before the violation occurred.

(D) In the discretion of the peace officer, City Clerk, or other person giving notice of an alleged violation of a provision of this code, in a written notice of an alleged violation, sent by first class mail to the person who is alleged to have violated the code, the person giving notice may request the payment of a voluntary administrative penalty for the violation directly to the City Treasurer within 14 days of the notice of the violation. A sample notice is contained in the Appendix to this chapter. In the sole discretion of the person giving the notice of the alleged violation, the time for payment may be extended an additional 14 days, whether or not requested by the person to whom the notice has been given. In addition to the administrative penalty, the person giving notice may request in the notice to the alleged violator to adopt a compliance plan to correct the situation resulting in the alleged violation and may provide that if the alleged violator corrects the situation resulting in the alleged violation within the time specified in the notice, that the payment of the administrative penalty will be waived.

(E) At any time before the payment of the administrative penalty is due, the person who has been given notice of an alleged violation may request to appear before the City Council to contest the request for payment of the penalty. After a hearing before the Council, the Council may determine to withdraw the request for payment or to renew the request for payment. Because the payment of the administrative penalty is voluntary, there shall be no appeal from the decision of the Council.

(F) At any time after the date the payment of the administrative penalty is due, if the administrative penalty remains unpaid or the situation creating the alleged violation remains uncorrected, the City, through its Attorney, may bring criminal charges in accordance with state law and this code. Likewise, the City, in its discretion, may bring criminal charges in the first instance, rather than requesting the payment of an administrative penalty, even if a penalty for the particular violation has been established by Council resolution. If the administrative penalty is paid, or if any requested correction of the situation resulting in the violation is completed, no criminal charges shall be initiated by the City for the alleged violation.

§ 10.99 GENERAL PENALTY AND ENFORCEMENT.

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

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

(C) Pursuant to M.S. § 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.

APPENDIX

NOTICE OF CODE VIOLATION

To: (Name and address of person who is alleged to have violated the code)

From: (Name and title of city official giving the notice)

Re: Alleged violation of Section of the City Code, relating to (give title of section)

Date: (Date of notice)

I hereby allege that on (date of violation) you violated § _____ of the City Code relating to_ _____ .

The City Council has by resolution established an administrative penalty in the amount of $_____ for this violation.

Payment of this administrative penalty is voluntary, but if you do not pay it the city may initiate criminal proceedings for this alleged violation.

Payment is due within 14 days of the date of this notice. Before the due date, you may request an additional 14-day extension of the time to pay the administrative penalty.

As an alternative to the payment of this administrative penalty, if the situation that gave rise to this alleged violation is corrected by _____ (establish date), then the payment of the administrative penalty will be waived.

Even if the administrative penalty is paid, the city reserves the right to institute appropriate proceedings at law or at equity to restrain, correct or abate the violation.

Before the due date, you may request to appear before the City Council to contest the request for payment of the penalty. After a hearing before the Council, the Council may determine to withdraw the request for payment or to renew the request for payment. Because the payment of the administrative penalty is voluntary, there shall be no appeal from the decision of the Council.

If you pay the administrative penalty, the city will not initiate criminal proceedings for this alleged violation. However, 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.

Payment of the administrative penalty may be made by check, cash or money order to the City Treasurer.

Signed: _____
(Name and Title of Person Giving Notice)

TITLE III: ADMINISTRATION

Chapter

30. GENERAL PROVISIONS

31. DEPARTMENTS, BOARDS AND COMMISSIONS

32. EMERGENCY MANAGEMENT

CHAPTER 30: GENERAL PROVISIONS

Section

30.01 City Council meetings
30.02 Presiding officer
30.03 Minutes
30.04 Order of business
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30.06 Ordinance, resolutions, motions, petitions and communications
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30.08 Compensation of Mayor and Council Members
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30.12 Application of state laws
30.13 Background information

§ 30.01 CITY COUNCIL MEETINGS.

(A) *Regular meetings*. Regular meetings of the City Council shall be held at least once each month, at a date, time and place as established by the City Council. Any regular meeting falling upon a holiday shall be held on the next following business day at the same time and place. All meetings, including special and adjourned meetings, shall be held in the city hall unless the City Council decides otherwise at a prior meeting, or meeting in the city hall is impossible.

(B) *Special meetings*. The Mayor or any two members of the City Council may call a special meeting of the City Council upon at least 24 hours written notice to each member of the City Council. This notice shall be delivered personally to each member or shall be left at the member's usual place of residence with some responsible person. Pursuant to M.S. Ch. 13D, as it may be amended from time to time, written notice of any special meeting shall be posted giving the date, time, place and purpose of the meeting at least three days before the meeting. Written notice shall be mailed at least three days before the meeting to anyone who has filed a written request for notice of special meetings. In calculating the three days, if the last day falls on a Saturday, Sunday or legal holiday, the next regular business day shall be counted as the third day.

(C) *Emergency meetings*. Notice of emergency meetings shall be given as required by M.S. Ch. 13D, as it may be amended from time to time. An emergency meeting is a meeting defined by M.S. Ch. 13D, as it may be amended from time to time.

(D) *Initial meeting*. At the first regular City Council meeting in January of each year, the City Council shall:

(1) Designate the depositories of city funds;

(2) Designate the official newspaper;

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

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

(5) Establish and appoint Council Members to those City Council committees as are deemed appropriate for the efficient and orderly management of the city.

(E) *Public meetings*. All City Council meetings, including special, emergency and adjourned meetings and meetings of City Council committees, as well as meetings of City Commissions and Boards, shall be conducted in accordance with the Minnesota Open Meeting Law, M.S. Ch. 13D, as it may be amended from time to time.

§ 30.02 PRESIDING OFFICER.

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

(B) *Procedure*. The presiding officer shall preserve order, enforce any rules of procedure adopted by the City Council, and determine without debate, subject to the final decision of the City Council on appeal, all questions of procedure and order.

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

§ 30.03 MINUTES.

(A) *Generally*. Minutes of each City Council meeting shall be kept by the City Clerk or, in the City Clerk's absence, by the Deputy City Clerk. In the absence of both, the presiding officer shall appoint a secretary pro tem. Ordinances, resolutions and claims need not be recorded in full in the minutes if they appear in other permanent records of the City Clerk and can be accurately identified from the description given in the minutes.

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

§ 30.04 ORDER OF BUSINESS.

(A) *Order established*. Each meeting of the City Council shall convene at the time and place appointed therefor. City Council business shall be conducted in the following order unless varied by the presiding officer or by-laws or other procedures adopted by Council resolution:

(1) Call to order.

(2) Roll call.

(3) Approval of minutes.

(4) Consent agenda.

(5) Public hearings.

(6) Petitions, requests, and communications.

(7) Ordinances and resolutions.

(8) Reports of officers, boards, and committees.

(9) Unfinished business.

(10) New business.

(11) Miscellaneous.

(12) Adjournment.

(B) *Petitions and agenda*. Petitions and other papers addressed to the City Council shall be read or copies distributed by the City Clerk upon presentation of the same to the City Council. All persons desiring to present new business before the City Council shall inform the City Clerk thereof at least 72 hours before new business is to be heard. The City Clerk may prepare an agenda of the new business for submission to the City Council on or before the time of the next regular meeting.

§ 30.05 VOTING.

The votes of the Council Members on any question may be taken in any manner which signifies the intention of the individual members, and the votes of the Council Members on any action taken shall be recorded in the minutes. The vote of each Council Member shall be recorded on each appropriation of money, except for payments of judgments, claims and amounts fixed by statute. If any Council Member is present but does not vote, the minutes, as to his or her name, shall be marked "Present-Not Voting."

§ 30.06 ORDINANCE, RESOLUTIONS, MOTIONS, PETITIONS AND COMMUNICATIONS.

(A) *Signing and publication proof*. Every ordinance and resolution passed by the City Council shall be signed by the Mayor, attested by the City Clerk, and filed by the City Clerk in the ordinance or resolution book. Proof of publication of every ordinance shall be attached and filed with the ordinance.

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

§ 30.07 SUSPENSION OR AMENDMENT OF RULES.

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

§ 30.08 COMPENSATION OF MAYOR AND COUNCIL MEMBERS.

The compensation of the Mayor and the compensation of each Council Member shall be established from time to time by City Council ordinance pursuant to M.S. § 415.11, as it may be amended from time to time.

§ 30.09 COMPENSATION OF OFFICERS AND EMPLOYEES.

Officers and employees of the city shall be compensated at a rate as established from time to time by the City Council.

§ 30.10 QUORUM FOR CONDUCTING BUSINESS.

(A) A quorum shall consist of a majority of the entire City Council, including the Mayor. A quorum shall be necessary to transact the business of the City Council.

(B) If no quorum is present, the City Council shall not thereby stand adjourned, but the members present shall adjourn or recess the City Council by a majority vote of those present.

§ 30.11 FEES AND CHARGES.

The City Council may enact an ordinance establishing those fees and charges that are authorized by this code. Until that ordinance becomes effective, all fees and charges established by ordinance or resolution prior to the adoption of this code shall remain in effect. All fees and charges established by the ordinance establishing fees and charges may be amended from time to time by amendment of that ordinance.

§ 30.12 APPLICATION OF STATE LAWS.

The provisions of the Government Data Practices Act, M.S. Ch. 13, the Opening Meeting Law, M.S. Ch. 13D, and the laws relating to Gifts to Local Officials, M.S. § 471.895, as these laws may be amended from time to time, apply to the City Council and all boards and commissions of this city and their members.

§ 30.13 BACKGROUND INFORMATION.

(A) *Applicants for City employment.*

(1) *Purpose*. The purpose and intent of this section is to establish regulations that will allow law enforcement access to Minnesota's Computerized Criminal History information for specified non-criminal purposes of employment background checks for the positions described in division (2) below.

(2) *Criminal history employment background investigations*. Pursuant to M.S. § 364.021 as it may be amended from time to time, with the exception of the applicants for employment listed in M.S. § 364.09, the city shall not inquire into or consider the criminal record or history of an applicant for public employment until the applicant has been selected for an interview by the city or, if there is not an interview, before a conditional offer of employment is made to the applicant.

The City Police Department or County Sheriff's Department is hereby required, as the exclusive entity within the City to do a criminal history background investigation on the applicants for the following positions within the city, unless the city's hiring authority concludes that a background investigation is not needed:

(a) Employment positions. All regular part-time or full-time employees of the City and other positions that work with children or vulnerable adults.

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

(3) Before the investigation is undertaken, the applicant must authorize the Police Department or County Sheriff's Department by written consent to undertake the investigation. The written consent must fully comply with the provisions of M.S. Ch. 13, as it may be amended from time to time, regarding the collection, maintenance and use of the information. Except for the positions set forth in M.S. § 364.09, 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 with a jail sentence. If the City rejects the applicant's request on this basis, the City shall notify the applicant in writing of the following:

(a) The grounds and reasons for the denial.

(b) The applicant complaint and grievance procedure set forth in M.S. § 364.06.

(c) The earliest date the applicant may reapply for employment.

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

(B) *Applicants for City licenses*.

(1) *Purpose*. The purpose and intent of this section is to establish regulations that will allow law enforcement access to Minnesota's Computerized Criminal History information for specified non-criminal purposes of licensing background checks.

(2) Criminal history license background investigations. The Police Department or County Sheriff's Department is hereby required, as the exclusive entity within the City, to do a criminal history background investigation on the applicants and their employees for the following licenses or permits within the city:

City Licenses: Liquor Licenses, under Chapter 112 of this code, and any applicants under Chapters 113, 114, 116, 118, or 119 of this code.

(3) In conducting the criminal history background investigation in order to screen license or permit applicants, the Police Department or Sheriff Department is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehensions Computerized Criminal History information system in accordance with BCA policy. Any data that is accessed and acquired shall be maintained at the Police Department or Sheriff's Department under the care and custody of the chief law enforcement official or his or her designee. A summary of the results of the Computerized Criminal History data may be released by the Police Department to the licensing authority, including the City Council, the City Clerk or other City staff involved in the license approval process.

(4) Before the investigation is undertaken, the applicant must authorize the Police Department or Sheriff's Department by written consent to undertake the investigation. The written consent must fully comply with the provisions of M.S. Ch. 13 as it may be amended from time to time regarding the collection, maintenance and use of the information. Except for the positions set forth in M.S. § 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 with a jail sentence. If the City rejects the applicant's request on this basis, the City shall notify the applicant in writing of the following:

(a) The grounds and reasons for the denial.

(b) The applicant complaint and grievance procedure set forth in M.S. § 364.06.

(c) The earliest date the applicant may reapply for the license.

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

CHAPTER 31: DEPARTMENTS, BOARDS AND COMMISSIONS

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POLICE DEPARTMENT

§ 31.01 POLICE DEPARTMENT CONTINUED.

(A) If the city has a Police Department at the time this code is adopted, then the Department of the city is hereby continued. If the city does not have a Police Department at the time of the adoption of this code, then at any time after the code is adopted, the City Council may by resolution create a Police Department, which shall be organized and administered as provided for by this code. The City Council may at any time determine by resolution to discontinue the existence of a Police Department and provide for the enforcement of state laws and city ordinances by other means. The head of the Police Department shall be known as the Chief of Police and the number of additional members of the Police Department, together with their ranks and titles, shall be determined by the City Council by resolution. The compensation to be paid to members of the Police Department shall be fixed by the City Council. Members of the Police Department shall be appointed by the City Council.

(B) All police officers shall meet the minimum standards for licensing as a peace officer as established by the Minnesota Peace Officers Standards and Training Board and have a current and valid peace officer license at the time of appointment. All police officers shall retain this license during their employment as a police officer with the city and will be subject to discharge if the license is suspended, revoked or becomes invalid for any reason. In addition, all police officers must have a valid Minnesota vehicle operator's license and must be insurable as a vehicle driver by the city's automobile insurance carrier.

§ 31.02 CHIEF OF POLICE.

The Chief of Police shall have supervision and control of the Police Department and its members. The Chief of Police shall be responsible for the proper training and discipline of the members of the Police Department. The Chief of Police shall be responsible for the keeping of adequate records and shall report to the City Council on the needs of the Police department and its work. Every member of the Police department is subordinate to the Chief of Police and shall obey the instructions of the Chief of Police and any superior officer. The City Council may designate one of the police officers as Acting Chief, who shall have all the powers and duties of the Chief of Police during the absence or disability of the Chief of Police.

§ 31.03 DUTIES OF POLICE.

Members of the Police Department are authorized to enforce the laws applicable to the city, bring violators before the court, and make complaints for offenses coming to their knowledge. Members of the Police Department are authorized to serve processes on behalf of the city and shall serve those notices as may be required

by the City Council or other authority. When the city is not a party to the proceedings involved in the process or notice, the officer shall collect the same fees as provided by law. All fees shall be paid into the city treasury.

§ 31.04 UNIFORM AND BADGE.

Each member of the Police Department shall, while on duty, wear a suitable badge and uniform furnished by the city, except that the Chief of Police may authorize the performance of specific duties while not in uniform. When a member terminates membership in the Police Department, the member shall immediately deliver to the city the badge, uniform and all other property of the city.

§ 31.05 RESERVE OFFICERS.

(A) The Chief of Police may appoint, for a specified time, as many reserve officers as may be necessary. Reserve officers shall be subordinate to the Chief of Police. Under the provisions of M.S. § 626.84, Subd. 1(e), as it may be amended from time to time, a ***RESERVE OFFICER*** is an individual whose services are utilized by a law enforcement agency to provide supplementary assistance at special events, traffic or crowd control, and administrative or clerical assistance. A reserve officer's duties shall not include enforcement of the general criminal laws of the state, and the reserve officer does not have full powers of arrest or authorization to carry a firearm on duty.

(B) The Chief of Police, or City Council if there is no Police Chief, may appoint, for a specified time, as many parking enforcement officers pursuant to M.S. § 168B.035 Subd. 2, as it may be amended from time to time, as may be necessary. The parking enforcement officers shall be subordinate to the Chief of Police, if there is one, or the City Clerk. A ***PARKING ENFORCEMENT OFFICER*** is an individual whose services are utilized by a law enforcement agency to provide parking enforcement and administrative or clerical assistance. A parking enforcement officer's duties shall not include enforcement of the general criminal laws of the state, and the parking enforcement officer does not have full powers of arrest or authorization to carry a firearm on duty.

VOLUNTEER FIRE DEPARTMENT

§ 31.20 VOLUNTEER FIRE DEPARTMENT CONTINUED; APPOINTMENT OF OFFICERS.

(A) If, at the time of the adoption of this code, the city has a Volunteer Fire Department, there is continued in this city a Volunteer Fire Department. If the city, at the time of the adoption of this code, does not have a Volunteer Fire Department, the City Council may by resolution create a Volunteer Fire

Department subject to the provisions of this code. All Volunteer Fire Departments are established under the authority of state law, M.S. § 412.221, Subd. 17, as it may be amended from time to time.

(B) All officers of the Volunteer Fire Department shall be appointed by the City Council. These officers may be removed by the City Council for cause and after a public hearing. If one of the officers duly appointed shall resign his or her office, be removed from office by the City Council, or is deceased during his or her term of office, the successor shall be duly appointed by the City Council as soon as is practical and no later than two weeks from the time the position becomes open. The officer so appointed is so appointed for any period of the unexpired term of the vacated office.

(C) Firefighters and probationary firefighters shall be appointed by the City Council upon recommendation by the Chief of the Volunteer Fire Department. The process of recruitment, selection, appointment and termination of firefighters and probationary firefighters shall, as required by state law, follow all of the provisions of the Veteran's Preference Act, M.S. §§ 43A.11 and 197.46, as they may be amended from time to time, and, as required by state law, there shall be no discrimination on the basis of age, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, sexual orientation or disability (except based on a bona fide occupational qualification) as provided by the Minnesota Human Rights Act, M.S. Ch. 363A, as it may be amended from time to time. Firefighters shall continue as members of the Volunteer Fire Department during good behavior until retirement, but may be removed by the City Council for cause after a public hearing.

(D) As required by state law, M.S. § 412.241, as it may be amended from time to time, the City Council shall have full authority over the financial affairs of the Volunteer Fire Department, and shall provide for the collection of all revenues and other assets, the auditing and settlement of accounts, and the safekeeping and disbursement of public money. This division does not apply to the funds of any Fire Relief Association.

§ 31.21 DUTIES OF CHIEF.

The Chief shall have control of all fire fighting apparatus and shall be responsible for its care and condition. The Chief shall make a report semi-annually to the City Council at its meeting in March and in September as to the condition of the equipment and needs of the Volunteer Fire Department. The Chief may submit additional reports and recommendations at any meeting of the City Council, and he or she shall report each suspension by him or her of a member of the Volunteer Fire Department at the first meeting of the City Council following the suspension. The Chief shall be responsible for the proper training and discipline of the members of the Volunteer Fire Department, and may suspend any member for refusal or neglect to obey orders pending final action by the City Council on his or her discharge or retention.

§ 31.22 [RESERVED]

§ 31.23 RECORDS.

The Chief shall keep in convenient form a record of all fires. The record shall include the time of the alarm, location of fire, cause of fire, if known, type of building, name of owner or tenant, purpose for which occupied, value of building and contents, members of the Volunteer Fire Department responding to the alarm and other information as he or she may deem advisable or as may be required from time to time by the City Council or state law or regulation.

§ 31.24 PRACTICE DRILLS.

It shall be the duty of the Chief, when the weather permits, to hold practice drills for the Volunteer Fire Department and to give the firefighters instruction in approved methods of fire fighting and fire prevention.

§ 31.25 ASSISTANT CHIEF.

In the absence or disability of the Chief of the Volunteer Fire Department, the Assistant Chief shall perform all functions and exercise all of the authority of the Chief.

§ 31.26 FIREFIGHTERS.

Firefighters shall not be less than 18 years of age and able bodied. They shall become members of the Volunteer Fire Department only after a 12-month probationary period. The City Council may require that each candidate, before he or she may become a probationary firefighter, must possess certain minimum height, weight, education, mental and physical health requirements, and any other qualifications which may be specified by the City Council.

§ 31.27 [RESERVED]

§ 31.28 COMPENSATION.

The members and officers of the Volunteer Fire Department shall receive compensation as provided by the City Council.

§ 31.29 INTERFERENCE WITH VOLUNTEER FIRE DEPARTMENT.

It shall be unlawful for any person to give or make, or cause to be given or made, an alarm of fire without probable cause, or to neglect or refuse to obey any reasonable order of the Chief or other firefighter at a fire, or to interfere with the Volunteer Fire Department in the discharge of its duties. Penalty, see § 10.99

§ 31.30 POLICIES AND PROCEDURES.

The Volunteer Fire Department may adopt policies and procedures for the operation of the department, which shall be effective upon approval by the City Council. Any provision of these policies and procedures, which may be called a Constitution and Bylaws, which is inconsistent with state and federal law, including the Veterans Preference Act, Minnesota Human Rights Act, and state laws requiring the City Council to control Fire Department Finances, shall be unenforceable and void.

PLANNING COMMISSION

§ 31.45 ESTABLISHMENT OF THE PLANNING COMMISSION.

If, at the time this code is adopted, the city has a Planning Commission, the Planning Commission for the city is hereby continued. If the city did not have a Planning Commission at the time of the adoption of this code, the City Council may at any time determine to establish a Planning Commission by appointing members to the Planning Commission as provided in § 31.46 of this code. To the extent that any provisions of §§ 31.45 to 31.48 of this code are inconsistent with any provisions of Titles XV or XVII, the provisions of those titles shall prevail. The Planning Commission shall be the city planning agency authorized by M.S. § 462.354(1), as it may be amended from time to time.

§ 31.46 COMPOSITION.

(A) The Planning Commission shall consist of seven members from the resident population of the city to be appointed by the City Council. The appointees shall be appointed to serve staggered terms of three years, except as noted below, commencing on the first day of January in the year of appointment. Upon expiration of a term, the appointee shall continue until reappointed or a successor is appointed. Absences from any three meetings in a year, unless excused in advance by the Chair, constitutes a vacancy. In the event of any vacancy, the City Council, shall appoint a person to complete the unexpired term.

(B) One member may be a Council Member or the City Clerk, to be appointed by the City Council. This member shall serve for a one year term, to expire on December 31 of each year.

(C) Other persons may serve in an ex officio capacity as the City Council may, in its discretion, deem appropriate.

(D) Each of the five regular Planning Commission members shall have equal voting privileges. Any member may be removed for cause by majority vote of the City Council upon written charge and after a public hearing.

§ 31.47 ORGANIZATION, MEETINGS, MINUTES AND EXPENDITURES.

(A) At the first regular meeting in January, the Planning Commission shall elect a Chairperson, a Vice-Chairperson and a Secretary from among its appointed members, each for a term of one year. The Planning Commission may create and fill other offices as it may determine is necessary.

(B) The Planning Commission shall hold at least one meeting each month at the time and place as they may fix by resolution. Special meetings may be called at any time by the Chairperson, or in the case of the Chairperson's absence, by the Vice-Chairperson.

(C) Written minutes of meetings shall be kept and filed with the City Clerk prior to the next regularly scheduled City Council meeting, but shall be subject to the approval at the next Planning Commission meeting.

(D) No expenditures by the Planning Commission shall be made unless and until authorized for the purpose by the City Council.

§ 31.48 POWERS AND DUTIES; COMPREHENSIVE PLAN.

(A) *Generally*. The Planning Commission shall have the powers and duties given to city planning agencies generally by law, including the authority to conduct public hearings as directed by the City Council or city policy. The Planning Commission shall also exercise the duties conferred upon it by this code. It shall be the purpose of the Planning Commission to prepare and adopt a comprehensive plan for the physical development of the city, including proposed public buildings, street arrangements and improvements, efficient design of major thoroughfares for moving of traffic, parking facilities, public utilities services, parks and playgrounds, a general land use plan and other matters relating to the physical development of the city. This plan may be prepared in sections, each of which shall relate to a comprehensive plan program. After the City Council has adopted the comprehensive plan, the Planning Commission shall periodically, but at least every five years, review the comprehensive plan and any ordinances or programs implementing the plan.

(B) *Means of executing plan*. Upon the adoption of a comprehensive plan or any section thereof, it shall be the concern of the Planning Commission to recommend to the City Council reasonable and practical means for putting into effect the plan or section thereof in order that it will serve as a pattern and guide for the orderly physical development of the city and as a basis for judging the timely disbursements of funds to implement the objective. Means of effectuating the plan shall, among other things, consist of a zoning ordinance, subdivision regulations, capital improvement programming and technical review, and recommendations of matters referred to the Planning Commission by the City Council.

(C) *Zoning ordinance*. Pursuant to M.S. § 462.357, Subd. 4, as it may be amended from time to time, the Planning Commission shall review all proposed amendments to the zoning ordinance, conduct public hearings as directed by the City Council or city policy, and make recommendations to the City Council concerning zoning ordinance amendments and their relation to the city comprehensive plan and other land use controls. The Planning Commission shall report recommendations to the City Council for action.

(D) *Conditional permits*. The Planning Commission may make recommendations on all requests for a conditional use permit under the terms of the zoning ordinance and may conduct public hearings as directed by the City Council or city policy. The Planning Commission shall report its recommendations to the City Council for action.

(E) *Interim Use Permits*. The Planning Commission may make recommendations on all requests for an interim use permit under the terms of the zoning ordinance and conduct public hearings as directed by the City Council or city policy. The Planning Commission shall report its recommendations to the City Council for action

(F) *Subdivision regulations*. The Planning Commission may make recommendations in relation to the subdividing of land as prescribed by the ordinance and may conduct public hearings as directed by the City Council or city policy. The Planning Commission shall report its recommendations to the City Council for action.

(G) *Variances*. All applications for variances may be referred to the Planning Commission which may conduct public hearings as directed by the City Council or city policy, and forwarded with or without recommendations directly to the City Council, which shall have the powers of a Board of Appeals and Adjustments as provided for in M.S. § 462.357, Subd. 6, as it may be amended from time to time for its decision.

(H) *Official Map*. Pursuant to M.S. § 462.359 subd. 2, as it may be amended from time to time, after adoption of a major thoroughfare plan and community facilities plan (which may be contained in the city comprehensive plan or adopted separately), the Planning Commission, for the purpose of carrying out the policies of the major thoroughfare plan and community facilities plan, may prepare and recommend to the governing body a proposed official map covering the entire municipality or any

portion thereof. The official map or maps shall be prepared in sufficient detail to permit establishment of the future acquisition lines on the ground. In unplatted areas, a minimum of a centerline survey shall have been made prior to the preparation of the final draft of the official map. The accuracy of the future acquisition lines shown on the official map shall be attested to by a licensed surveyor.

(I) *Appeals to denials of zoning, land use or building permits based on the official map*. All appeals to denials of zoning, land use or building permits based on the official map may be referred to the Planning Commission, and forwarded with or without recommendations directly to the City Council. The City Council shall have the powers of a Board of Appeals and Adjustments as provided for in M.S. 462.359, Subd. 4, as it may be amended from time to time for its decision.

(J) *Purchase and sale of real property*. Pursuant to M.S. § 462.356, Subd. 2, as it may be amended from time to time, after adoption of a comprehensive plan, if any, the Planning Commission shall review all proposed acquisitions or disposals of publically owned interests in real property within the city by the municipality, or any special district or any agency thereof, or any other political subdivision having jurisdiction within the municipality, and make findings as to the compliance of the proposed acquisition or disposal of real property with the comprehensive municipal plan. The City Council may by resolution adopted by two-thirds vote dispense with the requirements of this section when in its judgement it finds that the proposed acquisition or disposal of real property has no relationship to the comprehensive municipal plan.

(K) *Capital improvements*. Pursuant to M.S. § 462.356, Subd. 2, as it may be amended from time to time, after adoption of a comprehensive plan, if any, the Planning Commission shall review all proposed capital improvements within the city by the municipality, or any special district or any agency thereof, or any other political subdivision having jurisdiction within the municipality, and make findings, as to the compliance of the proposed capital improvement with the comprehensive municipal plan. The City Council may by resolution adopted by two-thirds vote dispense with the requirements of this section when in its judgment it finds that the proposed acquisition or disposal of real property has no relationship to the comprehensive municipal plan.

(L) *Comprehensive Plan amendments*. Pursuant to M.S. § 462.355, Subds. 2 and 3, as it may be amended from time to time, after adoption of a comprehensive plan, if any, the Planning Commission shall review all proposed amendments to the comprehensive plan, hold at least one public hearing, and make recommendations to the City Council on comprehensive plan amendments and their relation to the city comprehensive plan and other land use controls. The Planning Commission shall report its recommendations to the City Council for action.

ADVISORY PARK AND RECREATION BOARD

§ 31.50 ADVISORY PARK AND RECREATION BOARD.

(A) If the city has an Advisory Park and Recreation or similar Board at the time this code is adopted, that Board is hereby continued. If the city had no Board but wishes to create one, it may do so by resolution, and the provisions of this code will apply.

(B) The Board shall consist of five members from the resident population of the city to be appointed by the Mayor with the approval of the City Council. The appointees shall be appointed to serve staggered terms of three years, except as noted below, commencing on the first day of January in the year of appointment. Upon expiration of a term, the appointee shall continue until reappointed or a successor is appointed. Absences from any three meetings in a year, unless excused in advance by the Chair, constitutes a vacancy. In the event of any vacancy, the Mayor, with the approval of the City Council, shall appoint a person to complete the unexpired term.

(C) (1) At the first regular meeting in January, the Board shall elect a Chairperson, a Vice-Chairperson and a Secretary from among its appointed members, each for a term of one year. The Board may create and fill other offices as it may determine.

(2) The Board shall hold at least one meeting each month at the time and place as they may fix by resolution. Special meetings may be called at any time by the Chairperson, or in the case of the Chairperson's absence, by the Vice-Chairperson.

(3) Written minutes of meetings shall be kept and filed with the City Clerk prior to the next regularly scheduled City Council meeting, but shall be subject to the approval at the next Board meeting.

(4) No expenditures by the Board shall be made unless and until authorized for the purpose by the City Council.

(D) The Board will consult with the City Council and the Planning Commission and shall be advisory to the City Council in matters relating to park lands, park facilities, park and recreation programs and finances. The Board may meet with various groups on matters relating to park and recreation activities.

CHAPTER 32: EMERGENCY MANAGEMENT

Section

32.01 Policy and purpose
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32.03 Establishment of emergency management organization
32.04 Powers and duties of Director
32.05 Local emergencies
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§ 32.01 POLICY AND PURPOSE.

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

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

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

(C) To provide for the rendering of mutual aid between this city and other political subdivisions of this state and of other states with respect to the carrying out of emergency-preparedness functions.

(D) To comply with the provisions of M.S. § 12.25, as it may be amended from time to time, which requires that each political subdivision of the state shall establish a local organization for emergency management.

§ 32.02 DEFINITIONS.

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

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

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

EMERGENCY MANAGEMENT. The preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters caused by fire, flood, tornado, and other acts of nature, or from sabotage, hostile action, or from industrial hazardous material mishaps. These functions include, without limitation, fire-fighting services, police services, emergency medical services, engineering, warning services, communications, radiological, and chemical, evacuation, congregate care, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to civil protection, together with all other activities necessary or incidental for carrying out the foregoing functions. Emergency management includes those activities sometimes referred to as "civil defense" functions.

EMERGENCY MANAGEMENT FORCES. The total personnel resources engaged in city-level emergency management functions in accordance with the provisions of this chapter or any rule or order thereunder. This includes personnel from city departments, authorized volunteers, and private organizations and agencies.

EMERGENCY MANAGEMENT ORGANIZATION. The staff responsible for coordinating city-level planning and preparation for disaster response. This organization provides city liaison and coordination with federal, state, and local jurisdictions relative to disaster preparedness activities and assures implementation of federal and state program requirements.

§ 32.03 ESTABLISHMENT OF EMERGENCY MANAGEMENT ORGANIZATION.

There is hereby created within the city government an emergency management organization which shall be under the supervision and control of the City Emergency Management Director, called the Director. The Director shall be appointed by the City Council for an indefinite term and may be removed by the Council at any time. The Director shall serve with a salary as established by the City Council and shall be paid his or her necessary expenses. The Director shall have direct responsibility for the organization, administration and operation of the emergency preparedness organization, subject

to the direction and control of the Council. The emergency management organization shall conform to and be consistent with, where applicable, all state and federal requirements, including the National Incident Management System framework found at 44 CFR part 201, as it may be amended from time to time.

§ 32.04 POWERS AND DUTIES OF DIRECTOR.

(A) The Director shall represent the city on any regional or state conference for emergency management. The Director shall develop proposed mutual aid agreements with other political subdivisions of the state for reciprocal emergency management aid and assistance in an emergency too great to be dealt with unassisted, and shall present these agreements to the Council for its action. These arrangements shall be consistent with the State Emergency Plan.

(B) The Director shall make studies and surveys of the human resources, industries, resources, and facilities of the city as deemed necessary to determine their adequacy for emergency management and to plan for their most efficient use in time of an emergency or disaster. The Director shall establish the economic stabilization systems and measures, service staffs, boards, and sub-boards required, in accordance with state and federal plans and directions subject to the approval of the Mayor.

(C) The Director shall prepare a comprehensive emergency plan for the emergency preparedness of the city and shall present the plan to the Council for its approval. When the Council has approved the plan, it shall be the duty of all city agencies and all emergency preparedness forces of the city to perform the duties and functions assigned by the plan as approved. The plan may be modified in like manner from time to time. The Director shall coordinate the emergency management activities of the city to the end that they shall be consistent and fully integrated with the emergency plans of the federal government and the state and correlated with emergency plans of the county and other political subdivisions within the state.

(D) In accordance with the State and City Emergency Plan, the Director shall institute training programs, public information programs and conduct practice warning alerts and emergency exercises as may be necessary to assure prompt and effective operation of the City Emergency Plan when a disaster occurs.

(E) The Director shall utilize the personnel, services, equipment, supplies, and facilities of existing departments and agencies of the city to the maximum extent practicable. The officers and personnel of all city departments and agencies shall, to the maximum extent practicable, cooperate with and extend services and facilities to the city's emergency management organization and to the Governor upon request. The head of each department or agency in cooperation with the Director shall be responsible for the planning and programming of those emergency activities as will involve the utilization of the facilities of the department or agency.

(F) The Director shall, in cooperation with those city departments and agencies affected, assist in the organizing, recruiting, and training of emergency management personnel, which may be required

on a volunteer basis to carry out the emergency plans of the city and state. To the extent that emergency personnel are recruited to augment a regular city department or agency for emergencies, they shall be assigned to the departments or agencies and shall be under the administration and control of the department or agency.

(G) Consistent with the state emergency services law, the Director shall coordinate the activity of municipal emergency management organizations within the city and assist in establishing and conducting training programs as required to assure emergency operational capability in the several services as provided by M.S. § 12.25, as it may be amended from time to time.

(H) The Director shall carry out all orders, rules, and regulations issued by the Governor with reference to emergency management.

(I) The Director shall prepare and submit reports on emergency preparedness activities when requested by the Mayor.

§ 32.05 LOCAL EMERGENCIES.

(A) A local emergency may be declared only by the Mayor or his or her legal successor. It shall not be continued for a period in excess of three days except by or with the consent of the Council. Any order, or proclamation declaring, continuing, or terminating a local emergency shall be given prompt and general publicity and shall be filed in the office of the City Clerk.

(B) A declaration of a local emergency shall invoke necessary portions of the response and recovery aspects of applicable local or inter-jurisdictional disaster plans, and may authorize aid and assistance thereunder.

(C) No jurisdictional agency or official may declare a local emergency unless expressly authorized by the agreement under which the agency functions. However, an inter-jurisdictional disaster agency shall provide aid and services in accordance with the agreement under which it functions.
Penalty, see § 32.99

§ 32.06 EMERGENCY REGULATIONS.

(A) Whenever necessary, to meet a declared emergency or to prepare for an emergency for which adequate regulations have not been adopted by the Governor or the Council, the Council may by resolution promulgate regulations, consistent with applicable federal or state law or regulation, respecting: the conduct of persons and the use of property during emergencies; the repair, maintenance, and safeguarding of essential public services, emergency health, fire, and safety regulations, drills or practice periods required for preliminary training, and all other matters which are required to protect public safety, health, and welfare in declared emergencies.

(B) Every resolution of emergency regulations shall be in writing; shall be dated; shall refer to the particular emergency to which it pertains, if so limited, and shall be filed in the office of the City Clerk. A copy shall be kept posted and available for public inspection during business hours. Notice of the existence of these regulations and their availability for inspection at the City Clerk's Office shall be conspicuously posted at the front of the city hall or other headquarters of the city or at other places in the affected area as the Council shall designate in the resolution. By resolution, the Council may modify or rescind a regulation.

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

(D) During a declared emergency, the city is, under the provisions of M.S. § 12.37, as it may be amended from time to time and notwithstanding any statutory or Charter provision to the contrary, empowered, through its Council, acting within or without the corporate limits of the city, to enter into contracts and incur obligations necessary to combat the disaster by protecting the health and safety of persons and property and providing emergency assistance to the victims of a disaster. The city may exercise these powers in the light of the exigencies of the disaster without compliance with the time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering rental equipment agreements, purchase of supplies and materials, limitations upon tax levies, and the appropriation and expenditure of public funds, including, but not limited to, publication of resolutions, publication of calls for bids, provisions of personnel laws and rules, provisions relating to low bids, and requirement for bids.
Penalty, see § 32.99

§ 32.07 EMERGENCY MANAGEMENT A GOVERNMENT FUNCTION.

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

§ 32.08 PARTICIPATION IN LABOR DISPUTES OR POLITICS.

The emergency management organization shall not participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes, nor shall it be employed in a labor dispute.

§ 32.99 PENALTY.

Any person who violates any provision of this chapter or any regulation adopted thereunder relating to acts, omissions, or conduct other than official acts of city employees or officers is guilty of a misdemeanor.

TITLE V: PUBLIC WORKS

Chapter

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51. SEWER REGULATIONS

52. WATER REGULATIONS

53. STORM WATER DRAINAGE UTILITY

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CHAPTER 50: GARBAGE AND RUBBISH

Section

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50.11 Nonresidential customers; container types; collection schedules
50.12 Manner of collection and transportation
50.13 Licensing for collection
50.14 Collection of leaves, trees or tree limbs

Cross-reference:

Health and Safety; Nuisances, see Chapter 92

§ 50.01 EFFECTIVENESS.

The provisions of this chapter are not effective until the City Council has complied with the notice and hearing requirements of M.S. § 115A.94, as it may be amended from time to time.

§ 50.02 DEFINITIONS.

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

GARBAGE. Organic refuse resulting from the preparation of food, and decayed and spoiled food from any source.

RUBBISH. All inorganic refuse matter such as tin cans, glass, paper, ashes and the like.

§ 50.03 SANITATION COLLECTION SERVICE REQUIRED.

Every person owning, managing, operating, leasing or renting any premises or any place where garbage or rubbish accumulates shall subscribe to a sanitation collection service.
Penalty, see § 10.99

§ 50.04 CONTAINER REQUIRED; PLACEMENT.

(A) It shall be the duty of every person whose garbage and refuse is collected by the sanitation collection service to provide a container or containers for garbage and refuse, sufficient in size and number to accommodate and securely keep all garbage and refuse that may accumulate between collections. Garbage containers shall be watertight and constructed of a solid and durable grade of metal, plastic, or paper material.

(B) It shall be the duty of every person whose garbage and refuse is collected by the sanitation collection service to place their garbage containers directly behind the curbline of the street abutting their property or in the absence of a curb directly behind the ditch line abutting their property. In no event shall containers be placed in the street or on the sidewalk or in any manner placed where the containers will interfere with vehicular or pedestrian traffic. It shall be the responsibility of the subscriber to place the containers no earlier than 6:00 p.m. of the afternoon preceding the collection day.
Penalty, see § 10.99

§ 50.05 MEDDLING WITH TRASH RECEPTACLES PROHIBITED.

(A) It shall be unlawful to meddle with garbage cans, trash or rubbish receptacles or in any way pilfer, search or scatter contents of garbage cans or rubbish receptacles in or upon any street or alley within the city limits.

(B) This section shall not apply to persons authorized by the city or persons authorized by state or federal law to search or otherwise meddle with trash receptacles.
Penalty, see § 10.99

§ 50.06 CONTAINERS TO BE KEPT SANITARY AND SECURE.

All containers shall be kept clean and free from accumulation of any substance remaining attached to the inside of the container which would attract or breed flies, mosquitoes, or other insects. The area surrounding garbage containers shall be maintained in a clean and sanitary condition. The contents of all receptacles shall be protected so that the wind cannot scatter the contents over the streets, alleys or other property within the city. All containers shall be securely closed in a manner as to prevent the scattering of the contents and to make them inaccessible to insects, rodents and other animals.
Penalty, see § 10.99

§ 50.07 UNAUTHORIZED PRIVATE COLLECTIONS PROHIBITED.

(A) It shall be unlawful for any person to transport garbage or refuse for hire which has been collected from any premises within the city over any public street within the city.

(B) This section shall not apply to any person who at the time of the activity is operating under a valid contract or franchise granted by the city which authorizes that person to use the public streets to conduct that activity.
Penalty, see § 10.99

§ 50.08 SANITATION SERVICE: CITY OPTIONS.

The City Council may provide for sanitation collection services within the city by use of city employees and vehicles, or it may grant licenses under the terms and conditions of § 50.13, or it may contract with one or more contractors for the provision of these services under the terms and conditions negotiated with the contractors, except that the provisions for insurance under § 50.13(E) shall always apply. Where the city provides for collection by use of city employees and city vehicles, the city shall establish a price structure consistent with § 50.13(I) except as provided by M.S.§ 115A.9301 Subd. 3 as it may be amended from time to time.

§ 50.09 REMOVAL OF BUILDING MATERIALS.

Waste from building operations, rock waste, building materials or other refuse resulting from building or remodeling operations or resulting from a general cleanup of vacant or improved property shall be removed by the building contractor, owner or occupant of the building at his or her own expense. It shall be unlawful for any person to place those materials in any dumpster or other trash receptacle for disposal by the city or any agent or contractor of the city.
Penalty, see § 10.99

§ 50.10 PROHIBITED ACTS.

(A) It shall be unlawful for any person to sweep, throw or deposit any garbage, trash, debris, stagnant water or dead animal into, upon or along any public property or private property of another, except as may be specifically provided by this chapter.

(B) It shall be unlawful for any person owning or otherwise in control of any premises within the city to permit any of the conditions described in division (A) to exist upon property owned or controlled by him or her after having actual or constructive notice thereof.

(C) It shall be unlawful for any person to place in any container any material other than as specifically provided in this chapter.

(D) It shall be unlawful for any person to deposit or maintain garbage or trash except as provided for by this chapter.

(E) It shall be unlawful for any person to deposit any burning match, charcoal, ember, or other material in any container used for the disposal of garbage.
Penalty, see § 10.99

§ 50.11 NONRESIDENTIAL CUSTOMERS; CONTAINER TYPES; COLLECTION SCHEDULES.

(A) It shall be the duty of the owner or person otherwise in charge of multi-family, institutional or industrial premises within the city to cause all garbage and trash accumulated on the premises to be placed in disposable containers, or commercial-type containers. Commercial-type containers may be used and may be placed at a location on the premises as arranged between the customer and the collector, but subject to review by the city at any time.

(B) Disposable containers shall be placed at a location on the premises which is readily accessible to the collector.

(C) The amount and character of garbage shall be considered in establishing size of commercial containers and frequency of pickup. The city shall have final authority to establish the size and frequency based on the history of amount and type of garbage generated by the customer. The collection and removal of garbage and trash from premises used for commercial, institutional, or industrial purposes shall be made as often as necessary in order to maintain the premises free of accumulations. Garbage, except dry trash in contractor-supplied containers, shall be collected not less than one time each week, except for roll-off containers which shall not be subject to this provision so long as they are used solely for brush and dry trash.
Penalty, see § 10.99

§ 50.12 MANNER OF COLLECTION AND TRANSPORTATION.

(A) The collection, removal and disposal of all garbage, trash and brush shall be carried on in a systematic, efficient manner to keep the city in a clean and sanitary condition.

(B) All vehicles used for the collection and transportation of garbage and trash shall be equipped with suitable covers which shall be used to prevent blowing or scattering of refuse while garbage and trash are being transported for disposal.
Penalty, see § 10.99

§ 50.13 LICENSING FOR COLLECTION.

(A) *Purpose*. In order to provide for a continuous system of refuse collection and disposal in a manner which meets the needs and conveniences of the residents of the city and in order to protect the area from the problems of uncoordinated, unsanitary and improper solid waste disposal, the City Council may determine that it is in the best interests of the residents of the city to require licenses of persons collecting or hauling garbage and rubbish for hire, reserving to the city the right and authority to contract with one or more operators to provide these services.

(B) *Licensing*. No person may collect or haul garbage or rubbish within the city without first obtaining a written license from the City Council. An application for a license shall be submitted in writing to the City Clerk, and shall contain the following information:

(1) Name and address of the applicant;

(2) Description of the equipment which will be used within the city by the applicant;

(3) A schedule of the rate that will be charged by the applicant for the various categories of customers within the city;

(4) Evidence of compliance with the other applicable sections of this chapter.

(C) *Franchise*. The City Council may exercise its reserved right to contract with one or more operators for the collection of garbage and rubbish within the city.

(D) *Suspension of license or contract*. A contract or license issued under the provisions of this section may be revoked or suspended for a violation of this chapter or other applicable regulations of law upon a showing that the contractor or licensee has failed to comply with that regulation.

(E) *Financial responsibility*. The licensee or contractor shall show financial responsibility or a certificate of insurance coverage prior to obtaining the license or franchise whereby each vehicle to be used by the licensee or contractor shall be covered against loss or injury in the following amounts: $500,000 when the claim is one for death by wrongful act or omission and $500,000 to any claimant in any other case; $1,500,000 for any number of claims arising out of a single occurrence. The licensee or contractor shall hold the city harmless and agrees to defend and indemnify the city, and the city's employees and agents, for any claims, damages, losses, and expenses related to the work under the license or contract. The city shall be named as an additional insured under that insurance for the services provided under the license or contract. The licensee's or contractor's insurance shall be the primary insurance for the city and the licensee or contractor shall provide a certificate of insurance on the city's approved form which verifies the existence of the insurance required, including provisions to hold the city harmless and defend and indemnify the city. The licensee or contractor shall also provide evidence of workers compensation insurance for employees. These insurance policies shall be for the full term of the license or franchise and shall provide for the giving of ten days prior notice to the city of the

termination or cancellation of these policies. In case any policies are terminated or cancelled, the license or contract shall be automatically revoked upon receipt by the City Clerk of the termination or cancellation.

(F) *Design of equipment*. All trucks or motor vehicles used by the licensee or contractor shall be water-tight so as not to allow the leakage of liquids or refuse while hauling the same and shall be covered with a covering to prevent the scattering of its contents upon the public streets or private properties in the city.

(G) *Inspections*. All vehicles used for garbage or rubbish shall be made available for inspection within the city at the times and places as the City Council may designate.

(H) *Bond*. The contractor or licensee may be required to furnish a surety bond in an amount as the City Council deems necessary running to and approved by the City Council, guaranteeing the franchisee's or licensee's faithful and continuous performance of the terms of the franchise, license or contract and of this chapter.

(I) *Licensee requirements*.

(1) Licensees must impose charges for the collection of garbage or rubbish consistent with M.S. § 115A.93 Subd 3, as it may be amended from time to time, that increase with the volume or weight of the garbage or rubbish collected.

(2) Licensees must not impose any additional charges on customers who recycle.

(3) Where a licensee imposes charges by volume instead of weight, the licensee must establish a base unit size for an average small quantity household and offer a multiple pricing system that ensures that the amounts of waste generated in excess of the base unit amount are priced higher than the base unit price.

§ 50.14 COLLECTION OF LEAVES, TREES OR TREE LIMBS.

Nothing in this chapter shall be construed to prevent the collection for hire by other persons of leaves, trees or tree limbs.

CHAPTER 51: SEWER REGULATIONS

Section

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Cross-reference:

Health and Safety; Nuisances, see Chapter 92

GENERAL PROVISIONS

§ 51.001 DEFINITIONS.

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

ACT. The Federal Water Pollution Control Act, also referred to as the Clean Water Act, being 33 USC 1251 et seq., as amended.

ASTM. American Society for Testing Materials.

AUTHORITY. This city or its representative thereof.

BIOCHEMICAL OXYGEN DEMAND (BOD_5). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C, expressed in terms of milligrams per liter (mg/l).

BUILDING DRAIN. The part of the lowest horizontal piping of a drainage system which receives the discharge from waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning three feet outside the building wall.

BUILDING SEWER. The extension from the building drain to the public sewer or other place of disposal, also referred to as a house connection or service connection.

CITY. The area within the corporate boundaries of the city as presently established or as amended by ordinance or other legal actions at a future time. The term ***CITY*** when used herein may also be used to refer to the City Council and its authorized representative.

CONTROL MANHOLE. A structure specially constructed for the purpose of measuring flow and sampling of wastes.

EASEMENT. An acquired legal right for the specific use of land owned by others.

GARBAGE. Animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.

INDUSTRIAL WASTE. Gaseous, liquid and solid wastes resulting from industrial or manufacturing processes, trade or business, or from the development, recovery and processing of natural resources, as distinct from residential or domestic strength wastes.

INDUSTRY. Any nongovernmental or nonresidential user of a publicly owned treatment works which is identified in the *Standard Industrial Classification Manual*, latest edition, which is categorized in Divisions A, B, D, E and I.

INFILTRATION. Water entering the sewage system (including building drains and pipes) from the ground through means as defective pipes, pipe joints, connections and manhole walls.

INFILTRATION/INFLOW (I/I). The total quantity of water from both infiltration and inflow.

INFLOW. Water other than wastewater that enters a sewer system (including building drains) from sources such as, but not limited to, roof leaders, cellar drains, yard and area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers, catch basins, surface runoff, street wash waters or drainage.

INTERFERENCE. The inhibition or disruption of the city's wastewater disposal system processes or operations which causes or significantly contributes to a violation of any requirement of the city's NPDES or SDS permit. The term includes sewage sludge use or disposal by the city in accordance with published regulations providing guidelines under Section 405 of the Act (33 USC 1345) or any regulations developed pursuant to the Solid Waste Disposal Act (42 USC 6901 et seq.), the Clean Air Act (42 USC 7401 et seq.), the Toxic Substances Control Act (15 USC 2601 et seq.), or more stringent state criteria applicable to the method of disposal or use employed by the city.

MAY. The term is permissive.

MPCA. The Minnesota Pollution Control Agency.

NATIONAL CATEGORICAL PRETREATMENT STANDARDS. Federal regulations establishing pretreatment standards for introduction of pollutants in publicly-owned wastewater treatment facilities which are determined to be not susceptible to treatment by those treatment facilities or would interfere with the operation of those treatment facilities, pursuant to Section 307(b) of the Act (33 USC 1317(b)).

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT. A permit issued by the MPCA, setting limits on pollutants that a permittee may legally discharge into navigable waters of the United States pursuant to Sections 402 and 405 of the Act (33 USC 1342 and 33 USC 1345).

NATURAL OUTLET. Any outlet, including storm sewers and combined sewers, which overflow into a watercourse, pond, ditch, lake or other body of surface water or ground water.

NON-CONTACT COOLING WATER. The water discharged from any use such as air conditioning, cooling or refrigeration, or during which the only pollutant added is heat.

NORMAL DOMESTIC STRENGTH WASTE. Wastewater that is primarily introduced by residential users with a BOD_5 concentration not greater than 287 mg/l and a suspended solids (TSS) concentration not greater than 287 mg/l.

PERSON. Any individual, firm, company, association, society, corporation or group.

pH. The logarithm of the reciprocal of the concentration of hydrogen ions in terms of grams per liter of solution.

PRETREATMENT. The treatment of wastewater from industrial sources prior to the introduction of the waste effluent into a publicly-owned treatment works.

PROPERLY SHREDDED GARBAGE. The wastes from the preparation, cooking and dispensing of food that have been shredded to a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than ½-inch (1.27 cm) in any dimension.

SEWAGE. The spent water of a community. The preferred term is wastewater.

SEWER. A pipe or conduit that carries wastewater or drainage water.

(1) ***COLLECTION SEWER.*** A sewer whose primary purpose is to collect wastewaters from individual point source discharges and connections.

(2) ***INTERCEPTOR SEWER.*** A sewer whose primary purpose is to transport wastewater from collection sewers to a treatment facility.

(3) ***PRIVATE SEWER.*** A sewer which is not owned and maintained by a public authority.

(4) ***PUBLIC SEWER.*** A sewer owned, maintained and controlled by a public authority.

(5) ***SANITARY SEWER.*** A sewer intended to carry only liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters which are not admitted intentionally.

(6) ***STORM SEWER*** or ***STORM DRAIN.*** A drain or sewer intended to carry storm waters, surface runoff, ground water, subsurface water, street wash water, drainage and unpolluted water from any source.

SHALL. The term is mandatory.

SLUG. Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge.

STATE DISPOSAL SYSTEM (SDS) PERMIT. Any permit (including any terms, conditions and requirements thereof) issued by the MPCA pursuant to M.S. § 115.07, as it may be amended from time to time for a disposal system as defined by M.S. § 115.01 Subd. 5, as it may be amended from time to time.

SUSPENDED SOLIDS (SS) or ***TOTAL SUSPENDED SOLIDS (TSS).*** The total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and is removable by laboratory filtering as prescribed in *Standard Methods for the Examination of Water and Wastewater*, latest edition, and referred to as non-filterable residue.

TOXIC POLLUTANT. The concentration of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse affects as defined in standards issued pursuant to Section 307(a) of the Act (33 USC 1317(a)).

UNPOLLUTED WATER. Water of quality equal to or better than the effluent criteria in effect, or water that would not cause violation of receiving water quality standards, and would not be benefitted by discharge to the sanitary sewers and wastewater treatment facilities.

USER. Any person who discharges or causes or permits the discharge of wastewater into the city's wastewater disposal system.

UTILITIES SUPERINTENDENT. The person appointed by the City Council to supervise the sewer and water systems of the city.

WASTEWATER. The spent water of a community and referred to as sewage. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with any ground water, surface water and storm water that may be present.

WASTEWATER TREATMENT WORKS or ***TREATMENT WORKS.*** An arrangement of any devices, facilities, structures, equipment or processes owned or used by the city for the purpose of the transmission, storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or industrial wastewater, or structures necessary to recycle or reuse water including interceptor sewers, outfall sewers, collection sewers, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled water supply such as standby treatment units and clear well facilities; and any works including land which is an integral part of the treatment process or is used for ultimate disposal of residues resulting from that treatment.

WPCF. The Water Pollution Control Federation.

§ 51.002 CONTROL OF SEWERS; ADMINISTRATION OF CHAPTER.

The Utilities Superintendent, or other official designated by the City Council shall have control and general supervision of all public sewers and service connections in the city, and shall be responsible for administering the provisions of this chapter to the end that a proper and efficient public sewer is maintained.

§ 51.003 BUILDING SEWERS; GENERAL REQUIREMENTS.

Building sewer construction shall meet the pertinent requirements of the Minnesota State Building Code, which is those chapters of Minn. Rules referenced in Minn. Rules part 1300.0050, as they may be amended from time to time, and the Minnesota Plumbing Code, Minn. Rules Ch. 4715, as it may be amended from time to time. The applicant shall notify the City Clerk when the building sewer and connection is ready for inspection. The connection shall be made under the supervision of the Building Official or the Building Official's representative, if the city has adopted the State Building Code. If the city has not adopted the State Building Code, the Utilities Superintendent shall perform the inspection. If the city does not have a Utilities Superintendent, an installer licensed under § 51.064 shall certify that the building sewer and connection comply with the State Building Code. No backfill shall be placed until the work has been inspected and approved, or until the certification has been received.
Penalty, see § 51.999

§ 51.004 TAMPERING WITH WASTEWATER FACILITIES.

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under the charge of a misdemeanor.
Penalty, see § 51.999

§ 51.005 COST OF REPAIRING OR RESTORING SEWERS.

In addition to any penalties that may be imposed for violation of any provision of this chapter, the city may assess against any person the cost of repairing or restoring sewers or associated facilities damaged as a result of the discharge of prohibited wastes by that person, and may collect the assessment as an additional charge for the use of the public sewer system or in any other manner deemed appropriate by the city.

GENERAL REGULATIONS

§ 51.015 DEPOSITS OF UNSANITARY MANNER PROHIBITED.

It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the city, or in any area under the city's jurisdiction, any human or animal excrement, garbage or objectionable waste.
Penalty, see § 51.999

§ 51.016 DISCHARGE OF WASTEWATER OR OTHER POLLUTED WATERS.

It shall be unlawful to discharge to any natural outlet any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter and the city's NPDES/SDS permit.
Penalty, see § 51.999

§ 51.017 RESTRICTIONS ON WASTEWATER DISPOSAL FACILITIES.

Except as otherwise provided in this chapter, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater.
Penalty, see § 51.999

§ 51.018 INSTALLATION OF SERVICE CONNECTION TO PUBLIC SEWER.

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes from which wastewater is discharged, and which is situated within the city and adjacent to any street, alley or right-of-way in which there is now located, or may in the future be located, a public sanitary sewer of the city shall be required at the owner's expense to install a suitable service connection to the public sewer in accordance with provisions of this code within 365 days of the date the public sewer is operational; provided, the public sewer is within 200 feet of the structure generating the wastewater. All future buildings constructed on property adjacent to the public sewer shall be required to immediately connect to the public sewer. If sewer connections are not made pursuant to this section, an official ten-day notice shall be served instructing the affected property owner to make the connection.
Penalty, see § 51.999

PRIVATE WASTEWATER DISPOSAL

§ 51.035 PUBLIC SEWER NOT AVAILABLE.

Where a public sewer is not available under the provisions of § 51.018, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this subchapter and Minn. Rules Ch. 7080, Design Standards for Individual Subsurface Sewage Treatment Systems, as they may be amended from time to time.
Penalty, see § 51.999

§ 51.036 PERMITS.

(A) *Required.* Prior to commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the city. The application for the permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary to the city.

(B) *Inspections.* A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the city or its authorized representative. The city or its representative shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the city when work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 24 hours of the receipt of notice. The Utilities Superintendent or other duly authorized employees of the city, bearing proper credentials and identification, are authorized, with the permission of the licensee, owner, resident or other person in control of property within the city, to enter all properties for the purpose of inspection in accordance with the provisions of this chapter. If the licensee, owner, resident or other person in control of property within the city does not permit the entrance to the property, the city shall obtain a search warrant as provided for in § 10.20 before entering the property, except in emergency situations.
Penalty, see § 51.999

§ 51.037 TYPE, CAPACITIES, LOCATION AND LAYOUT.

(A) The type, capacities, location, and layout of a private wastewater disposal system shall comply with all requirements of Minn. Rules Ch. 7080, Individual Sewage Treatment Systems Program, as they may be amended from time to time. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(B) *Straight-pipe systems; noncompliance.* A city inspector who discovers the existence of a straight-pipe system may issue a noncompliance notice to the owner of the straight-pipe system and forward a copy of the notice to the Pollution Control Agency. The notice must state that the owner must

replace or discontinue the use of the straight-pipe system within ten months of receiving the notice. If the owner does not replace or discontinue the use of the straight-pipe system within ten months after the notice was received, the owner of the straight-pipe system shall be subject to a Pollution Control Agency administrative penalty of $500 per month of noncompliance beyond the ten-month period. Administrative penalty orders may be issued for violations under this subdivision, as provided in M.S. § 116.072, as it may be amended from time to time. One-half of the proceeds collected from an administrative penalty order issued for violating this subdivision shall be remitted to the local unit of government with jurisdiction over the noncompliant straight-pipe system.
Penalty, see § 51.999

§ 51.038 DIRECT CONNECTION REQUIRED.

At the time a public sewer becomes available to a property serviced by a private wastewater disposal system, a direct connection shall be made to the public sewer within 365 days in compliance with this chapter, and within 365 days any septic tanks, cesspools and similar private wastewater disposal systems shall be cleaned of sludge. The bottom shall be broken to permit drainage, and the tank or pit filled or may be removed.
Penalty, see § 51.999

§ 51.039 OPERATION AND MAINTENANCE BY OWNER.

The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times at no expense to the city.

§ 51.040 APPLICATION OF SUBCHAPTER.

No statement contained in this subchapter shall be construed to interfere with any additional requirements that may be imposed by the MPCA or the Minnesota Department of Health.

BUILDING SEWERS AND CONNECTIONS

§ 51.055 RESTRICTIONS ON NEW CONNECTIONS.

Any new connections to the sanitary sewer system shall be prohibited unless sufficient capacity is available in all downstream facilities, including but not limited to capacity for flow, BOD_5 and suspended solids, as determined by the Utilities Superintendent.
Penalty, see § 51.999

§ 51.056 BUILDING SEWER PERMITS.

(A) *Required.* No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the city.

(B) *Applications.* Applications for permits shall be made by the owner or authorized agent and the party employed to do the work, and shall state the location, name of owner, street number of the building to be connected and how occupied. No person shall extend any private building drain beyond the limits of the building or property for which the service connection permit has been given.

(C) *Classes.* There shall be two classes of building sewer permits: one for residential and commercial service, and one for service to establishments producing industrial wastes. In either case, the application shall be supplemented by any plans, specifications or any other information considered pertinent in the judgement of the city. The industry, as a condition of permit authorization, must provide information describing its wastewater constituents, characteristics and type of activity.

(D) *Inspection and connection.* The applicant for the building sewer permit shall notify the city when the building sewer is ready for inspection and connection to the public sewer. The connection and inspection shall be made under the supervision of the Utilities Superintendent or authorized representative thereof.
Penalty, see § 51.999

§ 51.057 COSTS AND EXPENSES.

All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may be directly or indirectly occasioned by the installation of the building sewer.
Penalty, see § 51.999

§ 51.058 SEPARATE BUILDING SEWERS REQUIRED.

A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway. The building sewer from the front building may be extended to the rear building and the whole considered one building sewer. The city does not and will not assume any obligation or responsibility for damage caused by or resulting from any connection.
Penalty, see § 51.999

§ 51.059 OLD BUILDING SEWERS; RESTRICTIONS ON USE.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Utilities Superintendent or his or her representative, to meet all requirements of this chapter.

§ 51.060 CONFORMANCE TO STATE BUILDING AND PLUMBING CODE REQUIREMENTS.

(A) The size, slopes, alignment, materials of construction of building sewers and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling of the trench, shall all conform to the requirements of the State Building and Plumbing Code or other applicable rules and regulations of the city. Cast iron pipe shall be used for a building sewer laid within 50 feet of any well per Minnesota Public Health department requirements.

(B) The connection of the building sewer into the public sewer shall conform to the requirements of the State Building and Plumbing Code or other applicable rules and regulations of the city. All connections shall be made gastight and watertight, and verified by proper testing to prevent the inclusion of infiltration/inflow. Any deviation from the prescribed procedures and materials must be approved by the city prior to installation.
Penalty, see § 51.999

§ 51.061 ELEVATION BELOW BASEMENT FLOOR.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by the building drain shall be lifted by an approved means and discharged to the building sewer.
Penalty, see § 51.999

§ 51.062 SURFACE RUNOFF OR GROUNDWATER CONNECTIONS PROHIBITED.

(A) No person shall discharge water or cause to be discharged any unpolluted waters such as storm water, ground water, roof run off, subsurface drainage such as that from floor drains, sump pumps, cisterns, field tile or any other recognizable source or any type of private, commercial or industrial cooling water to any sanitary sewer.

(B) Any person, firm or corporation having a roof drain system, surface drain system, footing tile, swimming pool, ground water drain system or sump pump now connected and/or discharging into the sanitary sewer system shall disconnect and/or remove the same. Any disconnects or opening into the sanitary sewer shall be closed or repaired in an effective, workmanlike manner, as approved by the public works supervisor.

(C) Dwellings and other buildings and structures which require because of the infiltration of water into basements, crawl spaces and the like, a sump pump system to discharge excess water shall have a permanently installed discharge line which shall not at any time discharge water into the sanitary sewer system. A permanent installation shall be one which provides for year around discharge capability to either the outside of the dwelling, building or structure, or is connected to the city storm sewer. It shall consist of a rigid discharge line, without valves or quick connections for altering the path of discharge, and if connected to the city storm sewer shall include a check valve.

(D) *Powers and authority of inspectors*. Duly authorized employees or representatives of the city, bearing proper credentials and identification, shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing pertinent to determine the nature of discharge into any public sewer or natural outlet in accordance with the provisions of this chapter. In lieu of having the city inspect their property, any person or entity may furnish a certificate from a licensed plumber certifying that their property is in compliance with this chapter.

(E) Any person refusing to allow their property to be inspected or refusing to furnish a plumbers certificate within 14 days of the date the duly authorized city employees or representatives are denied admittance to their property shall be subject to the surcharge hereafter provided for.

(F) At any future time, if the city has reason to suspect that an illegal connection may exist in a premises, the owner, by written notice shall comply with the provisions of (C) above.

(G) A surcharge of $100 per month may be imposed and added to every sewer billing mailed to property owners who are not in compliance with this chapter. The surcharge shall be added every month until the property is in compliance. The City Council may grant waivers from the surcharges where strict enforcement may cause undue hardship unique to the property or where the property owner was scheduled for disconnection but cannot do so due to circumstances, such as availability of the plumber or inclement weather.

§ 51.063 EXCAVATIONS.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.
Penalty, see § 51.999

§ 51.064 LICENSES.

(A) *Required*. No person shall make a service connection with any public sewer unless regularly licensed under this chapter to perform the work, and no permit shall be granted to any person except a regularly licensed person. A person licensed as a plumber by the State of Minnesota, or a person in the

ditch installing the pipe who has a card showing that they have completed a program of training that incorporates the Plumbing Code installation requirements, issued by either the Associated Builders and Contractors, Laborers-Employers Cooperation Educational Trust, or Minnesota Utility Contractors Association, is not subject to the licensing requirements of this section.

(B) *Application*. Any person desiring a license to make a service connection with public sewers shall apply in writing to the City Council with satisfactory evidence that the applicant or employer is trained or skilled in the business and qualified to receive a license. All applications shall be referred to the Utilities Superintendent for recommendations to the Council. If approved by the Council, the license shall be issued by the City Clerk upon the filing of a bond as hereinafter provided.

(C) *Issuance*. No license shall be issued to any person until a policy of insurance to the city, approved by the Council, is filed with the City Clerk conditioned that the licensee will indemnify and save harmless the city from all suits, accidents and damage that may arise by reason of any opening in any street, alley or public ground made by the licensee or by those in the licensee's employment for any purpose whatever, and that the licensee will replace and restore the street and alley over that opening to the condition existing prior to installation, adequately guard with barricades and lights, and will keep and maintain the same to the satisfaction of the Utilities Superintendent, and shall conform in all respects to any rules and regulations of the Council relative thereto, and pay all fines that may be imposed on the licensee by law.

(D) *Fee*. The license fee for making service connections shall be as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time. All licenses shall expire on December 31 of the license year unless the license is suspended or revoked by the Council for cause.

(E) *Suspension or revocation*. The Council may suspend or revoke any license issued under this subchapter for any of the following causes:

(1) Giving false information in connection with the application for a license.

(2) Incompetence of the licensee.

(3) Willful violation of any provisions of this chapter or any rule or regulation pertaining to the making of service connections.

Penalty, see § 51.999

USE OF PUBLIC SERVICES

§ 51.080 DISCHARGES OF UNPOLLUTED WATER.

(A) No person shall discharge or caused to be discharged any water such as stormwater, ground water, roof runoff, surface drainage or non-contact cooling water to any sanitary sewer.

(B) Stormwater and all other unpolluted drainage shall be discharged to those sewers as are specifically designed as storm sewers or to a natural outlet approved by the city and other regulatory agencies. Industrial cooling water or unpolluted process waters may be discharged to a storm sewer or natural outlet on approval of the city and upon approval and the issuance of a discharge permit by the MPCA.
Penalty, see § 51.999

§ 51.081 DISCHARGES OF WATERS OR WASTES.

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

(A) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the wastewater disposal system or to the operation of the system. Prohibited materials include but are not limited to gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides.

(B) Solid or viscous substances which will cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as but not limited to grease, garbage with particles greater than ½-inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes.

(C) Any wastewater having a pH of less than 5.0 or greater than 9.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater disposal system.

(D) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to inhibit or disrupt any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the wastewater disposal system.

A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the Act (33 USC 1317(a)).
Penalty, see § 51.999

§ 51.082 LIMITED DISCHARGES.

(A) The following described substances, materials, water or wastes shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either sewers, the wastewater treatment works, treatment process or equipment, will not have an adverse effect on the receiving stream and soil, vegetation and ground water, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The Utilities Superintendent may set limitations lower than limitations established in the regulations below if, in his or her opinion, the more severe limitations are necessary to meet the above objectives. In forming his or her opinion as to the acceptability of wastes, the Utilities Superintendent will give consideration to factors as the quantity of subject waste in reaction to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, the city's NPDES/SDS permit, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors.

(B) The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the Utilities Superintendent are as follows:

(1) Any wastewater having a temperature greater than 150°F (65.6°C), or causing, individually or in combination with other wastewater, the influent at the wastewater treatment plant to have a temperature exceeding 104°F (40°C), or having heat in amounts which will inhibit biological activity in the wastewater treatment works resulting in interference therein.

(2) Any wastewater containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32°F and 150°F (0°C and 65.6°C); and any wastewater containing oil and grease concentrations of mineral origin of greater than 100 mg/l, whether emulsified or not.

(3) Any quantities of flow, concentrations, or both which constitute a “slug” as defined in § 51.001.

(4) Any garbage not properly shredded, as defined in § 51.001 of this chapter. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food on the premises or when served by caterers.

(5) Any noxious or malodorous liquids, gases or solids which either singly or by interaction with other wastes are capable of creating a public nuisance or hazard to life, or are sufficient to prevent entry into the sewers for their maintenance and repair.

(6) Any wastewater with objectionable color not removed in the treatment process such as but not limited to dye wastes and vegetable tanning solutions.

(7) Non-contact cooling water or unpolluted storm, drainage or ground water.

(8) Wastewater containing inert suspended-solids such as but not limited to fullers earth, lime slurries, and lime residues, or of dissolved solids such as but not limited to sodium chloride and sodium sulfate, in quantities that would cause disruption with the wastewater disposal system.

(9) Any radioactive wastes or isotopes of half-life or concentration as may exceed limits established by the Utilities Superintendent in compliance with applicable state or federal regulations.

(10) Any waters or wastes containing the following substances to the degree that any material received in the composite wastewater at the wastewater treatment works is detrimental to treatment process, adversely impacts land application, adversely effects receiving waters, or is in violation of standards pursuant to Section 307(b) of the Act (33 USC 1317(b)): Arsenic, Cadmium, Copper, Cyanide, Lead, Mercury, Nickel, Silver, total Chromium, Zinc and Phenolic compounds which cannot be removed by the city's wastewater treatment system.

(11) Any wastewater which creates conditions at or near the wastewater disposal system which violates any statute, rule, regulation or ordinance of any regulatory agency, or state or federal regulatory body.

(12) Any waters or wastes containing BOD_5 or suspended solids of character and quantity that unusual attention or expense is required to handle the materials at the wastewater treatment works, except as may be permitted by specific written agreement subject to the provisions of § 51.094.

§ 51.083 DISCHARGES HAZARDOUS TO LIFE OR CONSTITUTE PUBLIC NUISANCES.

(A) If any waters or wastes are discharged or are proposed to be discharged to the public sewers which contain substances or possess the characteristics enumerated in § 51.082, or which in the judgement of the Utilities Superintendent may have a deleterious effect upon the wastewater treatment facilities, processes, or equipment, receiving waters or soil, vegetation, and ground water, or which otherwise create a hazard to life or constitute a public nuisance, the city may:

(1) Reject the wastes;

(2) Require pretreatment to an acceptable condition for discharge to the public sewers, pursuant to Section 307(b) of the Act (33 USC 1317(b)) and all amendments thereof;

(3) Require control over the quantities and rates of discharge; and

(4) Require payment to cover the added costs of handling, treating and disposing of wastes not covered by existing taxes or sewer service charges.

(B) If the city permits the pretreatment or equalization of waste flows, the design, installation and maintenance of the facilities and equipment shall be made at the owner's expense and shall be subject to the review and approval of the city pursuant to the requirements of the MPCA.

§ 51.084 INCREASING USE OF PROCESS WATER.

No user shall increase the use of process water or, in any manner, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in §§ 51.081 and 51.082, or contained in the National Categorical Pretreatment Standards or any state requirements.
Penalty, see § 51.999

§ 51.085 PRETREATMENT OR FLOW-EQUALIZING FACILITIES.

Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation at the expense of the owner.

§ 51.086 GREASE, OIL AND SAND INTERCEPTORS.

Grease, oil, and sand interceptors shall be provided when, in the opinion of the Utilities Superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in § 51.082(B)(2), any flammable wastes as specified in § 51.081(A), sand or other harmful ingredients; except that interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of the type to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal of the captured materials by appropriate means, and shall maintain a record of dates and means of disposal which are subject to review by the Utilities Superintendent. Any removal and hauling of the collecting materials not performed by the owner's personnel must be performed by a currently licensed waste disposal firm.
Penalty, see § 51.999

§ 51.087 INDUSTRIAL WASTES; INSTALLATIONS.

Where required by the city, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure, or control manhole, with necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of wastes. The

structure shall be accessible and safely located, and shall be constructed in accordance with plans approved by the city. The structure shall be installed by the owner at his or her expense and shall be maintained by the owner to be safe and accessible at all times.
Penalty, see § 51.999

§ 51.088 INDUSTRIAL WASTES; REQUIREMENTS.

The owner of any property serviced by a building sewer carrying industrial wastes may, at the discretion of the city, be required to provide laboratory measurements, tests or analyses of waters or wastes to illustrate compliance with this chapter and any special condition for discharge established by the city or regulatory agencies having jurisdiction over the discharge. The number, type and frequency of sampling and laboratory analyses to be performed by the owner shall be as stipulated by the city. The industry must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with federal, state and local standards are being met. The owner shall report the results of measurements and laboratory analyses to the city at times and in the manner as prescribed by the city. The owner shall bear the expense of all measurements, analyses and reporting required by the city. At those times as deemed necessary, the city reserves the right to take measurements and supplies for analysis by an independent laboratory.
Penalty, see § 51.999

§ 51.089 MEASUREMENTS, TESTS AND ANALYSES OF WATERS AND WASTES.

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of *Standard Methods for the Examination of Water and Wastewater*, published by the American Public Health Association. Sampling methods, location, times, duration and frequencies are to be determined on an individual basis subject to approval by the Utilities Superintendent.
Penalty, see § 51.999

§ 51.090 PROTECTION FROM ACCIDENTAL DISCHARGE OF PROHIBITED MATERIALS.

Where required by the city, the owner of any property serviced by a sanitary sewer shall provide protection from an accidental discharge of prohibited materials or other substances regulated by this chapter. Where necessary, facilities to prevent accidental discharges of prohibited materials shall be provided and maintained at the owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the Utilities Superintendent for review and approval prior to construction of the facility. Review and approval of the plans and operating procedures shall not relieve any user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter. Users shall notify the Utilities Superintendent immediately upon having a slug or accidental discharge of substances of wastewater in violation of this chapter to enable

countermeasures to be taken by the Utilities Superintendent to minimize damage to the wastewater treatment works. The notification will not relieve any user of any liability for any expense, loss or damage to the wastewater treatment system or treatment process, or for any fines imposed on the city on account thereof under any state and federal law. Employers shall ensure that all employees who may cause or discover a discharge are advised of the emergency notification procedure.
Penalty, see § 51.999

§ 51.091 PERMITTING SUBSTANCE OR MATTER TO FLOW OR PASS INTO PUBLIC SEWERS.

No person having charge of any building or other premises which drains into the public sewer shall permit any substance or matter which may form a deposit or obstruction to flow or pass into the public sewer. Within 30 days after receipt of written notice from the city, the owner shall install a suitable and sufficient catch basin or waste trap, or if one already exists, shall clean out, repair or alter the same, and perform other work as the Utilities Superintendent may deem necessary. Upon the owner's refusal or neglect to install a catch basin or waste trap or to clean out, repair, or alter the same after the period of 30 days, the Utilities Superintendent may cause the work to be completed at the expense of the owner or representative thereof.
Penalty, see § 51.999

§ 51.092 REPAIRING SERVICE CONNECTION.

Whenever any service connection becomes clogged, obstructed, broken or out of order, or detrimental to the use of the public sewer, or unfit for the purpose of drainage, the owner shall repair or cause the work to be done as the Utilities Superintendent may direct. Each day after 30 days that a person neglects or fails to so act shall constitute a separate violation of this section, and the Utilities Superintendent may then cause the work to be done, and recover from the owner or agent the expense thereof by an action in the name of the city.
Penalty, see § 51.999

§ 51.093 CATCH BASIN OR WASTE TRAPS REQUIRED FOR MOTOR VEHICLE WASHING OR SERVICING FACILITIES.

The owner or operator of any motor vehicle washing or servicing facility shall provide and maintain in serviceable condition at all times a catch basin or waste trap in the building drain system to prevent grease, oil, dirt or any mineral deposit from entering the public sewer system.
Penalty, see § 51.999

§ 51.094 SPECIAL AGREEMENT AND ARRANGEMENT.

No statement contained in this subchapter shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor by the industrial concern; provided, that National Categorical Pretreatment Standards and the city's NPDES/SDS Permit limitations are not violated.

USER RATE SCHEDULE FOR CHARGES

§ 51.110 CHARGES GENERALLY.

Each user of sewer service shall pay the charges applicable to the type of service, and in accordance with the provisions set forth in this subchapter.

§ 51.111 PURPOSE.

The purpose of the subchapter is to provide for sewer service charges to recover costs associated with operation, maintenance and replacement to ensure effective functioning of the city's wastewater treatment system, and local capital costs incurred in the construction of the city's wastewater treatment system.

§ 51.112 DEFINITIONS.

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

ADMINISTRATION. Those fixed costs attributable to administration of the wastewater treatment works such as billing and associated bookkeeping and accounting costs.

CITY. The area within the corporate boundaries of the city as presently established or as amended by ordinance or other legal actions at a future time. When used herein the term ***CITY*** may also refer to the City Council or its authorized representative.

DEBT SERVICE CHARGE. A charge levied on users of wastewater treatment facilities for the cost of repaying money bonded to construct the facilities.

INCOMPATIBLE WASTE. Waste that either singly or by interaction with other wastes interferes with any waste treatment process, constitutes a hazard to humans or animals, creates a public nuisance or creates any hazard in the receiving waters of the wastewater treatment works.

INDUSTRIAL USERS or ***INDUSTRIES.***

(1) (a) Entities that discharge into a publicly owned wastewater treatment works liquid wastes resulting from the processes employed in industrial or manufacturing processes, or from the development of any natural resources. These are identified in the *Standard Industrial Classification Manual*, latest edition, Office of Management and Budget, as amended and supplemented under one of the following divisions:

Division A. Agriculture, forestry and fishing
Division B. Mining
Division D. Manufacturing
Division E. Transportation, communications, electric, gas, and sanitary sewers
Division I. Services

(b) For the purpose of this definition, domestic waste shall be considered to have the following characteristics: BOD_5 - less than 287 mg/l; Suspended solids - less than 287 mg/l.

(2) Any nongovernmental user of a publicly owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids or gases in sufficient quantity either singly or by interaction with other wastes to contaminate the sludge of any municipal systems, or to injure or to interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

MAY. The term is permissive.

OPERATION AND MAINTENANCE. Activities required to provide for the dependable and economical functioning of the treatment works, throughout the design or useful life, whichever is longer of the treatment works, and at the level of performance for which the treatment works were constructed. The term includes replacement.

OPERATION AND MAINTENANCE COSTS. Expenditures for operation and maintenance, including replacement.

REPLACEMENT. Obtaining and installing of equipment, accessories or appurtenances which are necessary during the design life or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which the works were designed and constructed.

REPLACEMENT COSTS. Expenditures for replacement.

SANITARY SEWER. A sewer intended to carry only liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm and surface waters which are not admitted intentionally.

SEWER SERVICE CHARGE. The aggregate of all charges, including charges for operation, maintenance, replacement, debt service, and other sewer related charges that are billed periodically to users of the city's wastewater treatment facilities.

SEWER SERVICE FUND. A fund into which income from sewer service charges is deposited along with other income, including taxes intended to retire debt incurred through capital expenditure for wastewater treatment. Expenditure of the sewer service fund will be for operation, maintenance and replacement costs and to retire debt incurred through capital expenditure for wastewater treatment.

SHALL. The term is mandatory.

TOXIC POLLUTANT. The concentration of any pollutant or combination of pollutants as defined in standards issued pursuant to Section 307(a) of the Act (33 USC 1317(a)), which upon exposure to or assimilation into any organism, will cause adverse effects.

USER CHARGE. A charge levied on a user of a treatment works for the user's proportionate share of the cost of operation and maintenance, including replacement.

USERS. Those residential, commercial, governmental, institutional and industrial establishments which are connected to the public sewer collection system.

WASTEWATER. The spent water of a community, also referred to as sewage. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with any ground water, surface water and storm water that may be present.

WASTEWATER TREATMENT WORKS or ***TREATMENT WORKS.*** An arrangement of any devices, facilities, structures, equipment or processes owned or used by the city for the purpose of the transmission, storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or industrial wastewater, or structures necessary to recycle or reuse water including interceptor sewers, outfall sewers, collection sewers, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled water supply such as standby treatment units and clear well facilities; and any works including land which is an integral part of the treatment process or is used for ultimate disposal of residues resulting from the treatment.

§ 51.113 ESTABLISHMENT OF A SEWER SERVICE CHARGE SYSTEM.

(A) The city hereby establishes a Sewer Service Charge System whereby all revenue collected from users of the wastewater treatment facilities will be used to affect all expenditures incurred for annual operation, maintenance and replacement and for debt service on capital expenditure incurred in constructing the wastewater treatment works.

(B) Each user shall pay its proportionate share of operation, maintenance, and replacement costs of the treatment works, based on the users proportionate contribution to the total wastewater loading from all users.

(C) Each user shall pay debt service charges to retire local capital costs as determined by the City Council.

(D) Sewer service rates and charges to users of the wastewater treatment facility shall be determined and fixed in a "Sewer Service Charge System" developed according to the provisions of this subchapter. The Sewer Service Charge System shall be the system enacted prior to the adoption of this code. The Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code may be amended from time to time to include subsequent changes in sewer service rates and charges.

(E) Revenues collected for sewer service shall be deposited in a separate fund known as "The Sewer Service Fund." Income from revenues collected will be expended to off-set the cost of operation, maintenance and equipment replacement for the facility and to retire the debt for capital expenditure.

(F) Sewer service charges and the sewer service fund will be administrated in accordance with the provisions of § 51.116.

(G) A connection fee as fixed in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, shall be charged to each user connecting a new service to the Sanitary Sewer System. The connection fee shall be due and payable within 90 days of the date the connection is completed.

(H) A sewer availability charge, as fixed in the ordinance establishing fees and charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time may be charged. Penalty, see § 51.999

§ 51.114 DETERMINATION OF SEWER SERVICE CHARGES.

The sewer service rates and charges to users of the wastewater treatment facility shall be as established by ordinance or resolution prior to the adoption of this code, unless amended or modified in the Ordinance Establishing Fees and Charges, adopted pursuant to § 30.11, as that ordinance may be amended from time to time. Charges made for service rendered shall conform to M.S. § 444.075 Subd. 3a, as it may be amended from time to time. All accounts shall be carried in the name of the owner who

personally, or by his authorized agent, applied for such service. The property owner shall be liable for all sewer services supplied to the property, whether he or she is occupying the property or not.
Penalty, see § 51.999

§ 51.115 SEWER SERVICE FUND.

(A) The city hereby establishes a "Sewer Service Fund" as an income fund to receive all revenues generated by the sewer service charge system, and all other income dedicated to the operation, maintenance, replacement and construction of the wastewater treatment works, including taxes, special charges, fees and assessments intended to retire construction debt. The city also establishes the following accounts as income and expenditure accounts within the sewer service fund:

(1) Operation and maintenance account.

(2) Equipment replacement account.

(3) Debt retirement account.

(B) All revenue generated by the sewer service charge system, and all other income pertinent to the treatment system, including taxes and special assessments dedicated to retire construction debt, shall be held by the City Clerk separate and apart from all other funds of the city. Funds received by the sewer service fund shall be transferred to the "Operation and Maintenance Account," the "Equipment Replacement Account," and the "Debt Retirement Account" in accordance with state and federal regulations and the provisions of this chapter.

(C) Revenue generated by the sewer service charge system sufficient to ensure adequate replacement throughout the design life or useful life, whichever is longer, of the wastewater facility shall be held separate and apart in the "Equipment Replacement Account" and dedicated to affecting replacement costs. Interest income generated by the "Equipment Replacement Account" shall remain in the "Equipment Replacement Account."

(D) Revenue generated by the sewer service charge system sufficient for operation and maintenance shall be held separate and apart in the "Operation and Maintenance Account."

§ 51.116 ADMINISTRATION.

The sewer service charge system and sewer service fund shall be administrated according to the following provisions:

(A) The City Clerk shall maintain a proper system of accounts suitable for determining the operation and maintenance, equipment replacement and debt retirement costs of the treatment works, and shall

furnish the City Council with a report of those costs annually in December. The City Council shall annually determine whether or not sufficient revenue is being generated for the effective operation, maintenance, replacement and management of the treatment works, and whether sufficient revenue is being generated for debt retirement. The Council will also determine whether the user charges are distributed proportionately to each user in accordance with § 51.113(B). The city shall thereafter, but not later than the end of the year, reassess and as necessary revise the Sewer Service Charge System then in use to ensure the proportionality of the user charges and to ensure the sufficiency of funds to maintain the capacity and performance to which the facilities were constructed, and to retire the construction debt.

(B) In accordance with federal and state requirements, each user will be notified annually in conjunction with a regular billing of that portion of the sewer service charge attributable to operation, maintenance and replacement.

(C) In accordance with federal and state requirements, the City Clerk shall be responsible for maintaining all records necessary to document compliance with the Sewer Service Charge System adopted.

(D) Bills for sewer service charges shall be rendered on a monthly, bi-monthly or quarterly basis as designated by Council, succeeding the period for which the service was rendered and shall be due ten days from the date of rendering. Any bill not paid in full 30 days after the due date will be considered delinquent. At that time the city shall notify the delinquent owner/occupant in writing regarding the delinquent bill and subsequent penalty. The penalty shall be computed at 10% of the original bill and shall be increased the same 10% for every quarter the bill is outstanding. Disconnection of services for late payment shall follow the procedures established in Chapter 54.

(E) The owner of the premises shall be liable to pay for the service to their premises, and the service is furnished to the premises by the city only upon the condition that the owner of the premises is liable therefore to the city.

(F) Any additional costs caused by discharges to the treatment works of toxics or other incompatible wastes, including the cost of restoring wastewater treatment services, clean up and restoration of the receiving waters and environs, and sludge disposal, shall be borne by the discharger of the wastes, at no expense to the city.

POWERS AND AUTHORITY OF INSPECTORS

§ 51.130 AUTHORIZED EMPLOYEES PERMITTED TO ENTER ALL PROPERTIES.

The Utilities Superintendent or other duly authorized employees of the city, bearing proper credentials and identification, are authorized, with the permission of the licensee, owner, resident or

other person in control of property within the city, to enter all properties for the purpose of inspection, observations, measurement, sampling and testing pertinent to the discharges to the city's sewer system in accordance with the provisions of this chapter. If the licensee, owner, resident or other person in control of property within the city does not permit the entrance to the property, the city shall obtain an administrative search warrant as provided for in § 10.20 before entering the property, except in emergency situations.

§ 51.131 AUTHORIZED EMPLOYEES OBTAINING INFORMATION FOR INDUSTRIAL PROCESSES.

The Utilities Superintendent or other duly authorized employees are authorized to obtain information concerning industrial processes which have a direct bearing on the type and source of discharge to the wastewater collection system. An industry may withhold information considered confidential; however, the industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.

§ 51.132 AUTHORIZED EMPLOYEES TO OBSERVE SAFETY RULES.

While performing necessary work on private properties, the Utilities Superintendent or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company, and the property owner shall be held harmless for injury or death to the city employees and the city shall indemnify the property owner against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as may be caused by negligence or failure of the company to maintain safe conditions as required in § 51.087.

§ 51.133 AUTHORIZED EMPLOYEES PERMITTED TO ENTER ALL PROPERTY WITH EASEMENTS.

The Utilities Superintendent or other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of but not limited to inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

§ 51.999 PENALTY.

(A) (1) Any person found to be violating any provisions of §§ 51.001 through 51.094 and 51.130 through 51.133 shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all violations.

(2) Any person who shall continue any violation beyond the time limit provided for in division (A) of this section shall be punished as provided in § 10.99. Each day in which any violation occurs shall be deemed as a separate offense.

(3) Any person violating any of the provisions of §§ 51.001 through 51.094 and 51.130 through 51.133 shall become liable to the city for any expense, loss or damage occasioned by the city by reason of that violation.

(B) (1) Each and every sewer service charge levied by and pursuant to §§ 51.110 through 51.116 is made a lien upon the lot or premises served, and all charges which are on October 31 of each year past due and delinquent shall be certified to the County Auditor by November 29, for collection as provided for in Chapter 54. Nothing in §§ 51.110 through 51.116 shall be held or construed as in any way stopping or interfering with the right of the city to levy as taxes or assessments against any premises affected any delinquent or past due sewer service charges.

(2) As an alternative to levying a lien, the city may, at its discretion, file suit in a civil action to collect amounts as are delinquent and due against the occupant, owner or user of the real estate, and shall collect as well all attorney's fees incurred by the city in filing the civil action. Attorney's fees shall be fixed by order of the court.

(3) In addition to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the owner or user of the real estate being serviced by the treatment works shall be liable for interest upon all unpaid balances at the rate of 8% per annum.

CHAPTER 52: WATER REGULATIONS

Section

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GENERAL PROVISIONS

§ 52.01 GENERAL OPERATION.

The city does hereby make provision for the establishment of a municipal water system (hereinafter called the water system) to be operated as a public utility.

§ 52.02 USE OF WATER SERVICE.

No person other than a city employee shall uncover or make or use any water service installation connected to the city water system except in the manner provided by this chapter. No person shall make or use any installation contrary to the regulatory provisions of this chapter.
Penalty, see § 10.99

§ 52.03 USE TO CIRCUMVENT CHAPTER PROHIBITED.

No person shall permit water from the water system to be used for any purpose to circumvent this chapter.
Penalty, see § 10.99

§ 52.04 DAMAGE TO WATER SYSTEM.

(A) No unauthorized person shall remove or damage any structure, appurtenance, or part of the water system or fill or partially fill any excavation or move any gate valve used in the water system.

(B) No person shall make any connection of an electrical welder to the city water main, appurtenance or service or use an electric welder for the purpose of thawing frozen water mains, appurtenances or services.
Penalty, see § 10.99

§ 52.05 CONNECTIONS BEYOND CITY BOUNDARIES.

Where water mains of the city are in any street or alley adjacent to or outside the corporate limits of the city, the City Council may issue permits to the owners or occupants of properties adjacent or accessible to the water main to make proper water service pipe connections with the water mains of the city and to be supplied with water in conformity with the applicable provisions of this chapter and subject to any contract for the supply of water between the city and any other city. The water meter pit will be in the city limits. The city will own and maintain the water meter. The user will pay for the original meter in the connection fee.
Penalty, see § 10.99

§ 52.06 CONNECTION TO SYSTEM REQUIRED; USE OF PRIVATE WELLS.

(A) Except where municipal water is not available, it shall be unlawful to construct, reconstruct, or repair any private water system which is designed or intended to provide water for human consumption. Private wells, to provide water for other than human consumption, may be constructed, maintained and continued in use after connection is made to the water system; provided, there is no means of cross-connection between the private well and municipal water supply at any time. Hose bibbs that will enable the cross-connection of the two systems are prohibited on internal piping of the well system supply. Where both private and city systems are in use, outside hose bibbs shall not be installed on both systems.

(B) All new homes or buildings shall connect to the municipal water system if water is available to the property. At the time as municipal water becomes available to existing homes or buildings, a direct connection shall be made to the public system within a period of time as determined by the City Council. If the connection is not made pursuant to this chapter, a charge shall be made in an amount established by § 52.51.

(C) Where new homes or buildings do not have water available to the property, the city shall determine whether and under what conditions the municipal water system will be extended to serve the property.

(D) If the well is not to be used after the time a municipal water connection is made:

(1) The well pump and tank shall be disconnected from all internal piping;

(2) The casing shall be filled with sandy soil from the bottom to a point eight feet from the top;

(3) The remaining eight feet shall be filled with concrete to the floor level and the well casing cut off as close to the floor level as possible;

(4) Within 30 days after the municipal water connection is made, the owner or occupant must advise the City Utilities Superintendent that the well has been sealed.

(5) Notwithstanding the foregoing, all well abandonment shall be done in accordance with M.S. §§ 103I.301 to 103I.345 and Minn. Rules Ch. 4725, Wells and Borings, as it may be amended from time to time. All well sealing shall be performed by a professional licensed well driller trained in well abandonment.
Penalty, see § 10.99

§ 52.07 USE OF WATER FOR AIR CONDITIONING; PERMITS.

(A) All air conditioning systems which are connected directly or indirectly with the public water system must be equipped with water conserving and water regulating devices and a backflow device as approved by the City Engineer or City Utilities Superintendent.

(B) Permits shall be required for the installation of all air conditioning systems to the public water system. The fee shall be established pursuant to § 52.51.
Penalty, see § 10.99

§ 52.08 USE OF WATER FROM FIRE HYDRANTS; TEMPORARY CONNECTIONS.

(A) *Use of fire hydrants*. Except for extinguishment of fires, no person, unless authorized by the Public Works Director or Public Utilities Department, shall operate fire hydrants or interfere in any way with the water system without first obtaining a permit to do so from the city as follows:

(1) A permit to use a fire hydrant shall be issued for each individual job or contract and for a minimum of 30 days and for the additional 30 day period as the city shall determine. The permit shall state the location of the hydrant and shall be for the use of that hydrant and none other.

(2) The user shall make an advance cash deposit to guarantee payment for water used and to cover breakage and damage to the hydrant and meter, which shall be refunded upon expiration of the permit, less applicable charges for use.

(3) The user shall relinquish the use of the hydrant to authorized city employees in emergency situations.

(4) The user shall pay a rental charge as established pursuant to § 52.51 for each day including Sundays and legal holidays, and a fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time for each 1,000 gallons of water used.

(5) Connections to a public water supply to fill tankers must follow backflow prevention standards. The connection will have a reduced pressure zone backflow device.

(B) *Temporary connection to fire hydrants*. An owner of a private water system may make a temporary above ground connection to a fire hydrant, subject to the time periods, conditions, and payment specified in § 52.51. In addition, the method of connection to the private system shall conform to all existing requirements of this chapter and city ordinance and the type of meter used shall meet the approval of the Utilities Superintendent.
Penalty, see § 10.99

§ 52.09 WATER DEFICIENCY, SHUT OFF AND USE RESTRICTIONS.

(A) The city shall not be liable for any deficiency or failure in the supply of water to consumers, whether occasioned by shutting the water off for the purpose of making repairs or connections or from any other cause whatsoever. In case of fire, or alarm of fire, or in making repairs of construction of new works, water may be shut off without notice at any time and kept off as long as necessary. In addition, the City Council shall have the right to impose reasonable restrictions on the use of the city water system in emergency situations. For non-payment of charges, water service may be discontinued according to the procedures established in § 52.72.

(B) *Restricted hours*. Whenever the Council determines that a shortage of water supply threatens the city, it may, by resolution, limit the times and hours during which city water may be used for sprinkling, irrigation, car washing, air condition, or other specified uses. After publication of the resolution, no person shall use, or permit water to be used, in violation of the resolution, and any customer who does so shall be charged a fee set by resolution of the Council for each day of violation and the charge shall be added to his next water bill. If the emergency requires immediate compliance with terms of the resolution, the Council may provide for the delivery of a copy of the resolution to the premises of each customer, and any customer who has received such notice and thereafter uses or permits water to be used in violation of the resolution shall be subject to the charge provided above. Continued violation shall be cause for discontinuance of water service.

WATER REGULATIONS

§ 52.25 SUPPLY FROM ONE SERVICE.

No more than one housing unit or building shall be supplied from one service connection except by permission of City Council. Each unit served shall have a separate water meter.
Penalty, see § 10.99

§ 52.26 TAPPING OF MAINS RESTRICTED.

No person, except persons authorized by the City Council, shall tap any distributing main or pipe of the water supply system or insert stopcocks or ferrules therein.
Penalty, see § 10.99

§ 52.27 REPAIRS.

(A) *Determination of need for repairs*. Based on the information supplied by the property owner or available to the city, the city may make a determination whether a problem exists in that portion of the service which is the city's responsibility. If the problem, appears to exist in the areas for which the city has no responsibility, the private owners will be responsible for correction of the problem.

(B) *Thawing of water services*. The city may attempt to thaw water services on request of the resident. If the problem is found within that portion of the service for which the private owner is responsible, the private owner thereafter will be responsible for thawing the service and correction of the problem.

(C) *Excavation or repair of water service*.

(1) The city may arrange for the investigative digging up and repair of any water service where the problem apparently exists within that area for which the city has responsibility.

(2) Unless it is clearly evident, however, that the problem is the responsibility of the city, the excavation and repair may not be made until the property owner requests the city in writing to excavate or repair the service and agrees to pay the cost.

(3) The owner further agrees to waive public hearing and be special assessed the cost of the excavation and repair if the problem is found to be other than the city's responsibility. The city may make the determination for responsibility of the cost of investigation or repair.

(4) The matter of whether the dig up is done by city forces or contracted would depend on the urgency or need of repair and the availability of city forces to do the work. Recovery by the city for faulty construction will depend upon the circumstances and the decision of the City Attorney on the likelihood of recovery.

(D) *Failure to repair*. In case of failure upon the part of any consumer or owner to repair any leak occurring in his or her service pipe within 24 hours after verbal or written notice thereof, the water may be turned off by the city and may not be turned on until the leak has been repaired and a fee pursuant to § 52.51 has been paid to the city.
Penalty, see § 10.99

§ 52.28 ABANDONED OR UNUSED SERVICES.

(A) If the premises served by water have been abandoned, or if the service has not been used for one year, then the service may be shut off at the curb stop box by the city and the water meter will be removed.

(B) When new buildings are erected on the site of old ones, and it is desired to increase or change the old water service, no connections with the mains may be made until all the old service has been removed and the main taps plugged or yoked connections installed by the city at the owner's expense.
Penalty, see § 10.99

§ 52.29 DISCONNECTION PERMIT.

A permit must be obtained to disconnect from the existing water service leads at the curb stop box. The fee for the permit shall be set pursuant to § 52.51.
Penalty, see § 10.99

§ 52.30 SERVICE PIPES.

Every service pipe shall be laid so as to allow at least one foot of extra length in order to prevent rupture by settlement. The service pipe must be placed no less than seven feet below the ground and in a manner as to prevent rupture by freezing. Service pipes must extend from the curb stop box to the inside of the building, or if not taken into the building, then to the hydrant or fixtures which it is intended to supply. All tubing and pipes shall conform to the Minnesota Plumbing Code. All underground joints are to be mechanical, except joints under floors shall be soldered in accordance with the Minnesota Plumbing Code, unless otherwise approved by the Utilities Superintendent. Joints of copper tubing shall be kept, to a minimum, and all joints shall conform to the Minnesota Plumbing Code. All joints and connections shall be left uncovered until inspected by the Utilities Superintendent and must comply to the Minnesota Plumbing Code and tested at normal water line pressure. Unions must conform to the Minnesota Plumbing Code. Connections with the mains for domestic supply shall be at least three-quarter inch up to the curb stop box.
Penalty, see § 10.99

§ 52.31 EXCAVATION AND CONSTRUCTION REQUIREMENTS.

(A) No excavation shall be made until a permit for the connection has been issued by the city.

(B) No water service pipe or water connection shall be installed in the same trench or closer than ten feet horizontally to a sewer trench or drain laid, or to be laid, either in the street or in private property, except that the water pipe on private property may be in a common trench with a sewer drain

which is of a material that is in conformance with the current Minnesota Plumbing Code, Minn. Rules Ch. 4715, as it may be amended from time to time.

(C) Where it is desired to lay the water service pipe and the building sewer pipe in the same trench, or in separate trenches less than ten feet apart, the water service pipe shall be above the sewer pipe unless approved by the City Engineer. It shall be placed at least one foot above the sewer and on a solid shelf excavated at one side of the trench. The sewer pipe shall be of a material that is in conformance with the Minnesota Plumbing Code with tested watertight joints. The water service pipe shall be watertight and corrosion resistant. Copper pipe and ductile or cast iron water pipe with specially protected joints is acceptable for this construction. Cast iron pipe shall conform to the American Water Works Association specifications for this pipe. Bell joint clamps with rubber gaskets are provisionally acceptable as extra protection for the joints on cast iron water pipe. In all cases, precautions shall be taken to assure a firm foundation for the pipes. The intervening space between the pipes shall be backfilled with compacted earth.

(D) In case the installation is on a surfaced street, the following shall apply: All backfill materials shall be mechanically compacted in 12-inch layers to the density of the adjacent material in the roadway area and to the existing street grades in accordance with the Minnesota Department of Transportation Standards. Complete surface restoration shall be made.
Penalty, see § 10.99

§ 52.32 CONNECTION TO OTHER WATER SUPPLIES RESTRICTED.

No water pipe of the water system shall be connected with any pump, well, tank, or piping that is connected with any other source of water supply except to service municipal systems.
Penalty, see § 10.99

§ 52.33 WATER CONNECTIONS; APPLICATIONS AND CHARGES.

(A) *Connection applications.*

(1) All applications for service installations and for water service shall be made to the City Clerk. All applications for service installations and water service shall be made by the owner or agent of the property to be served and shall state the size and location of service connection required. The applicant shall, at the time of making application, pay to the city the amount of fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time or deposit required for the installation of the service connection as hereinafter provided. Applications for services larger than one inch shall be accompanied by two sets of plans or sketches indicating preferred location of service pipe and size of service based on building demand.

(2) The size of the water service connections and meter shall be subject to approval of the City Engineer. Water meter sizing for a domestic connection shall be 5/8 inch by 3/4 inch. The standard service line size will be one inch. If the homeowner requests a larger service line the extra cost of the water meter will be charged to the connection owner. The future replacement of the water meter will be billed at the difference between the standard meter cost and meter need to accommodate the larger line at the time of replacement.

(3) Water billing shall start at the time of installation of the water meter, or in the event the meter is not installed, seven days after completion of outside piping, and shall be calculated upon the minimum quarterly rate, prorated on a semi-monthly basis.

(B) *Connection charges.*

(1) A permit must be obtained to connect to the existing water service leads at the curb stop box. The fee for the permit shall be set pursuant to § 52.51. The city shall install or have installed all service connections from the water main to the curb stop box including the stop box. Payment for service connections must be made before the work is started and should be based upon 1½ times the estimate of costs provided by the City Engineer. Any excess deposit shall be returned to the applicant.

(2) Additional charges shall be paid at the time of making application for tapping and making connections with the water main to where a curb stop box and service lead is not previously installed. The charge shall include the tapping of the water main, corporation cocks, the installation of a service line, the installation of a curb stop box, cost of restoring disturbed areas and all other costs related to the installation.

(3) There shall be a connection charge pursuant to § 52.51 levied by the city to contribute to the payment of the costs of the Public Water System Facilities. The City Council shall set by resolution the charges to be made for nonresidential installations.

(4) When water services have been stopped because of a violation of this chapter, the city shall collect the fee established pursuant to § 52.51 before service is recommenced.

(5) If a person desires to connect to the system and service a parcel that has not been assessed for the cost of water main and lateral construction, then before a permit is granted, the city shall collect an amount from the applicant that is established pursuant to § 52.51.
Penalty, see § 10.99

§ 52.34 LOCATION OF CURB STOP BOX.

Curb stop boxes will be installed on the right-of-way line or easement limits at a location as determined by the City Engineer to be best suitable to the property and shall be left in a vertical position when backfilling is completed. Curb stop boxes will be installed at an approximate depth of seven feet

below the finished ground elevation and the top of the curb stop box shall be adjusted to be flush with the finished ground elevation. Curb stop boxes must be firmly supported by a masonry block. No person shall erect any fence or plant any tree or other landscaping that would obstruct, or place a structure on, park a motor vehicle on, or otherwise obstruct the use of the curb stop box, or cause damage to the same.
Penalty, see § 10.99

§ 52.35 WATER METERS.

(A) *Generally*. Except for extinguishment of fires, no person, unless otherwise authorized by the City Council or Public Utilities Department, shall use water from the water system or permit water to be drawn therefrom unless the same be metered by passing through a meter supplied or approved by the city. No person not authorized by the City Council or Utilities Superintendent shall connect, disconnect, take apart, or in any manner change or cause to be changed or interfere with any meter or the action thereof, or break any meter or valve seal.

(1) A charge established pursuant to § 52.51 shall be paid by customers to the city for water meters including installations and check valves and payment for same shall be made at the time of water service application. This payment shall be made only once, subject to the following.

(2) Where a consumer has need for a larger line in addition to his or her domestic line, as in the case of a commercial consumer who needs a one-inch line for normal use and a six-inch or larger line for a fire sprinkler system, he or she will be permitted to run one line into the premises and "Y" off into two lines at the building. When this is done, the meter will be attached to the small or domestic line and a check valve as well as one-inch detection meter shall be put on the large line.

(3) The city shall maintain and repair all meters when rendered unserviceable through ordinary wear and tear and shall replace them if necessary. When replacement, repair, or adjustment of any meter is rendered by the act, neglect (including damage from freezing or hot water backup) or carelessness of the owner or occupant of the premises, any expense caused the city thereby shall be charged against and collected from the water consumer.

(4) A consumer may, by written request, have his or her meter tested by depositing the amount established pursuant to § 52.51. In case a test should show an error of over 5% of the water consumed, a correctly registering meter will be installed, and the bill will be adjusted accordingly and the testing deposit refunded. This adjustment shall not extend back more than one billing period from the date of the written request.

(5) All water meters and remote readers shall be and remain the property of the city.

(6) Authorized city employees shall have free access at reasonable hours of the day to all parts of every building and premises connected with the water system for reading of meters and inspections.

However, city employees may not enter private property without obtaining the permission of the owner to do so or have obtained a search warrant issued by a court of competent jurisdiction, as provided for in § 10.20.

(7) It shall be the responsibility of the consumer to notify the city to request a final reading at the time of the customer's billing change.

(B) *Water meter setting*. All water meters hereafter installed shall be in accordance with the Minnesota Plumbing Code and any standards established by resolution of the City Council.
Penalty, see § 10.99

RATES AND CHARGES

§ 52.50 WATER UNIT.

A water unit (hereinafter called unit) shall be one residential equivalent connection based on usage of 100,000 gallons per year or portion thereof.

§ 52.51 RATES, FEES AND CHARGES GENERALLY.

The City Council shall establish a schedule of all water rates, fees and charges for permits or services in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time. In accordance with M.S. § 444.075 Subd 3, charges made for service rendered shall be as nearly as possible proportionate to the cost of furnishing the service.

§ 52.52 WATER SERVICE BILLING; CHANGE OF ADDRESS.

All bills and notices shall be mailed or delivered to the address where service is provided. If nonresident owners or agents desire personal notice sent to a different address, they shall so note on the water service application. Any change or error in address shall be promptly reported to the City Clerk. All accounts shall be carried in the name of the owner who personally or by his or her authorized agent, applied for the service. The owner shall be liable for water services supplied to the property whether he or she is occupying the property or not.

§ 52.53 WATER RATES.

(A) The rate due and payable by each user within the city for water taken from the water system shall be established pursuant to § 52.51.

(B) In case the meter is found to have stopped, or to be operating in a faulty manner, the amount of water used will be estimated in accordance with the amount used previously in comparable periods of the year.

(C) Rates due and payable by each water user located beyond the territorial boundaries of the city may be determined by special contract.

(D) The minimum rates established pursuant to § 52.51 shall begin to accrue after connection of the service pipe with the curb stop box.

(E) A meter shall be installed on the water valve in the house and a remote register outside regardless of whether inside piping is connected.

(F) In the event a water customer elects to discontinue the use of the municipal water, the regular or minimum charge shall continue until the date as service is disconnected at the curb box.
Penalty, see § 10.99

§ 52.54 PAYMENT OF CHARGES; LATE PAYMENT; COLLECTION.

(A) Any prepayment or overpayment of charges may be retained by the city and applied on subsequent charges.

(B) If a service charge is not paid when due, then a penalty of 10% shall be added thereto.

(C) In the event a user fails to pay his or her water user fee within a reasonable time following discontinuance of service (a time period not to exceed 90 days), the fee shall be certified by the City Clerk and forwarded to the County Auditor for collection as provided for in Chapter 54.
Penalty, see § 10.99

ADMINISTRATION AND ENFORCEMENT

§ 52.70 SUPERVISION BY UTILITIES SUPERINTENDENT; LICENSING.

(A) All piping connections from the curb stop box to house supply piping shall be made under the supervision of a licensed plumber subject to inspection by the Utilities Superintendent. The piping

connection made to the curb stop box on the house side shall be inspected by the Utilities Superintendent. The water meter installation shall be inspected, tested and the meter sealed by the Utilities Superintendent.

(B) No person, firm or corporation shall engage in the business of altering, repairing, installing or constructing municipal water connections within the city without first obtaining a license to carry on the occupation from the city. A master plumber licensed by the state under the provisions of M.S. § 326B.46, as it may be amended from time to time, is exempt from the provisions of this section. A person in the ditch installing the pipe who has a card showing that they have completed a program of training that incorporates the Plumbing Code installation requirements, issued by either the Associated Builders and Contractors, Laborers-Employers Cooperation Educational Trust, or Minnesota Utility Contractors Association, is not subject to the licensing requirements of this section.

(1) The applicant shall file with the City Clerk evidence of public liability insurance, including products liability insurance with limits of at least $50,000 per person and $100,000 per occurrence and property damage insurance with limits of at least $10,000. Evidence of insurance required pursuant to M.S. § 326B.46, Subd. 2, as it may be amended from time to time, shall satisfy this requirement.

(2) The applicant shall file with the City Clerk a surety bond guaranteeing the conformance and compliance of work with this chapter. The bond shall be in the amount of $2,000. The city shall hold the bond for one year following the license period. Failure to comply with provisions and requirements of this chapter shall result in forfeiture of the bond. The applicant may comply with the requirements of M.S. § 326B.46, Subd. 2, as it may be amended from time to time in lieu of these requirements.

(3) Applications for licenses shall be filed with the City Clerk and shall be reviewed and subject to approval of the city.

(4) Any installation, construction, alteration of a water connection by a licensee in violation of any provision of this chapter or refusal on the part of a licensee to correct the defective work shall be cause for revocation of or refusal to renew a license. This license may be revoked or refused for renewal by the city at any time for cause which shall be documented in writing.

(C) All licenses required in this section shall be renewable annually. Applications for licenses shall be made annually on a form furnished by the City Clerk. Licenses shall be in effect from January 1 to December 31 of the same year. The license fee shall be established pursuant to § 52.51.

(D) Before any license issued under the provisions of this section may be revoked or its renewal refused, the licensee shall be given a hearing by the City Council to show cause why the license should not be revoked or refused. Notice of the time, place and purpose of the hearing shall be in writing.

§ 52.71 POWERS AND AUTHORITY OF INSPECTORS.

The Utilities Superintendent and other duly authorized employees of the city, upon proper identification, are authorized, with the permission of the licensee, owner, resident or other person in control of property within the city, to enter upon all properties for the purpose of inspections, observation and testing in accordance with the provisions of this chapter. If the licensee, owner, resident or other person in control of property within the city does not permit the entrance to the property, the city shall obtain an administrative search warrant as provided for in § 10.20 before entering the property, except in emergency situations.

§ 52.72 DISCONTINUANCE OF SERVICE.

Water service may be shut off at any connection as provided for in Chapter 54 of this code.

§ 52.73 AUTHORIZED EMPLOYEES TO TURN WATER ON AND OFF.

No person, except an authorized city employee, shall turn on or off any water supply at the curb stop box.
Penalty, see § 10.99

§ 52.74 LIABILITY FOR EXPENSE, LOSS OR DAMAGE.

Any person violating any of the provisions of this chapter shall become liable to the city for any expense, loss or damage occasioned by the city by reason of the violation.

CHAPTER 53: STORM WATER DRAINAGE UTILITY

Section

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§ 53.01 STORM WATER DRAINAGE UTILITY ESTABLISHED.

The Council may, by resolution adopted by a majority of its members, resolve that the city storm sewer system be operated as a public utility pursuant to M.S. § 444.075, from which revenues will be derived subject to the provisions of this chapter and state statutes. The storm water drainage utility will be under the administration of the City Clerk.

§ 53.02 DEFINITION.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning:

RESIDENTIAL EQUIVALENT FACTOR (REF). One ***REF*** is defined as the ratio of the average volume of runoff generated by one acre of a given land use to the average volume of runoff generated by one acre of typical single-family residential land during a standard one-year rainfall event.

§ 53.03 DETERMINATION OF STORM WATER DRAINAGE FEES.

(A) Storm water drainage fees for parcels of land shall be determined by multiplying the REF for a parcel's land use by the parcel's acreage and then multiplying the resulting product by the storm water drainage rate. The REF values for various land used are as shown in the following table.

[See table on following page]

Classification	*Land Use*	*REF*
1	Cemeteries, golf courses	.25
2	Parks with parking facilities	.75
3	Single-family and duplex residential	1
4	Public and private schools	1.25
5	Multiple-family residential, churches and government buildings	2.5
6	Commercial, industrial, warehouse	5
7	Vacant land	As assigned

(B) For the purpose of calculating storm water drainage fees, all developed single-family and duplex parcels shall be considered to have an acreage of one-third acre. The storm water drainage rate shall be as set in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code by the City Council.

(C) Other uses not listed shall be classified by the City Engineer by assigning them to the most similar class from the standpoint of probably hydrologic response.

§ 53.04 CREDITS.

The Council may adopt policies, recommended by the City Engineer, by resolution for adjustment of the storm water drainage fee for parcels based upon hydrologic data to be supplied by the property owner, which data demonstrates a hydrologic response substantially different from the standards. The adjustment of storm water drainage fees shall not be made retroactively.

§ 53.05 EXEMPTIONS.

The following land uses are exempt from storm water drainage fees:

(A) Public rights-of-way;

(B) Vacant, unimproved land with ground cover; and

(C) Wetlands and public waters as defined by state law.

§ 53.06 FEE PAYMENT PROCEDURES.

(A) Statements for storm water drainage fees shall be computed monthly and shall appear as part of the monthly utility bill from the city utilities.

(B) If a property owner or person responsible for paying the storm water drainage fee questions the correctness of the fee, the person may have the determination of the charge recomputed by written request to the City Engineer.

(C) Each monthly billing for storm water drainage fees not paid when due shall incur a penalty charge of 10% of the amount past due.

(D) Any past due storm water drainage fees in excess of 90 days past due on October 1 of any year may be certified to the County Auditor for collection with real estate taxes in the following year, pursuant to M.S. § 444.075, Subd. 3e. In addition, the city shall also have the right to bring civil action or to take other legal remedies to collect unpaid fees.

CHAPTER 54: RATES AND CHARGES

Section

54.01 Generally
54.02 Collection of charges
54.03 Disconnection for late payment
54.04 Cold weather rule
54.05 Delinquent charges

§ 54.01 GENERALLY.

(A) The monthly charge for water, sewer services and for collection, removal and disposal of garbage and trash from residences and businesses within the corporate limits of the city shall be as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time.

(B) *Accounts*. All accounts shall be carried in the name of the owner who personally, or by his or her authorized agent, applied for such service. The owner shall be liable for water and sewer services supplied to the property, whether he or she is occupying the property or not, and any unpaid charges shall be a lien upon the property.

§ 54.02 COLLECTION OF CHARGES.

The charges fixed herein for water, sewer services and for collection, removal and disposal of all garbage and trash shall be entered in their respective amounts on the utility bill. The city may discontinue all utility services, including water, sewer, and garbage and trash services, for failing to pay any assessed charges and until the charges have been paid in full under conditions and procedures detailed in § 54.03.

§ 54.03 DISCONNECTION FOR LATE PAYMENT.

(A) It is the policy of the city to discontinue utility service to customers by reason of nonpayment of bills only after notice and a meaningful opportunity to be heard on disputed bills. The city's form for application for utility service and all bills shall contain, in addition to the title, address, room number,

and telephone number of the official in charge of billing, clearly visible and easily readable provisions to the effect:

(1) That all bills are due and payable on or before the date set forth on the bill;

(2) That if any bill is not paid by or before that date, a second bill will be mailed containing a cutoff notice that if the bill is not paid within ten days of the mailing of the second bill, service will be discontinued for nonpayment; and

(3) That any customer disputing the correctness of his or her bill shall have a right to a hearing at which time he or she may be represented in person and by counsel or any other person of his or her choosing and may present orally or in writing his or her complaint and contentions to the city official in charge of utility billing. This official shall be authorized to order that the customer's service not be discontinued and shall have the authority to make a final determination of the customer's complaint.

(B) Requests for delays or waiver of payment will not be entertained; only questions of proper and correct billing will be considered. In the absence of payment of the bill rendered or resort to the hearing procedure provided herein, service will be discontinued at the time specified, but in no event until the charges have been due and unpaid for at least 30 days.

(C) When it becomes necessary for the city to discontinue utility service to a customer for nonpayment of bills, service will be reinstated only after all bills for service then due have been paid, along with a turn-on charge as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time.

§ 54.04 COLD WEATHER RULE.

Pursuant to M.S. § 216B.097, as it may be amended from time to time, no service of a residential customer shall be disconnected if the disconnection affects the primary heat source for the residential unit when the disconnection would occur during the period between October 15 and April 15, the customer has declared inability to pay on forms provided by the city, the household income of the customer is at or below 50% of the state median household income as documented by the customer to the city, and the customer’s account is current for the billing period immediately prior to October 15 or the customer has entered into a payment schedule and is reasonably current with payments under the schedule. The City Clerk shall, between August 15 and October 15, of each year, notify all residential customers of these provisions.
Penalty, see § 10.99

§ 54.05 DELINQUENT CHARGES.

As provided for by M.S. § 444.075, Subd. 3e, as it may be amended from time to time, the City Clerk, annually or more frequently as directed by Council, shall prepare a list of delinquent charges to

be certified for payment as taxes. The list of delinquent charges shall be delivered to the City Council for adoption. All persons who have delinquent charges included in the list shall be notified and given a chance to appear before the Council before the list is adopted. In the event the delinquency involves rental property, notice shall be given to the record owner of the property in addition to the tenant or other parties in possession and he or she given a chance to appear before the Council. Upon adoption, the Clerk shall certify the unpaid charges to the County Auditor for collection as other taxes are collected. This action may be optional or subsequent to taking other legal action to collect delinquent charges, and shall not preclude the City or its agents from recovery of the delinquent charges and interest under any other available remedy, and shall not preclude the disconnection for late payment provided for in this chapter.

TITLE VII: TRAFFIC CODE

Chapter

70. TRAFFIC REGULATIONS

71. PARKING REGULATIONS

72. SNOWMOBILES

73. RECREATIONAL AND OTHER VEHICLES

74. BICYCLES, ROLLER BLADES, ROLLER SKATES, ROLLER SKIS AND SKATEBOARDS

CHAPTER 70: TRAFFIC REGULATIONS

Section

General Provisions

70.01 State highway traffic regulations adopted by reference
70.02 Trucks prohibited on certain streets
70.03 Stop intersections
70.04 Through streets and one-way streets
70.05 Turning restrictions
70.06 U-turns restricted
70.07 Excessive noise
70.08 Exhibition driving prohibited
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70.10 Motor vehicle noise
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Parades

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GENERAL PROVISIONS

§ 70.01 STATE HIGHWAY TRAFFIC REGULATIONS ADOPTED BY REFERENCE.

(A) The Highway Traffic Regulations Act is hereby adopted by reference. The regulatory provisions of M.S. Chapter 169, as it may be amended from time to time, are hereby adopted as a traffic ordinance regulating the use of highways, streets and alleys within the city and are hereby incorporated in and made a part of this section as completely as if set out in full herein.

(B) The penalty for violation of the provisions of state statutes adopted by reference in this section shall be identical with the penalty provided for in the statutes for the same offense.

§ 70.02 TRUCKS PROHIBITED ON CERTAIN STREETS.

(A) As authorized by M.S. § 169.87, as it may be amended from time to time, the City Council by resolution may designate streets on which travel by commercial vehicles in excess of 10,000 pounds axle weight is prohibited. The Chief of Police shall cause appropriate signs to be erected on those streets. No person shall operate a commercial vehicle on posted streets in violation of the restrictions posted.

(B) The weight restrictions established in division (A) shall not apply to city or emergency vehicles, public school buses, garbage and refuse trucks making regular collections and are under contract with the city, recycling trucks used exclusively for collection of recycling materials pursuant to a city mandate to provide curbside recycling, and implements of husbandry operated in compliance with M.S. § 169.801, as it may be amended from time to time, and city, county and state road authority vehicles engaged in snow and ice removal or flood control operations on behalf of a state or local government, nor shall the weight restrictions in division (A) apply if a commercial vehicle must use the particular street in question for the purpose of local pick-up or delivery.

(C) Pursuant to M.S. § 169.84, the gross weight of any vehicle or combination of vehicles driven onto or over a bridge on any city street or highway shall not exceed the safe capacity of the bridge, as may be indicated by warning posted on the bridge or the approaches thereto.

(D) Pursuant to M.S. § 169.86, M.S. § 169.862 and M.S. § 169.865, the City Clerk may issue a permit for heavier loads to travel on streets where otherwise restricted. The City Clerk may issue such a permit upon applicant provision of adequate insurance, execution of a written agreement to pay the city costs of any repairs the roadway, curbs, ditches and right-of-way necessitated by the permittee's damage to the roadway and to defend and indemnify the city against all claims related to the permittee's use of

the roadway, and posting of a bond or other financial security in an amount adequate to cover city expenses, including but not limited to repair costs related to any damage to the road. Any person aggrieved by a permit denial may appeal the denial to the City Council within 30 days of such denial. Permits issued under this provision are good for five consecutive business days. No person, corporation or other entity may obtain more than three permits per year. The permit fee shall be set by the Ordinance establishing fees and charges for the city.
Penalty, see § 10.99

§ 70.03 STOP INTERSECTIONS.

Pursuant to M.S. § 169.04, as it may be amended from time to time, the city may designate intersections as a stop intersection and require all vehicles to stop at one or more entrances to those intersections. The city shall post signs at those designated intersections, giving notice of the designation as a stop intersection. It shall be unlawful for any person to fail to obey the markings or signs posted under this section.
Penalty, see § 10.99

§ 70.04 THROUGH STREETS AND ONE-WAY STREETS.

Pursuant to M.S. § 169.04, as it may be amended from time to time, the City Council by resolution may designate any street or portion of a street as a through street or one-way street where necessary to preserve the free flow of traffic or to prevent accidents. No trunk highway shall be so designated unless the consent of the Commissioner of Transportation to the designation is first secured. The city shall cause appropriate signs to be posted at the entrance to designated streets. It shall be unlawful for any person to fail to obey the markings or signs posted under this section.
Penalty, see § 10.99

§ 70.05 TURNING RESTRICTIONS.

(A) (1) Pursuant to M.S. § 169.04, as it may be amended from time to time, the City Council by resolution may, whenever necessary to preserve a free flow of traffic or to prevent accidents, designate any intersection as one where turning of vehicles to the left or to the right, or both, is to be restricted at all times or during specified hours. No intersection on a trunk highway shall be so designated until the consent of the Commissioner of Transportation to the designation is first obtained.

(2) The city shall mark by appropriate signs any intersection so designated.

(3) No person shall turn a vehicle at any intersection contrary to the direction on those signs.

(B) Except at intersections, and then only if not posted otherwise, it shall be unlawful for any person operating a motor vehicle on any street to cross the center of the street for the purpose of parking on the side of the street opposite the original direction of travel.

(C) It shall be unlawful for any person operating a motor vehicle on any street to back up or drive from a parked position and commence travel in the opposite direction from which the motor vehicle faced when parked.
Penalty, see § 10.99

§ 70.06 U-TURNS RESTRICTED.

No person shall turn a vehicle so as to reverse its direction on any street in the business district or at any intersection where traffic is regulated by a traffic control signal.
Penalty, see § 10.99

§ 70.07 EXCESSIVE NOISE.

(A) As used in this section:

(1) ***LIGHT-MOTOR VEHICLES*** means any automobile, van, motorcycle, motor-driven cycle, motor scooter, go-cart, minibike, trail bike, neighborhood electric vehicle, golf cart, mini truck, all terrain vehicle, truck with a gross vehicular weight of less than 10,000 pounds or low power vehicle.

(2) ***LOW POWER VEHICLE*** for the purposes of this section means a vehicle with a gas, electric or battery powered engine that may achieve a maximum vehicle speed of 35 miles per hour.

(B) It shall be unlawful for any person to operate, or cause to operate, or use a light-motor vehicle in a manner as to cause, or allow to be caused, excessive noise levels as a result of unreasonable rapid accelerations, deceleration, revving of engine, squealing of tires, honking of horns, or as a result of the operation of audio devices including but not limited to radios, phonograph, tape players, compact disc players or any other sound-amplifying device on or from the light-motor vehicle.

(C) No person shall operate, or cause to operate, or use a light-motor vehicle in violation of the noise standards contained in Minn. Rules parts 7030.1050 and 7030.1060, as it may be amended from time to time.

(D) No person shall operate, or cause to operate, or use a light-motor vehicle that discharges its exhaust other than through a muffler or other device that effectively prevents loud or explosive noises. No person shall operate, or cause to operate, or use a light-motor vehicle whose exhaust system has been modified, altered, or repaired in any way, including the use of a muffler cut-out or by-pass, that amplifies or otherwise increases noise above that emitted by the light-motor vehicle as originally equipped.

(E) The following are exempted from the provisions of this section:

(1) Sound emitted from sirens of authorized emergency vehicles;

(2) Burglar alarms on light-motor vehicles of the electronic signaling type which also transmit an audible signal to a receiver which can be carried by the owner or operator of the vehicle; and

(3) Celebrations on Halloween and other legal holidays and celebrations in connection with duly authorized parades.

Penalty, see § 10.99

§ 70.08 EXHIBITION DRIVING PROHIBITED.

No person shall turn, accelerate, decelerate or otherwise operate a motor vehicle within the city in a manner which causes unnecessary engine noise or backfire, squealing tires, skidding, sliding, swaying, throwing of sand or gravel, or in a manner simulating a race. Unreasonable squealing or screeching sounds emitted by tires or the unreasonable throwing of sand or gravel by the tires is prima facie evidence of a violation of this section.

Penalty, see § 10.99

§ 70.09 CRUISING PROHIBITED.

(A) As used in this section, ***CRUISING*** means the operation of a motor vehicle as defined in M.S. § 169.011, Subd. 42, as it may be amended from time to time, past a traffic control point as determined by a peace officer on a street in an area designated "No Cruising Zone" by City Council resolution four or more times between the hours of 9:00 p.m. and 3:30 a.m.

(B) The passing of a traffic control point under the conditions previously stated, shall constitute unnecessary repetitive driving and is a violation of this section.

(C) The following use of vehicles shall constitute valid exceptions to this prohibition: taxicabs for hire, buses, authorized emergency vehicle, vehicles used by or under contract with any governmental jurisdiction, any vehicle being used to conduct legitimate business activities.

(D) This section may be enforced only in an area that has been posted as a "No Cruising Zone." Signs shall be posted at the beginning and the end of any public street, alley or highway, or portion thereof which is a no cruising zone.

§ 70.10 MOTOR VEHICLE NOISE.

(A) *Definitions*. For the purposes of this section, the following phrases are defined as follows:

ABNORMAL OR EXCESSIVE NOISE.

(a) Distinct and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort and repose of any person or precludes their enjoyment of property or affects their property's value;

(b) Noise in excess of that permitted by M.S. § 169.69, as it may be amended from time to time, which requires every motor vehicle to be equipped with a muffler in good working order; or

(c) Noise in excess of that permitted by M.S. § 169.693 and Minn. Rules parts 7030.1000 through 7030.1050, as this statute and these rules may be amended from time to time, which establish motor vehicle noise standards.

ENGINE-RETARDING BRAKE. A dynamic brake, jake brake, Jacobs brake, C-brake, Paccar brake, transmission brake or other similar engine-retarding brake system which alters the normal compression of the engine and subsequently releases that compression.

(B) It shall be unlawful for any person to discharge the exhaust or permit the discharge of the exhaust from any motor vehicle except through a muffler that effectively prevents abnormal or excessive noise and complies with all applicable state laws and regulations.

(C) It shall be unlawful for the operator of any truck to intentionally use an engine-retarding brake on any public highway, street, parking lot or alley within the city which causes abnormal or excessive noise from the engine because of an illegally modified or defective exhaust system, except in an emergency.

(D) Minnesota Statutes §§ 169.69 and 169.693 (motor vehicle noise limits) and Minn. Rules parts 7030.1000 through 7030.1050, as these statutes and rules may be amended from time to time, are hereby adopted by reference.

(E) Signs stating "VEHICLE NOISE LAWS ENFORCED" may be installed at locations deemed appropriate by the City Council to advise motorists of the prohibitions contained in this section, except that no sign stating "VEHICLE NOISE LAWS ENFORCED" shall be installed on a state highway without a permit from the Minnesota Department of Transportation. The provisions of this section are in full force and effect even if no signs are installed.

§ 70.11 PEDESTRIAN CROSSINGS.

Pursuant to M.S. § 169.2151, as it may be amended from time to time, the city is authorized to designate pedestrian safety crossings on exclusive city streets where pedestrian safety considerations require extra time for pedestrian crossing in addition to the time recommended under the Minnesota Manual on Uniform Traffic Control Devices for pedestrian signals. The city may provide for timing of pedestrian signals for such crossings, consistent with the recommendations of the uniform manual for pedestrian signal timing at senior citizen and disabled pedestrian crossings. The location of such crossings may be designated by resolution.

§ 70.12 CROSSINGS FOR SENIORS OR DISABLED PERSONS.

Pursuant to M.S. § 169.215, as it may be amended from time to time, the city may designate a crossing for senior citizens or disabled persons on any exclusive city street in the vicinity of a senior citizen housing project, senior citizen nursing home, or residential care facility for disabled persons on the basis of an engineering and traffic investigation prescribed by the Commissioner and subject to the uniform specifications adopted by the Minnesota Commissioner of Transportation.

PARADES

§ 70.20 DEFINITIONS.

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

PARADE. Any parade, march, ceremony, show, exhibition, pageant, or procession of any kind, or any similar display in or on any street, sidewalk, park, or other public place in the city.

PARADE PERMIT. A permit required by this subchapter.

PARKING LOT. Any paved or unpaved area used by a place of business or shopping center for the parking of vehicles of their customers, but shall not include those operated for hire.

§ 70.21 PERMIT REQUIRED.

(A) No person or persons shall engage or participate in, aid, form or start any parade unless a parade permit has been obtained from the City Clerk or other authorized city official.

(B) This subchapter shall not apply to:

(1) Funeral processions;

(2) Students going to and from school classes or participating in educational activities; provided, that the conduct is under the immediate direction and supervision of the proper school authorities;

(3) A governmental agency acting within the scope of its functions.

Penalty, see § 10.99

§ 70.22 APPLICATION FOR PERMIT.

(A) *Generally*. A person seeking issuance of a parade permit shall file an application with the City Clerk.

(B) *Filing period*. The application for a parade permit shall be filed not less than 72 hours but not more than 60 days before the date on which it is proposed to conduct the parade. Failure to file an application 72 hours in advance will not result in automatic denial of the permit; provided, that the applicant shows reasonable grounds why the application could not be filed 72 hours in advance.

(C) *Required information*. The application for a parade permit shall set forth the following information:

(1) The name, address, and telephone number of the person seeking to conduct the parade;

(2) If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address, and telephone number of the headquarters of the organization and of the authorized and responsible heads of the organization;

(3) The name, address, and telephone number of the person who will be the parade chairperson and who will be responsible for its conduct;

(4) The date when the parade is to be conducted;

(5) The route to be traveled, the starting point, and the termination point;

(6) The approximate number of persons, animals, and vehicles which will constitute the parade, the type of animals, if any, and the description of the vehicles;

(7) The hours when the parade will start and terminate;

(8) A statement as to whether the parade will occupy all or only a portion of the width of the streets, sidewalk, park or other public place proposed to be traversed;

(9) The location by street of any assembly area for the parade;

(10) The time at which units of the parade will begin to assemble at any assembly area or areas;

(11) The interval of space to be maintained between units of the parade;

(12) If the parade is designed to be held by, and on behalf of or for, any person other than the applicant, the applicant for the permit shall file a communication in writing from the person authorizing the applicant to apply for the permit on his or her behalf;

(13) Any additional information reasonably necessary to a fair determination as to whether a permit should be issued.

(D) There shall be paid at the time of filing an application for a parade permit a fee in an amount as established in the Ordinance Establishing Fees and Charges pursuant to § 30.11 of this code, as it may be amended from time to time. In addition, the applicant must provide proof of a valid insurance policy in the amount of $500,000 per individual claim and $1,500,000 for all claims arising from the same event, that names and agrees to defend and indemnify the city from any and all claims arising from the parade.
Penalty, see § 10.99

§ 70.23 STANDARDS FOR ISSUANCE OF PERMIT.

The City Clerk shall issue a permit when, from a consideration of the application and from other information obtained, he or she finds that:

(A) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route;

(B) The conduct of the parade will not require the diversion of so great a number of police officers of the city to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection to the city;

(C) The concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to the assembly areas;

(D) The conduct of the parade will not interfere with the movement of firefighting equipment en route to a fire;

(E) The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route.
Penalty, see § 10.99

§ 70.24 NOTICE OF REJECTION OF PERMIT APPLICATION.

If the City Clerk disapproves the application, he or she shall mail to the applicant within the three regular business days after the date on which the application was filed a notice of his or her action stating the reasons for his or her denial of the permit.

§ 70.25 APPEAL PROCEDURE WHEN PERMIT DENIED.

Any person aggrieved shall have the right to appeal the denial of a parade permit to the City Council. The appeal shall be taken within 30 days after notice of denial. The City Council shall act on the appeal within 30 days after its receipt.

§ 70.26 ALTERNATIVE PERMIT.

The City Clerk or other authorized city official, in denying an application for a parade permit, shall be empowered to authorize the conduct of the parade on a date, at a time, or over a route different than that named by the applicant. An applicant desiring to accept an alternate permit shall file a written notice of his or her acceptance. An alternate parade permit shall conform to the requirements of, and shall have the effect of, a parade permit under this subchapter.

§ 70.27 NOTICE TO CITY AND OTHER OFFICIALS WHEN PERMIT ISSUED.

Immediately on the issuance of a parade permit, a copy thereof shall be sent to the Police Chief and the Fire Chief.

§ 70.28 CONTENTS OF PERMIT.

Each parade permit shall state the following information:

(A) Starting time;

(B) Minimum speed;

(C) Maximum speed;

(D) Maximum interval of space to be maintained between the units of the parade;

(E) The portions of the street, sidewalk, park or other public place to be traversed that may be occupied by the parade;

(F) The maximum length of the parade in miles or fractions thereof;

(G) Other information as is reasonably necessary to the enforcement of this subchapter.
Penalty, see § 10.99

§ 70.29 DUTIES OF PERMITTEE.

A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances. The parade chairperson or other person heading or leading the activity shall carry the parade permit on his or her person during the conduct of the parade.
Penalty, see § 10.99

§ 70.30 PUBLIC CONDUCT DURING PARADES.

(A) *Interference*. No person shall unreasonably hamper, obstruct, impede or interfere with any parade or parade assembly or with any person, vehicle or animal participating or used in a parade.

(B) *Driving through parades*. No driver of a vehicle except a police car or other emergency vehicle shall drive between the vehicles or persons comprising a parade when the vehicles or persons are in motion and are conspicuously designated as a parade.

(C) *Parking on parade route*. The Police Chief or other authorized city official shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street or other public thoroughfare or part thereof constituting a part of the route of a parade. Signs shall be posted to the effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street or other public thoroughfare unless signs have been posted in accordance with this section.
Penalty, see § 10.99

§ 70.31 REVOCATION OF PERMIT.

The city shall have the authority to revoke a parade permit issued hereunder on application of the standards for issuance as herein set forth.

CHAPTER 71: PARKING REGULATIONS

Section

71.01 No parking where posted
71.02 Limited parking
71.03 Other parking restrictions
71.04 Declaration of snow emergency; parking prohibited
71.05 Parking certain semi-trailers or tractors on public streets prohibited
71.06 Overnight parking
71.07 Repairing of vehicles
71.08 Prohibiting parking areas in front yards in residential zones
71.09 Impoundment
71.10 Prima facie violation

Cross-reference:

Abandoned vehicles, see Chapter 90

§ 71.01 NO PARKING WHERE POSTED.

(A) No person shall stop, stand or park a vehicle upon the public streets of the city at any place where official signs or where appropriate devices, marks, or painting, either upon the surface of the street or the curb immediately adjacent thereto, prohibit these acts.

(B) Pursuant to M.S. § 168B.035, the City Police Chief, if any, or the City Council may appoint as many parking enforcement officers as are needed to enforce the provisions of this chapter. The parking enforcement officers shall be subordinate to the Chief of Police, if there is one, or the City Clerk. A ***PARKING ENFORCEMENT OFFICER*** is an individual whose services are utilized by a law enforcement agency to provide parking enforcement and administrative or clerical assistance and who is not a sworn and licensed police officer. A parking enforcement officer's duties shall not include enforcement of the general criminal laws of the state, and the parking enforcement officer does not have full powers of arrest or authorization to carry a firearm on duty.

Penalty, see § 10.99

§ 71.02 LIMITED PARKING.

No person shall stop, stand or park a vehicle upon the public streets of the city where official signs are erected limiting the parking time thereon, for a period of time in excess of the time as designated by the official signs.
Penalty, see § 10.99

§ 71.03 OTHER PARKING RESTRICTIONS.

(A) The City Council may by resolution order the placing of signs, devices or marks, or the painting of streets or curbs prohibiting or restricting the stopping, standing or parking of vehicles on any street where, in its opinion, as evidenced by a finding in its official minutes, the stopping, standing or parking is dangerous to those using the highway, or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic. The signs, devices, marks or painting shall be official signs, devices, marks or painting, and no person shall stop, stand or park any vehicle in violation of the restrictions thereon or as indicated thereby.

(B) "No parking" signs may be placed by city employees on any street of the city to permit construction, repair, snow removal, street cleaning or similar temporary activities. While the signs are in place, it shall be unlawful to park any vehicle on the streets or portion thereof so posted.

(C) It shall be unlawful for a person to park in an area designated by Council resolution and posted as a fire lane.

(D) It shall be unlawful for a person to park a vehicle or permit it to stand, whether attended or unattended, on an alley within the city, provided that this does not prohibit the parking of vehicles for less than one hour on an alley for the purpose of access to abutting property for loading or unloading merchandise or other material when parking on the property itself is not available.

(E) It shall be unlawful for a person to park a motor vehicle in an area designated by posted signs pursuant to Council resolution for certain types of vehicles, unless the motor vehicle is one of the types of vehicles specifically permitted.

(F) Every vehicle parked upon any street with a curb shall be parked parallel to the curb, unless angle parking is designated by appropriate signs or markings. On streets with a curb, the right-hand wheels of any vehicle parked shall be within one foot of the curb. On streets without a curb, the vehicle shall be parked to the right of the main traveled portion of the street and parallel to it and in such a manner as not to interfere with the free flow of traffic, unless angle parking is designated by appropriate signs or markings.
Penalty, see § 10.99

§ 71.04 DECLARATION OF SNOW EMERGENCY; PARKING PROHIBITED.

(A) The Mayor, Police Chief or other designated official may declare a snow emergency in the city. The emergency shall continue in effect for a period of 24 hours or until the snow has been removed from the city's streets or until the snow emergency has been rescinded by action of the Mayor, Police Chief or other designated officer.

(B) Notice of the declaration of a snow emergency shall be given by notifying the local news media; however, the notification shall be a service aid only and not a duty on the part of the officials.

(C) During a declared snow emergency or after two inches or more of snow have accumulated, no motor vehicle shall be left parked on any street or public way in the city until the declared emergency is canceled or, if no emergency is declared, until the street is cleared on both sides of accumulated snow.

(D) During a declared snow emergency, any police officer or city appointed parking enforcement officer, appointed pursuant to M.S. § 168B.035, Subd. 2, who finds a motor vehicle in violation of this section shall attempt to contact the owner of the motor vehicle and require the owner to immediately move the motor vehicle so as not to be in violation of this section. If the owner does not immediately remove the motor vehicle or the owner cannot be located, the police officer or city appointed parking enforcement officer, appointed pursuant to M.S. § 168B.035, Subd. 2, is authorized to have the motor vehicle removed at the owner's expense.
Penalty, see § 10.99

§ 71.05 PARKING CERTAIN SEMI-TRAILERS OR TRACTORS ON PUBLIC STREETS PROHIBITED.

No person shall park a semi-tractor or trailer, or any truck rated with a gross vehicle weight in excess of 10,000 pounds, in any area of the city zoned for residential use or other area designated by City Council resolution except when the vehicle is parked in a completely enclosed garage.
Penalty, see § 10.99

§ 71.06 OVERNIGHT PARKING.

The following vehicles shall not be allowed to park on city streets overnight: repair, delivery, rented vehicles with commercial plates and refuse and recycling haulers or any other vehicle not registered as a passenger vehicle.
Penalty, see § 10.99

§ 71.07 REPAIRING OF VEHICLES.

Minor repairs and tune-ups, such as replacement of spark plugs, spark plug wires, thermostat, radiator or heater hoses, oil changes and brake jobs shall be permitted on city streets; provided, that they can be accomplished within the same day and completed by 10:00 p.m. All other repairs shall be considered major repairs and shall not be permitted on any city street, unless the repairs are made within an enclosed structure allowed within the zoning district. Damage to city streets because of repairs or lack of repairs shall be charged to the person responsible for the damage to the city streets.

§ 71.08 PROHIBITING PARKING AREAS IN FRONT YARDS IN RESIDENTIAL ZONES.

(A) The construction, operation or maintaining a parking area, either paved or unpaved, in the front yard of any lot is prohibited in any area zoned for residential use. For the purpose of this section, front yard shall mean and include that area between the sidewalk, or street line in the event there is no sidewalk, and the front line of the principal building, extending in both directions to the side lot lines.

(B) Use of that portion of a vacant lot within 30 feet of the sidewalk lines for parking in an area zoned for residential use is prohibited.

(C) Driveways in any area zoned for residential use shall not exceed 25% of the width at the front or side lot line. Where more than one driveway is desired or required, they shall be at least 70 feet apart.

(D) The front part of any lot shall not be used for the parking of an automobile, truck, trailer, tractor, recreational vehicle, camper, travel trailer, camper top, tent, wagon, boat, boat trailer, storage area or motor home.

(E) No person, being the owner or having control of any building, shall violate or fail to conform to any provision of this section, or fail to obey any lawful order of an officer charged with its enforcement. Each and every day on which any person continues to violate the provisions of this section, after having been notified of the violation, shall constitute a separate offense. This conviction shall not relieve any person from thereafter complying with the provisions of this section, and shall be sufficient cause to refuse further building or land use permits to the offender until a time as the orders have been complied with.
Penalty, see § 10.99

§ 71.09 IMPOUNDMENT.

Any police officer or city appointed parking enforcement officer, appointed pursuant to M.S. § 168B.035, Subd. 2, may order the removal of a vehicle from a street to a garage or other place of safety when the vehicle is left unattended and constitutes an obstruction to traffic or hinders snow

removal, street improvements or maintenance operations. The vehicle shall not be released until the fees for towing and storage are paid in addition to any fine imposed for violation of this chapter.

§ 71.10 PRIMA FACIE VIOLATIONS.

Pursuant to M.S. § 169.34, Subd. 2, as it may be amended from time to time, the presence of any motor vehicle on any street when standing or parked in violation of this chapter is prima facie evidence that the registered owner of the vehicle committed or authorized the commission of the violation.

CHAPTER 72: SNOWMOBILES

Section

72.01 Intent
72.02 Definitions
72.03 Application of traffic ordinances
72.04 Restrictions
72.05 Stopping and yielding
72.06 Persons under 18
72.07 Equipment
72.08 Unattended snowmobiles
72.09 Emergency operation permitted

§ 72.01 INTENT.

It is the intent of this chapter to supplement M.S. §§ 84.81 to 84.91, and M.S. Ch. 169, as these statutes may be amended from time to time and Minn. Rules parts 6100.5000 through 6100.6000, as these rules may be amended from time to time, with respect to the operation of snowmobiles. These statutes and rules are incorporated herein by reference. This section is not intended to allow what the state statutes and rules prohibit, nor to prohibit what the state statutes and rules allow.

§ 72.02 DEFINITIONS.

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

DEADMAN THROTTLE or ***SAFETY THROTTLE.*** A device which, when pressure is removed from the engine accelerator or throttle, causes the motor to be disengaged from the driving mechanism.

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

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

OWNER. A person, other than a lien holder having the property in or title to a snowmobile, or entitled to the use or possession thereof.

PERSON. Includes an individual, partnership, corporation, the state and its agencies and subdivision, and any body of persons, whether incorporated or not.

RIGHT-OF-WAY. The entire strip of land traversed by a highway or street in which the public owns the fee or an easement for roadway purposes.

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

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

STREET. A public thoroughfare, roadway, alley or trail used for motor vehicular traffic which is not an interstate, trunk, county-state aid, or county highway.

§ 72.03 APPLICATION OF TRAFFIC ORDINANCES.

The provisions of Ch. 70 of this code shall apply to the operation of snowmobiles upon streets and highways, except for those relating to required equipment, and except those which by their nature have no application.
Penalty, see § 10.99

§ 72.04 RESTRICTIONS.

(A) It is unlawful for any person to enter, operate or stop a snowmobile within the limits of the city:

(1) On the roadway of any street, except the most right hand lane then available for traffic or as close as practicable to right hand curb or edge of the roadway, except when overtaking and passing another vehicle stopped in the lane or proceeding in the same direction, or in making a left turn. Snowmobiles may also be operated upon the outside slope of trunk, county-state aid and county highways where the highways are so configured within the corporate limits. The City Council may, pursuant to M.S. § 84.87, Subd. 3, as it may be amended from time to time, adopt a resolution designating certain city streets as available for snowmobile operation and prescribe such time and speed limits as are necessary.

(2) On a public sidewalk provided for pedestrian travel.

(3) On boulevards within any public right-of-way.

(4) On private property of another without specific permission of the owner or person in control of the property.

(5) Upon any school grounds, except as permission is expressly obtained from responsible school authorities.

(6) On public property, playgrounds and recreation areas, except areas previously listed or authorized for the use by resolution of the City Council, in which case the use shall be lawful, and snowmobiles may be driven in and out of those areas by the shortest route.

(7) On streets as permitted by this chapter at a speed exceeding 10 miles per hour.

(8) During the hours of 10:00 p.m. to 7:00 a.m., Sunday through Thursday, and 12:01 a.m. to 8:00 a.m. on other days closer than 100 feet from any residence. This provision is not intended to prohibit snowmobiles from operating on city streets during the hours specified herein.

(B) It is unlawful for any person to operate a snowmobile within the limits of the city:

(1) So as to tow any person or thing in a public street or highway except through use of a rigid tow bar attached to the rear of the snowmobile; provided, that a disabled snowmobile may be towed to a private residence or a place of business where snowmobiles are repaired without the use of a rigid tow bar.

(2) Within 100 feet of any fisherman, pedestrian, skating rink or sliding area where the operation would conflict with use or endanger other persons or operation.

(3) To intentionally drive, chase, run over or kill any animal.
Penalty, see § 10.99

§ 72.05 STOPPING AND YIELDING.

No snowmobile shall enter any uncontrolled intersection without making a complete stop. The operator shall then yield the right-of-way to any vehicles or pedestrians at the intersection, or so close to the intersection as to constitute an immediate hazard.
Penalty, see § 10.99

§ 72.06 PERSONS UNDER 18.

(A) No person under 14 years of age shall operate on streets or make a direct crossing of a city street as the operator of a snowmobile. A person 14 years of age or older, but less than 18 years of age, may operate a snowmobile on streets as permitted under this chapter and make a direct crossing of those streets only if he or she has in his or her immediate possession a valid snowmobile safety certificate issued pursuant to M.S. § 84.872, as it may be amended from time to time.

(B) It is unlawful for the owner of a snowmobile to permit the snowmobile to be operated contrary to the provision of this section.
Penalty, see § 10.99

§ 72.07 EQUIPMENT.

It is unlawful for any person to operate a snowmobile any place within the limits of the city unless it is equipped with the following:

(A) Standard mufflers which are properly attached and which reduce the noise of operation of the motor to the minimum necessary for operation. No person shall use a muffler cutout, by-pass straight pipe or similar device on a snowmobile motor.

(B) Brakes adequate to control the movement of and to stop and hold the snowmobile under any condition of operation.

(C) A safety or so called deadman throttle in operating condition.

(D) When operated between the hours of one-half hour after sunset to one-half hour before sunrise, or at times of reduced visibility, at least one clear lamp attached to the front, with sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead during the hours of darkness under normal atmospheric conditions. The head lamp shall be so aimed that glaring rays are not projected into the eyes of an oncoming snowmobile operator. It shall also be equipped with at least one red light plainly visible from a distance of 500 feet to the rear during hours of darkness under normal atmospheric conditions.

(E) Snowmobiles shall fly a pennant flag of red or blaze material, of a size not less than 12 inches by 9 inches, at a height of not less than six feet from ground level at any time when the vehicle is operated on public streets.

(F) Reflective material at least 16 square inches on each side, forward of the handlebars and at the highest practical point on any towed object, so as to reflect lights at a 90 degree angle.
Penalty, see § 10.99

§ 72.08 UNATTENDED SNOWMOBILES.

Every person leaving a snowmobile on a public place shall lock the ignition, remove the key and take the same with him or her.
Penalty, see § 10.99

§ 72.09 EMERGENCY OPERATION PERMITTED.

Notwithstanding any prohibitions in this chapter, a snowmobile may be operated on a public thoroughfare in an emergency during the period of time and at locations where snow upon the roadway renders travel by automobile impractical.

CHAPTER 73: RECREATIONAL AND OTHER VEHICLES

Section

73.01 Purpose and intent
73.02 Definition
73.03 Operation requirements
73.04 Street crossings
73.05 Hours of operation
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73.07 Designation of public areas for use
73.08 Motorized golf carts, utility task vehicles and mini trucks
73.09 Mobility devices
73.10 Motorized foot scooters
73.11 Medium speed electric vehicles and neighborhood electric vehicles

§ 73.01 PURPOSE AND INTENT.

(A) (1) The purpose of this chapter is to provide reasonable regulations for the use of recreational motor vehicles on public and private property in the city.

(2) This chapter is not intended to allow what the Minnesota Statutes prohibit nor to prohibit what the Minnesota Statutes expressly allow.

(B) It is intended to ensure the public safety and prevent a public nuisance.

§ 73.02 DEFINITION.

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

ALL-TERRAIN VEHICLE. Any all-terrain vehicle as defined by M.S. § 84.92, as it may be amended from time to time.

RECREATIONAL MOTOR VEHICLE. Any self-propelled vehicle and any vehicle propelled or drawn by a self-propelled vehicle used for recreational purposes including, but not limited to trail bike, off-highway motorcycle, as defined by M.S. § 84.787, Subd. 7, as it may be amended from time to

time, or other all-terrain vehicle as defined by M.S. § 84.92, Subd. 8, as it may be amended from time to time, utility task vehicle, motorized go-carts, hovercraft or motor vehicle licensed for highway operation which is being used for off-road recreational purposes, but not including golf carts defined by § 73.08, personal electric mobility devices defined by § 73.09, motorized foot scooters defined by § 73.10, neighborhood electric vehicles or medium speed electric vehicle as defined by § 73.11, and mini-trucks defined by § 73.08.

UTILITY TASK VEHICLE. A side-by-side, four-wheel drive, off-road vehicle that has four wheels, is propelled by an internal combustion engine with a piston displacement capacity of 1,200 cubic centimeters or less, and has a total dry weight of 1,800 but less than 2,600 pounds as defined by M.S. § 169.045 as amended from time to time.

§ 73.03 OPERATION REQUIREMENTS.

It is unlawful for any person to operate a recreational motor vehicle:

(A) On private property of another without specific written permission of the owner of the property; (Written permission may be given by a posted notice of any kind or description, so long as it specifies the kind of vehicles allowed, that the owner, occupant or lessee prefers, such as by saying "Recreational Vehicles Allowed," "Trail Bikes Allowed," "All-Terrain Vehicles Allowed" or words substantially similar.)

(B) On publicly-owned land, including school, exclusive city streets, park property, playgrounds, recreation areas and golf courses, except where permitted by this chapter;

(C) In a manner so as to create a loud, unnecessary or unusual noise which disturbs, annoys or interferes with the peace and quiet of other persons;

(D) On a public sidewalk or walkway provided or used for pedestrian travel;

(E) At a place while under the influence of intoxicating liquor or narcotics or habit-forming drugs;

(F) At a rate of speed greater than reasonable or proper under all the surrounding circumstances;

(G) At any place in a careless, reckless or negligent manner so as to endanger or be likely to endanger any person or property or to cause injury or damage thereto;

(H) On any public street, highway or right-of-way unless licensed and registered pursuant to Minnesota law;

(I) To intentionally drive, chase, run over or kill any animal, wild or domestic;

(J) By halting any recreational motor vehicle carelessly or heedlessly in disregard of the rights or the safety of others or in a manner so as to endanger or be likely to endanger any person or property or in excess of 25 miles per hour on publicly-owned lands; and/or

(K) Within 150 yards of any public recreational area or gathering of people. This provision does not apply to the occasional use of recreational motor vehicles on private property for the purpose of loading or unloading it from a trailer or for mechanically checking it;

(L) Without headlight and taillight lighted at all times if the vehicle is equipped with headlight and taillight;

(M) Without a functioning stoplight if so equipped;

(N) Without a brake operational by either hand or foot;

(O) At a speed exceeding ten miles per hour on the frozen surface of public waters within 100 feet of a person not on an all-terrain vehicle or within 100 feet of a fishing shelter;

(P) *Helmet and seat belts required.*

(1) A person less than 18 years of age shall not ride as a passenger or as an operator of a vehicle regulated herein on public land, public waters, or on a public road right-of-way unless wearing a safety helmet approved by the Commissioner of Public Safety.

(2) A person less than 18 years of age shall not ride as a passenger or as an operator of a vehicle regulated herein without wearing a seat belt when such seat belt has been provided by the manufacturer.

(Q) *All-terrain vehicles and passengers.*

(1) No person under 18 years of age shall operate a class 1 all-terrain vehicle while carrying a passenger. A person 18 years of age or older may operate a class 1 all-terrain vehicle carrying one passenger. For the purposes of this division a ***CLASS 1 ALL-TERRAIN VEHICLE*** means an all-terrain vehicle that has a total dry weight of less than 1,200 pounds.

(2) No person under 18 years of age shall operate a class 2 all-terrain vehicle while carrying a passenger. A person 18 years of age or older may operate a class 2 all-terrain vehicle while carrying a passenger, or up to the number of passengers for which the vehicle was designed, whichever is greater. For the purposes of this division a ***CLASS 2 ALL-TERRAIN VEHICLE*** means an all-terrain vehicle that has a total dry weight of 1,200 to 1,800 pounds.
Penalty, see § 10.99

§ 73.04 STREET CROSSINGS.

(A) No person under 12 years of age operating the vehicles regulated herein shall make a direct crossing of any street, highway or public right-of-way or operate a vehicle regulated herein on a public street, highway or road right-of-way or operate a vehicle regulated herein on public lands or waters, except that a person at least 10 years of age but under 12 years of age may operate an all-terrain vehicle with an engine capacity up to 90cc on public lands or waters if accompanied by a parent or legal guardian.

(B) *Additional restrictions for all-terrain vehicles*. An all-terrain vehicle may make a direct crossing of a public road right-of-way provided:

(1) The crossing is made at an angle of approximately 90 degrees to the direction of the road and at a place where no obstruction prevents a quick and safe crossing;

(2) The vehicle is brought to a complete stop before crossing the shoulder of main-traveled way of the road;

(3) The driver yields the right-of-way to all oncoming traffic that constitutes an immediate hazard;

(4) In crossing a divided road, the crossing is made only at an intersection of the road with another public road; and

(5) If the crossing is made between the hours of one-half hour after sunset to one-half hour before sunrise or in conditions of reduced visibility, only if both front and rear lights are on.
Penalty, see § 10.99

§ 73.05 HOURS OF OPERATION.

Hours for use are 8:00 a.m. to 10:00 p.m.
Penalty, see § 10.99

§ 73.06 MINIMUM EQUIPMENT REQUIREMENTS.

(A) Standard mufflers shall be properly attached and in constant operation to reduce the noise of operation of the motor to the minimum necessary for operation. No person shall use a muffler cutout, by-pass, straight pipe or similar device on a recreational motor vehicle motor. The exhaust system shall not emit or produce a sharp popping or crackling sound.

(B) Brakes shall be adequate to control the movement of and to stop and hold under any conditions of operation.

(C) At least one clear lamp shall be attached to the front with sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead during the hours of darkness under normal atmospheric conditions. The head lamp shall be so that glaring rays are not projected into the eyes of an oncoming vehicle operator. It shall also be equipped with at least one red tail lamp having a minimum candlepower of sufficient intensity to exhibit a red light plainly visible from a distance of 500 feet to the rear during the hours of darkness under normal atmospheric conditions. This equipment shall be

required and shall be in operating condition when the vehicle is operated between the hours of one-half hour after sunset and one-half hour before sunrise, or at times of reduced visibility.
Penalty, see § 10.99

§ 73.07 DESIGNATION OF PUBLIC AREAS FOR USE.

(A) The Council may designate areas and exclusive city streets for use of recreational motor vehicles by approval of a resolution by a majority of the members of the City Council. The areas designated may be changed from time to time by the City Council. Any area designated shall be published in the official newspaper of the city in a conspicuous place after the approval. If an area is changed, the change shall be published in like manner in the official newspaper of the city. An up-to-date map of any designated park areas open for recreational motor vehicle use shall be kept on file in the office of the City Clerk, who shall provide on request a copy of the map together with the applicable rules, regulations and this chapter to each person requesting the information from the city.

(B) Unless designated by the City Council as an area for recreational motor vehicles, the use on city park property and city streets shall be unlawful. Further, the use of city parks designated by the City Council shall be in accordance with all of the applicable provisions of this chapter.
Penalty, see § 10.99

§ 73.08 MOTORIZED GOLF CARTS, UTILITY TASK VEHICLES AND MINI TRUCKS.

(A) (1) No person shall operate a motorized golf cart, utility task vehicles or mini truck on streets, alleys, sidewalks or other public property without obtaining a permit as provided herein.

(2) Every application for a permit shall be made on a form supplied by the city and shall contain the following information:

(a) The name and address of the applicant;

(b) The nature of the applicant's physical handicap, if any;

(c) Model name, make and year and number of the motorized golf cart, utility task vehicle or mini truck;

(d) Current driver's license or reason for not having a current license; and

(e) Other information as the city may require.

(3) The annual permit fee shall be as set forth in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time.

(4) Permits shall be granted for a period of one year and may be renewed annually January 1 to December 31.

(5) No permit shall be granted or renewed unless the following conditions are met:

(a) The applicant must demonstrate that he or she currently holds or has held a valid Minnesota driver's license to operate a mini truck;

(b) The applicant may be required to submit a certificate signed by a physician that the applicant is able to safely operate a motorized golf cart, utility task vehicle or mini truck on the roadways designated;

(c) The applicant must provide evidence of insurance in compliance with the provisions of Minnesota Statutes concerning insurance coverage for the golf cart, utility task vehicle or mini truck;

(d) The applicant has not had his or her driver's license revoked as the result of criminal proceedings.

(6) Motorized golf carts, utility task vehicles and mini trucks are permitted to operate only on city streets, not state or federal highways, except to cross at designated intersections.

(7) Motorized golf carts, utility task vehicles or mini trucks may only be operated on designated roadways from sunrise to sunset. They shall not be operated in inclement weather conditions or at any time when there is insufficient light to clearly see persons and vehicles on the roadway at a distance of 500 feet.

(8) Motorized golf carts shall display the slow-moving vehicle emblem provided for in M.S. § 169.045 Subd. 4, as it may be amended from time to time, when operated on designated roadways.

(9) Motorized golf carts, utility task vehicles or mini trucks shall be equipped with a wing-style rear view mirror to provide the driver with adequate vision from behind as required by M.S. § 169.70 as is may be amended from time to time.

(10) The operator of a motorized golf cart, utility task vehicle or mini truck may cross any street or highway intersecting a designated roadway.

(11) Every person operating a motorized golf cart, utility task vehicle or mini truck under permit on designated roadways has all the rights and duties applicable to the driver of any other vehicle under the provisions of M.S. Ch. 169, as it may be amended from time to time, except when these provisions cannot reasonably be applied to motorized golf carts, utility task vehicles or mini trucks and except as otherwise specifically provided in M.S. § 169.045(7), as it may be amended from time to time.

(12) The City Council may suspend or revoke a permit granted hereunder upon a finding that the holder thereof has violated any of the provisions of this section or M.S. Ch. 169, as it may be amended from time to time, or if there is evidence that the permit holder cannot safely operate the motorized golf cart or mini truck on the designated roadways.

(13) The number of occupants in the golf cart, utility task vehicle or mini truck may not exceed the design occupant load.

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

DRIVER. The person driving and having physical control over the motorized golf cart, utility task vehicle or mini truck and being the permitee.

MINI TRUCK. As defined in Minn. Stat. § 169.011 Subd. 40a, motor vehicle that has four wheels; is propelled by an electric motor with a rated power of 7,500 watts or less or an internal combustion engine with a piston displacement capacity of 660 cubic centimeters or less; has a total dry weight of 900 to 2,200 pounds; contains an enclosed cabin and a seat for the vehicle operator; commonly resembles a pickup truck or van, including a cargo area or bed located at the rear of the vehicle; and was not originally manufactured to meet federal motor vehicle safety standards required of motor vehicles in the Code of Federal Regulations, title 49, sections 571.101 to 571.404, and successor requirements. A mini truck does not include: a neighborhood electric vehicle or a medium speed electric vehicle as defined by § 73.11; or a motor vehicle that meets or exceeds the regulations in the Code of Federal Regulations, title 49, section 571.500, as it may be amended from time to time.

(C) Authorized city staff may operate city owned motorized golf carts, utility task vehicles and mini trucks without obtaining a permit within the city on city streets, sidewalks, trails, rights-of-way and public property when conducting city business.

(D) Mini truck equipment requirements:

(1) A mini truck may be operated under permit on designated roadways if it is equipped with:

(a) At least two headlamps;

(b) At least two tail lamps;

(c) Front and rear turn-signal lamps;

(d) An exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror;

(e) A windshield;

(f) A seat belt for the driver and front passenger; and

(g) A parking brake.

MOTORIZED GOLF CART. Any passenger conveyance being driven with three or four wheels with three or four low pressure tires that is limited in engine displacement of less than 800 cubic centimeters and total dry weight less than 800 pounds.

§ 73.09 OPERATION OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES.

(A) ***ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE*** means a self-balancing device with two nontandem wheels, designed to transport not more than one person, and operated by an electric propulsion system that limits the maximum speed of the device to 15 miles per hour.

(B) Except as otherwise provided by law, a person operating an electric personal assistive mobility device has the rights and responsibilities of a pedestrian.

(C) *Operation*.

(1) An electric personal assistive mobility device may be operated on a bicycle path.

(2) No person may operate an electric personal assistive mobility device on a roadway, sidewalk, or bicycle path at a rate of speed that is not reasonable and prudent under the conditions. Every person operating an electric personal assistive mobility device on a roadway, sidewalk, or bicycle path is responsible for becoming and remaining aware of the actual and potential hazards then existing on the roadway or sidewalk and must use due care in operating the device.

(3) An electric personal assistive mobility device may be operated on a roadway only under the following circumstances:

(a) While making a direct crossing of a roadway in a marked or unmarked crosswalk;

(b) Where no sidewalk is available;

(c) Where a sidewalk is so obstructed as to prevent safe use;

(d) When so directed by a traffic control device or by a peace officer; or

(e) Temporarily in order to gain access to a motor vehicle;

(f) An electric personal assistive mobility device may not be operated at any time on a roadway with a speed limit of more than 35 miles per hour except to make a direct crossing of the roadway in a marked crosswalk;

(g) As provided in division (7) below by Council resolution.

(4) An electric personal assistive mobility device may not be operated at any time while carrying more than one person.

(5) A person operating an electric personal assistive mobility device on a sidewalk must yield the right-of-way to pedestrians at all times. A person operating an electric personal assistive mobility device on a bicycle path must yield the right-of-way to bicycles at all times.

(6) An electric personal assistive mobility device may not be operated unless the device bears reflectorized material on the front, back, and wheels, visible at night from 600 feet when illuminated by the lower beams of headlamps of a motor vehicle.

(7) *Designated exclusive city streets*. The City Council may, by resolution, designate exclusive city streets within its jurisdiction where the operation of electric personal assistive mobility devices is permissible, provided that no street so designated has a speed limit of more than 35 miles per hour.

§ 73.10 MOTORIZED FOOT SCOOTERS.

(A) ***MOTORIZED FOOT SCOOTER*** means a device with handlebars designed to be stood or sat upon by the operator, and powered by an internal combustion engine or electric motor that is capable of propelling the device with or without human propulsion, and that has no more than two 12-inch or smaller diameter wheels and has an engine or motor that is capable of a maximum speed of 15 miles per hour on a flat surface with not more than 1% grade in any direction when the motor is engaged. An electric personal assistive mobility device, a motorized bicycle, an electric-assisted bicycle, or a motorcycle is not a motorized foot scooter.

(B) Operation of a motorized foot scooter on city bicycle paths, bicycle lanes, bicycle trails, or bikeways is prohibited except as provided in division (C) below.

(C) The City Council may by resolution designate specific bicycle paths, bicycle lanes, bicycle trails, or bikeways as available for use by motorized foot scooters.

(D) Every person operating a motorized foot scooter shall have all rights and duties applicable to the operator of a bicycle, except in respect to those provisions relating expressly to motorized foot scooters and in respect to those provisions of law that by their nature cannot reasonably be applied to motorized foot scooters.

(E) No person may operate a motorized foot scooter upon a sidewalk, except when necessary to enter or leave adjacent property. No person may operate a motorized foot scooter that is carrying any person other than the operator.

(F) No person under the age of 12 years may operate a motorized foot scooter.

(G) No person under the age of 18 years may operate a motorized foot scooter without wearing properly fitted and fastened protective headgear that complies with standards established by the Commissioner of Public Safety.

(H) A motorized foot scooter must be equipped with a headlight and a taillight that comply with standards established by the Commissioner of Public Safety if the vehicle is operated under conditions when vehicle lights are required by law.

(I) A person operating a motorized foot scooter on a roadway shall ride as close as practicable to the right-hand curb or edge of the roadway, except in the following situations;

(1) When overtaking and passing another vehicle proceeding in the same direction;

(2) When preparing for a left turn, in which case the operator shall stop and dismount at the right-hand curb or right edge of the roadway, and shall complete the turn by crossing the roadway on foot, subject to restrictions placed by law on pedestrians; or

(3) When reasonably necessary to avoid impediments or conditions that make it unsafe to continue along the right-hand curb or edge, including, but not limited to, fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or narrow lanes.

§ 73.11 MEDIUM SPEED ELECTRIC VEHICLES AND NEIGHBORHOOD ELECTRIC VEHICLES.

(A) *Definitions.*

(1) ***MEDIUM SPEED ELECTRIC VEHICLE*** means an electrically powered four-wheeled motor vehicle, equipped with a roll cage or crushproof body design, that can attain a maximum speed of 35 miles per hour on a paved level surface, is fully enclosed and has at least one door for entry, has a wheelbase of 40 inches or greater and a wheel diameter of ten inches or greater, and except with respect to maximum speed, otherwise meets or exceeds regulations in the Code of Federal Regulations, title 49, section 571.500, and successor requirements.

(2) ***NEIGHBORHOOD ELECTRIC VEHICLE*** means an electrically powered motor vehicle that has four wheels, and has a speed attainable in one mile of at least 20 miles per hour but not more than 25 miles per hour on a paved level surface.

(B) Operation of neighborhood electric vehicles and medium speed electric vehicles on city streets is prohibited except as provided in (C) below.

(C) *Use on designated exclusive city streets*. The City Council may, by resolution, designate exclusive city streets within its jurisdiction where the operation of neighborhood electric vehicles or medium speed electric vehicles is permissible, provided that no street so designated has a speed limit of more than 35 miles per hour.

(D) A neighborhood electric vehicle or a medium-speed electric vehicle may be operated on public streets and highways only if it meets all equipment and vehicle safety requirements in Code of Federal Regulations, title 49, section 571.500, as it may be amended from time to time.

(E) Authorized city staff may operate city owned neighborhood electric vehicles and medium speed electric vehicles within the city on city streets, sidewalks, trails, rights-of-way and public property when conducting city business.

CHAPTER 74: BICYCLES, ROLLER BLADES, ROLLER SKATES, ROLLER SKIS AND SKATEBOARDS

Section

Bicycles

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Roller Blades, Roller Skates, Roller Skis and Skateboards

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BICYCLES

§ 74.01 DEFINITION.

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

BICYCLE. Every device propelled solely by human power upon which any person may ride, having two tandem wheels, except scooters and similar devices, and including any device generally recognized as a ***BICYCLE*** though equipped with two front or rear wheels.

§ 74.02 TRAFFIC LAWS APPLY.

Every person riding a bicycle on a street or upon any path set aside for the exclusive use of bicycles shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this title, except as to special regulations in this chapter and except as to those provisions of this chapter which by their nature can have no application.

§ 74.03 MANNER AND NUMBER RIDING.

(A) It is unlawful for any person propelling a bicycle to ride other than upon or astride a permanent and regular seat attached thereto.

(B) No bicycle, including a tandem bicycle, cargo or utility bicycle or trailer, shall be used to carry more persons at one time than the number for which it is designed and equipped, except on a baby seat attached to the bicycle, provided that the seat is equipped with a harness to hold the child securely in the seat and that protection is provided against the child's feet hitting the spokes of the wheel, or in a seat attached to the bicycle operator.
Penalty, see § 74.99

§ 74.04 HITCHING RIDES.

It is unlawful for any person riding upon any bicycle, coaster, roller skates, roller blades, skate board, sled, or toy vehicle to attach the same or themselves to any vehicle upon a street.
Penalty, see § 74.99

§ 74.05 WHERE TO RIDE.

(A) Every person operating a bicycle upon a street shall ride as near to the right side of the street as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(B) Persons riding bicycles upon a street shall not ride more than two abreast except on paths or parts of streets set aside for the exclusive use of bicycles.
Penalty, see § 74.99

§ 74.06 RIGHT-OF-WAY; SIDEWALKS.

Whenever a person is riding a bicycle upon a sidewalk, the person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing the pedestrian.
Penalty, see § 74.99

§ 74.07 CARRYING ARTICLES.

It is unlawful for any person operating a bicycle to carry any package, bundle, or article which prevents the driver from keeping at least one hand upon the handlebars.
Penalty, see § 74.99

§ 74.08 LIGHTING AND BRAKE EQUIPMENT.

(A) Every bicycle, when in use at night time, shall be equipped with, or its operator shall carry a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front, and with a red reflector on the rear of a type approved by the Department of Public Safety which is visible from all distances from 100 feet to 600 feet to the rear when directly in front of lawful lower beams of headlamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector. No person may, at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead, operate a bicycle unless the bicycle or its operator is equipped with reflective surfaces that shall be visible during the hours of darkness from 600 feet when viewed in front of lawful lower beams of headlamps on a motor vehicle. The reflective surfaces shall include reflective materials on each side of each pedal to indicate their presence from the front or the rear and with a minimum of 20 square inches on each side of the bicycle or its operator of white reflective material. All reflective materials used in compliance with this section shall meet the requirements as prescribed by the Commissioner of Public Safety.

(B) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.
Penalty, see § 74.99

§ 74.09 SALE WITH REFLECTORS.

It is unlawful for any person to sell or offer for sale any new bicycle unless it is equipped with such reflectors as are prescribed in § 74.08.
Penalty, see § 74.99

ROLLER BLADES, ROLLER SKATES, ROLLER SKIS AND SKATEBOARDS

§ 74.25 DEFINITIONS.

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

BUSINESS DISTRICT. That part of the City so designated by council resolution.

OPERATE. To ride on or upon or control the operation of roller blades, roller skates, or a skateboard.

OPERATOR. Every person who operates or is in actual physical control of roller blades, roller skates, or a skateboard.

ROLLER BLADES/ROLLER SKATES. A shoe with wheels attached or a device with wheels which is designed to be attached to a shoe.

ROLLER SKIS. A pair of skis platformed with wheels attached which is intended to simulate skiing.

SKATEBOARD. A device for riding-upon, usually while standing, consisting of an oblong piece of wood, or of other composition, mounted on skate wheels.

§ 74.26 UNLAWFUL ACTS.

(A) It is unlawful for any person to operate roller blades, roller skates, roller skis or a skateboard under the circumstances set forth hereafter:

(1) On any public sidewalk, street, or public parking lot within the Business District;

(2) On private property of another without the express permission to do so by the owner or occupant of the property; or

(3) In any careless, reckless, or negligent manner so as to endanger or be likely to endanger the safety of any person or property of any other person.

(B) It is unlawful for any person operating roller blades, roller skates, roller skis or a skateboard to attach the same, or the person of the operator, to any vehicle upon a street.

(C) Every person operating roller blades, roller skates, roller skis or a skateboard upon a street shall ride as close as possible to the right-hand curb or edge of the street.

(D) Every person operating roller blades, roller skates, roller skis or a skateboard upon a street shall observe the same rules of the road as required of bicycles, pursuant to M.S. § 169.222.
Penalty, see § 74.99

§ 74.27 RIGHT-OF-WAY.

The operator of roller blades, roller skates, roller skis or a skateboard emerging from any alley, driveway, or building, upon approaching a sidewalk or the sidewalk area extending across any alleyway, shall yield the right-of-way to all pedestrians approaching on the sidewalk or sidewalk area and upon entering the street shall yield the right-of-way to all vehicles approaching on the street.
Penalty, see § 74.99

§ 74.28 HOURS OF USE.

It is unlawful for any person to use roller blades, roller skates, roller skis or a skateboard upon a public street, sidewalk, or other roadway from 10:00 p.m. to 6:00 a.m., except on private property with express permission of owner, and except if the roller blades, roller skates, roller skis, skateboard or operator are equipped with reflective surfaces that shall be visible during the hours of darkness from 600 feet when viewed in front of lawful lower beams of head lamps on a motor vehicle. The reflective material shall be a minimum of 40 square inches. All reflective materials used in compliance with this section shall meet the requirements as prescribed by the Commissioner of Public Safety.
Penalty, see § 74.99

§ 74.99 VIOLATIONS.

A person apprehended by a peace officer in violation of the provisions of this chapter does, by his or her use of the public sidewalks, streets, and public parking lots, consent to the impoundment by a police officer of the roller blades, roller skates, roller skis or skateboard for a period of three days upon a first offense, a week upon the second offense and 30 days upon a third or additional offense. Any operator aggrieved by the impoundment of his or her roller blades, roller skates, roller skis or skateboard may petition the Council for a hearing thereon at the next regular Council meeting following the impoundment. This provision is in addition to the provisions for fines and penalties as set forth in § 10.99.

TITLE IX: GENERAL REGULATIONS

Chapter

90. ABANDONED PROPERTY

91. ANIMALS

92. HEALTH AND SAFETY; NUISANCES

93. STREETS AND SIDEWALKS

CHAPTER 90: ABANDONED PROPERTY

Section

General Provisions

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Abandoned Vehicles

90.15 Findings and purpose
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90.17 Violation to abandon motor vehicle
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City Employee Purchase of Abandoned Property or Abandoned Vehicles

90.40 May purchase at auction

GENERAL PROVISIONS

§ 90.01 DISPOSITION OF ABANDONED PROPERTY.

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

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

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

(D) *Sale*. If the property remains unclaimed in the possession of the city for 60 days, the property shall be sold to the highest bidder at a public auction conducted by the City Clerk or his or her designee after two weeks' published notice setting forth the time and place of the sale and the property to be sold.

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

ABANDONED VEHICLES

§ 90.15 FINDINGS AND PURPOSE.

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

§ 90.16 DEFINITIONS.

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

ABANDONED VEHICLE.

(1) A motor vehicle, as defined in M.S. § 169.011, Subd. 42 as it may be amended from time to time, that:

(a) Has remained illegally:

1. For a period of more than 48 hours on any property owned or controlled by a unit of government, or more than four hours on that property when it is properly posted; or

2. On private property for a period of time, as determined under § 90.18(B), without the consent of the person in control of the property; and

(b) Lacks vital component parts or is in an inoperable condition that it has no substantial potential for further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building.

(2) A classic car or pioneer car, as defined in M.S. § 168.10 as it may be amended from time to time, is not considered an abandoned vehicle.

(3) Vehicles on the premises of junk yards and automobile graveyards that are defined, maintained, and licensed in accordance with M.S. § 161.242 as it may be amended from time to time, or that are licensed and maintained in accordance with local laws and zoning regulations, are not considered abandoned vehicles.

(4) A vehicle being held for storage by agreement or being held under police authority or pursuant to a writ or court order is not considered abandoned, nor may it be processed as abandoned while the police hold, writ or court order is in effect.

DEPARTMENT. The Minnesota Department of Public Safety.

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

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

JUNK VEHICLE. A vehicle that:

(1) Is three years old or older;

(2) Is extensively damaged, with the damage including things as broken or missing wheels, motor, drive train or transmission;

(3) Is apparently inoperable;

(4) Does not have a valid, current registration plate; and

(5) Has an approximate fair market value equal only to the approximate value of the scrap in it.

MOTOR VEHICLE or ***VEHICLE.*** Has the meaning given "motor vehicle" in M.S. § 169.011, Subd. 42, as it may be amended from time to time.

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

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

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

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

UNAUTHORIZED VEHICLE. A vehicle that is subject to removal and impoundment pursuant to § 90.18(B), or M.S. § 168B.035 as it may be amended from time to time, but is not a junk vehicle or an abandoned vehicle.

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

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

§ 90.17 VIOLATION TO ABANDON MOTOR VEHICLE.

Any person who abandons a motor vehicle on any public or private property, without the consent of the person in control of the property, is guilty of a misdemeanor.
Penalty, see § 10.99

§ 90.18 AUTHORITY TO IMPOUND VEHICLES.

(A) *Abandoned or junk vehicles*. The City Clerk or his or her designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any abandoned or junk vehicle if the vehicle is on public property. If the abandoned or junk vehicle is located on private property, the vehicle shall not be removed or impounded until the provisions of § 90.18(C) are complied with.

(B) *Unauthorized vehicles*. The City Clerk, or his or her designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any unauthorized vehicle under M.S. § 168B.035 as it may be amended from time to time. A vehicle may also be impounded after it has been left unattended in one of the following public or private locations for the indicated period of time:

(1) In a public location not governed by M.S. § 168B.035 as it may be amended from time to time:

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

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

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

(2) On private property, only with the express permission of the owner of the property, a resident or other person in control of the premises:

(a) That is single-family or duplex residential property, immediately;

(b) That is private, nonresidential property, properly posted, immediately;

(c) That is private, nonresidential property, not posted, 24 hours; or

(d) That is any residential property, properly posted, immediately.

(3) If under division (B)(2) of this section, permission is not granted, then the city shall not remove and impound any vehicle until the procedure established in division (C) of this section has been followed.

(C) If the vehicle is on private property, the City Clerk or his or her designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any abandoned or junk vehicle on private property only with the permission of the owner of the property, a resident, or other person in control of the premises. If permission is denied, the city may declare the existence of the abandoned or junk vehicle to be a nuisance and proceed to abate the nuisance as provided for in §§ 92.15 through 92.21. Once the abatement procedure has been completed, the city may apply for an order from a court of competent jurisdiction authorizing the removal and impoundment of the vehicle and, after the order has been granted, the city may then remove and impound the vehicle.

§ 90.19 SALE; WAITING PERIODS.

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

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

(2) An abandoned vehicle.

(B) *Sale after 45 days*. An impounded vehicle is eligible for disposal or sale under § 90.23, 45 days after notice to the owner, if the vehicle is determined to be an unauthorized vehicle or upon the date of a voluntary written title transfer by the registered owner to the impound lot operator.

§ 90.20 NOTICE OF TAKING AND SALE.

(A) *Contents; notice given within five days*. When an impounded vehicle is taken into custody, the city or impound lot operator taking it into custody shall give notice of the taking to the registered owner and any registered lien holders within five days. The notice shall:

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

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

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

(4) State that the vehicle owner who provides to the impound lot operator documentation from a government or nonprofit agency or legal aid office that the owner is homeless, receives relief based on need, or is eligible for legal aid services, has the unencumbered right to retrieve any and all contents of the vehicle without charge.

(B) *Notice by mail or publication*. The notice shall be sent by mail to the registered owner, if any, of an impounded vehicle and to all readily identifiable lien holders of record. The Department makes this information available to impound lot operators for notification purposes. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lien holders, the notice shall be published once in a newspaper of general circulation in the area where the motor vehicle was towed from or abandoned. Published notices may be grouped together for convenience and economy.

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

§ 90.21 RIGHT TO RECLAIM.

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

(B) *Lien holders*. Nothing in this chapter shall be construed to impair any lien of a garagekeeper under the laws of this state, or the right of a lien holder to foreclose. For the purposes of this section, ***GARAGEKEEPER*** is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair or maintenance of motor vehicles.

(C) At any time before the expiration of the waiting periods provided in § 90.21 a registered owner who provides documentation from a government or nonprofit agency or legal aid office that the registered owner is homeless, receives relief based on need, or is eligible for legal aid service, has the unencumbered right to retrieve any and all contents without charge and regardless of whether the registered owner pays incurred charges or fees, transfers title, or reclaims the vehicle. For the purposes of this section:

(1) ***CONTENTS*** does not include any permanently affixed mechanical or nonmechanical automobile parts; automobile body parts; or automobile accessories, including audio or video players; and

(2) ***RELIEF BASED ON NEED*** includes, but is not limited to, receipt of MFIP and Diversionary Work Program, medical assistance, general assistance, general assistance medical care, emergency general assistance, Minnesota supplemental aid, MSA-emergency assistance, MinnesotaCare, Supplemental Security Income, energy assistance, emergency assistance, food stamps, earned income tax credit, or Minnesota working family tax credit. The city or impound lot operator shall establish reasonable procedures for retrieval of vehicle contents under this section, and may establish reasonable procedures to protect the safety and security of the impound lot and its personnel.

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

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

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

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

(B) *Implied consent to sale*. A registered owner who fails to claim the impounded vehicle within the applicable time period allowed under § 90.19 is deemed to waive any right to reclaim the vehicle and consents to the disposal or sale of the vehicle and its contents and transfer of title. The failure to exercise rights to claim contents under § 90.21(C) constitutes a waiver of all right, title and interest in the contents of the vehicle and a consent to the transfer of title to and disposal or sale of the contents.

§ 90.23 DISPOSITION BY IMPOUND LOT.

(A) *Auction or sale*.

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

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

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

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

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

§ 90.24 DISPOSAL AUTHORITY.

The city may contract with others or may utilize its own equipment and personnel for the inventory of impounded motor vehicles and abandoned scrap metal and may utilize its own equipment and

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

§ 90.25 CONTRACTS; REIMBURSEMENT BY MPCA.

(A) *MPCA review and approval.* If the city proposes to enter into a contract with a person licensed by the MPCA pursuant to this section or a contract pursuant to § 90.24, the MPCA may review the proposed contract before it is entered into by the city, to determine whether it conforms to the MPCA's plan for solid waste management and is in compliance with MPCA rules. A contract that does so conform may be approved by the MPCA and entered into by the city. Where a contract has been approved, the MPCA may reimburse the city for the costs incurred under the contract that have not been reimbursed under § 90.23. Except as otherwise provided in § 90.24, the MPCA shall not approve any contract that has been entered into without prior notice to and without a request for bids from all persons duly licensed by the MPCA to be a party to a disposal contract pursuant to M.S. § 116.07, as it may be amended from time to time; nor that does not provide for a full performance bond; or does not provide for total collection and transportation of abandoned motor vehicles, except that the MPCA may approve a contract covering solely collection or transportation of abandoned motor vehicles where the MPCA determines total collection and transportation to be impracticable and where all other requirements herein have been met and the unit of government, after proper notice and request for bids, has not received any bid for total collection and transportation of abandoned motor vehicles.

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

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

CITY EMPLOYEE PURCHASE OF ABANDONED PROPERTY OR ABANDONED VEHICLES

§ 90.40 MAY PURCHASE AT AUCTION.

Pursuant to M.S. § 15.054, as it may be amended from time to time, no officer or employee of the city shall sell or procure for sale or possess or control for sale to any other officer or employee of the

city, any property or materials owned by the city except pursuant to conditions provided in this section. Property or materials owned by the city and not needed for public purposes, may be sold to an employee of the city after reasonable public notice at a public auction or by sealed response, if the employee is not directly involved in the auction or process pertaining to the administration and collection of sealed responses. Prior to such auction or collection of sealed responses, public notice of at least one week's published notice must be provided. An employee of the city may purchase no more than one motor vehicle from the city at any one auction. This section shall not apply to the sale of property or materials acquired or produced by the city for sale to the general public in the ordinary course of business. Nothing in this section shall prohibit an employee of the city from selling or possessing for sale public property if the sale or possession for sale is in the ordinary course of business or normal course of the employee's duties.

CHAPTER 91: ANIMALS

Section

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91.99 Penalty

§ 91.01 DEFINITIONS.

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

ANIMAL. Any mammal, reptile, amphibian, fish, bird (including all fowl and poultry) or other member commonly accepted as a part of the animal kingdom. Animals shall be classified as follows:

(1) ***DOMESTIC ANIMALS.*** Those animals commonly accepted as domesticated household pets. Unless otherwise defined, domestic animals shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians, and other similar animals.

(2) ***FARM ANIMALS.*** Those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, farm animals shall include members of the equine family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (ducks, geese), swine (including Vietnamese pot-bellied pigs), goats, bees, ratitae (ostriches and emus), farm raised cervidae (caribous and mule deer), llamas and alpacas and other animals associated with a farm, ranch, or stable.

(3) ***NON-DOMESTIC ANIMALS.*** Those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety, and welfare of people. Unless otherwise defined, non-domestic animals shall include:

(a) Any member of the large cat family (family felidae) including lions, tigers, cougars, bobcats, leopards and jaguars, but excluding commonly accepted domesticated house cats.

(b) Any naturally wild member of the canine family (family canidae) including wolves, foxes, coyotes, dingoes, and jackals, but excluding commonly accepted domesticated dogs.

(c) Any crossbreeds such as the crossbreed between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.

(d) Any member or relative of the rodent family including any skunk (whether or not descented), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.

(e) Any poisonous, venomous, constricting, or inherently dangerous member of the reptile or amphibian families including rattlesnakes, boa constrictors, pit vipers, crocodiles and alligators.

(f) Any other animal which is not explicitly listed above but which can be reasonably defined by the terms of this section, including but not limited to bears, deer, monkeys and game fish.

AT LARGE. Off the premises of the owner and not under the custody and control of the owner or other person, either by leash, cord, chain, or otherwise restrained or confined.

CAT. Both the male and female of the felidae species commonly accepted as domesticated household pets.

DOG. Both the male and female of the canine species, commonly accepted as domesticated household pets, and other domesticated animals of a dog kind.

OWNER. Any person or persons, firm, association or corporation owning, keeping, or harboring an animal.

RELEASE PERMIT. A permit issued by the Animal Control Officer or other person in charge of the pound for the release of any animal that has been taken to the pound. A release permit may be obtained upon payment of a fee to the City Clerk in accordance with the regular license requirement if the animal is unlicensed, payment of a release fee, and any maintenance costs incurred in capturing and impounding the animal. The release fee shall be as established in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11, as it may be amended from time to time.

§ 91.02 DOGS AND CATS.

(A) *Running at large prohibited.* It shall be unlawful for the dog or cat of any person who owns, harbors, or keeps a dog or cat, to run at large. A person, who owns, harbors, or keeps a dog or cat which runs at large shall be guilty of a misdemeanor. Dogs or cats on a leash and accompanied by a responsible person or accompanied by and under the control and direction of a responsible person, so as to be effectively restrained by command as by leash, shall be permitted in streets or on public land unless the city has posted an area with signs reading "Dogs or Cats Prohibited."

(B) *License required.*

(1) All dogs over the age of six months kept, harbored, or maintained by their owners in the city, shall be licensed and registered with the city. Dog licenses shall be issued by the City Clerk upon payment of the license fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time. The owner shall state, at the time application is made for the license and upon forms provided, his or her name and address and the name, breed, color, and sex of each dog owned or kept by him or her. No license shall be granted for a dog that has not been vaccinated against distemper and rabies, as evidenced by a certificate by a veterinarian qualified to practice in the state in which the dog is vaccinated.

(2) It shall be the duty of each owner of a dog subject to this section to pay to the City Clerk the license fee established in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11, as it may be amended from time to time.

(3) Upon payment of the license fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, the Clerk shall issue to the owner a license certificate and metallic tag for each dog licensed. The tag shall have stamped on it the year for which it is issued and the number corresponding with the number on the certificate. Every owner shall be required to provide each dog with a collar to which the license tag must be affixed, and shall see that the collar and tag are constantly worn. In case a dog tag is lost or destroyed, a duplicate shall be issued by the City Clerk. A charge shall be made for each duplicate tag in an amount established in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11, as it may be amended from time to time. Dog tags shall not be transferable from one dog to another and no refunds shall be made on any dog license fee or tag because of death of a dog or the owner's leaving the city before the expiration of the license period.

(4) The licensing provisions of this division (B) shall not apply to dogs whose owners are nonresidents temporarily within the city, nor to dogs brought into the city for the purpose of participating in any dog show. If the animal owned is a service animal which is capable of being properly identified as from a recognized school for seeing eye, hearing ear, service or guide animals, and the owner is a blind or deaf person, or a person with physical or sensory disabilities, then no license shall be required.

(5) The funds received by the City Clerk from all dog licenses and metallic tags fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, shall first be used to defray any costs incidental to the enforcement of this chapter; including, but not restricted to, the costs of licenses, metallic tags, and impounding and maintenance of the dogs.

(C) *Cats*. Cats shall be included as controlled by this division insofar as running-at-large, pickup, impounding, boarding, licensing and proof of anti-rabies vaccine is concerned. All other provisions of this section shall also apply to cats unless otherwise provided.

(D) *Vaccination*.

(1) All dogs and cats kept harbored, maintained, or transported within the city shall be vaccinated at least once every three years by a licensed veterinarian for:

(a) Rabies - with a live modified vaccine; and

(b) Distemper.

(2) A certificate of vaccination must be kept on which is stated the date of vaccination, owner's name and address, the animal's name (if applicable), sex, description and weight, the type of vaccine, and the veterinarian's signature. Upon demand made by the City Clerk, the Animal Control Officer or a police officer, the owner shall present for examination the required certificate(s) of vaccination for the animal(s). In cases where certificates are not presented, the owner or keeper of the animal(s) shall have seven days in which to present the certificate(s) to the City Clerk or officer. Failure to do so shall be deemed a violation of this section.
Penalty, see § 91.99

§ 91.03 NON-DOMESTIC ANIMALS.

Except as provided in M.S.§ 346.155, as it may be amended from time to time, it shall be illegal for any person to own, possess, harbor, or offer for sale, any non-domestic animal within the city. Any owner of a non-domestic animal at the time of adoption of this code shall have 30 days in which to remove the animal from the city after which time the city may impound the animal as provided for in this section. An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to the handicapped or disabled, and for those animals brought into the city

as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.
Penalty, see § 91.99

§ 91.04 FARM ANIMALS.

Farm animals shall only be kept in an agricultural district of the city, or on a residential lot of at least ten acres in size provided that no animal shelter shall be within 300 feet of an adjoining piece of property. An exception shall be made to this section for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

§ 91.05 IMPOUNDING.

(A) *Running at large*. Any unlicensed animal running at large is hereby declared a public nuisance. Any Animal Control Officer or police officer may impound any dog or other animal found unlicensed or any animal found running at large and shall give notice of the impounding to the owner of the dog or other animal, if known. The Animal Control Officer or police officer shall not enter the property of the owner of an animal found running at large or the owner of an unlicensed animal 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 § 10.20, to search for and seize the animal. In case the owner is unknown, the officer shall post notice at the city office that if the dog or other animal is not claimed within the time specified in division (C) of this section, it will be sold or otherwise disposed of. Except as otherwise provided in this section, it shall be unlawful to kill, destroy, or otherwise cause injury to any animal, including dogs and cats running at large.

(B) *Biting animals*. Any animal that has not been inoculated by a live modified rabies vaccine and which has bitten any person, wherein the skin has been punctured or the services of a doctor are required, shall be confined in the city pound for a period of not less than ten days, at the expense of the owner. The animal may be released at the end of the time if healthy and free from symptoms of rabies, and by the payment of all costs by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for the confinement by the officer to voluntarily and immediately confine the animal for the required period of time in a veterinary hospital of the owner's choosing, not outside of the county in which this city is located, and provide immediate proof of confinement in the manner as may be required, the owner may do so. If, however, the animal has been inoculated with a live modified rabies vaccine and the owner has proof of the vaccination by a certificate from a licensed veterinarian, the owner may confine the dog or other animal to the owner's property.

(C) *Reclaiming*. For the purposes of this section regular business day means a day during which the establishment having custody of the animal is open to the public at least four consecutive hours between 8:00 a.m. and 7:00 p.m. All animals conveyed to the pound shall be kept, with humane treatment and sufficient food and water for their comfort, at least five regular business days, unless the animal is a dangerous animal as defined under § 91.11 in which case it shall be kept for seven regular

business days or the times specified in § 91.11, and except if the animal is a cruelly-treated animal in which case it shall be kept for ten regular business days, unless sooner reclaimed by their owners or keepers as provided by this section. In case the owner or keeper shall desire to reclaim the animal from the pound, the following shall be required, unless otherwise provided for in this code or established from time to time by resolution of the City Council:

(1) Payment of the release fee and receipt of a release permit as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time.

(2) Payment of maintenance costs, as provided by the pound, per day or any part of day while animal is in the pound; and

(3) If a dog is unlicensed, payment of a regular license fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, and valid certificate of vaccination for rabies and distemper shots is required.

(D) *Unclaimed animals*. At the expiration of the times established in division (C) of this section, if the animal has not been reclaimed in accordance with the provisions of this section, the officer appointed to enforce this section may dispose of the unclaimed animal in a manner permitted by law. Any money collected under this section shall be payable to the City Clerk.
Penalty, see § 91.99

§ 91.06 KENNELS.

(A) *Definition of kennel*. The keeping of three or more dogs on the same premises, whether owned by the same person or not and for whatever purpose kept, shall constitute a "kennel"; except that a fresh litter of pups may be kept for a period of three months before that keeping shall be deemed to be a "kennel."

(B) *Kennel as a nuisance*. Because the keeping of three or more dogs on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard, and general aesthetic depreciation, the keeping of three or more dogs on the premises is hereby declared to be a nuisance and no person shall keep or maintain a kennel within the city.
Penalty, see § 91.99

§ 91.07 BARKING/CRYING/WHINING DOGS.

(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) *Damage to property*. It shall be unlawful for any person's dog or other animal to damage any lawn, garden, or other property, whether or not the owner has knowledge of the damage.

(C) *Cleaning up litter*. The owner of any animal or person having the custody or control of any animal shall be responsible for cleaning up any feces of the animal and disposing of the feces in a sanitary manner whether on their own property, on the property of others or on public property.

(D) *Warrant required*. The Animal Control Officer 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 § 10.20, to search for and seize the animal.

§ 91.08 SEIZURE OF ANIMALS.

Any police officer or Animal Control Officer may enter upon private property and seize any animal with the permission of the owner of the property, if that person is also the owner of the animal, provided that the following exist:

(A) There is an identified complainant other than the police officer or Animal Control Officer making a contemporaneous complaint about the animal;

(B) The officer reasonably believes that the animal meets either the barking dog criteria set out in § 91.07(A); the criteria for cruelty set out in § 91.13; or the criteria for an at large animal set out in § 91.02(A);

(C) The officer can demonstrate that there has been at least one previous complaint of a barking dog; inhumane treatment of the animal; or that the animal was at large at this address on a prior date;

(D) The officer has made a reasonable attempt to contact the owner of the animal and the property to be entered and those attempts have either failed or have been ignored;

(E) The Animal Control Officer 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 § 10.20, to search for and seize the animal. If the officer has the permission of the owner, a property manager, landlord, innkeeper, or other authorized person to enter the property or has obtained a pass key from

a property manager, landlord, innkeeper, or other authorized person to have that key shall not be considered unauthorized entry, and a warrant to search for and seize the animal need not be obtained; and

(F) Written notice of the seizure is left in a conspicuous place if personal contact with the owner of the animal is not possible.

§ 91.09 ANIMALS PRESENTING A DANGER TO HEALTH AND SAFETY OF CITY.

If, in the reasonable belief of any person or the Animal Control Officer or police officer, an animal presents an immediate danger to the health and safety of any person, or the animal is threatening imminent harm to any person, or the animal is in the process of attacking any person, the person or officer may destroy the animal in a proper and humane manner whether or not the animal is on the property of its owner. Otherwise, the person or officer may apprehend the animal and deliver it to the pound for confinement under § 91.05. If the animal is destroyed, the owner or keeper of the animal destroyed shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examination. If the animal is found not to be a danger to the health and safety of the city, it may be released to the owner or keeper in accordance with § 91.05(C).

§ 91.10 DISEASED ANIMALS.

(A) *Running at large*. No person shall keep or allow to be kept on his or her premises, or on premises occupied by them, nor permit to run at large in the city, any animal which is diseased so as to be a danger to the health and safety of the city, even though the animal be properly licensed under this section, and a warrant to search for and seize the animal is not required.

(B) *Confinement*. Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public, may be apprehended and confined in the pound by any person, the Animal Control Officer or a police officer. The officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in a manner so as to be a danger to the health and safety of the city, the officer shall cause the animal to be painlessly killed and shall properly dispose of the remains. The owner or keeper of the animal killed under this section shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examinations.

(C) *Release*. If the animal, upon examination, is not found to be diseased the animal shall be released to the owner or keeper free of charge.
Penalty, see § 91.99

§ 91.11 DANGEROUS AND POTENTIALLY DANGEROUS DOGS.

(A) *Adoption by reference*. Except as otherwise provided in this section, the regulatory and procedural provisions of M.S. §§ 347.50 to 347.565 (commonly referred to as the "Dangerous Dog Regulations"), are adopted by reference.

(B) *Definitions*. Definitions in this section shall have the following meanings:

(1) ***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.

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

(3) ***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.

(4) ***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.

(5) ***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.

(6) ***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.

(7) ***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.

(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.

(8) ***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.

(9) ***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.

(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.

(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 M.S. § 347.52 (a) and (c) 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 Minnesota 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 Minnesota in the amount of at least $300,000, insuring the owner for any personal injuries

inflicted by the dangerous dog. Such 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 such cancellation;

(c) The owner has paid the annual license fee for dangerous dogs as established in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this Code.

(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;

(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 insure 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 established in the Ordinance to Establish Fees and Charges as it may be amended from time to time.

(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 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 possess 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*. Animal control 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 § 91.11(E);

(5) After 30 days after the owner has notice that the dog is dangerous, the dog is not sterilized, as required by § 91.11(D)(1)(e);

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

(H) *Reclamation*. A dog seized under § 91.11(G) may be reclaimed by the owner of the dog upon payment of maintenance costs, and presenting proof to animal control that the requirements of this section have been met. A dog not reclaimed under this division 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 in manner permitted by law.

(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 M.S. § 347.52, paragraphs (a) and (c) 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 M.S. § 347.51, 347.515, and 347.52;

(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 § 91.11(J) 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;

(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 § 91.11(D), (E) or (F) or similar ordinance in another jurisdiction, or M.S. §§ 347.51, 347.515 or 347.52;

(b) Convicted of 2nd degree manslaughter due to negligent or intentional use of a dog under M.S. § 609.205 (4); or

(c) Convicted of gross misdemeanor harm caused by a dog under M.S. § 609.226, Subd. 1.

(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 § 91.11(J).

(3) If any member of a household is prohibited from owning a dog in § 91.11(M)(1) or (2), 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*. Beginning three years after a conviction under § 91.11(M)(1) 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. 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. 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 § 91.11(D), (E), or (F) is guilty of a gross misdemeanor.

(3) Any person who violates § 91.11(M), whether an owner or household member, is guilty of a gross misdemeanor.

§ 91.12 DANGEROUS ANIMALS (EXCLUDING DOGS).

(A) *Attack by an animal*. It shall be unlawful for any person's animal to inflict or attempt to inflict bodily injury to any person or other animal whether or not the owner is present. This section shall not apply to dogs as regulated by § 91.11.

(B) *Destruction of dangerous animal*. The Animal Control Officer shall have the authority to order the destruction of dangerous animals in accordance with the terms established by this chapter.

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

(1) ***DANGEROUS ANIMAL.*** An animal which has:

(a) Caused bodily injury or disfigurement to any person on public or private property;

(b) Engaged in any attack on any person under circumstances which would indicate danger to personal safety;

(c) Exhibited unusually aggressive behavior, such as an attack on another animal;

(d) Bitten one or more persons on two or more occasions; or

(e) Been found to be potentially dangerous and/or the owner has personal knowledge of the same, the animal aggressively bites, attacks, or endangers the safety of humans or domestic animals.

(2) ***POTENTIALLY DANGEROUS ANIMAL.*** An animal which has:

(a) Bitten a human or a domestic animal on public or private property;

(b) When unprovoked, chased or approached a person upon the streets, sidewalks, or any public property in an apparent attitude of attack; or

(c) Has engaged in unprovoked attacks causing injury or otherwise threatening the safety of humans or domestic animals.

(3) ***PROPER ENCLOSURE.*** Securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animal 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 animal 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 animal from exiting. The enclosure shall not allow the egress of the animal in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:

(a) Have 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 posts shall be 1¼-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 shall also have no openings in the wire greater than two inches.

(d) An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and shall also have no openings in the wire greater than two inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel.

(4) ***UNPROVOKED.*** The condition in which the animal is not purposely excited, stimulated, agitated or disturbed.

(D) *Designation as potentially dangerous animal.* The Animal Control Officer shall designate any animal as a potentially dangerous animal upon receiving evidence that the potentially dangerous animal has, when unprovoked, then bitten, attacked, or threatened the safety of a person or a domestic animal as stated in division (C)(2). When an animal is declared potentially dangerous, the Animal Control Officer shall cause one owner of the potentially dangerous animal to be notified in writing that the animal is potentially dangerous.

(E) *Evidence justifying designation.* The Animal Control Officer shall have the authority to designate any animal as a dangerous animal upon receiving evidence of the following:

(1) That the animal has, when unprovoked, bitten, attacked, or threatened the safety of a person or domestic animal as stated in division (C)(1).

(2) That the animal has been declared potentially dangerous and the animal has then bitten, attacked, or threatened the safety of a person or domestic animal as stated in division (C)(1).

(F) *Authority to order destruction.* The Animal Control Officer, upon finding that an animal is dangerous hereunder, is authorized to order, as part of the disposition of the case, that the animal be destroyed based on a written order containing one or more of the following findings of fact:

(1) The animal is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks; or

(2) The owner of the animal has demonstrated an inability or unwillingness to control the animal in order to prevent injury to persons or other animals.

(G) *Procedure.* The Animal Control Officer, after having determined that an animal is dangerous, may proceed in the following manner: The Animal Control Officer shall cause one owner of the animal to be notified in writing or in person that the animal is dangerous and may order the animal seized or make orders as deemed proper. This owner shall be notified as to dates, times, places and parties bitten, and shall be given 14 days to appeal this order by requesting a hearing before the City Council for a review of this determination.

(1) If no appeal is filed, the Animal Control Officer shall obtain an order or warrant authorizing the seizure and the destruction of the animal from a court of competent jurisdiction, unless the animal is already in custody or the owner consents to the seizure and destruction of the animal.

(2) If an owner requests a hearing for determination as to the dangerous nature of the animal, the hearing shall be held before the City Council, which shall set a date for hearing not more than three weeks after demand for the hearing. The records of the Animal Control or City Clerk's office shall be admissible for consideration by the Animal Control Officer without further foundation. After considering

all evidence pertaining to the temperament of the animal, the City Council shall make an order as it deems proper. The City Council may order that the Animal Control Officer take the animal into custody for destruction, if the animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the Animal Control Officer. If the owner does not immediately make the animal available, the Animal Control Officer shall obtain an order or warrant authorizing the seizure and the destruction of the animal from a court of competent jurisdiction.

(3) No person shall harbor an animal after it has been found by to be dangerous and ordered into custody for destruction.

(H) *Stopping an attack*. If any police officer or Animal Control Officer is witness to an attack by an animal upon a person or another animal, the officer may take whatever means the officer deems appropriate to bring the attack to an end and prevent further injury to the victim.

(I) *Notification of new address*. The owner of an animal which has been identified as dangerous or potentially dangerous shall notify the Animal Control Officer in writing if the animal is to be relocated from its current address or given or sold to another person. The notification shall be given in writing at least 14 days prior to the relocation or transfer of ownership. The notification shall include the current owner's name and address, the relocation address, and the name of the new owner, if any.

(J) *Dangerous animal requirements*.

(1) *Requirements*. If the City Council does not order the destruction of an animal that has been declared dangerous, the City Council may, as an alternative, order any or all of the following:

(a) That the owner provide and maintain a proper enclosure for the dangerous animal as specified in § 91.12(C)(3);

(b) Post the front and the rear of the premises with clearly visible warning signs, including a warning symbol to inform children, that there is a dangerous animal on the property;

(c) Provide and show proof annually of public liability insurance in the minimum amount of $300,000;

(d) If the animal is outside the proper enclosure, the animal must be muzzled (if physically possible depending on the type of animal) and restrained by a substantial chain or leash (not to exceed six feet in length) and under the physical restraint of a person 16 years of age or older. The muzzle must be of a design as to prevent the animal from biting any person or animal, but will not cause injury to the animal or interfere with its vision or respiration;

(e) The animal shall have a microchip implant as provided by M.S. § 347.515, as it may be amended from time to time;

(f) All animals deemed dangerous by the Animal Control Officer shall be registered with the county in which this city is located within 14 days after the date the animal was so deemed and provide satisfactory proof thereof to the Animal Control Officer.

(g) If the animal is a cat or ferret, it must be up to date with rabies vaccination.

(2) *Seizure*. As authorized by M.S. § 347.54, as it may be amended from time to time, the Animal Control Officer shall immediately seize any dangerous animal if the owner does not meet each of the above requirements within 14 days after the date notice is sent to the owner that the animal is dangerous. Seizure may be appealed to district court by serving a summons and petition upon the city and filing it with the district court.

(3) *Reclaiming animals*. A dangerous animal seized under § 91.12(J)(2), may be reclaimed by the owner of the animal upon payment of impounding and boarding fees and presenting proof to animal control that each of the requirements under § 91.12(J)(1), is fulfilled. An animal not reclaimed under this section within 14 days may be disposed of as provided under § 91.12(F), and the owner is liable to the city for costs incurred in confining and impounding the animal.

(D) *Subsequent offenses*. If an owner of an animal has subsequently violated the provisions under § 91.12 with the same animal, the animal must be seized by animal control. The owner may request a hearing as defined in § 91.12(G). If the owner is found to have violated the provisions for which the animal was seized, the Animal Control Officer shall order the animal destroyed in a proper and humane manner and the owner shall pay the costs of confining the animal. If the person is found not to have violated the provisions for which the animal was seized, the owner may reclaim the animal under the provisions of § 91.12(J)(3). If the animal is not yet reclaimed by the owner within 14 days after the date the owner is notified that the animal may be reclaimed, the animal may be disposed of as provided under § 91.12(F) and the owner is liable to the animal control for the costs incurred in confining, impounding and disposing of the animal.

§ 91.13 BASIC CARE.

(A) All animals shall receive from their owners or keepers kind treatment, housing in the winter, and sufficient food and water for their comfort. Any person not treating their pet in a humane manner will be subject to the penalties provided in this section.

(B) Dogs and cats. Dogs and cats must be provided the following basic care.

(1) *Food*. Dogs and cats must be provided with food of sufficient quantity and quality to allow for normal growth or the maintenance of body weight. Feed standards shall be those recommended by the National Research Council.

(2) *Water*. Dogs and cats must be provided with clean, potable water in sufficient quantity to satisfy the animal's needs or supplied by free choice. Snow or ice is not an adequate water source.

(3) *Transportation and shipment*. When dogs or cats are transported in crates or containers, the crates or containers must be constructed of nonabrasive wire or a smooth, durable material suitable for the animals. Crates and containers must be clean, adequately ventilated, contain sufficient space to allow the animals to turn around, and provide maximum safety and protection to the animals. Exercise for 20 to 30 minutes and water must be provided at least once every eight hours. Food must be provided at least once every 24 hours or more often, if necessary, to maintain the health and condition of the animals.

(4) *Shelter size*. A confinement area must provide sufficient space to allow each animal to turn about freely and to easily stand, sit, and lie in a normal position. Each confined animal must be provided a minimum square footage of floor space as measured from the tip of its nose to the base of its tail, plus 25%, expressed in square feet. The formula for computing minimum square footage is: (length of animal plus 25%) times (length of animal plus 25%), divided by 144. A shaded area must be provided sufficient to protect the animal from the direct rays of the sun at all times during the months of May to October.

(5) *Exercise*. All dogs and cats must be provided the opportunity for periodic exercise, either through free choice or through a forced work program, unless exercise is restricted by a licensed veterinarian.

(6) *Group housing and breeding*. Animals housed together must be kept in compatible groups. Animals must not be bred so often as to endanger their health.

(7) *Temperature*. Confinement areas must be maintained at a temperature suitable for the animal involved.

(8) *Ventilation*. An indoor confinement area must be ventilated. Drafts, odors, and moisture condensation must be minimized. Auxiliary ventilation, such as exhaust fans, vents, and air conditioning, must be used when the ambient temperature rises to a level that may endanger the health of the animal.

(9) *Lighting*. An indoor confinement area must have at least eight hours of illumination sufficient to permit routine inspection and cleaning.

(10) *Confinement and exercise area surfaces*. Where applicable, the interior surfaces of confinement and exercise areas, including crates or containers, must be constructed and maintained so that they are substantially impervious to moisture and may be readily cleaned. They must protect the animal from injury and be kept in good repair.

(11) *Drainage*. Where applicable, a suitable method must be used to rapidly eliminate excess fluids from confinement areas.

(12) *Sanitation*. Food and water receptacles must be accessible to each animal and located so as to minimize contamination by excreta. Feeding and water receptacles must be kept clean. Disposable food receptacles must be discarded when soiled. Measures must be taken to protect animals from being contaminated with water, wastes, and harmful chemicals. Wastes must be disposed of properly. Where

applicable, flushing methods and a disinfectant must be used periodically. Bedding, if used, must be kept clean and dry. Outdoor enclosures must be kept clean and base material replaced as necessary.

(C) *Birds, rodent other animals*. Basic care provided to pet and companion animal birds, rodents and other shall be consistent with M.S. § 346.40, § 346.41 and §346.42, as those statutes may be amended from time to time.

(D) *Dogs and cats in motor vehicles*.

(1) *Unattended dogs or cats*. A person may not leave a dog or a cat unattended in a standing or parked motor vehicle in a manner that endangers the dog's or cat's health or safety.

(2) *Removal of dogs or cats*. A peace officer, as defined in M.S. § 626.84, as it may be amended from time to time, a humane agent, a dog warden, or a volunteer or professional member of a fire or rescue department of the city may use reasonable force to enter a motor vehicle and remove a dog or cat which has been left in the vehicle in violation of (D)(1). A person removing a dog or a cat under this division shall use reasonable means to contact the owner of the dog or cat to arrange for its return home. If the person is unable to contact the owner, the person may take the dog or cat to an animal shelter.

(E) *Dog houses*. A person in charge or control of any dog which is kept outdoors or in an unheated enclosure shall provide the dog with shelter and bedding as prescribed in this section as a minimum.

(1) *Building specifications*. The shelter shall include a moisture proof and windproof structure of suitable size to accommodate the dog and allow retention of body heat. It shall be made of durable material with a solid, moisture proof floor or a floor raised at least two inches from the ground. Between November 1 and March 31 the structure must have a windbreak at the entrance. The structure shall be provided with a sufficient quantity of suitable bedding material consisting of hay, straw, cedar shavings, blankets, or the equivalent, to provide insulation and protection against cold and dampness and promote retention of body heat.

(2) *Shade*. Shade from the direct rays of the sun, during the months of May to October shall be provided.

(3) *Farm dogs*. In lieu of the requirements of (E)(1) and (E)(2), a dog kept on a farm may be provided with access to a barn with a sufficient quantity of loose hay or bedding to protect against cold and dampness.

§ 91.14 BREEDING MORATORIUM.

Every female dog or female cat in heat shall be confined in a building or other enclosure in a manner that it cannot come in contact with another dog or cat except for planned breeding. Upon capture and failure to reclaim the animal, every dog or cat shall be neutered or spayed prior to being transferred to a new owner.

§ 91.15 ENFORCING OFFICER.

The Council is hereby authorized to appoint an animal control officer(s) to enforce the provisions of this section. In the officer's duty of enforcing the provisions of this section, he or she may from time to time, with the consent of the City Council, designate assistants.

§ 91.16 POUND.

Every year the Council shall designate an official pound to which animals found in violation of this chapter shall be taken for safe treatment, and if necessary, for destruction.

§ 91.17 INTERFERENCE WITH OFFICERS.

No person shall in any manner molest, hinder, or interfere with any person authorized by the City Council to capture dogs, cats or other animals and convey them to the pound while engaged in that operation. Nor shall any unauthorized person break open the pound, or attempt to do so, or take or attempt to take from any agent any animal taken up by him or her in compliance with this chapter, or in any other manner to interfere with or hinder the officer in the discharge of his or her duties under this chapter.
Penalty, see § 91.99

§ 91.18 FIGHTING ANIMALS.

(A) The provisions of M.S. § 343.31, as it may be amended from time to time, are adopted herein by reference.

(B) No person shall:

(1) Promote, engage in, or be employed in the activity of cockfighting, dogfighting, or violent pitting of one pet or companion animal as defined in M.S. § 346.36, Subd. 6, as it may be amended from time to time, against another of the same or a different kind;

(2) Receive money for the admission of a person to a place used, or about to be used, for that activity;

(3) Willfully permit a person to enter or use for that activity premises of which the permitter is the owner, agent, or occupant; or

(4) Use, train, or possess a dog or other animal for the purpose of participating in, engaging in, or promoting that activity.

(5) Purchase a ticket of admission or otherwise gain admission to the activity of cockfighting, dogfighting, or violent pitting of one pet or companion animal against another of the same or a different kind.

§ 91.19 FEEDING STRAY CATS AND DOGS.

(A) *Definitions*.

(1) ***FEED*** or ***FEEDING*** means the placing of dog or cat food, or similar food products or consumable materials attractive to dogs and cats, which may result in dogs and cats congregating thereon on a regular basis, placed on the ground, in an obviously intended feeder, or in a feeder at a height accessible to cats and dogs.

(2) ***STRAY*** means an unlicensed domestic or feral dog or cat running at large and unaccompanied or controlled by an owner.

(B) *Policy and purpose*. High populations of stray dogs and cats pose a hazard to human health and safety, as such animals provide a fruitful breeding ground for infectious disease, including but not limited to rabies and distemper, and may otherwise bite or attack humans and domestic animals. In addition, food provided for stray animals is often attractive to wild animals such as raccoons and rodents and may create nuisance conditions such as a rat harborage or other wild animal infestation.

(C) No person shall feed or allow the feeding of any stray cat or dog within the city.

(D) *Exceptions*. Veterinarians and persons who, acting within the scope of their employment with any governmental entity non-profit, or humane society has custody of or manages stray dogs and cats are not subject to the prohibitions of this section.

§ 91.99 PENALTY.

(A) *Separate offenses*. Each day a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable under this section.

(B) *Misdemeanor*. Unless otherwise provided, violation of this chapter shall constitute a misdemeanor punishable as provided in § 10.99.

(C) *Petty misdemeanor*. Violations of §§ 91.02, 91.07, 91.13 and 91.14 are petty misdemeanors punishable as provided in § 10.99.

CHAPTER 92: HEALTH AND SAFETY; NUISANCES

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GENERAL PROVISIONS

§ 92.01 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. Shall mean 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 M.S. §§ 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 M.S. § 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 M.S. § 429.101 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 M.S. § 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 M.S. § 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.
Penalty, see § 92.99

§ 92.02 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 M.S. §§ 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 Council may declare any vertebrate or invertebrate animal, plant pathogen, or plant threatening to cause significant damage to a shade tree or community forest as defined by M.S. § 89.001, to be a shade tree pest and prescribe control measures to effectively eradicate, control or manage the shade tree pest including necessary timelines for action.

(D) *Public nuisances declared*. A shade tree pest declared by Council 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 this section.

(F) *Definition of control areas.* Upon declaring a shade tree pest, the Council may define one or more locations within the geographic boundaries of the city to be within a shade tree pest control area provided such locations are characterized by biologic, composition, environmental and size factors favorable to successful application of the control measures prescribed by Council.

(G) *Tree Inspector.* The Council may appoint a Tree Inspector to coordinate the activities of the city relating to the control and prevention of damage by shade tree pests. 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 tasks incident to such a program adopted by the Council. The term ***TREE INSPECTOR*** includes any person designated by Council or the Tree Inspector to carry out activities authorized in this section.

(H) *Abatement of shade tree pest nuisances.*

(1) In abating a nuisance declared by ordinance under divisions (B) and (C), 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. Such abatement procedures shall be carried out in accordance with the control measures and areas prescribed by ordinance according to divisions (C) and (K) and (O) .

(2) In addition, should the appropriate abatement procedure be removal and the tree(s) and/or hedge(s) be within the limits of a highway in a rural area within the city's jurisdiction, M.S. § 160.22, as it may be amended from time to time, shall be complied with as necessary.

(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) 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 Minnesota Commissioner of Agriculture under M.S. § 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 inspect premises and places within the city to determine whether shade tree pests exist thereon and to investigate all reported incidents of shade tree pests. The Tree Inspector is authorized to take all reasonable measures 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 Minnesota Department of Agriculture or the Commissioner of the Minnesota Department of Natural Resources or other reliable means.

(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 authority while engaged in activities authorized by this section.

(L) *Standard abatement procedure*. Except as provided in divisions (M) and (O), whenever a Tree Inspector determines with reasonable certainty that a public nuisance as described by this section is being maintained or exists on premises in the city, the Tree Inspector is authorized to abate a public nuisance according to the following procedure.

(1) The Tree Inspector will notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice may be given in person or by mail. Failure of any party to receive the mail does not invalidate the service of the notice. A copy of the notice shall be filed with the City Clerk.

(2) The notice of abatement shall state that unless the public nuisance is abated by the owner or occupant, it will be abated by the city at the expense of the owner or occupant. The notice shall specify the control measures to be taken to abate the nuisance, and provide a reasonable amount of time to abate the nuisance. The notice will also state that the owner or occupant has the right to appeal the determination that a public nuisance exists by submitting a request in writing to the City Clerk within seven days after service of the notice, or before the date by which abatement must be completed, whichever comes first.

(3) If no timely appeal is submitted, and the notice of abatement and its prescribed control measures are not complied with within the time provided by the notice or any additional time granted, the Tree Inspector or designated person shall have the authority to obtain permission or an administrative search warrant, enter the property and carry out abatement in accordance with the notice of abatement.

(M) *High cost abatement*. If the Tree Inspector determines that the cost of abating a nuisance will exceed $5,000 based on a reasonable, good faith estimate, the written notice referred to in division (L) must provide that if the nuisance is not abated within the reasonable amount of time provided, the matter will be referred to the City Council for a hearing. The date, time, and location of the hearing must be provided in the notice.

(N) *Appeal procedure*. If the City Clerk receives a written request for a hearing on the question of whether a public nuisance in fact exists, the City Council shall hold a hearing within seven calendar days following receipt by the Clerk of the written request. At least three days notice shall be given to the individual who made the written request for the hearing. The Council may modify the abatement notice or extend the time by which abatement must be completed. Each owner, agent of the owner, occupant and lienholder of the subject property or properties in attendance, if any, shall be given the opportunity to present evidence at the hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance.

(O) *Abatement procedure in event of imminent danger.*

(1) If the Tree Inspector determines that the danger of infestation to other shade trees is imminent and delay in control measures may put public health, safety or welfare in immediate danger, the Tree Inspector may provide for abatement without following (L) or (M). The Tree Inspector must reasonably attempt to notify the owner or occupant of the affected property of the intended action and the right to appeal the abatement and any cost recovery at the next regularly scheduled City Council meeting.

(2) *Immediate Abatement.* Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

(P) Recovery of cost of abatement; liability and assessment.

(1) The owner of premises on which a nuisance has been abated by the city 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.

(2) After notice and hearing as provided in M.S. § 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 M.S. § 429.101 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.

(Q) *Penalty.*

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

(2) Upon conviction of a 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.

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

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

(R) *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 Ceratocvstis 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 4-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.

(e) 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 4 mil plastic. The edges of the cover must be buried or sealed to the ground.

(b) *Definition of control areas*. The control area for Dutch Elm Disease is defined as all lands within the boundaries of the city.

NUISANCES

§ 92.15 PUBLIC NUISANCE.

A person must not act, or fail to act in a manner that is or causes a public nuisance. For purpose of this chapter, a person who does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor:

(A) Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public;

(B) Interferes with, obstructs or renders dangerous for passage any public highway or right-of-way, or waters used by the public; or

(C) Does any other act or omission declared by law or §§ 92.16, 92.17 or 92.18, or any other part of this code to be a public nuisance and for which no sentence is specifically provided.
Penalty, see § 92.99

§ 92.16 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; and

(K) Any offensive trade or business as defined by statute not operating under local license.

(L) All unnecessary and annoying vibrations.
Penalty, see § 92.99

§ 92.17 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 and permitted 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 ½% alcohol by volume;

(E) Any vehicle used for the unlawful transportation of intoxicating liquor, or for promiscuous sexual intercourse, or any other immoral or illegal purpose.
Penalty, see § 92.99

§ 92.18 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

The following are declared to be nuisances affecting public peace and safety:

(A) All snow and ice not removed from public sidewalks 24 hours after the snow or other precipitation causing the condition has ceased to fall;

(B) All trees, hedges, billboards or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;

(C) All wires and limbs of trees which are so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles;

(D) All obnoxious noises in violation of Minn. Rules Ch. 7030, as they may be amended from time to time which are hereby incorporated by reference into this code;

(E) The discharging of the exhaust or permitting the discharging of the exhaust of any stationary internal combustion engine, motor boat, motor vehicle, motorcycle, all terrain vehicle, snowmobile or any recreational device except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations;

(F) The using or operation or permitting the using or operation of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for producing or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet and comfort of any person nearby. Operation of any device referred to above between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building shall be prima facie evidence of violation of this section;

(G) No person shall participate in any party or other gathering of people giving rise to noise, unreasonably disturbing the peace, quiet, or repose of another person. When a police officer determines that a gathering is creating such a noise disturbance, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave after being ordered by a police officer to do so. Every owner or tenant of such premises who has knowledge of the disturbance shall make every reasonable effort to see that the disturbance is stopped;

(H) Obstructions and excavations affecting the ordinary public use of streets, alleys, sidewalks or public grounds except under conditions as are permitted by this code or other applicable law;

(I) Radio aerials or television antennae erected or maintained in a dangerous manner;

(J) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds of people to gather, obstructing traffic and the free use of the street or sidewalk;

(K) All hanging signs, awnings and other similar structures over streets and sidewalks, so situated so as to endanger public safety, or not constructed and maintained as provided by ordinance;

(L) The allowing of rain water, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk;

(M) Any barbed wire fence less than six feet above the ground and within three feet of a public sidewalk or way;

(N) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;

(O) Waste water cast upon or permitted to flow upon streets or other public properties;

(P) Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other material in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from accumulation;

(Q) Any well, hole or similar excavation which is left uncovered or in another condition as to constitute a hazard to any child or other person coming on the premises where it is located;

(R) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter or ditch with trash of other materials;

(S) The placing or throwing on any street, sidewalk or other public property of any glass, tacks, nails, bottles or other substance which may injure any person or animal or damage any pneumatic tire when passing over the substance;

(T) The depositing of garbage or refuse on a public right-of-way or on adjacent private property;

(U) All other conditions or things which are likely to cause injury to the person or property of anyone.

(V) (1) *Noises prohibited.*

(a) *General prohibition.* No person shall make or cause to be made any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person or precludes their enjoyment of property or affects their property's value. This general prohibition is not limited by the specific restrictions of this section.

(b) *Defective vehicles or loads.* No person shall use any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling, or other noise.

(c) *Loading, unloading, unpacking.* No person shall create loud or excessive noise in loading, unloading, or unpacking any vehicle.

(d) *Radios, phonographs, paging systems, and the like.* No person shall use or operate or permit the use or operation of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for the production or reproduction of sound in a distinct and loudly audible manner as to unreasonably disturb the peace, quiet, and comfort of any person nearby. Operation of any such set, instrument, phonograph, machine or other device between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at the property line of the structure or building in which it is located, in the hallway or apartment adjacent, or at a distance of 50 feet if the source is located outside a structure or building, shall be prima facie evidence of a violation of this section.

(e) *Schools, churches, hospitals, and the like.* No person shall create any excessive noise on a street, alley or public grounds adjacent to any school, institution of learning, church or hospital when the noise unreasonably interferes with the working of the institution or disturbs or unduly annoys its occupants or residents and when conspicuous signs indicate the presence of such institution.

(2) *Hourly restriction of certain operations.*

(a) *Domestic power equipment.* No person shall operate a power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, drill or other similar domestic power maintenance equipment except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday. Snow removal equipment is exempt from this provision.

(b) *Refuse hauling.* No person shall collect or remove garbage or refuse in any residential district except between the hours of 6:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

(c) *Construction activities.* No person shall engage in or permit construction activities involving the use of any kind of electric, diesel, or gas-powered machine or other power equipment except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

(3) *Noise impact statements.* The Council may require any person applying for a change in zoning classification or a permit or license for any structure, operation, process, installation or alteration or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the Council. It shall evaluate each such statement and take its evaluation into account in approving or disapproving the license or permit applied for or the zoning change requested.

(W) Reflected glare or light from private exterior lighting exceeding 0.5 footcandles as measured on the property line of the property where the lighting is located when abutting any residential parcel, and one footcandle when abutting any commercial or industrial parcel.
Penalty, see § 92.99

§ 92.19 NUISANCE PARKING AND STORAGE.

(A) *Declaration of nuisance.* 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 (a) obstructs views on streets and private property, (b) creates cluttered and otherwise unsightly areas, (c) prevents the full use of residential streets for residential parking, (d) introduces commercial advertising signs into areas where commercial advertising signs are otherwise prohibited, (e) decreases adjoining landowners' and occupants' enjoyment of their property and neighborhood, and (f) otherwise adversely affects property values and neighborhood patterns.

(B) *Unlawful parking and storage.*

(1) A person must not place, store, or allow the placement or storage of ice fish houses, skateboard ramps, playhouses or other similar non-permanent structures outside continuously for longer than 24 hours in the front-yard area of residential property unless more than 100 feet back from the front property line.

(2) A person must not place, store, or allow the placement or storage of pipe, lumber, forms, steel, machinery, or similar materials, including all materials used in connection with a business, outside on residential property, unless shielded from public view by an opaque cover or fence.

(3) A person must not cause, undertake, permit or allow the outside parking and storage of vehicles on residential property unless it complies with the following requirements:

(a) No more than four vehicles per lawful dwelling unit may be parked or stored anywhere outside on residential property, except as otherwise permitted or required by the city because of nonresidential characteristics of the property. This maximum number does not include vehicles of occasional guests who do not reside on the property.

(b) Vehicles that are parked or stored outside in the front-yard area must be on a paved or graveled parking surface or driveway area.

(c) Vehicles, watercraft and other articles stored outside on residential property must be owned by a person who resides on that property. Students who are away at school for periods of time but still claim the property as their legal residence will be considered residents on the property.
Penalty, see § 92.99

§ 92.20 INOPERABLE MOTOR VEHICLES.

(A) *Declaration of a nuisance.* Any motor vehicles described in this section constitute a hazard to the health and welfare of the residents of the community in that such vehicles can harbor noxious diseases, furnish a shelter and breeding place for vermin and present physical danger to the safety and well-being of children and citizens; and vehicles containing fluids which, if released into the environment, can and do cause significant health risks to the community.

(B) It shall be unlawful to keep, park, store or abandon any motor vehicle which is not in operating condition, partially dismantled, used for repair of parts or as a source of repair or replacement parts for other vehicles, kept for scrapping, dismantling or salvage of any kind, or which is not properly licensed for operation with the state, pursuant to M.S. § 168.13, as it may be amended from time to time.

(C) This section does not apply to a motor vehicle enclosed in a building and/or kept out of view from any street, road or alley, and which does not foster complaint from a resident of the city. A privacy fence is permissible.
Penalty, see § 92.99

§ 92.21 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 (a) are unsightly, (b) decrease adjoining landowners and occupants' enjoyment of their property and neighborhood, and (c) 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.

Penalty, see § 92.99

§ 92.22 DUTIES OF CITY OFFICERS.

For purposes of §§ 92.22 and 92.23, the Police Department, or Sheriff or person designated by the City Council under § 10.20, if the city has at the time no Police Department, may enforce the provisions relating to nuisances. Any peace officer or designated person shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances. Except in emergency situations of imminent danger to human life and safety, no police officer or designated person shall enter private property for the purpose of inspecting or preventing public nuisances without the permission of the owner, resident or other person in control of the property, unless the officer or person designated has obtained a warrant or order from a court of competent jurisdiction authorizing the entry, as provided in § 10.20.

§ 92.23 ABATEMENT.

(A) *Notice*. Written notice of violation; notice of the time, date, place and subject of any hearing before the City Council; notice of City Council order; and notice of motion for summary enforcement hearing shall be given as set forth in this section.

(1) *Notice of violation*. Written notice of violation shall be served by a peace officer or designated person on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of violation, notice of violation shall be served by posting it on the premises.

(2) *Notice of City Council hearing*. Written notice of any City Council hearing to determine or abate a nuisance shall be served on the owner of record and occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of the City Council hearing, notice of City Council hearing shall be served by posting it on the premises.

(3) *Notice of City Council order*. Except for those cases determined by the city to require summary enforcement, written notice of any City Council order shall be made as provided in M.S. § 463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time.

(4) *Notice of motion for summary enforcement*. Written notice of any motion for summary enforcement shall be made as provided for in M.S. § 463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time.

(B) *Procedure*. Whenever a peace officer or designated person determines that a public nuisance is being maintained or exists on the premises in the city, the officer or person designated may notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within

the time specified, the officer or designated person shall report that fact forthwith to the City Council. Thereafter, the City Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the city may seek injunctive relief by serving a copy of the City Council order and notice of motion for summary enforcement or obtain an administrative search and seizure warrant and abate the nuisance.

(C) *Emergency procedure; summary enforcement*. In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in divisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the officer or designated person shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The officer or designated person shall notify in writing the occupant or owner of the premises of the nature of the nuisance and of the city's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in division (A) of this section, and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

(D) *Immediate abatement*. Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.
Penalty, see § 92.99

§ 92.24 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 M.S. § 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 accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the City Clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other charges as well as other charges for current services to be assessed under M.S. § 429.101 against each

separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute 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.
Penalty, see § 92.99

WEEDS

§ 92.35 SHORT TITLE.

This subchapter shall be cited as the "Weed Ordinance."

§ 92.36 JURISDICTION.

This subchapter shall be in addition to any state statute or regulation or county ordinance presently in effect, subsequently added, amended or repealed.

§ 92.37 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 M.S. § 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 of Minnesota, 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 M.S. § 18.77, Subd. 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.

§ 92.38 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.

Penalty, see § 92.99

§ 92.39 FILING COMPLAINT.

Any person, including the city, who believes there is property located within the corporate limits of the city which has growing plant matter in violation of this subchapter shall make a written complaint signed, dated and filed with the City Clerk. If the city makes the complaint, an employee, officer or Council Member of the city shall file the complaint in all respects as set out above.

§ 92.40 NOTICE OF VIOLATIONS.

(A) Upon receiving notice of the probable existence of weeds in violation of this subchapter, a person designated by the City Council shall make an inspection and prepare a written report to the City Council regarding the condition. The City Council, upon concluding that there is a probable belief that this subchapter has been violated, shall forward written notification in the form of a "Destruction Order" to the property owner or the person occupying the property as that information is contained within the records of the City Clerk or any other city agency. The notice shall be served in writing by certified mail. The notice shall provide that within seven regular business days after the receipt of the notice that the designated violation shall be removed by the property owner or person occupying the property.

(B) (1) All notices are to be in writing and all filings are to be with the City Clerk.

(2) Certified mailing to the City Clerk or others is deemed filed on the date of posting to the United States Postal Service.

§ 92.41 APPEALS.

(A) The property owner may appeal by filing written notice of objections with the City Council within 48 hours of the notice, excluding weekends and holidays, if the property owner contests the finding of the City Council. It is the property owner's responsibility to demonstrate that the matter in question is shrubs, trees, cultivated plants or crops or is not otherwise in violation of this subchapter, and should not be subject to destruction under the subchapter.

(B) An appeal by the property owner shall be brought before the City Council and shall be decided by a majority vote of the Council Members in attendance and being at a regularly scheduled or special meeting of the City Council.

§ 92.42 ABATEMENT BY CITY.

In the event that the property owner shall fail to comply with the "Destruction Order" within seven regular business days and has not filed a notice within 48 hours to the City Clerk of an intent to appeal, the City Council may employ the services of city employees or outside contractors and remove the weeds to conform to this subchapter by all lawful means. No person shall enter the property to abate the nuisance, except with the permission of the owner, resident or other person in control of the property.

§ 92.43 LIABILITY.

(A) The property owner is liable for all costs of removal, cutting or destruction of weeds as defined by this subchapter.

(B) The property owner is responsible for all collection costs associated with weed destruction, including but not limited to court costs, attorney's fees and interest on any unpaid amounts incurred by the city. If the city uses municipal employees, it shall set and assign an appropriate per hour rate for employees, equipment, supplies and chemicals which may be used.

(C) All sums payable by the property owner are to be paid to the City Clerk and to be deposited in a general fund as compensation for expenses and costs incurred by the city.

(D) All sums payable by the property owner may be collected as a special assessment as provided by M.S. § 429.101, as it may be amended from time to time.

OPEN BURNING

§ 92.60 DEFINITIONS.

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

FIRE CHIEF, FIRE MARSHAL, and ***ASSISTANT FIRE MARSHALS.*** The Fire Chief, Fire Marshal, and Assistant Fire Marshals of the Fire Department which provides fire protection services to the city.

OPEN BURNING. The burning of any matter if the resultant combustion products are emitted directly to the atmosphere without passing through a stack, duct or chimney, except a "recreational fire" as defined herein. Mobile cooking devices such as manufactured hibachis, charcoal grills, wood smokers, and propane or natural gas devices are not defined as "open burning."

RECREATIONAL FIRE. A fire set with approved starter fuel no more than three feet in height, contained within the border of a "recreational fire site" using dry, clean wood; producing little detectable smoke, odor or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, food preparation for social purposes; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans, and air quality so that nuisance, health or safety hazards will not be created. No more than one recreational fire is allowed on any property at one time.

RECREATIONAL FIRE SITE. An area of no more than a three foot diameter circle (measured from the inside of the fire ring or border); completely surrounded by non-combustible and non-smoke or odor producing material, either of natural rock, cement, brick, tile or blocks or ferrous metal only and which area is depressed below ground, on the ground, or on a raised bed. Included are permanent outdoor wood burning fireplaces. Burning barrels are not a "recreation fire site" as defined herein. Recreational fire sites shall not be located closer than 25 feet to any structure or combustible material.

RUNNING FIRE. An attended fire allowed to spread through surface vegetative matter under controlled conditions for the purpose of vegetative management, forest management, game habitat management, or agricultural improvement.

STARTER FUELS. Dry, untreated, unpainted, kindling, branches, cardboard or charcoal fire starter. Paraffin candles and alcohols are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution must be used to start an open burn.

VEGETATIVE MATERIALS. Dry leaves, dry grass clippings, twigs, branches, tree limbs, untreated or unpainted wood that contains no glues or resins, and other similar materials. Paper and cardboard are not considered vegetative materials.

WOOD. Dry, clean fuel only such as twigs, branches, limbs, manufactured fireplace logs, charcoal, cord wood or untreated dimensional lumber. "Wood" does not include wood that is green with leaves or needles, rotten, wet, oil soaked, or treated with paint, glue or preservatives. Clean pallets may be used for recreational fires when cut into three foot lengths.

§ 92.61 PROHIBITED MATERIALS.

(A) No person shall conduct, cause or permit open burning of oils, petroleum fuels, rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke such as but not limited to: tires, railroad ties, treated, painted or glued wood composite shingles, tar paper, insulation, composition board, sheet rock, wiring, paint or paint fillers.

(B) No person shall conduct, cause or permit open burning of: hazardous waste or materials from salvage operations; solid waste generated from an industrial or manufacturing process; materials from a service or commercial establishment; or building material generated from demolition of commercial or institutional structures.

(C) No person shall conduct, cause or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.

(D) No person shall conduct, cause or permit open burning of any leaves or grass clippings.
Penalty, see § 92.99

§ 92.62 PERMIT REQUIRED FOR OPEN BURNING.

No person shall start or allow any open burning on any property in the city without first having obtained an open burn permit, except that a permit is not required for any fire which is a recreational fire as defined in § 92.60.
Penalty, see § 92.99

§ 92.63 PURPOSES ALLOWED FOR OPEN BURNING.

(A) Open burn permits may be issued only for the following purposes:

(1) Elimination of fire or health hazard that cannot be abated by other practical means.

(2) Ground thawing for utility repair and construction.

(3) Disposal of vegetative matter for managing forest, prairie or wildlife habitat, and in the development and maintenance of land and rights-of-way where chipping, composting, landspreading or other alternative methods are not practical.

(4) Disposal of diseased trees generated on-site, diseased or infected nursery stock, diseased bee hives.

(5) Disposal of unpainted, untreated, non-glued lumber and wood shakes generated from construction, where recycling, reuse, removal or other alternative disposal methods are not practical.

(6) Running fires.

(B) Fire training permits can only issued by the Minnesota Department of Natural Resources.

(C) Permits for the operation of permanent tree and brush burning sites may only be issued by the Minnesota Department of Natural Resources (DNR).
Penalty, see § 92.99

§ 92.64 PERMIT APPLICATION FOR OPEN BURNING; PERMIT FEES.

(A) Open burning permits shall be obtained by making application on a form prescribed by the Department of Natural Resources (DNR) and adopted by the Fire Department. The permit application shall be presented to the Fire Chief, Fire Marshal, and Assistant Fire Marshals for reviewing and processing those applications.

(B) An open burning permit shall require the payment of a fee. Permit fees shall be in the amount established in the Ordinance Establishing Fees and Charges, authorized by § 30.11, as it may be amended from time to time.
Penalty, see § 92.99

§ 92.65 PERMIT PROCESS FOR OPEN BURNING.

(A) If the established criteria for the issuance of an open burning permit are not met, the application will be denied.

(B) Upon receipt of the completed open burning permit application and permit fee, the Fire Chief, Fire Marshal, or Assistant Fire Marshals, if he or she reasonably believes necessary, may require a preliminary site inspection to locate the proposed burn site, note special conditions, and set dates and time of permitted burn and review fire safety considerations.

§ 92.66 PERMIT HOLDER RESPONSIBILITY.

(A) Prior to starting an open burn, the permit holder shall be responsible for confirming that no burning ban or air quality alert is in effect. Every open burn event shall be constantly attended by the permit holder or his or her competent representative. The open burning site shall have available, appropriate communication and fire suppression equipment as set out in the fire safety plan.

(B) The open burn fire shall be completely extinguished before the permit holder or his or her representative leaves the site. No fire may be allowed to smolder with no person present. It is the responsibility of the permit holder to have a valid permit, as required by this subchapter, available for inspection on the site by the Police Department, Fire Department, MPCA representative or DNR forest officer.

(C) The permit holder is responsible for compliance and implementation of all general conditions, special conditions, and the burn event safety plan as established in the permit issued. The permit holder shall be responsible for all costs incurred as a result of the burn, including but not limited to fire suppression and administrative fees.
Penalty, see § 92.99

§ 92.67 REVOCATION OF OPEN BURNING PERMIT.

An open burning permit is subject to revocation at the discretion of DNR forest officer, the Fire Chief, Fire Marshal, or Assistant Fire Marshals. Reasons for revocation include but are not limited to a fire hazard existing or developing during the course of the burn, any of the conditions of the permit being violated during the course of the burn, pollution or nuisance conditions developing during the course of the burn, or a fire smoldering with no flame present.
Penalty, see § 92.99

§ 92.68 DENIAL OF OPEN BURNING PERMIT.

If established criteria for the issuance of an open burning permit are not met during review of the application, it is determined that a practical alternative method for disposal of the material exists, or a pollution or nuisance condition would result, or if a burn event safety plan cannot be drafted to the satisfaction of the Fire Chief, Fire Marshal, or Assistant Fire Marshals, these officers may deny the application for the open burn permit.

§ 92.69 BURNING BAN OR AIR QUALITY ALERT.

(A) The designated fire official is authorized to determine when conditions make open burning potentially hazardous and declare a burning ban within the city.

(B) No recreational fire or open burn will be permitted when the city or DNR has officially declared a burning ban due to potential hazardous fire conditions or when the MPCA has declared an Air Quality Alert.
Penalty, see § 92.99

§ 92.70 RULES AND LAWS ADOPTED BY REFERENCE.

The provisions of M.S. §§ 88.16 to 88.22, as these statutes may be amended from time to time, are hereby adopted by reference and made a part of this subchapter as if fully set forth at this point.

§ 92.71 EXTERNAL SOLID FUEL-FIRED HEATING DEVICES (OUTDOOR WOOD BURNING STOVES).

(A) *Definitions.*

(1) ***EXTERNAL SOLID FUEL-FIRED HEATING DEVICE.*** A device designed for external solid fuel combustion so that usable heat is derived for the interior of a building, and includes solid fuel-fired stoves, solid fuel-fired cooking stoves, and combination fuel furnaces or boiler which burn solid fuel. Solid fuel-fired heating devices do not include natural gas-fired fireplace logs or wood-burning fireplaces or wood stoves in the interior of a dwelling.

(2) ***PERSON.*** An individual, partnership, corporation, company or other association.

(3) ***STACKS OR CHIMNEYS.*** Any vertical structure incorporated into a building and enclosing a flue or flues that carry off smoke or exhaust from a solid fuel-fired heating device, especially, the part of such a structure extending above a roof.

(B) *Requirements for operation.*

(1) Any dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities, or any use of an external solid fuel-fired heating device to burn solid fuels other than those solid fuels for which the external solid fuel-fired heating device was designed, is declared a public nuisance.

(2) No person may install, use or operate an external solid fuel fired heating device on a lot less than four acres in size.

(3) All stacks or chimneys must be so constructed to withstand high winds or other related elements and in accordance to the specifications of the manufacturer of the external solid fuel-fired heating device. The stack height shall be a minimum of 25 feet above ground level, but shall also extend at least as high as the height of the roofs of residents within 500 feet. All stacks or chimneys must be of masonry or insulated metal with a minimum six-inch flue.

(4) All external solid fuel-fired heating devices must be setback a minimum of 50 feet from all property lines.

(5) All external solid fuel-fired heating devices must be setback a minimum of ten feet from any principal or accessory structure.

(C) *Fuels.*

(1) Only fuels designed for burning in an external solid fuel-fired heating device may be burned. No garbage may be burned in an external solid fuel-fired heating device.

(2) The only fuel permitted to be burned is untreated fuel. Wood may not be treated, processed, stained, finished or painted - specifically prohibited woods include plywood, particle board and similar products. Other fuels, such as corn, shall not contain any additives, treatments or chemicals. No petroleum products or processed materials of any kind may be burned.

§ 92.99 PENALTY.

Violation of any provision of this chapter, including maintaining a nuisance after being notified in writing by first class mail of a violation of any provision of this chapter, shall be a misdemeanor and punished as provided in § 10.99

CHAPTER 93: STREETS AND SIDEWALKS

Section

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GENERAL PROVISIONS

§ 93.01 UNLOADING ON STREET OR SIDEWALK.

No person shall unload any heavy material in the streets of the city by throwing or letting the material fall upon the pavement of any street, alley, sidewalk, or other public way, without first placing some sufficient protection over the pavement.
Penalty, see § 10.99

§ 93.02 STREET AND SIDEWALK OBSTRUCTION.

No person shall obstruct any street, alley, sidewalk, or other public way within the city by erecting thereon any fence or building, or permitting any fence or building to remain thereon. Each day that any fence or building is permitted to remain upon the public way shall constitute a separate offense.
Penalty, see § 10.99

§ 93.03 MATERIALS ON STREET OR SIDEWALK.

(A) No person shall encumber any street, sidewalk, or right-of-way. No owner, occupant, or person having the care of any building or lot of land, bordering on any street, sidewalk, or right-of-way shall permit it to be encumbered with barrels, boxes, cans, articles, or substances of any kind, so as to interfere with the free and unobstructed use thereof.

(B) Except for the actions of the city employees and contractors carrying out their duties, no person shall:

(1) Obstruct any street or sidewalk by depositing snow or ice thereon;

(2) Dig any holes in any street, sidewalk or right-of-way;

(3) Remove any earth, gravel, or rock from any street, sidewalk or right-of-way;

(4) Obstruct any ditch draining any street or drain any noisome materials into any ditch;

(5) Deface, mar, damage, or tamper with any structure, work, material, equipment, tools, signs, markers, signals, paving, guardrails, drains or any other highway appurtenance on or along any street, sidewalk or right-of-way.

(6) Remove, injure, displace, or destroy right-of-way markers, or reference or witness monuments, or markers placed to preserve section or quarter-section corners;

(7) Drive over, through, or around any barricade, fence, or obstruction erected for the purpose of preventing traffic from passing over a portion of a street or sidewalk closed to public travel or to remove, deface, or damage any such barricade, fence or obstruction.
Penalty, see § 10.99

RIGHT-OF-WAY CONSTRUCTION REGULATIONS

§ 93.20 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY.

In accordance with the authority granted to the city under state and federal statutory, administrative, and common law, the city hereby elects pursuant to this chapter to manage rights-of-ways within its jurisdiction.

§ 93.21 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.

Minn. Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in M.S. § 237.162, Minn. Rules 7819.0100 subps. 1 through 23, and Minn. Rules 7560.0100 subps. 1 through 12 are hereby adopted by reference and are incorporated into this chapter as if set out in full.

§ 93.22 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 permit from the city.

(1) *Excavation permit*. An excavation permit is required to excavate that part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

(2) *Obstruction permit*. An obstruction permit is required 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 the person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.

(C) *Delay penalty*. In accordance with Minn. Rules part 7819.1000 subp. 3, as it may be amended from time to time and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by the Ordinance Establishing Fees and Charges, adopted pursuant to § 30.11 of this code, as it may be amended from time to time.

(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 Clerk, Utilities Superintendent or other person designated by the Council.
Penalty, see § 10.99

§ 93.23 PERMIT APPLICATIONS.

Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(A) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:

(1) Each permittee's name, gopher one-call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be 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:

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self-insurance acceptable to the Clerk, Utilities Superintendent or other person designated by the Council;

(b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees, and placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;

(c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all coverages;

(d) Requiring that the Clerk, Utilities Superintendent or other person designated by the Council be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

(e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Clerk, Utilities Superintendent or other person designated by the Council in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

(4) The city may require a copy of the actual insurance policies.

(5) If the person is a corporation, a copy of the certificate of incorporation issued by the Secretary of State pursuant to M.S. § 302A.155.

(6) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have the certificate from the Commission or other state or federal agency.

(B) Payment of money due the city for:

(1) Permit fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, 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 the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; or

(4) Franchise fees or other charges as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, if applicable.

§ 93.24 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance*. If the applicant has satisfied the requirements of this chapter, the Clerk, Utilities Superintendent or other person designated by the Council shall issue a permit.

(B) *Conditions*. The director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state and federal laws, including but not limited to M.S. § 216D.01 - 09 (Gopher One Call Excavation Notice System) and Minn. Rules Ch. 7560.

(C) *Trenchless excavation*. As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in M.S. Ch. 216D and Minn. Rules Ch. 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the city.

§ 93.25 PERMIT FEES.

Permit fees shall be in an amount established in the Ordinance Establishing Fees and Charges, adopted pursuant to § 30.11, as it may be amended from time to time.

(A) *Excavation permit fee*. The city shall establish an excavation permit fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, in an amount sufficient to recover the following costs:

(1) The city management costs; and

(2) Degradation costs, if applicable.

(B) *Obstruction Permit Fee*. The city shall establish the obstruction permit fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, and shall be in an amount sufficient to recover the city management costs.

(C) *Payment of permit fees*. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay those fees within 30 days of billing.

(D) *Non-refundable*. Permit fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, that were paid for a permit that the Clerk, Utilities Superintendent or other person designated by the Council has revoked for a breach as stated in § 93.33 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.

(F) All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.1000, as it may be amended from time to time.
Penalty, see § 10.99

§ 93.26 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 this subchapter.

(B) *Patch and restoration*. The 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, the permittee shall pay the costs thereof within 30 days of billing. If following the restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.

(2) *Permittee restoration*. If the permittee restores the right-of-way itself, it may be required at the time of application for an excavation permit to post a construction performance bond or a deposit in accordance with the provisions of Minn. Rules part 7819.3000, as it may be amended from time to time.

(C) *Standards*. The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100, as it may be amended from time to time. The Clerk, Utilities Superintendent or other person designated by the Council shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.

(D) *Duty to correct defects*. The permittee shall correct defects in patching, or restoration performed by the permittee or its agents. The permittee upon notification from the Clerk, Utilities Superintendent or other person designated by the Council, shall correct all restoration work to the extent necessary, using the method required by the Clerk, Utilities Superintendent or other person designated by the Council. The work shall be completed within five calendar days of the receipt of the notice from the Clerk, Utilities Superintendent or other person designated by the Council, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under this subchapter.

(E) *Failure to restore*. If the permittee fails to restore the right-of-way in the manner and to the condition required by the Clerk, Utilities Superintendent or other person designated by the Council, or fails to satisfactorily and timely complete all restoration required by the Clerk, Utilities Superintendent or other person designated by the Council, the Clerk, Utilities Superintendent or other person designated by the Council at his or her option may do the 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 the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(F) *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 as established by the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

§ 93.27 SUPPLEMENTARY APPLICATIONS.

(A) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area make application for a permit extension and pay any additional fees required thereby, and be granted a new permit or permit extension.

(B) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

§ 93.28 DENIAL OF PERMIT.

The city may deny a permit for failure to meet the requirements and conditions of this chapter 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.

§ 93.29 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 part 7819.1100, as it may be amended from time to time and other applicable local requirements, in so far as they are not inconsistent with M.S. §§ 237.162 and 237.163, as they may be amended from time to time.

§ 93.30 INSPECTION.

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rules part 7819.1300, as it may be amended from time to time.

(B) *Site inspection*. The permittee shall make the work-site available to city personnel 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 Clerk, Utilities Superintendent or other person designated by the Council*.

(1) At the time of inspection, the Clerk, Utilities Superintendent or other person designated by the Council 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 Clerk, Utilities Superintendent or other person designated by the Council may issue an order to the permittee for any work which 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 Clerk, Utilities Superintendent or other person designated by the Council that the violation has been corrected. If proof has not been presented within the required time, the Clerk, Utilities Superintendent or other person designated by the Council may revoke the permit pursuant to § 93.33.

§ 93.31 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations*.

(1) Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the owner 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 chapter for the actions it took in response to the emergency.

(2) If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

(B) *Non-emergency situations*. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for the permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

§ 93.32 SUPPLEMENTARY NOTIFICATION.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the Clerk, Utilities Superintendent or other person designated by the Council of the accurate information as soon as this information is known.

§ 93.33 REVOCATION OF PERMITS.

(A) *Substantial breach*. The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited, to the following:

(1) The violation of any material provision of the right-of-way permit;

(2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;

(3) Any material misrepresentation of fact in the application for a right-of-way permit;

(4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees 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 § 93.30.

(B) *Written notice of breach*. If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy that violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) *Response to notice of breach*. Within 24 hours of receiving notification of the breach, the permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. The permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or the permittee’s failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

(D) *Reimbursement of city costs*. If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with the revocation.

§ 93.34 MAPPING DATA; INFORMATION REQUIRED.

(A) *Information required.* Each permittee shall provide mapping information required by the city in accordance with Minn. Rules parts 7819.4000 and 7819.4100, as it may be amended from time to time.

(B) *Service laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. Rules 7560.0150, Subp. 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or other subcontractors shall submit to the city evidence of the installed service lateral locations. Compliance with this division (B) and with applicable Gopher State One Call law and Minn. Rules governing service laterals installed after December 31, 2005, shall be a condition of any city approval necessary for:

(1) Payments to contractors working on a public improvement project including those under M. S. Ch. 429;

(2) City approval of performance under development agreements, or other subdivision or site plan approval under M.S. Ch. 462.

The city shall reasonably determine the appropriate method of providing such information. 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 for future permits to the offending permittee or its subcontractors.

§ 93.35 LOCATION OF FACILITIES.

(A) *Compliance required.* Placement, location, and relocation of facilities must comply with applicable laws, and with Minn. Rules parts 7819.3100, 7819.5000 and 7819.5100, as they may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.

(B) *Corridors.* The city may assign specific corridors 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.

(C) *Limitation of space.* To protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Clerk, Utilities Superintendent or other person designated by the Council shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Clerk, Utilities Superintendent or other person designated by the Council 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.

§ 93.36 DAMAGE TO OTHER FACILITIES.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the Clerk, Utilities Superintendent or other person designated by the Council shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner 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 owner's facilities.

§ 93.37 RIGHT-OF-WAY VACATION.

If the city vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules part 7819.3200, as it may be amended from time to time.

§ 93.38 INDEMNIFICATION AND LIABILITY.

By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rules 7819.1250, as it may be amended from time to time.

§ 93.39 ABANDONED FACILITIES; REMOVAL OF ABANDONED FACILITIES.

Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the Clerk, Utilities Superintendent or other person designated by the Council.

§ 93.40 APPEAL.

A right-of-way user that has been denied registration; has been denied a permit; has had a permit revoked; believes that the fees imposed are invalid; or disputes a determination of the city regarding § 93.34(B) of this chapter, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly

scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee as imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

§ 93.41 RESERVATION OF REGULATORY AND POLICE POWERS.

A permittees or registrants rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

TITLE XIII: GENERAL OFFENSES

Chapter

130. GENERAL OFFENSES

CHAPTER 130: GENERAL OFFENSES

Section

General Provisions

130.01 Damage to property; graffiti
130.02 Discharging firearms
130.03 Curfew for minors
130.04 Fireworks

130.99 Penalty

GENERAL PROVISIONS

§ 130.01 DAMAGE TO PROPERTY; GRAFFITI.

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

GRAFFITI. In addition to its usual and customary meaning of defacing walls or structures with messages or slogans, ***GRAFFITI*** shall also mean any letter, numeral, figure, emblem, insignia, picture, outline, character, spectacle, delineation, announcement, word, phrase, diagram, symbol, sketch, inscription or representation, wherein the contents thereof are visible to any member of the general public and which contains references to sexual activity, diagrams relating to sexual activity or sexual organs, references to criminal activities or groups which promote or are involved in criminal activity, swearing or fighting words, defamatory materials about any person, references to relationships, or any marking of any kind whatsoever which results in damage to, defacing of, marring of, or discoloring of any sidewalk, street, or other public surface, any vehicle, any equipment, lamp, lamp post or other city property, or of the exterior surface of a wall, fence, door, building or other structure, whether publicly or privately owned.

OWNER. Means and includes the owner of record of the subject property, whether public or private, at the time of the placement or discovery of the graffiti or at a subsequent time, the beneficial owner under a land trust, the contract purchaser, or that person or persons or trust in whose name the general taxes for the last preceding year were paid, except that ***OWNER*** shall not include the city.

(B) *Conduct prohibited.*

(1) It is unlawful for any person to inscribe, draw, or otherwise place or cause to be placed any graffiti upon the surface of any building, structure, wall or surface of other property that is publicly or privately owned.

(2) It shall be unlawful for any parent or legal guardian to knowingly permit any minor child in his or her custody or control to violate division (B)(1) of this section.

(3) The parent or legal guardian of a minor defendant who resides with the parent or legal guardian at the time of the offense may be held liable for any fine or condition of restitution or reparation imposed by a court upon a minor for violation of this section; provided, that minor has not paid the fine or made restitution or reparation within the time ordered by the court; and further provided that the parent or legal guardian has been served with summons or notice to appear whether in the original cause or in any subsequent proceedings arising therefrom, including sentencing or collection actions, as provided by law.

(C) *Removal by owner.*

(1) *Owner's responsibility*. It shall be the duty of the owner of the structure or wall or other private property upon which any graffiti is placed or made to remove, eradicate, or eliminate the inscription or representation within 30 days of the occurrence unless granted additional time by the City Council.

(2) *Notice to remove graffiti*. In the event the owner has failed to eliminate the graffiti, the owner shall be notified by certified mail or personal notice that he or she has 30 days from the date of the notice in which to remove the graffiti. In the event that charges have been filed against the person believed responsible for placement of the graffiti and the owner can show to the city that there is a reasonable likelihood that the person will be required to make restitution or restore the premises to its previous condition, the owner may be given additional time to meet the removal requirements. In no event shall the owner be granted more than a total of six months' time to remove graffiti, but any extensions shall be based solely upon a reasonable likelihood of apprehension and conviction of the person responsible. In the absence of the reasonable likelihood, the owner is responsible for removal within the time allowed in divisions (C)(1) and (2) of this section.

(3) *List of contractors and cleaning materials*. The city may make available a list of contractors in the business of removing graffiti and list of cleaning materials generally recognized in the industry as effective in the removal of graffiti. By providing lists of contractors and cleaning materials, the city does not guarantee the quality or adequacy of work performed by anyone selected by owner or the effectiveness or safety of the materials listed, and the city expressly disclaims responsibility or liability for the quality or adequacy of the work or materials or any claims for damage or injury arising therefrom.

(D) *Removal by the city*.

(1) The city shall have the right but not the duty to remove graffiti from the exterior of private property if the owner informs the city of the presence of the graffiti and of the owner's inability to remove it. Prior to the city entering any private property to remove graffiti, the owner must sign a statement authorizing removal by the city and agreeing to pay the reasonable costs of the removal and to allow the recording of a lien against the real estate upon which the work was performed if the cost is not paid to the city within 30 days of the date of the invoice sent to the owner. The owner must also sign a release holding the city harmless from any claims or suits brought for damages pursuant to any adverse or injurious effects of such chemicals or from the actions taken by the city or its employees to remove the graffiti prior to the city commencing work on the property. If the property owner does not remove the graffiti within the time specified or extended time requested and granted by the city or if the city is unable to perform the work at the request of the owner, the owner shall be subject to the penalties listed in division (E) of this section.

(2) If the city performs the graffiti removal pursuant to division (D)(1) of this section, it shall be entitled to a lien and to file a notice of lien against the property upon which the work was performed for the cost of the removal.

(E) *Penalty*.

(1) Upon a finding of guilty for violation of division (B) of this section, an offender shall be punished as provided in § 130.99. Additionally, the court may, as a condition of probation, supervision, or conditional discharge, require that the party guilty of violating the provisions of division (B) of this section make full and complete restitution to the owner of the property for expenses incurred in the removal of the graffiti or, with the consent of the owner, restore the structure, wall, building or surface to its previous condition. In addition, the court may order as a further penalty community service in the form of time to be spent in cleaning property that has been defaced by graffiti in any location in the city.

(2) Upon a finding of guilty for violation of division (C)(1) of this section, an offender shall be punished as provided in § 130.99. Each and every day that graffiti is permitted to remain beyond the time specified in division (C)(2) of this section shall constitute a separate violation.

(F) *Compliance by the city*.

(1) It is the intention of the city that graffiti discovered upon city property or public property under the jurisdiction and control of the city will be removed within the time periods for graffiti removal imposed upon other governmental bodies and owners of private property under this section. The City Council shall have the authority to order and direct the removal of graffiti.

(2) A designated city officer, or his or her designee, shall provide, no less than semi-annually, a written report to the City Council of graffiti incidents involving city property and removal efforts by the city. The report shall include at a minimum the location of the graffiti, charges filed against or

convictions of offenders where relevant, the date and methods of graffiti removal undertaken by the city and the cost of the removal.
Penalty, see § 130.99

§ 130.02 DISCHARGING FIREARMS.

(A) *Shooting upon, over or near a cemetery*. Except as provided by M.S. § 97A.137, for wildlife management areas that are 40 acres or greater, no person shall, without permission from the proper officials, discharge a firearm upon or over a cemetery or within 100 yards thereof, unless the person is upon his or her own land.

(B) *Hunting near a city park*. Except as provided by M.S. § 97A.137, for wildlife management areas that are 40 acres or greater, no person shall hunt, shoot, or kill game within ½ mile of a city park unless the City Council has granted permission to kill game not desired within the limits prohibited by this division.

(C) *Discharge of firearms prohibited in certain places*. No person shall discharge a firearm on a lawn, park, playground, orchard, or other ground appurtenant to a school, church, or an inhabited dwelling, the property of another, or a charitable institution. This section does not prevent or prohibit the owner thereof from discharging firearms upon his or her own land.

(D) *Discharging firearms on highways prohibited*. No person shall discharge a firearm upon or over a public road or highway.

(E) *Exceptions*. This section shall not prohibit the firing of a military salute or the firing of weapons by persons of the nation's armed forces acting under military authority, and shall not apply to law enforcement officials in the proper enforcement of the law, or to any person in the proper exercise of the right of self defense, or to any person otherwise lawfully permitted by proper federal, state or local authorities to discharge a firearm in a manner contrary to the provisions of this section.

(F) If any of the above provisions are found to be in conflict with M.S. § 624.717, as it may be amended from time to time, the provisions of that statute shall prevail.
Penalty, see § 130.99

§ 130.03 CURFEW FOR MINORS.

(A) *Purpose*. The curfew for minors established by this section is maintained for four primary reasons:

(1) To protect the public from illegal acts of minors committed during the curfew hours;

(2) To protect minors from improper influences that prevail during the curfew hours, including involvement with gangs;

(3) To protect minors from criminal activity that occurs during the curfew hours; and

(4) To help parents control their minor children.

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

EMERGENCY ERRAND. A task that if not completed promptly threatens the health, safety, or comfort of the minor or a member of the minor's household. The term shall include, but shall not be limited to, seeking urgent medical treatment, seeking urgent assistance from law enforcement or fire department personnel, and seeking shelter from the elements or urgent assistance from a utility company due to a natural or human-made calamity.

OFFICIAL CITY TIME. The time of day as determined by reference to the master clock used by the Police Department.

PLACES OF AMUSEMENT, ENTERTAINMENT OR REFRESHMENT. Those places that include, but are not limited to, movie theaters, pinball arcades, shopping malls, nightclubs catering to minors, restaurants, and pool halls.

PRIMARY CARE or ***PRIMARY CUSTODY.*** The person who is responsible for providing food, clothing, shelter, and other basic necessities to the minor. The person providing primary care or custody to the minor shall not be another minor.

SCHOOL ACTIVITY. An event which has been placed on a school calendar by public or parochial school authorities as a school sanctioned event.

(C) *Hours*.

(1) *Minors under the age of 16 years*. No minor under the age of 16 years shall be in or upon the public streets, alleys, parks, playgrounds or other public grounds, public places, public buildings; nor in or upon places of amusement, entertainment or refreshment; nor in or upon any vacant lot, between the hours of 10:30 p.m. and 5:00 a.m. the following day, official city time.

(2) *Minors ages 16 years to 18 years*. No minor of the ages of 16 or 17 years shall be in or upon the public streets, alleys, parks, playgrounds or other public grounds, public places, public buildings; nor in or upon places of amusement, entertainment or refreshment; nor in or upon any vacant lot, between the hours of 12:00 midnight and 5:00 a.m. the following day, official city time.

(D) *Effect on control by adult responsible for minor*. Nothing in this section shall be construed to give a minor the right to stay out until the curfew hours designated in this section if otherwise directed

by a parent, guardian, or other adult person having the primary care and custody of the minor; nor shall this section be construed to diminish or impair the control of the adult person having the primary care or custody of the minor.

(E) *Exceptions*. The provisions of this section shall not apply in the following situations:

(1) To a minor accompanied by his or her parent or guardian, or other adult person having the primary care and custody of the minor;

(2) To a minor who is upon an emergency errand at the direction of his or her parent, guardian, or other adult person having the primary care and custody of the minor;

(3) To a minor who is in any of the places described in this section if in connection with or as required by an employer engaged in a lawful business, trade, profession, or occupation; or to a minor traveling directly to or from the location of the business, trade, profession or occupation and the minor's residence. Minors who fall within the scope of this exception shall carry written proof of employment and proof of the hours the employer requires the minor's presence at work.

(4) To a minor who is participating in or traveling directly to or from an event which has been officially designated as a school activity by public or parochial school authorities; or who is participating in or traveling directly to or from an official activity supervised by adults and sponsored by the city, a civic organization, school, religious institution, or similar entity that takes responsibility for the minor and with the permission of the minor's parent, guardian, or other adult person having the primary care and custody of the minor.

(5) To a minor who is passing through the city in the course of interstate travel during the hours of curfew.

(6) To a minor who is attending or traveling directly to or from an activity involving the exercise of First Amendment rights of free speech, freedom of assembly, or freedom of religion.

(7) To minors on the sidewalk abutting his or her residence or abutting the residence of a next-door neighbor if the neighbor does not complain to the city's designated law enforcement provider about the minor's presence.

(8) To a minor who is married or has been married, or is otherwise legally emancipated.

(F) *Duties of person legally responsible for minor*. No parent, guardian, or other adult having the primary care or custody of any minor shall permit any violation of the requirements of this section by the minor.

(G) *Duties of other persons*. No person operating or in charge of any place of amusement, entertainment, or refreshment shall permit any minor to enter or remain in his or her place of business during the hours prohibited by this section unless the minor is accompanied by his or her parent,

guardian or other adult person having primary care or custody of the minor, or unless one of the exceptions to this section applies.

(H) *Defense*. It shall be a defense to prosecution under this section that the owner, operator, or employee of an establishment promptly notified the city's designated law enforcement provider that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(I) A law enforcement officer must look into whether a minor has an affirmative defense before making an arrest.
Penalty, see § 130.99

§ 130.04 FIREWORKS.

(A) The use, display, possession, discharge or sale of any fireworks not expressly permitted by M.S. § 624.20, Subd. 1(b), (c), as it may be amended from time to time, is strictly prohibited.

(B) All use, display or discharge of those non-explosive, non-aerial pyrotechnic entertainment devices only containing the limited amounts of pyrotechnic chemical compositions described in and permitted by M.S. § 624.20, Subd. 1(b), (c), as it may be amended from time to time, hereinafter referred to as "permitted consumer fireworks", is strictly prohibited in:

(1) The area on, below, above or within or in close proximity to: recreational areas, roadways, streets, highways, bicycle lanes, pedestrian paths, sidewalks, rights-of-way, lakes, rivers, waterways and all other property owned or leased by the city, the county in which the city is located, the State of Minnesota or the federal government and located in whole or in part within the city limits;

(2) Private property within the city limits that has conspicuously posted a written sign or notice that no fireworks discharge is allowed;

(3) Within 300 feet of any consumer fireworks retail sales facility or storage area that has posted a written sign or notice that no fireworks discharge is allowed; and

(4) Any property, area, or structure that, by its physical condition or the physical conditions in which it is set, would constitute a fire or personal safety hazard.

(C) All other use, display or discharge of permitted consumer fireworks must be conducted in a manner that minimizes the risk of fire or injury to other persons or property.

§ 130.99 PENALTY.

(A) *Generally*. Whoever violated any provision of this chapter for which no other penalty has been established shall be punished as provided in § 10.99.

(B) *Curfew penalties*.

(1) *Minors*. Any minor found to be in violation of § 130.03 may be adjudicated delinquent and shall be subject to the dispositional alternatives set forth in M.S. § 260B.198, as it may be amended from time to time.

(2) *Adults*. Any adult person found to be in violation of § 130.03 shall be guilty of a misdemeanor.

TITLE XV: LAND USAGE

Chapter

150. GENERAL PROVISIONS

151. ZONING

152. SUBDIVISION CONTROL

153. ANTI-BLIGHT REGULATIONS

CHAPTER 150: GENERAL PROVISIONS

Section

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§ 150.01 MINNESOTA ACCESSIBILITY CODE.

(A) The Minnesota Accessibility Code, established pursuant to M.S. §§ 326B.01 - 326B.998, as they may be amended from time to time, and as provided for in Minn. Rules Ch. 1341, as it may be amended from time to time, is adopted as the building code for accessibility in this city. M.S. § 326B.16 provides that a city which has not adopted the Uniform State Building Code is nevertheless responsible for the enforcement of the Minnesota Accessibility Code, and this section is intended to comply with that requirement.

(B) No building subject to the provisions of the Minnesota Accessibility Code shall be constructed, reconstructed or substantially altered, or undergo a change in use within the city unless the building will comply with the Minnesota Accessibility Code after the construction or alteration is completed or the change in use occurs.

(C) Any person who constructs, reconstructs or substantially alters any building subject to the Minnesota Accessibility Code, or changes the use of any such building shall, before construction or alteration begins, certify to the City Clerk that the applicable provisions of the Minnesota Accessibility Code will be complied with.

(D) No person shall be issued a building, zoning or land use permit unless they certify that any structure to be located on the property shall be constructed or reconstructed in compliance with the handicapped accessibility provisions, if they apply to the structure to be constructed, substantially altered or reconstructed.

(E) A violation of this section is a misdemeanor punished as provided for in § 10.99.

§ 150.02 CONTRACTOR'S LICENSE REQUIRED.

No residential building contractor, residential remodeler, or other person who is required to be licensed by the state under the provisions of M.S. §§ 326B.805 – 326B.89, as they may be amended from time to time, and no person employing a residential contractor, who is required to be licensed, shall be issued a building, zoning or land use permit unless that contractor is licensed. Any person applying for a permit who is required to have a state license but who does not have a state license shall be reported to the State Commissioner of Commerce, who may begin an action against the person.
Penalty, see § 10.99

§ 150.03 MANUFACTURED HOMES.

After the date of the adoption of this code, only manufactured homes which comply with the Manufactured Home Building Code established by M.S. § 327.31 may be located in and used as a dwelling within the city. A mobile home, manufactured home, house trailer or other mobile dwelling which does not comply with the Manufactured Home Building Code and which is used as a residence after the date of the adoption of this code is a nonconforming use as defined by M.S. § 462.357, Subd. 1e, as it may be amended from time to time, and this nonconforming use may be continued, including through repair, maintenance, replacement, restoration or improvement but if the nonconformity or occupancy is discontinued for a period of more than one year, or the nonconforming use is destroyed by fire or other peril to the extent of greater than 50% of its market value and no building permit is applied for within 180 days of when the property is damaged, any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.
Penalty, see § 10.99

§ 150.04 AMATEUR RADIO SUPPORT TOWERS.

Amateur radio support structures (towers) shall not exceed a height above ground level of 70 feet, unless a conditional use permit has been granted by the City Council. They shall be mounted on the roof of a dwelling or other building or located in the rear yard unless there is not sufficient space to erect them in those locations. They shall be installed in accordance with the instructions furnished by the manufacturer of that tower model. Because of the experimental nature of the amateur radio service, antennas mounted on a tower may be modified and changed at any time so long as the published allowable load on the tower is not exceeded and the structure of the tower remains in accordance with the manufacturer's specifications.

§ 150.05 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(A) *Findings*. The City Council makes the following findings regarding the effect sexually oriented businesses have on the character of the city's neighborhoods. In making these findings, the City Council accepts the recommendation of the *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses* dated June 6, 1989, a copy of which is adopted by reference and included in Appendix II of Chapter 119 of this code. This § 150.05 shall have no force and effect until the City Council accepts these recommendations by resolution of a majority of its members, using the model resolution contained in Appendix I of Chapter 119 of this code.

(1) Sexually-oriented businesses have an impact on the neighborhoods surrounding them which is distinct from the impact caused by other uses.

(2) Residential and commercial neighborhoods located within close proximity to sexually oriented businesses experience the following negative impacts:

(a) Increased crime rates, particularly in sex-related crimes such as rapes, prostitution, indecent exposure and other lewd and lascivious behavior;

(b) Property values which are either diminished or fail to appreciate at the rate of other comparable properties not located in proximity to sexually oriented businesses;

(c) Increased transiency and decreased stability of ownership;

(d) Deteriorated neighborhood appearance from litter and graffiti;

(e) Sex-related harassment of residents and customers by motorists and pedestrians;

(f) A perception that the area is “unsafe;” and

(g) Difficulty in attracting and retaining customers, employees, and desirable tenants.

(3) The adverse impacts which sexually oriented businesses have on surrounding areas diminish as the distance from the sexually oriented business increases.

(4) The adverse impacts of sexually-oriented businesses are exacerbated when the uses are located near each other.

(5) The presence of liquor establishments in the immediate vicinity of sexually oriented businesses also compounds the adverse impacts on the neighborhood.

(6) Sexually oriented businesses can exert a dehumanizing influence on persons attending places of worship, children attending day care centers or schools, and people using public parks and libraries.

(7) Sexually oriented businesses can significantly contribute to the deterioration of residential neighborhoods and can impair the character and quality of the residential housing in the area where they are located, thereby exacerbating the shortage of affordable and habitable housing for city residents.

(8) The concentration of sexually oriented businesses in one area can have a substantially detrimental effect on that area and on the overall quality of urban life. A cycle of decay can result from the influx and concentration of sexually oriented businesses. The presence of such businesses is perceived by others as an indication that the area is deteriorating and the result can be devastating: other businesses move out of the vicinity and residents flee from the area. The resulting decline in real estate values erodes the city's tax base and contributes to overall urban blight.

(9) Land use regulations are appropriate to minimize the detrimental effects that sexually oriented businesses have on adjacent land uses.

(B) If the city has not adopted zoning regulations for sexually oriented businesses, as defined by § 153.03, then a sexually oriented business may locate only in those areas of the city which the City Council determines that the predominant use of the land is for commercial or industrial purposes.

(C) No person may operate a sexually oriented business on property, any part of which is within the area circumscribed by a circle that has a radius of 250 feet from any of the uses listed below. Distances must be measured by following a straight line, without regard to intervening structures or objects, between the closest points on the boundary lines of the property parcels where the two uses are located. This distance requirement applies to the following uses:

(1) Property used or zoned for residential uses;

(2) A day care facility, school, library, park, playground, state or federal wildlife area or preserve, religious institution, or other public recreational facility;

(3) Premises licensed under Chapter 112, Liquor Regulations; and

(4) Another sexually-oriented business.

(D) These provisions, along with Ch. 119, are intended to supercede the provisions of M.S. § 617.242, as it may be amended from time to time, and render M.S. § 617.242 inapplicable as authorized by the statute.

§ 150.06 COMPLIANCE WITH CODE.

No person shall erect, alter or replace any structure within the city unless the structure complies with the applicable requirements of this code and the person has obtained a land use permit from the City

Clerk certifying compliance with all of the applicable requirements of this code. No person shall use any structure or premises for any purpose other than as permitted by this code, except that lawful nonconforming uses as of the date of the adoption of this code may continue only as provided in M.S. § 462.357, Subd. 1e, as it may be amended from time to time.

CHAPTER 151: ZONING

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GENERAL PROVISIONS

§ 151.01 AUTHORIZATION, INTENT AND PURPOSE.

(A) This chapter is enacted pursuant to the authority granted by the Municipal Planning Act, M.S. §§ 462.351 et seq. The intent of this chapter is to ensure public health, safety and general welfare in

accordance with the adopted development goals, plans and policies as stated hereto. This plan for the city is to ensure that the land uses of the city are properly situated in relation to one another, providing for adequate space for each type of development; to control the density of development in each area of the city so that the property can be adequately serviced by such governmental facilities as streets, schools, recreation and utilities systems; to direct new growth into appropriate areas; to protect existing property by requiring that the development afford adequate light, air and privacy for persons living and working within the city; to improve the quality of the physical environment of the city; to protect and maintain property values, and to preserve and develop the economic base of the city.

(B) This chapter is not in effect until the provisions of § 151.05 are complied with and notice and public hearing is provided as required by M.S. § 462.357 Subd. 3, as it may be amended from time to time.

§ 151.02 TITLE.

This chapter, together with the zoning map required at § 151.05, shall be known as the"City Zoning Ordinance" except as referred to herein, where it shall be known as "this Ordinance" or "this chapter."

§ 151.03 INTERPRETATIONS OF TERMS.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the same meaning as they have in common usage unless such meaning is clearly contrary to the intent of this chapter and so as to give this chapter its most reasonable application. For the purpose of this chapter, the words "must" and "shall" are mandatory and "may" is permissive. All distances, unless otherwise specified, shall be measured horizontally. For the purpose of this chapter, the terms in § 151.04 have the meanings given them.

§ 151.04 DEFINITION OF TERMS.

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

ACCESSORY STRUCTURE OR FACILITY. Any building or improvement located on the same lot as the principal use subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.

ACCESSORY USE. A use on the same lot with and incidental and subordinate to the principal use or structure or facility.

BUILDING. Any structure having a roof supported by columns, walls or other means of support for the shelter or enclosure of persons or property.

BUILDING LINE. A line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.

COMMERCIAL USE. The principal use of land or buildings for the sale, lease, rental or trade of products, goods and services and other activities carried out for financial gain.

CONDITIONAL USE. A land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the zoning ordinance exist, the use or development conforms to comprehensive land use plan of the community, and the use is compatible with the existing neighborhood. The city may impose additional conditions in specific instances to protect the health, safety and welfare.

DECK. A horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to principal use or site and at any point extending more than three feet above ground level.

DWELLING, DUPLEX, TRIPLEX and ***QUAD.*** A dwelling structure on a single lot, having two, three, and four units respectively, being attached by common walls and each unit equipped with separate sleeping cooking, eating, living and sanitation facilities.

DWELLING, MULTIPLE. A building or portion thereof used for occupancy by three or more families living independently of each other.

DWELLING, ONE-FAMILY. A building used exclusively for occupancy by one family.

DWELLING, TWO-FAMILY. A building used exclusively for occupancy by two families living independently of each other.

DWELLING SITE. A designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.

DWELLING UNIT. Any structure or portion of a structure or other shelter designed as short or long-term living quarters for one or more persons, including rental or time-share accommodations, such as motel, hotel and resort rooms and cabins.

HOME OCCUPATION. A lawful occupation customarily carried on by a resident of a dwelling as an accessory use within the same building. Such occupation must be clearly secondary to the principal use and not change the nature of the principal use.

INDUSTRIAL USE. The use of land or buildings for the production, manufacture, warehousing, storage or transfer of goods, products, commodities or other wholesale items.

JUNK YARD. Land and structures used for the storage or keeping of junk, including scrap metals, or for the dismantling or wrecking of automobiles or other machinery, other than the storage of materials which is incidental or accessory to any business or industrial use on the same lot.

LIGHT INDUSTRIAL. The assembly, fabrication or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare or health or safety hazards outside the building or lot where the assembly, fabrication or processing takes place, where the processes are housed entirely within a building, or where the outdoor storage of goods and materials used does not exceed 25% of the floor area of all buildings on the lot.

LOT. A parcel of land designated by plat, metes and bounds, registered land survey, auditors plot, or other accepted means, and separated from other parcels or portions by that description for the purpose of sale, lease or separation. A lot must be situated and have its principal frontage on a public street.

LOT, CORNER. A lot situated at the intersection of two or more streets, or bounded on two or more adjacent sides by street lines.

LOT, INTERIOR. A lot other than a corner lot.

LOT LINE. A line of record bounding a lot which divides a lot from another lot, a public street or any other public or private space.

LOT LINE, FRONT. A lot line abutting a dedicated public right-of-way.

LOT LINE, REAR. The lot line opposite and most distant from the front lot line. In the case of corner lots, the rear lot line shall be determined by the zoning administrator based upon characteristics of the surrounding neighborhood.

LOT LINE, SIDE. Any lot line other than a front or rear lot line.

LOT WIDTH. The shortest distance between lot lines measured at the midpoint of the building line.

MANUFACTURED HOME. A structure, transportable in one or more sections which in the traveling mode is eight 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 permanent foundation when connected to required utilities, and includes the plumbing, heating and air conditioning and electrical systems contained therein, and which meets all the requirements established under M.S. § 327.31, as it may be amended from time to time, the Manufactured Home Building Code.

NONCONFORMING STRUCTURE OR USE. A structure or use lawfully in existence on the effective date of this chapter or any amendment thereto, and not conforming to the regulations for the district in which it is situated.

NONCONFORMITY. Any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

PLANNED UNIT DEVELOPMENT, COMMERCIAL. Typically include uses that provide transient, short-term lodging spaces, rooms or parcels, and their operations are essentially service-oriented. For example: hotel/motel accommodations, resorts, recreational vehicle and camping parks, and other primarily service-oriented activities are Commercial Planned Unit Developments.

PLANNED UNIT DEVELOPMENT, RESIDENTIAL. A use where the nature of residency is non-transient, and major or primary focus is not service-oriented. For example: residential apartments, manufactured home parks, townhouses and full-fee ownership residences would be considered as Residential Planned Unit Developments. To qualify as a Residential Planned Unit Development, a development must contain at least five dwelling units or sites.

RECREATIONAL VEHICLE. A vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towed by a light duty truck and is primarily designed not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

RESTAURANT. An establishment in which food and/or drink is offered or prepared and served for public consumption and is served to customers at tables by employees. Restaurants may include incidental take-out service.

SETBACK. The minimum distance from any lot line that an improvement may be placed, measured perpendicularly from the lot line to the closest point of the improvement.

SETBACK LINE. The line which is the specified setback -distance from and parallel to any lot line, or other specified line, such as the ordinary high water level, edge of wetland, floodplain, or top of bluff.

STORAGE. Goods, materials or equipment placed or left in a location on a premises.

STRUCTURE. Anything constructed, placed or erected on or attached to, in some manner, the ground.

STRUCTURE, PRINCIPAL. The building in which is conducted the primary use of the lot on which the building is located.

USE. The purpose or activity for which a premises is designed, arranged or intended or for which it is or may be occupied or maintained.

WIND ENERGY CONVERSION SYSTEM OR WINDMILL. An apparatus capable of converting wind energy into electricity.

YARD. An open space unobstructed from the ground upward with the exception of landscape materials and minor fixtures of a non-structural nature commonly found in a yard.

YARD, FRONT. The area between the front lot line and the front setback line.

YARD, REAR. The area between the rear lot line and the rear setback line.

YARD, SIDE. A space extending from the front yard to the rear yard along a side lot line measured perpendicularly from the side lot line to the closest point of a structure.

ZONING ADMINISTRATOR. The City Clerk or other person designated by the City Council to administer and enforce the provisions of this chapter.

§ 151.05 ZONING MAP.

(A) This chapter has no effect until the boundaries of the use districts are delineated on an Official Zoning Map, created pursuant to M.S. § 462.357, Subd. 1, as it may be amended from time to time, which, once it is adopted by ordinance after notice and hearing as provided in M.S. § 462.357, Subd. 3, as it may be amended from time to time, is hereby adopted by reference and declared to be a part of this chapter. This map shall be on permanent file and available for public inspection in the City Office. It shall be the responsibility of the Clerk or other person appointed by the City Council to administer this chapter to maintain and keep the map up to date.

(B) All property within the city shall have the zoning designation shown on the official zoning map. If there is any discrepancy or inconsistency between the official zoning map and any other map, ordinance or source which purports to indicate the zoning of property, the official zoning map shall take precedence. The provisions of this section shall not be interpreted to require the city to zone all properties within the city limits or to prevent zoning of only a portion of the city.

(C) Zoning district boundary lines shown on the official zoning map are intended to follow lot lines, the center lines of streets or alleys, the center lines of street or alleys projected, railroad right-of-way lines, the center of watercourses or the corporate limits of the city, unless otherwise specifically indicated.

§ 151.06 ANNEXED LAND.

Any land hereafter annexed to the city shall be considered to be in the district that is delineated on the adjacent areas than are designated for orderly annexation, unless otherwise reclassified.

§ 151.07 COMPLIANCE WITH ORDINANCE.

(A) No structure or land shall hereafter be used or occupied and no structure shall hereafter be erected, constructed, reconstructed, moved or structurally altered, except in conformity with the regulations specified in the Zoning Ordinance for the district in which it is located.

(B) The provisions of this chapter shall be minimum requirements. Where the conditions imposed by any provision of this chapter differ from those required by any statute or other ordinance of the city, the regulations which are more restrictive or which impose the higher standard shall prevail.
Penalty, see § 151.99

§151.08 SEVERABILITY.

Every section or subdivision of this chapter is declared separable from every other section or subdivision. If any section or subdivision is held to be invalid by competent authority, no other section or subdivision shall be invalidated by such action or decision.

ZONING DISTRICTS

§ 151.20 CLASSIFICATION OF ZONING DISTRICTS.

(A) R-1 Single Family Residential District

(B) R-2 Multi-Family Residential District

(C) C-1 Central Business District

(D) C-2 Central Business District

(E) I Industrial

(F) Rural Residential and Agricultural District

§ 151.21 R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose*. The purpose of the R-1 Single Family Residential District is to provide for moderate density one and two-family dwelling units and directly related, complementary uses.

(B) *Permitted uses and structures*.

(1) One and two-family dwelling units.

(2) Public, government owned parks, playgrounds, athletic fields and other public recreational uses.

(3) Churches and places of religious assembly, public and private schools and government-owned buildings and facilities.

(4) Agricultural gardens and forestry.

(5) Manufactured homes which meet the standards set forth in § 151.24.

(6) As required by M.S. § 462.357, Subd. 7, as it may be amended from time to time, a state licensed residential facility or a housing with services establishment registered under M.S. Ch. 144D, as it may be amended from time to time, serving six or fewer persons, a licensed day care facility serving 12 or fewer persons, and a group family day care facility licensed under Minn. Rules, parts 9502.0315 to 9502.0445, as it may be amended from time to time, to serve 14 or fewer children shall be considered a permitted single family residential use of property for the purposes of zoning, except that a residential facility whose primary purpose is to treat juveniles who have violated criminal statutes relating to sex offenses or have been adjudicated delinquent on the basis of conduct in violation of criminal statutes relating to sex offenses shall not be considered a permitted use.

(C) *Accessory uses*.

(1) Customary accessory uses incidental to the principal uses such as gardens, private garages, screen porches, play equipment, signs, as set forth in division (D)(1) of this section, one storage shed not exceeding 12 feet in height or 500 square feet or covering more than 30% of the area of the side or rear yard in which they are located, satellite dishes and antennae, solar equipment, greenhouses not exceeding 12 feet in height or 500 square feet or covering more than 30% of the area of the side or rear yard in which they are located and swimming pools intended for single-family use.

(2) The renting of rooms by a resident family for lodging purposes only, and for not more than two rooms in a one-family dwelling.

(D) *Conditional uses*. Within the R-1 District no structure or land shall be used for the following except by conditional use permit and in conformance with the standards specified in division (I) of this section.

(1) Home occupations in a residence.

(2) Hospitals and nursing homes, licensed day care centers serving 12 or more persons and cemeteries.

(3) Accessory buildings other than those listed in (C)(1), including storage sheds and green houses over 12 feet in height or 500 square feet or covering more than 30% of the area of the side or rear yard in which they are located.

(4) Wind energy conversion systems or windmills.

(5) Private recreational facilities as a principal use and excluding accessory play equipment and swimming pools intended for single family use.

(E) *Lot requirements and setbacks*. The following minimum requirements shall be observed in an R-1 District, subject to additional requirements, exceptions and modifications set forth in this chapter:

(1) *Lot area*. 10,000 square feet (100 x 100).

(2) *Lot width*. 75 feet.

(3) *Setbacks*.

(a) *Front yards*. Not less than 30 feet;

(b) *Side yards*. 5 feet.

(c) *Side yards, corner lots*. 25 feet on side adjacent to street, but in no case less than the setback of an adjacent lot which has its front yard on the same street.

(d) *Rear yards*. 30 feet.

(4) *Detached accessory building setback requirements*. Not less than 5 feet from rear yard line and not less than 4 feet from the side yard lines in the rear yard. On corner lots not less than 25 feet from the adjacent street, but in no case less than the setback of an adjacent lot which has its front yard on the same street.

(5) *Access*. All lots shall front on and have ingress and egress by means of a public right-of-way.

(F) *Building requirements; height*. No structure shall exceed 2 stories or 35 feet, whichever is less.

(G) *Parking*. Refer to §§ 151.35 through 151.39.

(H) *Height limitations*. Height limitations shall not apply to water towers, chimneys, flag poles, antennae, wind energy conversion systems, church spires, church belfries or church domes not containing habitable space and support towers permitted by § 150.04.

(I) *Conditional use permit standards for the R-1 Single-Family Residential District*.

(1) *Purpose*. It is the intent of the city in establishing general and specific criteria for conditional uses that such uses be subject to careful evaluation to ensure that their location, size and design are consistent with the standards, purposes and procedures of this chapter and the comprehensive plan, if one exists. The Planning Commission, if one exists, may recommend and the City Council may impose conditions on such uses in order to effect the purpose of this chapter.

(2) *General standards*. No conditional use permit shall be granted unless the City Council determines that all of the following standards will be met:

(a) The use is consistent with the intent of this chapter;

(b) The use is consistent with the goals, policies and objectives of the comprehensive plan, if one exists;

(c) The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and

(d) The use does not have an undue adverse impact on the public health, safety or welfare.

(3) *Specific standards*. In addition to the standards specified in division (2) above, no conditional use permit shall be granted unless the City Council determines that all of the specific standards contained in this subdivision will be met.

(a) Licensed day care facilities for 15 or more persons:

1. Located only on a collector or arterial roadway as designated in the comprehensive plan, if one exists, or otherwise located so that access can be provided without conducting significant traffic on local residential streets;

2. Buildings set back 50 feet from all property lines and parking lots set back 15 feet from streets and non-residential property and 25 feet from residential property;

3. Pick-up and drop-off areas located outside of parking setback area;

4. Outdoor recreational areas to be set back 15 feet from all property lines and screening provided to mitigate noise and adverse visual impacts on neighboring properties; and

5. One parking space provided for each six children based upon the licensed capacity of the center;

(b) Storage sheds or greenhouses in excess of 500 square feet of gross floor area or 12 feet in height or occupying more than 30% of the side or rear yard in which they are located:

1. Side and rear setbacks equal to the height of the structure or 15 feet, whichever is greater:

2. Not to be used for commercial activities:

3. Structure to be architecturally consistent with the principal structure;

4. Landscaping to be required to buffer views when the structure is highly visible from adjoining properties;

5. Minimum lot size of four acres; and

6. Must be located in a side or rear yard.

(c) Home occupations in a residence:

1. Such occupation shall be carried on in the-main building;

2. Not more than 25% of the floor space of the residence is used for this purpose;

3. No articles for sale be displayed so as to be visible from the street;

4. The conduct of the home occupation shall result in no change in the outside appearance of the building or land, or other visible evidence of the conduct of the home occupation, other than one sign, not exceeding one square foot in area, non-illuminated and mounted flat against the wall of the dwelling;

5. No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood;

6. Only limited retail sales activity;

7. Maximum of one outside employee;

8. Adequate off-street parking based on number of employees and customers per day;

9. Parking area screened from offsite views;

10. No outside storage;

11. Shall not result in significant levels of noise, air or other pollution and shall meet the performance standards of § 151.30;

12. Business hours restricted to no more than 8:00 a.m. to 9:00 p.m.; and

13. Outside parking of no more than one commercial type vehicle or vehicle identified for business purposes not to exceed one ton capacity which is used for both personal and business transportation. The vehicle is to be owned and registered by an occupant of the property and parked in a screened location.

(d) Private recreational facilities as a principal use:

1. Direct access limited to a collector or arterial roadway as identified in the comprehensive plan, if any, or otherwise located so that access can be provided without conducting significant traffic on local residential streets;

2. Buildings set back 50 feet from all property lines;

3. No more than 70% of the site to be covered with impervious surface and the remainder to be suitably landscaped in accordance with § 151.31;

4. Signs shall be designed to be consistent with the principal use;

5. Adequate off-street parking based on number of employees and customers per day;

6. Parking area and waste management areas screened from offsite views;

7. No outside storage; and

8. Shall not result in significant levels of noise, air or other pollution.

(e) Wind energy conversion systems (WECS):

1. Set back from the nearest property line a distance equal to the height of the tower plus one-half the diameter of the rotor;

2. Certified by a professional engineer as being of a design adequate for the atmospheric conditions of the area;

3. Equipped with over-speed or similar controls designed to prevent disintegration of the rotor in high winds;

4. Compliance with all building and electrical code requirements of the city, the noise regulations of the Minnesota Pollution Control Agency and the rules and regulations of the Federal Communications Commission and Federal Aviation Administration;

5. If the WECS has not been operated for a period of one year or fails to meet the conditions of this chapter, the City Council may order it dismantled and the site restored to its original condition;

6. If the owner or person responsible for the WECS does not maintain it or comply with all requirements of this chapter, the city may take such steps as are necessary to achieve compliance. The cost of such work, including administrative costs, shall be a lien against the property and may be collected as a special assessment. The city may sell salvaged and valuable materials at public auction on ten days' notice; and

7. The WECS shall meet the performance standards of § 151.30.

(f) Hospitals or nursing homes:

1. Direct access limited to a collector or arterial roadway as identified in the comprehensive plan, if any, or otherwise located so that access can be provided without conducting significant traffic on local residential streets;

2. Buildings set back 50 feet from all property lines;

3. No more than 70% of the site to be covered with impervious surface and the remainder to be suitably landscaped;

4. Signs shall be designed to be consistent with the principal use;

5. Adequate off-street parking based on number of employees and customers per day;

6. Parking area and waste management areas screened from offsite views;

7. No outside storage; and

8. Shall not result in significant levels of noise, air or other pollution and shall meet the performance standards of § 151.30.

Penalty, see § 151.99

§ 151.22 R-2 MULTIPLE FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose*. The purpose of the R-2 Multiple Family Residential District is to provide for medium density housing in multiple family structures and directly related complementary uses.

(B) *Permitted uses and structures*.

(1) Any permitted use in a Single-Family Residential District.

(2) Multiple-family dwelling.

(C) *Accessory uses*. Any accessory use permitted in Single-Family Residential District.

(D) *Conditional uses*. Within the R-2 District no structure or land shall be used for the following except by conditional use permit and in conformance with the standards specified in division (H) of this section.

(1) Any conditional use permitted in Single-Family Residential District.

(2) As required by M.S. § 462.357, Subd. 8, a state licensed residential facility serving from 7 through 16 persons under M.S. Ch. 144D, as it may be amended from time to time, or a licensed day care facility serving from 13 through 16 persons.

(E) *Lot requirements and setbacks*. The following minimum requirements shall be observed in R-2 Districts, subject to additional requirements, exceptions and modifications set forth in this chapter:

(1) *Lot area*. 10,000 square feet for one and two-family dwellings and 3,000 square feet per dwelling unit for multiple-family dwellings.

(2) *Lot width*. 75 feet for one and two-family dwellings, and 100 feet for multiple family dwellings.

(3) *Setbacks*.

(a) *Front yards*. Not less than 30 feet.

(b) *Side yards*. 5 feet.

(c) *Side yards, corner lots*. 25 feet on side adjacent to street, but in no case less than the setback of an adjacent lot which has its front yard on the same street.

(d) *Rear yards*. 30 feet.

(4) *Detached accessory building setback requirements*. Not less than 5 feet from the rear lot line and not less than 4 feet from the side yard line in the rear yard. On corner lots, not less than 25 feet from adjacent lot which has its front yard on the same street.

(5) All lots shall front on and have ingress and egress by means a public right-of-way.

(F) *Parking*. Refer to §§ 151.35 through 151.39.

(G) Height limitations shall not apply to water towers, chimneys, flag poles, antennae, wind energy conversion systems, church spires, church belfries or church domes not containing habitable space and support towers permitted by § 150.04.

(H) Conditional use permit standards for the R-2 Multiple-Family Residential District.

(1) *Purpose*. It is the intent of the city in establishing general and specific criteria for conditional uses that such uses be subject to careful evaluation to ensure that their location, size and design are consistent with the standards, purposes and procedures of this chapter and the comprehensive plan, if one exists. The Planning Commission, if one exists, may recommend and the City Council may impose conditions on such uses in order to effect the purpose of this chapter.

(2) *General standards*. No conditional use permit shall be granted unless the City Council determines that all of the following standards will be met:

(a) The use is consistent with the intent of this chapter;

(b) The use is consistent with the goals, policies and objectives of the comprehensive plan, if one exists;

(c) The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and

(d) The use does not have an undue adverse impact on the public health, safety or welfare.

(3) *Specific standards*. In addition to the standards specified in division (2) above, no conditional use permit shall be granted unless the City Council determines that all of the specific standards contained in this subdivision will be met.

(a) A state licensed residential facility serving from 7 through 16 persons under M.S. Ch. 144D, as it may be amended from time to time, or a licensed day care facility serving from 13 through 16 persons.

1. Located only on a collector or arterial roadway as designated in the comprehensive plan, if one exists, or otherwise located so that access can be provided without conducting significant traffic on local residential streets;

2. Buildings set back 50 feet from all property lines and parking lots set back 15 feet from streets and non-residential property and 25 feet from residential property;

3. Pick-up and drop-off areas located outside of parking setback area;

4. Outdoor recreational areas to be set back 15 feet from all property lines and screening provided to mitigate noise and adverse visual impacts on neighboring properties;

5. One parking space provided for each six attendees based upon the licensed capacity of the center; and

6. Meets the performance standards of § 151.30.

(b) Storage sheds or greenhouses in excess of 500 square feet of gross floor area or 12 feet in height or occupying more than 30% of the side or rear yard in which they are located:

1. Side and rear setbacks equal to the height of the structure or 15 feet, whichever is greater;

2. Not to be used for commercial activities:

3. Structure to be architecturally consistent with the principal structure:

4. Landscaping to be required to buffer views when the structure is highly visible from adjoining properties;

5. Minimum lot size of four acres;

6. Must be located in a side or rear yard.

(c) *Home occupations in a residence*:

1. Such occupation shall be carried on in the-main building;

2. Not more than 25% of the floor space of the-residence is used for this purpose;

3. No articles for sale be displayed so as to be visible from the street;

4. The conduct of the home occupation shall result in no change in the outside appearance of the building or land, or other visible evidence of the conduct of the home occupation, other than one sign, not exceeding one square foot in area, non-illuminated and mounted flat against the wall of the dwelling;

5. No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood;

6. Only limited retail sales activity;

7. Maximum of one outside employee;

8. Adequate off-street parking based on number of employees and customers per day;

9. Parking area screened from offsite views;

10. No outside storage;

11. Shall not result in significant levels of noise, air or other pollution and meets the performance standards of § 151.30;

12. Business hours restricted to no more than 8:00 a.m. to 9:00 p.m.; and

13. Outside parking of no more than one commercial type vehicle or vehicle identified for business purposes not to exceed one ton capacity which is used for both personal and business transportation. The vehicle is to be owned and registered by an occupant of the property and parked in a screened location.

(d) *Private recreational facilities as a principal use*:

1. Direct access limited to a collector or arterial roadway as identified in the comprehensive plan, if any, or otherwise located so that access can be provided without conducting significant traffic on local residential streets;

2. Buildings set back 50 feet from all property lines;

3. No more than 70% of the site to be covered with impervious surface and the remainder to be suitably landscaped;

4. Signs shall be designed to be consistent with the principal use;

5. Adequate off-street parking based on number of employees and customers per day;

6. Parking area and waste management areas screened from offsite views;

7. No outside storage; and

8. Shall not result in significant levels of noise, air or other pollution and meets the performance standards of § 151.30.

(e) *Wind energy conversion systems (WECS)*:

1. Set back from the nearest property line a distance equal to the height of the tower plus one-half the diameter of the rotor;

2. Certified by a professional engineer as being of a design adequate for the atmospheric conditions of the area;

3. Equipped with over-speed or similar controls designed to prevent disintegration of the rotor in high winds;

4. Compliance with all building and electrical code requirements of the city, the noise regulations of the Minnesota Pollution Control Agency and the rules and regulations of the Federal Communications Commission and Federal Aviation Administration;

5. If the WECS has not been operated for a period of one year or fails to meet the conditions of this chapter, the City Council may order it dismantled and the site restored to its original condition;

6. If the owner or person responsible for the WECS does not maintain it or comply with all requirements of this chapter, the city may take such steps as are necessary to achieve

compliance. The cost of such work, including administrative costs, shall be a lien against the property and may be collected as a special assessment. The city may sell salvaged and valuable materials at public auction on ten days' notice; and

7. The WECS shall meet the performance standards of § 151.30.

(f) *Hospitals or nursing homes*:

1. Direct access limited to a collector or arterial roadway as identified in the comprehensive plan, if any, or otherwise located so that access can be provided without conducting significant traffic on local residential streets;

2. Buildings set back 50 feet from all property lines;

3. No more than 70% of the site to be covered with impervious surface and the remainder to be suitably landscaped;

4. Signs shall be designed to be consistent with the principal use;

5. Adequate off-street parking based on number of employees and customers per day;

6. Parking area and waste management areas screened from off site views;

7. No outside storage; and

8. Shall not result in significant levels of noise, air or other pollution and meets the performance standards of § 151.30.

Penalty, see § 151.99

§ 151.23 MANUFACTURED HOME PARKS.

(A) *General*. Manufactured home parks that are licensed by the State Department of Health are conditional uses in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. All manufactured home parks shall, in addition to any requirements imposed by rule of the State Department of Health or law, meet the following performance standards and any other conditions placed on them by the conditional use permit.

(B) *Permitted uses and structures*.

(1) Manufactured homes.

(2) Essential services such as water, sewer, telephone and electric utilities.

(C) *Accessory uses*.

(1) Recreational vehicles and equipment.

(2) Recreational facilities, gardens, commons and open space which are operated for the enjoyment and convenience of the residents of the principal use and their guests, such as tennis courts and swimming pools.

(3) Building for storage of maintenance equipment incidental to the principal use.

(4) Solar panels and equipment.

(D) *Conditional use*. Customary home occupations as set forth in § 151.21(D).

(E) *Lot requirements and setbacks*. The following minimum requirements shall be observed in a manufactured home park, subject to additional requirements, exceptions and modifications set forth in this chapter:

(1) *Lot area*. Each individual manufactured home site shall contain at least 5,000 square feet for exclusive use of the occupant.

(2) *Lot width*. Each individual manufactured home site shall have a lot width of at least 50 feet.

(3) *Setbacks for each individual manufactured home site*.

(a) *Front yards*. Not less than 15 feet.

(b) *Side yards*. 5 feet.

(c) *Rear yards*. 8 feet.

(4) *Detached accessory building setback requirements*. Not less than 5 feet from the rear lot line and not less than 4 feet from the side yard lines in the rear yard.

(F) *Parking*. Refer to §§ 151.35 through 151.39.
Penalty, see § 151.99

§ 151.24 MANUFACTURED HOMES.

The city authorizes the placement of manufactured homes in residential districts within the city if such manufactured homes comply with the following conditions:

(A) Manufactured homes shall comply with all zoning regulations for the district in which they are located.

(B) A building permit and any other required permits shall be obtained for manufactured homes.

(C) All such manufactured homes shall be built in compliance with any Minnesota Statutes regulating manufactured homes.

(D) Connection to city utilities, if available, shall be required.
Penalty, see § 151.99

§ 151.25 C-1 CENTRAL BUSINESS DISTRICT.

(A) *Purpose*. The purpose of the C-1 Central Business District is in recognition of the existing downtown business and commercial development and the need for its future expansion, rehabilitation and redevelopment.

(B) *Permitted uses and structures*.

(1) Business and commercial establishments including:

(a) Retail establishments, including grocery, hardware, drug, clothing, variety and furniture stores; eating and drinking places, auto dealers, automobile service stations, farm implement dealerships, farm supply stores, seasonal evergreen sales and meat locker shops.

(b) Personal services, including laundries, beauty shops, barber shops, funeral homes, shoe repair shops, printing and publishing shops and photographic studios.

(c) Professional services, including medical and dental clinics and attorney's offices.

(d) Repair services, including automobile, jewelry, radio and television repair shops, appliance repair shops, farm and implement repair shops, plumbing contractor's shop and electrical contractor's shop.

(e) Entertainment and amusement services, including motion picture theatres, recreation halls and bowling alleys.

(f) Lodging services, including hotels and motels.

(g) Finance, insurance, real estate and tax services.

(2) Public and semi-public buildings, including post office, fire hall and city hall.

(3) Private clubs.

(4) Apartments, provided they are located above the first floor level.

(5) Automobile parking lots.

(6) Essential services, such as sewer, water, telephone and electric utility facilities.

(7) Churches and places of religious assembly.

(C) *Accessory uses*. Uses incidental to the foregoing principal uses, such as off-street parking and loading and unloading areas, signs, indoor storage of merchandise and wholesaling and manufacturing, when incidental to a permitted use, solar panels, satellite dishes and antennas.

(D) *Conditional uses*. Within the C-1 District no structure or land shall be used for the following except by conditional use permit and in conformance with the standards specified in division (I) of this section.

(1) One and two-family dwellings and multiple-family dwellings, including manufactured homes meeting the standards as set forth in § 151.24, and manufactured home parks licensed by the state.

(2) Nonresidential licensed day care facilities.

(3) Outdoor storage incidental to a principal use.

(4) Drive-thru or drive-up window accessory to a principal use.

(5) Sidewalk cafes and outdoor eating or dining areas accessory to a principal use.

(E) *Lot requirements and setbacks*. The following minimum requirements shall be observed in C-1 Districts, subject to additional requirements, exceptions and modifications set forth in this chapter:

(1) *Lot area*. None.

(2) *Lot width*. None.

(3) *Setbacks*.

(a) *Front yards*. None.

(b) *Side yards*. None.

(c) *Rear yards*. 15 feet.

(4) All lots shall front on and have ingress and egress by means of a public right-of-way.

(F) *Building requirements; height*. No structure shall exceed 3 stories or 45 feet, whichever is less.

(G) *Parking*. Refer to §§ 151.35 through 151.39.

(H) *Height limitations*. Height limitations shall not apply to water towers, chimneys, flag poles, antennae, wind energy conversion systems, church spires, church belfries or church domes not containing habitable space and support towers permitted by § 150.04.

(I) *Conditional use permit standards for the C-1 Central Business District*.

(1) Purpose. It is the intent of the city in establishing general and specific criteria for conditional uses that such uses be subject to careful evaluation to ensure that their location, size and design are consistent with the standards, purposes and procedures of this chapter and the comprehensive plan, if one exists. The Planning Commission, if one exists, may recommend and the City Council may impose conditions on such uses in order to effect the purpose of this chapter.

(2) *General standards*. No conditional use permit shall be granted unless the City Council determines that all of the following standards will be met:

(a) The use is consistent with the intent of this chapter;

(b) The use is consistent with the goals, policies and objectives of the comprehensive plan, if one exists;

(c) The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and

(d) The use does not have an undue adverse impact on the public health, safety or welfare.

(e) The use meets meet the performance standards of § 151.30.

(3) *Specific standards*. In addition to the standards specified in division (2) above, no conditional use permit shall be granted unless the City Council determines that all of the specific standards contained in this division (I) will be met.

(a) One and two family dwellings and multiple-family dwellings, including manufactured homes meeting the standards set forth in § 151.24 and manufactured home parks licensed by the state.

1. Building and site design shall provide a quality residential environment which is compatible with the permitted use;

2. At least two off-street parking spaces must be provided for the each residential unit, with such parking to be in a garage, carport or on a paved area specifically intended for that purpose;

3. The dwelling unit must be in compliance with all applicable building, housing, electrical, plumbing, heating and related city codes;

4. The use will be permitted only where the dwelling unit will not have an undue adverse impact on adjacent properties and where there will not be a substantial alteration of the neighborhood character;

5. The city may require buffering or screening if needed.

(b) Nonresidential licensed daycare facilities.

1. Shall have loading and drop-off points designed to avoid interfering with traffic and pedestrian movements and designed to promote the safety of children entering the center;

2. Outdoor play areas shall be fenced and located and designed in a manner which mitigates visual and noise impacts on adjoining residential areas (if any);

3. One parking space for each six attendees based on the licensed capacity of the center shall be provided; and

4. Shall obtain all applicable state, county and city licenses.

(c) Outdoor storage incidental to a principal use.

1. Outdoor storage shall not be located within 100 feet of any residential parcel;

2. Outdoor storage shall be screened by suitable materials, such as a fencings or natural landscaping features (trees, shrubbery, berms), as determined by Council. The screen must be, at minimum, equal to the height of the tallest item stored on the site;

3. Outdoor storage must be located in a rear or side yard;

4. Shall be kept in a neat and orderly fashion;

5. Shall not contain any unlicensed or inoperable motor vehicles; and

6. Shall not be operated in a manner as to constitute a nuisance or harborage of rodents or other wild animals.

(d) Drive-thru or drive-up windows accessory to a principal use.

1. Drive-up windows and stacking areas shall not be located adjacent to any residential parcel;

2. Stacking areas shall provide for a minimum of six cars per aisle;

3. Public address system shall not be audible from any residential parcel;

4. Drive-up windows and stacking areas shall be screened with suitable materials from adjacent parcels; and

5. Drive-up windows shall be designed to avoid interfering with traffic and pedestrian movements.

(e) Sidewalk cafes and outdoor eating or dining areas accessory to a principal use.

1. Shall be located in a controlled or cordoned-area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, an enclosure is required and the enclosure shall not be interrupted; access shall be only through the principal building;

2. Shall not be permitted within 200 feet of any residential parcel and shall be separated from residential parcels by the principal structure or other method of screening acceptable to the city;

3. Shall be located and designed so as not to interfere with pedestrian and vehicular circulation;

4. Shall not be located to obstruct parking spaces;

5. Shall be located adjacent to an entrance to the principal use;

6. Shall be equipped with refuse containers and periodically patrolled for litter pick-up; and

7. Shall not have speakers or audio equipment which is audible from adjacent parcels. Penalty, see § 151.99

§ 151.26 C-2 COMMERCIAL DISTRICT.

(A) *Purpose*. The purpose of the C-2 Commercial District is to provide for commercial development outside of the C-1 Central Business District.

(B) *Permitted uses and structures*. All uses of a commercial nature, including retail, light industrial, wholesale, service, office, financial, recreational, professional, lodging, and sexually oriented businesses in compliance with Chapters119 and 153, including all uses permitted in the C-1 Central Business District, and those other commercial uses as are not considered industrial as listed in § 151.27.

(C) *Accessory uses*. Those accessory uses permitted in the C-1 Central Business District.

(D) *Conditional uses*. Within the C-2 district no structure or land-shall be used for the following except by conditional use permit and in conformance with the standards specified in section (I) of this ordinance: All conditional uses permitted in the C-1 District.

(E) *Lot requirements and setbacks*. The following minimum requirements shall be observed in C-2 Districts, subject to additional requirements, exceptions and modifications set forth in this chapter:

(1) *Lot area*. None.

(2) *Lot width*. None.

(3) *Setbacks*.

(a) *Front yards*. None.

(b) *Side yards*. None.

(c) *Rear yards*. 15 feet.

(4) All lots shall front on and have ingress and egress by means of a public right-of-way.

(F) *Building requirements; height*. No structure shall exceed three stories or 45 feet, whichever is less.

(G) Parking. Refer to §§ 151.35 through 151.39.

(H) Height limitations shall not apply to water towers, chimneys, flag poles, antennae, wind energy conversion systems, church spires, church belfries or church domes not containing habitable space and support towers permitted by § 150.04.

(I) Conditional use permit standards for the C-2 Central Business District.

(1) *Purpose*. It is the intent of the city in establishing general and specific criteria for conditional uses that such uses be subject to careful evaluation to ensure that their location, size and design are consistent with the standards, purposes and procedures of this chapter and the comprehensive plan, if one exists. The Planning Commission, if one exists, may recommend and the City Council may impose conditions on such uses in order to effect the purpose of this chapter.

(2) *General standards*. No conditional use permit shall be granted unless the City Council determines that all of the following standards will be met:

(a) The use is consistent with the intent of this chapter;

(b) The use is consistent with the goals, policies and objectives of the comprehensive plan, if one exists;

(c) The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;

(d) The use does not have an undue adverse impact on the public health, safety or welfare; and

(e) The use meets the performance standards of § 151.30.

(3) *Specific standards*. In addition to the standards specified in division (2) above, no conditional use permit shall be granted unless the City Council determines that all of the specific standards contained in this subdivision will be met.

(a) *One and two family dwellings and multiple family dwellings, including manufactured homes meeting the standards set forth in § 151.24 and manufactured home parks licensed by the state*.

1. Building and site design shall provide a quality residential environment which is compatible with the permitted use;

2. At least two off-street parking spaces must be provided for the each residential unit, with such parking to be in a garage, carport or on a paved area specifically intended for that purpose;

3. The dwelling unit must be in compliance with all applicable building, housing, electrical, plumbing, heating and related city codes;

4. The use will be permitted only where the dwelling unit will not have an undue adverse impact on adjacent properties and where there will not be a substantial alteration of the neighborhood character; and

5. The city may require buffering or screening if needed.

(b) *Nonresidential licensed daycare facilities*.

1. Shall have loading and drop-off points designed to avoid interfering with traffic and pedestrian movements and designed to promote the safety of children entering the center;

2. Outdoor play areas shall be fenced and located and designed in a manner which mitigates visual and noise impacts on adjoining residential areas (if any);

3. One parking space for each six attendees based on the licensed capacity of the center shall be provided; and

4. Shall obtain all applicable state, county and city licenses.

(c) *Outdoor storage incidental to a principal use.*

1. Outdoor storage shall not be located within 100 feet of any residential parcel;

2. Outdoor storage shall be screened by suitable materials, such as a fencings or natural landscaping features (trees, shrubbery, berms), as determined by Council. The screen must be, at minimum, equal to the height of the tallest item stored on the site;

3. Outdoor storage must be located in a rear or side yard;

4. Shall be kept in a neat and orderly fashion;

5. Shall not contain any unlicensed or inoperable motor vehicles; and

6. Shall not be operated in a manner as to constitute a nuisance or harborage of rodents or other wild animals.

(d) *Drive-thru or drive-up windows accessory to a principal use.*

1. Drive-up windows and stacking areas shall not be located adjacent to any residential parcel;

2. Stacking areas shall provide for a minimum of six cars per aisle;

3. Public address system shall not be audible from any residential parcel;

4. Drive-up windows and stacking areas shall be screened with suitable materials from adjacent parcels; and

5. Drive-up windows shall be designed to avoid interfering with traffic and pedestrian movements.

(e) *Sidewalk cafes and outdoor eating or dining areas accessory to a principal use.*

1. Shall be located in a controlled or cordoned area with at least one opening to an acceptable pedestrian walk. When a liquor license is involved, an enclosure is required and the enclosure shall not be interrupted; access shall be only through the principal building;

2. Shall not be permitted within 200 feet of any residential parcel and shall be separated from residential parcels by the principal structure or other method of screening acceptable to the city;

3. Shall be located and designed so as not to interfere with pedestrian and vehicular circulation;

4. Shall not be located to obstruct parking spaces;

5. Shall be located adjacent to an entrance to the principal use;

6. Shall be equipped with refuse containers and periodically patrolled for litter pick-up; and

7. Shall not have speakers or audio equipment which is audible from adjacent parcels.

§ 151.27 INDUSTRIAL.

(A) *Purpose*. The purpose of the I Industrial District is to provide for industrial development outside of the other districts authorized by this chapter. Development within the district shall be regulated through the performance standards outlined in § 151.30 of this chapter to promote sensitive site design and to mitigate external site impacts.

(B) *Permitted uses and structures*. Within the I District no structure or land may be used except for the following uses occurring within an enclosed building:

(1) Warehouse

(2) Storage

(3) Manufacturing

(4) Processing

(5) Office

(6) Wholesale

(7) Research

(8) Government buildings

(9) Other such industrial uses which in the determination of the City Council and as formally documented will be compatible and will not be detrimental to uses allowed in this or contiguous districts.

(C) *Accessory structures and uses*. Within the I District the following accessory uses are permitted provided they are subordinate to and associated with a permitted use:

(1) Living quarters for security personnel, provided they are located within the principal structure;

(2) Overnight outside storage of vehicles, provided the vehicles are associated with the business and are screened from view from residential properties or public views;

(3) Outside storage, including fuel storage, provided it is screened from general public view;

(4) Retail or service uses not exceeding 25% of the gross floor area of the principal structure;

(5) Other uses customarily associated with but subordinate to a permitted use, as determined by the city.

(6) Solar panels and equipment, satellite dishes and-antennas.

(D) *Conditional uses*. Within the I District no land or structure may be used for the following except by conditional use permit and in conformance with the performance standards contained in § 151.30 of this ordinance:

(1) Retail, or service uses occupying between 25% and 50% of the gross area of the principal structure.

(2) Wind energy conversion systems or windmills.

(E) *District standards*. No building or land in the I District shall be used except in conformance with the following:

(1) *Building height*. Maximum of 45 feet or three stories, whichever is less;

(2) *Front yard setback*. Minimum of 35 feet from local and neighborhood collector streets as identified in the comprehensive plan, if any, or the zoning map if no comprehensive plan is in existence; or a minimum of 50 feet from railroad lines and from major collector or arterial roadways as designated in the comprehensive plan if any, or the zoning map if no comprehensive plan is in existence;

(3) *Side and rear yard setbacks*. Minimum setbacks shall be in accordance with the following when measured from land designated accordingly in the comprehensive plan if any, or the zoning map if no comprehensive plan is in existence:

(a) 70 feet from R-1 and R-2 residential uses;

(b) 30 feet from C-1 and C-2 commercial business uses; and

(c) 20 feet from I District uses.

(4) *Lot coverage*. Maximum lot coverage shall be 85% and shall be calculated to include building footprints; parking areas; driveways; loading, storage and trash areas and other areas covered by any impervious surface;

(5) Access: from a collector or arterial roadway as designated in the comprehensive plan, if any, or a street specifically designed to accommodate industrial traffic;

(6) Trash enclosures or accessory buildings not to exceed 600 square feet in size shall be located behind the front building line of the principal building and not in any required set back;

(7) Parking shall be regulated pursuant to §§ 151.35 through 151.39; and

(8) Performance standards shall be regulated pursuant to § 151.30.

(F) *Conditional use permit standards for the Industrial District*.

(1) *Purpose*. It is the intent of the city in establishing general and specific criteria for conditional uses that such uses be subject to careful evaluation to ensure that their location, size and design are consistent with the standards, purposes and procedures of this chapter and the comprehensive plan. The Planning Commission, if any, may recommend and the City Council may impose conditions on such uses in order to ensure compliance or to effect the purpose of this chapter.

(2) *General standards*. No conditional use permit shall be granted unless the City Council determines that all of the following standards will be met:

(a) The use is consistent with the intent of this chapter;

(b) The use is consistent with the goals, policies and objectives of the comprehensive plan, if any;

(c) The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;

(d) The use is in compliance with the performance standards specified in § 151.30, of this chapter; and

(e) The use does not have an undue adverse impact on the public health, safety or welfare.

(3) In addition to the standards specified in division (2), no conditional use permit shall be granted unless the City Council determines that each of the following specific standards will be met.

(a) Retail or service uses occupying between 25% and 50% of the gross area of the principal structure:

1. Shall be no exterior modifications to the building;

2. Shall have no outside storage or display and no accessory structures for retail sales purposes; and

3. Shall have sufficient parking to accommodate the additional retail traffic.

(b) Wind energy conversion systems or windmills.

1. Set back from the nearest property line a distance equal to the height of the tower plus one-half the diameter of the rotor;

2. Certified by a professional engineer as being of a design adequate for the atmospheric conditions of the area:

3. Equipped with over-speed or similar controls designed to prevent disintegration of the rotor in high winds;

4. Compliance with all building and electrical code requirements of the city, the noise regulations of the Minnesota Pollution Control Agency and the rules and regulations of the Federal Communications Commission and Federal Aviation Administration;

5. If the WECS has not been operated for a period of one year or fails to meet the conditions of this chapter, the City Council may order it dismantled and the site restored to its original condition; and

6. If the owner or person responsible for the WECS does not maintain it or comply with all requirements of this chapter, the city may take such steps as are necessary to achieve compliance. The cost of such work, including administrative costs, shall be a lien against the property and may be collected as a special assessment. The city may sell salvaged and valuable materials at public auction on ten days' notice.

§ 151.28 RURAL RESIDENTIAL AND AGRICULTURAL DISTRICT.

(A) *Purpose*. The purpose of the Rural Residential and Agriculture District is to allow suitable areas of the city to be retained and utilized in open space and/or agricultural uses.

(B) *Permitted uses*. The following are permitted uses in the Rural Residential and Agriculture District:

(1) Agriculture, including farm dwellings and agricultural related buildings and structures subject to state pollution control standards, but not including commercial feedlots or other commercial operations.

(2) One-family dwelling units.

(3) Public, government owned parks, playgrounds, wild life areas and game refuges, athletic fields and other public recreational uses.

(4) Churches and places of religious assembly, public and private schools and government-owned buildings and facilities.

(5) Manufactured homes which meet the standards set forth in § 151.24.

(6) As required by M.S. § 462.357, Subd. 7, as it may be amended from time to time, a state licensed residential facility or a housing with services establishment registered under M.S. Ch. 144D, as it may be amended from time to time, serving six or fewer persons, a licensed day care facility serving 12 or fewer persons, and a group family day care facility licensed under Minn. Rules, parts 9502.0315 to 9502.0445, as it may be amended from time to time, to serve 14 or fewer children shall be considered a permitted single-family residential use of property for the purposes of zoning, except that a residential facility whose primary purpose is to treat juveniles who have violated criminal statutes relating to sex offenses or have been adjudicated delinquent on the basis of conduct in violation of criminal statutes relating to sex offenses shall not be considered a permitted use.

(C) *Accessory uses*. The following are permitted accessory uses in the Rural Residential and Agriculture District:

(1) Operation and storage of such vehicles, equipment and machinery which are incidental to permitted or conditional uses allowed in this district.

(2) Boat houses, piers and docks serving a single-family residence.

(3) Private garages, screen porches, play equipment, solar panel equipment, satellite dishes and antennae.

(4) The renting of rooms by a resident family for lodging purposes only, and for not more than two rooms in a one-family dwelling.

(D) *Conditional uses*. Within the Rural Residential and Agriculture District no structure or land shall be used for the following except by conditional use permit and in conformance with the standards specified in division (I) of this chapter.

(1) Bed and breakfast inns.

(2) Wind energy conversion systems or windmills.

(3) Home occupations.

(E) *Lot requirements and setbacks*. The following minimum requirements shall be observed in the Rural Residential and Agriculture District, subject to additional requirements, exceptions and modifications set forth in this chapter:

(1) *Lot area*. A minimum of two and one-half acres of upland area, upland being land above the 100-year flood elevation or non-wetland.

(2) *Lot width*. A minimum of 200 feet.

(3) *Lot depth*. A minimum of 300 feet.

(4) *Setbacks*.

(a) *Front yard*. A minimum of 40 feet.

(b) *Side yards*. A minimum of 10 feet.

(c) *Side yards, corner lots*. A minimum of 30 feet on side adjacent to street, but in no case less than the setback of an adjacent lot which has its front yard on the same street.

(d) *Rear yard*. A minimum of 30 feet.

(e) *Rear yard, corner lots*. A minimum of 15 on side adjacent to street, but in no case less than the setback of an adjacent lot which has its rear yard on the same street.

(5) *Detached accessory building setback requirements*. Not less than five feet from rear yard line and not less than four feet from the side yard lines in the rear yard. On corner lots not less than 25 feet from the adjacent street, but in no case less than the setback of an adjacent lot which has its front yard on the same street.

(6) *Access*. All lots shall front on and have ingress and egress by means of a public right-of-way.

(F) *Building requirements; height*. No structure shall exceed two stories or 35 feet, whichever is less.

(G) *Parking*. Refer to §§ 151.35 through 151.39.

(H) Height limitations shall not apply to water towers, chimneys, flag poles, antennae, wind energy conversion systems, church spires, church belfries or church domes not containing habitable space and support towers permitted by § 150.04.

(I) Conditional use permit standards for the Rural Residential and Agriculture Single-Family Residential District.

(1) *Purpose*. It is the intent of the city in establishing general and specific criteria for conditional uses that such uses be subject to careful evaluation to ensure that their location, size and design are consistent with the standards, purposes and procedures of this chapter and the comprehensive plan, if one exists. The Planning Commission, if one exists, may recommend and the City Council may impose conditions on such uses in order to effect the purpose of this chapter.

(2) *General standards*. No conditional use permit shall be granted unless the City Council determines that all of the following standards will be met:

(a) The use is consistent with the intent of this chapter;

(b) The use is consistent with the goals, policies and objectives of the comprehensive plan, if one exists;

(c) The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and

(d) The use does not have an undue adverse impact on the public health, safety or welfare.

(3) *Specific standards*. In addition to the standards specified in division (2), no conditional use permit shall be granted unless the City Council determines that all of the specific standards contained in this division will be met.

(a) *Home occupations*.

1. Such occupation shall be carried on in the main building;

2. Not more than 25% of the floor space of the residence is used for this purpose;

3. No articles for sale be displayed so as to be visible from the street;

4. The conduct of the home occupation shall result in no change in the outside appearance of the building or land, or other visible evidence of the conduct of the home occupation, other than one sign, not exceeding one square foot in area, non-illuminated and mounted flat against the wall of the dwelling.

5. No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood.

6. Only limited retail sales activity;

7. Maximum of one outside employee;

8. Adequate off-street parking based on number of employees and customers per day;

9. Parking area screened from offsite views;

10. No outside storage;

11. Shall not result in significant levels of noise, air or other pollution;

12. Business hours restricted to no more than 8:00 a.m. to 9:00 p.m.; and

13. Outside parking of no more than one commercial type vehicle or vehicle identified for business purposes not to exceed one ton capacity which is used for both personal and business transportation. The vehicle is to be owned and registered by an occupant of the property and parked in a screened location.

(b) *Wind energy conversion systems (WECS).*

1. Set back from the nearest property line a distance equal to the height of the tower plus one-half the diameter of the rotor;

2. Certified by a professional engineer as being of a design adequate for the atmospheric conditions of the area;

3. Equipped with over-speed or similar controls designed to prevent disintegration of the rotor in high winds;

4. Compliance with all building and electrical code requirements of the city, the noise regulations of the Minnesota Pollution Control Agency and the rules and regulations of the Federal Communications Commission and Federal Aviation Administration;

5. If the WECS has not been operated for a period of one year or fails to meet the conditions of this chapter, the City Council may order it dismantled and the site restored to its original condition;

6. If the owner or person responsible for the WECS does not maintain it or comply with all requirements of this chapter, the city may take such steps as are necessary to achieve compliance. The cost of such work, including administrative costs, shall be a lien against the property and may be collected as a special assessment. The city may sell salvaged and valuable materials at public auction on ten days' notice; and

7. The WECS shall meet the performance standards of § 151.30.

(c) *Bed and breakfast inns.*

1. The conduct of the bed and breakfast inn shall result in no change in the outside appearance of the building or land, or other visible evidence of the conduct of the bed and breakfast inn, other than one sign, not exceeding one square foot in area, non-illuminated and mounted flat against the wall of the dwelling.

2. No traffic shall be generated by such bed and-breakfast inn in greater volume than would normally be expected in a residential neighborhood.

PERFORMANCE STANDARDS

§ 151.30 PERFORMANCE STANDARDS.

(A) *Purpose*. The purpose of performance standards is to establish specific and quantifiable limitations on identified types of pollution and other activities which have a high nuisance potential. The performance standards apply in all zoning districts unless specifically stated to the contrary.

(B) *Performance Standards Regulating Exterior Lighting*.

(1) Exterior lighting shall be designed and arranged to limit direct illumination and glare upon or into any contiguous parcel. Reflected glare or spill light shall not exceed five-tenths foot-candles as measured on the property line when abutting any residential parcel and one foot-candle on any abutting commercial or industrial parcel. Street lights installed in public right-of-way shall be excepted from these standards.

(2) Mitigative measures shall be employed to limit glare and spill light to protect neighboring parcels and to maintain traffic safety on public roads. These measures shall include lenses, shields, louvers, prismatic control devices and limitations on the height and type of fixtures. The city may also limit the hours of operation of outdoor lighting if it is deemed necessary to reduce impacts on the surrounding neighborhood.

(3) No flickering or flashing lights shall be permitted.

(4) Direct, off-site views of the light source shall not be permitted except for globe and/or ornamental light fixtures approved in conjunction with a site and building plan. Globe and ornamental fixtures shall only be approved when the developer can demonstrate that off-site impacts stemming from direct views of the bulb are mitigated by the fixture design and/or location.

(5) The city may require submission of a light distribution plan if deemed necessary to ensure compliance with the intent of this chapter.

(C) *Performance standards regulating noise and vibration*.

(1) Noises emanating from any use shall be in compliance with and regulated by the standards of the Minnesota Pollution Control Agency. Any use established or remodeled after the effective date of this chapter shall be so operated as to prevent vibration discernable at any point beyond the lot line of the site on which such use is located. The city may also limit the hours of operation of outdoor noise if it is deemed necessary to reduce impacts on the surrounding neighborhood.

(2) Ground vibration and noise caused by motor vehicles, trains, aircraft operations or temporary construction or demolition shall be exempt from these regulations. However, if deemed appropriate, the city may establish limits on the hours of operation of temporary construction or demolition operation to limit off-site impacts.

(D) *Performance standards regulating smoke and particulate matter*. No use shall produce or emit smoke, dust or particulate matter exceeding applicable regulations established by the Minnesota Pollution Control Agency.

(E) *Performance standards regulating odor*. No use shall produce unreasonable or disturbing odors beyond the property line exceeding applicable regulations established by the Minnesota Pollution Control Agency.

(F) *Performance standards regulating toxic or noxious matter*. No use or operation shall emit a concentration of toxic or noxious matter across the property line which exceeds applicable regulations of the Minnesota Pollution Control Agency.

(G) *Performance Standards Regulating Radiation*. No operation shall be conducted which exceeds the standards established by applicable regulations of the Minnesota Department of Health.

(H) *Performance standards regulating heat and humidity*. No use shall produce any unreasonable, disturbing or unnecessary emissions of heat or humidity beyond the property line which cause material distress, discomfort or injury to persons of ordinary sensitivity.

(I) *Performance standards regulating electromagnetic interference*. No use shall produce electromagnetic interference with normal radio or television reception in any residential district, or exceed applicable standards established by any applicable federal or state regulations.

(J) *Performance standards regulating liquid or solid waste*. All uses shall be subject to applicable regulations of the city governing discharge into a public storm or sanitary sewer, waterway or stream.

§ 151.31 LANDSCAPING REQUIREMENTS.

(A) All open areas of a lot which are not used or improved for required parking areas, drives or storage shall be landscaped with a combination of overstory trees, understory trees, shrubs, flowers and ground cover materials.

(B) All new landscape trees and shrubs must meet the American Standard for Nursery Stock and American National Standard relating to planting guidelines, quality of stock and appropriate sizing of the root ball. Landscape trees must be balled and burlapped or moved from the growing site by tree spade. Deciduous trees will be not less than one and one quarter inches but not more than three inches caliper for balled and burlapped trees, and not less than three inches but not more than six inches caliper for spade-moved trees. Coniferous trees will not be less than six feet in height but no more than eight feet for balled and burlapped trees, and not less than eight feet in height but not more than fourteen feet for spade-moved coniferous trees. The city may allow larger balled and burlapped or spade moved trees if these trees are accompanied with a three year guarantee.

(C) All lot areas not covered by buildings, sidewalks, parking lots, driveways, patios or similar hard surface materials shall be covered with sod or an equivalent ground cover approved by the city. This requirement shall not apply to site areas retained in a natural state.

OFF-STREET PARKING AND LOADING REQUIREMENTS

§ 151.35 PURPOSE.

The purpose of the off-street parking regulations 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 of motor vehicles in accordance with the utilization of various parcels of land and structures. No building shall be hereafter erected, substantially altered, or its use changed unless off-street parking spaces have been provided in accordance with the provisions of this chapter. Penalty, see § 151.99

§ 151.36 REQUIRED OFF-STREET PARKING.

The number of off-street parking spaces provided shall be at least the minimum number provided for the following uses:

(A) One and two-family dwellings: Two spaces per unit.

(B) Multiple-family dwellings: Two spaces per unit.

(C) Manufactured home park: Two spaces per unit.

(D) Theatres, auditoriums, churches and other similar places of assembly: One space per every four seats.

(E) Restaurants, bars and the like: One space for every three seats.

(F) Retail stores: One space per every 500 square feet of retail floor space.

(G) Motels, hotels: One space per sleeping room or unit.

(H) Service commercial shops, such as auto repair shops, furniture repair shops, appliance repair shops and the like: One space per every 500 square feet of gross floor space.

(I) Industrial establishments: One space per every two persons of maximum employment during any work period.

(J) Wholesale, warehouses: One space per every employee during any work period.

(K) Uses not mentioned: For any use not specifically mentioned in the schedule of off-street parking requirements, the number of spaces required shall be that required for that use in the schedule which is determined by the City Council to be most similar.
Penalty, see § 151.99

§ 151.37 SPECIAL OFF-STREET PARKING REQUIREMENTS.

(A) *Offices outside C-1 District*. Adequate off-street parking area shall be provided for all employees so as to avoid routine usage of the public street for parking. However, parking will be allowed on the side of the public street adjacent to the office's property for routine employee parking.

(B) *Industrial establishments within C-1, C-2 and I Districts*. Adequate off-street parking areas shall be required for all employees so as to avoid routine usage of a public street for parking, except during the climatic seasons that result in a deterioration of the available parking area serviceability to a point that reasonable judgment dictates temporary disuse. Parking will be allowed on the side of the public street adjacent to the establishment's property for routine employee parking.
Penalty, see § 151.99

§ 151.38 OFF-STREET LOADING.

(A) *Off-street loading spaces*. No building shall be hereafter erected, substantially altered, or its use changed unless loading spaces have been provided in accordance with the provisions of this chapter. One off-street loading space shall be provided and maintained on the same lot for each commercial and industrial use requiring regular delivery of goods.

(B) *Improvement and maintenance of off-street parking and loading spaces*. All parking and loading areas shall provide drainage of surface water to prevent drainage of such water on the adjacent properties or walkways. The owner of any parking or loading area shall maintain the area in good condition.
Penalty, see § 151.99

§ 151.39 PARKING AND STORAGE OF CERTAIN VEHICLES.

No motor vehicle or trailer without current license plates shall be parked or stored on any property in a residential district other than in a completely enclosed building, or as otherwise provided in this code.
Penalty, see § 151.99

§ 151.40 REQUIREMENTS AND PROHIBITIONS.

(A) Required parking and loading areas and the driveways providing access to them shall not be used for storage, display, sales, rental or repair of motor vehicles or other goods or for the storage of inoperable vehicles or snow.

(B) All required parking spaces shall be accessed by adequate maneuvering space.

§ 151.41 REDUCTIONS ALLOWED.

If warranted by the unique characteristics and/or documented parking demand for similar developments, the city may allow a reduction in the number of parking spaces actually constructed as long as the applicant provides proof of a future parking plan. The plan must show the location for all minimum required parking spaces in conformance with all applicable setback requirements. The city may require installation of the additional parking spaces whenever the need arises.

PERMITS AND REQUIREMENTS FOR FENCES, WALLS OR HEDGES

§ 151.45 APPLICATION.

The requirements of this subchapter shall apply to all new or replacement fences, walls, or shrubbery erected or installed from and after the effective date of this subchapter, but shall not apply to the mere repair of existing fences.

§ 151.46 GENERAL REQUIREMENTS.

(A) All fences of more than 30 inches in height shall require a permit.

(B) No fence shall contain barbed wire.

(C) No fence shall be charged with electric current, except within an agricultural district.

(D) No fence, wall or other obstruction to vision above a height of 30 inches from the established street grades shall be permitted within the triangular area formed at the intersection of any street right-of-way lines by a straight line drawn between the right-of-way lines at a distance along each line of 25 feet from their point of intersection.

(E) Fences must be maintained so as not to endanger life or property and any fence which, through lack of repair, type of construction or otherwise, that imperils health, life or property or the well-being of a neighborhood shall be deemed a nuisance.

(F) All fences must be located on the private property of the person, firm or corporation constructing the fence.

(G) All fences must comply with all other requirements of law or this code as it applies to fence installation and materials.
Penalty, see § 151.99

§ 151.47 RESIDENTIAL REGULATIONS.

(A) *Prohibited material.* No fence or wall shall be constructed of any electrically charged element or barbed wire.

(B) *Approved material.* All fences in residential districts shall be constructed of stone, brick, finished wood, chained link or vinyl. The finished side of the fence, or that side of the fence without exposed support or posts, shall face the neighboring property or streets.

(C) *Side and rear yard requirements*. No fence or wall located in a side or a rear yard shall be of height exceeding four feet, measured from its top edge to the ground at any point.

(D) *Front yards*. No fence or wall shall be located in a front yard.

(E) *Maintenance*. Every fence or wall shall be maintained in a good and safe condition at all times. Every damaged or missing element of any fence or wall shall be prepared or replaced immediately.

(F) *Setbacks*. No fence may be located less than six inches from a property line. No fence, wall, hedge or other screening device shall be permitted to encroach on any public right-of-way.
Penalty, see § 151.99

§ 151.48 VARIANCE.

Any deviation from the provisions of this subchapter shall require a variance. If a variance is requested, the variance shall be considered in accordance with the zoning variance procedures and fees for this variance will be in accordance with the zoning variance fee.

ADMINISTRATION AND ENFORCEMENT

§ 151.49 CONSISTENCY WITH STATE LAW.

Notwithstanding anything in this chapter to the contrary, the provisions of M.S. § 15.99 as it may be amended from time to time, and the following sections shall govern the process for making decisions under this chapter. To the extent to which these sections conflict with the provisions of M.S. § 15.99, as it may be amended from time to time, the provisions of that statute shall apply.

§ 151.50 APPLICATIONS.

(A) Notwithstanding anything to the contrary in this chapter, all applications for any site plan, conditional use permit, land use permit, variance, or for any other city approval required by this chapter, or to amend this chapter, shall be made in writing on a form provided by the city, if the city has a form, to the City Clerk or other person appointed by the City Council to administer this chapter. The Zoning Administrator is authorized to reject in writing any incomplete application within 15 business days of receipt if the application is incomplete, stating the reasons for its rejection, including what information is missing. This rejection shall be sent by first-class mail to the applicant. Every application shall contain the legal description of the property and a statement of the specific permit or action being sought.

Nothing in this section shall be deemed to prevent the city from requesting additional information from the applicant upon which to base a decision.

(B) As authorized by M.S. § 462.353, as it may be amended from time to time, if a dispute arises over a specific fee imposed by the city, the amount of the fee must be deposited and held in escrow, and the person aggrieved by the fee may appeal to district court, as provided by M.S. § 462.361, as it may be amended from time to time. The application shall proceed as if the fee had been paid, pending a decision of the court.

§ 151.51 PUBLIC NOTICE AND HEARINGS.

As required by M.S. § 462.357 and M.S. § 462.3595 a public hearing shall be held by the City Council or the Planning Commission, if a Planning Commission exists in the city, before any conditional use permit, variance, or zoning amendment may be granted. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the day of the hearing. In the case of an amendment to the zoning code which involves changes in district boundaries affecting an area of five acres or less, and in the case of an application for a conditional use permit or a variance, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the zoning code amendment, conditional use or variance relates. The applicant shall provide a list of the owners of affected property and property situated wholly or partly within 350 feet of the property to which the hearing relates. The Clerk or other person appointed by the City Council to administer this chapter may use any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the Clerk or other person appointed by the City Council to administer this chapter and shall be made a part of the records of the proceedings. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with the mailed notice requirements has been made.

§ 151.52 FINAL ACTIONS.

As required by M.S. § 15.99 as it may be amended from time to time, commonly called the 60-day rule, all approvals and denials of applications for a zoning amendment, site plan, conditional use permit, land use permit, variance or any other application which requires a city approval under this chapter must be made within the timeline and following the process of M.S. § 15.99. Failure to follow the requirements of the statute may result in automatic approval of applications.

§ 151.53 NOTICE OF DECISION.

As required by M.S. § 15.99, as it may be amended from time to time, commonly called the 60-day rule, notice of approvals and denials of applications for a zoning amendment, site plan, conditional use permit, land use permit, variance or any other application which requires a city approval under this chapter must be provided within the timeline and following the process of M.S. § 15.99. Failure to follow the requirements of the statute may result in automatic approval of applications.

§ 151.54 LAND USE PERMIT REQUIRED.

No structure or fence subject to § 151.46 shall be constructed until a land use permit has been obtained from the City Clerk or other person appointed by the City Council to administer this chapter. The application shall contain a plan showing the location on the structure or fence on the property that demonstrates that all requirements of this code will be met. The application shall also contain the plans for the structure to be built that demonstrates that the structure will meet all of the standards established by this zoning code. If an application requires a zoning amendment, conditional use permit or variance, no land use permit shall be issued by the Clerk or other person appointed by the City Council to administer this chapter until any application for a zoning amendment, conditional use permit or variance has been acted upon by the City Council. A decision by the Clerk or other person appointed by the City Council to administer this chapter not to issue a land use permit may be appealed to the Board of Appeals and Adjustments as provided for in § 151.60. No residential contractor who is required to be licensed by the state, and no person employing a residential contractor who is required to be licensed, shall be issued a land use permit unless that contractor is licensed. Any person applying for a permit who is required to have a state license, but who does not have a state license, shall be reported to the State Commissioner of Commerce.

§ 151.55 CONDITIONAL USE PERMITS.

Pursuant to M.S. § 462.3595, as it may be amended from time to time, conditional uses may be approved by the City Council by a showing by the applicant that the standards and criteria stated in this zoning code, and any conditions imposed by the City Council, will be satisfied. A public hearing on the granting of a conditional use permit shall be held in the manner provided in § 151.51. A conditional use permit shall remain in effect as long as the conditions agreed upon are observed, but the Council may enact or amend the zoning code to change the status of conditional uses. A conditional use permit shall not become effective until a certified copy is filed by the applicant with the County Recorder, which shall include the legal description of the property included.

§ 151.56 BOARD OF APPEALS AND ADJUSTMENTS.

The City Council shall be the Board of Appeals and Adjustments for this city, and have the powers granted under M.S. §§ 462.357, Subd. 6 and 462.359, Subd. 4, as they may be amended from time to time.

§ 151.57 VARIANCES.

Pursuant to M.S. § 462.357, Subd. 6, as it may be amended from time to time, the City Council, acting as a Board of Appeals and Adjustments, may issue variances from the provisions of this zoning code. A variance is a modification or variation of the provisions of this zoning code as applied to a specific piece of property. A variance from the literal provisions of this zoning code may be granted by the Board of Appeals and Adjustments only when the variance is in harmony with the general purposes and intent of the zoning code and the variance is consistent with the comprehensive plan, if the city has adopted one. A variance may be granted when the applicant for the variance establishes that there are ***PRACTICAL DIFFICULTIES*** in complying with the zoning ordinance. ***PRACTICAL DIFFICULTIES*** as used in connection with granting a variance, means the property owner proposes to use the property in a reasonable manner not permitted by the zoning code; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

Variances shall be granted for earth sheltered construction as defined in M.S. § 216C.06, Subd. 14, as it may be amended from time to time, when in harmony with this zoning code. The Board of Appeals and Adjustments may not permit as a variance any use that is not allowed under this zoning code for property in the zone where the affected person's land is located. The Board of Appeals and Adjustments may permit as a variance the temporary use of a one-family dwelling as a two-family dwelling. The Board of Appeals and Adjustments may impose conditions in the granting of variances to ensure compliance and to protect adjacent properties. A condition must be directly related to and must bear rough proportionality to the impact created by the variance. The variance shall not become effective until a certified copy is filed by the applicant with the County Recorder, which shall include the legal description of the property included.

§ 151.58 NONCONFORMING USES.

(A) As required by M.S. § 462.357, as it may be amended from time to time, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of these zoning regulations, may be continued, including through repair, replacement, restoration, maintenance

or improvement, but not including expansion, unless the nonconformity or occupancy is discontinued for a period of more than one year, or any nonconforming use is destroyed by fire or other peril to the extent of greater than 50% of its market value, and no building permit has been applied for within 180 days of when the property is damaged. In this case, the City Council may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property. A subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.

(B) Notwithstanding division (A), the city may regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction of flood flows in the floodway.

(C) Nonconforming shoreland lots of record are subject to the provisions of M.S. § 462.357, as it may be amended from time to time.

§ 151.59 AMENDMENTS.

(A) The clerk, or other person appointed by the City Council, may inspect any property that is the subject of any application under this chapter, with either the permission of the owner, resident or other person in control of the property, or after first obtaining an administrative search warrant as provided for under § 10.20.

(B) An amendment to this zoning code may be initiated by the City Council or by petition of affected property owners. The requirements for public notice and hearing contained in § 151.51 shall be followed. The zoning code may be amended by a majority vote of all of the members of the City Council. The adoption of an amendment which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the City Council.

§ 151.60 APPEALS.

Appeals to the City Council acting as the Board of Appeals and Adjustments may be taken by any affected person where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer of the city in the enforcement of the zoning code. No mailed or published notice of the hearing on the appeal is required, but a public hearing shall be held on each appeal.

§ 151.61 RECORD OF DECISIONS.

The Council may provide that a record be made of its proceedings concerning its actions on any application for a permit, zoning ordinance amendment, or appeal. This record may include the minutes of the meeting, the findings of the Council and the action taken.

§ 151.62 PLANNING COMMISSION.

The provisions of Minnesota Basic Code of Ordinances §§ 31.45 to 31.48 are inoperable until the Council appoints a Planning Commission. Nothing in those provisions requires the Council to appoint a Planning Commission.

§ 151.63 FEES.

As provided by M.S. § 462.353, Subd. 4, as it may be amended from time to time, fees may be established as follows:

(A) The Council may in a separate ordinance, or in the Ordinance Establishing Fees and Charges, prescribe fees sufficient to defray the costs incurred in reviewing, investigating, and administering applications for an amendment to the provisions of this chapter and to all official maps, and applications for a permit, a variance or for some other approval required under this chapter.

(B) These fees must be fair, reasonable and proportionate to the actual cost of the service for which the fee is imposed. The city shall adopt management and accounting procedures to ensure that fees are maintained and used only for the purpose for which they are collected.

(C) If a dispute arises over a specific fee imposed by a city, the amount of the fee must be deposited and held in escrow, and the person aggrieved by the fee may appeal to district court as provided by M.S. § 462.361, as it may be amended from time to time. The application shall proceed as if the fee had been paid, pending a decision by the court.

§ 151.64 CERTIFICATION OF TAXES PAID.

Prior to approving an application for any city land use permit, the applicant shall provide certification to the city that there are no delinquent property taxes, special assessments, unpaid utility charges certified for payment as taxes, interest, or city utility fees due upon the parcel of land to which the land use permit relates.

§ 151.99 ENFORCEMENT.

(A) The City Council may direct the Clerk or other person appointed by the City Council to administer this chapter to send a notice of any violation. When so directed, a notice of a violation shall be mailed by the Clerk or other person appointed by the City Council to administer this chapter to any person who, in the opinion of the Clerk or other person appointed by the City Council to administer this chapter, is in violation of the provisions of the zoning code. The notice shall state the nature of the violation and the penalty for the violation. A person who is issued a notice of violation may appeal the issuance to the City Council under the provisions of § 151.60.

(B) If the person to whom the notice of violation is directed fails to comply with the applicable provisions of the zoning code, that person is guilty of a misdemeanor and shall be punished as provided by § 10.99.

(C) Each day the violation continues is a separate offense.

(D) The city may also enforce any provision of this zoning code by mandamus, injunction, or any other appropriate remedy in any court of competent jurisdiction.

(E) A person who knowingly makes or submits a false statement or document in connection with an application or procedure required by this section is guilty of a misdemeanor and shall be punished as provided by § 10.99.

(F) A person who violates, fails to comply with or assists, directs or permits the violation of a performance standards required by § 151.30 must reimburse the city or its agent for the actual costs of the tests, measurements or other procedures necessary to demonstrate that violation.

(G) A violation of this chapter or a condition imposed under this chapter is a public nuisance. The public nuisance may be abated in accordance with Chapter 92.

(H) No section or part of this chapter designating the duties of an official, employee or appointee of the city may be construed to make that official, employee or appointee liable for the penalty provided by the city ordinances for violation of this chapter.

CHAPTER 152: SUBDIVISION CONTROL

Section

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§ 152.01 PURPOSE.

(A) In order to integrate new subdivisions with the development objectives of the city and to contribute to an attractive, stable and wholesome environment, adequate public services and an integrated safe road and highway system, the subdividing of land in the city shall be required. The provisions of this chapter shall not be in effect until the provisions of Chapter 151, Zoning, become effective, as provided in §§ 151.01 (B) and 151.05. If the city has in effect as of the effective date of this chapter, any ordinances regulating the subdivision of land within shorelands or floodplains, the provisions of those ordinances shall supersede the provisions of this chapter within the areas regulated. The provisions of this chapter shall not be in effect until a certified copy of this chapter is filed with the County Recorder as required by M.S. § 462.36, as it may be amended from time to time.

(B) *Minimum design features*. The design features set forth in this chapter are minimum requirements. The city may impose additional or more stringent requirements concerning lot size, streets and overall design as deemed appropriate considering the property being subdivided.

(C) *Zoning ordinance and zoning map consistency*. Subdivisions and preliminary or final plats may only be approved if they are consistent with the city's zoning ordinance and official zoning maps, if any.

§ 152.02 LEGAL AUTHORITY.

This chapter is enacted pursuant to M.S. § 462.358, as may be amended from time to time.

§ 152.03 COMPLIANCE.

(A) Any subdivision creating parcels, tracts, or lots which results in one or more parcels, tracts or lots of less than five acres shall be platted, except as provided in this chapter.

(B) The provisions of M.S. Ch. 505 shall prevail over any inconsistent provisions in this chapter.

(C) No conveyance other than those described in division (A) above, shall be recorded unless it meets the requirements of § 152.11 herein.

(D) No conveyance or other document creating a subdivision of any real property other than by a duly approved plat, shall be recorded unless accompanied by a registered surveyor's drawing for recording. The surveyor's drawing shall accurately illustrate the subdivider's entire lot, parcel or tract which is subdivided by the conveyance or other document, and shall illustrate the location of any wetlands, lakes, rivers, streams or other public waters on that property. No conveyance or other document shall be recorded unless accompanied by this surveyor's drawing.

(E) Any surveyor performing a survey in the city shall file a copy of that survey with the County Recorder and the Clerk.

(F) No deed or other document purporting to subdivide property shall be recorded or certified for recording by the County Auditor, County Treasurer or County Recorder unless it meets the requirements set forth above.

§ 152.04 SAVINGS CLAUSE.

All plats approved under this chapter are approved for city purposes only and shall not release the subdivider from any liability or obligation imposed by Minnesota Statutes or Federal Law. In the event

any provision of this chapter shall be found contrary to law by a Court of competent jurisdiction from whose final judgment no appeal has been taken, such provision shall be considered void. All other provisions of this chapter shall continue in full force and effect as though the voided provision had never existed.

§ 152.05 EXEMPTIONS.

(A) The division of a surveyed lot, parcel or tract for the purpose of attachment to contiguous lots where no residual plot or lot or real property is left unattached is exempted from the provisions of this chapter, as are subdivisions conveying property to a public utility for such things as substations, poles, towers, telephone booths, and the like.

(B) If the parcel can be described as a rectangular portion of a parcel of the government rectangular survey system, a surveyor's drawing will not be required.

(C) Metes and bounds subdivisions of less than five acres, as provided in § 152.03(A), that will be permanently attached to an adjacent contiguous parcel will be exempt from the minimum size requirements provided all other conditions of this chapter are complied with.

§ 152.06 DEFINITIONS.

As used in this chapter, words in the present tense shall include future tense and words used in the singular number shall include the plural number and the plural the singular. The word ***SHALL*** and ***MUST*** are mandatory and not discretionary. The word ***MAY*** is permissive. For the purpose of this chapter certain terms and words are herein defined as follows:

ADMINISTRATIVE OFFICER. The Clerk of the City or another person appointed by the City Council to administer this chapter.

ALLEY. Any strip of land publicly or privately owned, less than 33 feet in width between property lines, set aside for public vehicular access to abutting property.

ARTERIAL ROAD or ***HIGHWAY (PRIMARY)***. A road or highway of considerable continuity designed primarily to serve as an interconnection link between sectors of the city and beyond (such as from within a city to outlying areas).

BACKLOT. Residential lots without water frontage located in the Shoreland Area of the city.

BACKSLOPE. The portion of the roadway cross-section beginning at the outside edge of the ditch bottom, sloping upward to a point where the slope intersects the existing ground line.

CUL-DE-SAC. A road having but one end open to traffic and the other end being permanently terminated by a vehicular turnaround.

DEDICATED STREET. A roadway designated for public use.

DEVELOPMENT OBJECTIVES. Those goals defined as part of the city's comprehensive planning program which indicate how the city wishes to develop itself in line with orderly and logical direction.

EASEMENT. A grant by an owner of land for the specific use of said land by the public, generally, or to a person or persons.

FEE SCHEDULE. A document setting forth the city's fees for permits, appeals, variances and subdivision filings as adopted by ordinance by the City Council as provided in § 152.13.

FINAL PLAT. The final map, drawing or chart on which the subdivider's plan of subdivision is presented to the City Council for approval and which, if approved, will be submitted to the County Recorder.

INSLOPE. The portion of the roadway cross-section beginning at the outside edge of the roadway shoulder, sloping downward to the inside edge of the ditch bottom.

LOT. A parcel of land designated by plat, metes and bounds, registered land survey, auditor's plat or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease or separation.

METES AND BOUNDS. A description of real property which identifies a parcel of land by its shapes and boundaries, starting at a known point and describing the bearing and distances of lines forming the boundaries of the property or delineating a fractional portion of a section, lot or area by described lines or portions thereof.

OWNER. Any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under this chapter.

PRELIMINARY PLAT. The preliminary map drawing or chart indicating the proposed layout of the subdivision to be submitted to the Planning Commission, if the city has a Planning Commission, and City Council for their consideration.

PUBLIC ROAD. A particularly described and identified right-of-way, at least 33 feet in width, dedicated to public use for road or highway purposes.

SERVICE ROAD. A public road having a traveled surface of at least 24 feet in width lying parallel and adjacent to an ***ARTERIAL ROAD*** or ***HIGHWAY*** and which provides access to abutting properties and protection from through traffic.

STRUCTURE. Any building or appurtenance, including but not limited to, vision obstructing fences, decks, retaining walls, satellite dishes, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, tower poles and other supporting facilities.

SUBDIVIDER. Any person commencing proceedings under this chapter to affect a subdivision of land for himself/herself or for another.

SUBDIVISION. A parcel of land which is divided.

§ 152.07 PLATTING PROCEDURES.

(A) *Generally*. The following procedures shall be followed in the administration of this section and no real property within the jurisdiction of this section shall be subdivided and offered for sale or a plat recorded until a pre-application meeting has been held, a preliminary plat has been reviewed and approved and until a final plat has been reviewed and approved as set forth in the procedures provided herein.

(B) *Pre-application meeting*. Prior to the submission of any plat for consideration by the Planning Commission, if the city has a Planning Commission, under the provisions of this chapter, the subdivider may meet with the Administrative Officers to introduce himself or herself as a potential subdivider and learn the relevant requirements of the city's code.

(C) *Preliminary plat*.

(1) *Submission of plat*. The subdivider shall submit to the Administrative Officer ten copies of a preliminary plat of his/her proposed subdivision, the requirements of which are set forth in this chapter. They shall be filed at least 30 days prior to a regularly scheduled Planning Commission meeting, if the city has a Planning Commission, or a Council meeting, and shall be accompanied by the fees set forth in the fee schedule.

(2) *Notice procedure*. Notice of the public hearing at which the Planning Commission, if the city has a Planning Commission, will consider the preliminary plat shall be made by the Administrative Officer pursuant to M.S. § 462.358, Subd. 3b, as it may be amended from time to time. The owner or

subdivider shall also be notified as to the time and place of the public hearing. As required by M.S. § 505.03, as it may be amended from time to time, at least 30 days prior to taking final action on a preliminary plat, the proposed preliminary plat must be presented by the Administrative Officer to the Commissioner of Transportation for review if the plat includes or borders on a trunk highway or state rail bank property. Within five days after receiving a preliminary plat that includes or borders on an existing or proposed county road or state rail bank property, the Administrative Officer must submit it to the County Engineer for review. The Commissioner of Transportation and the County Engineer must report to the city within 30 days with any comments and recommendations they may have. No preliminary plat may be approved by the city until these comments and recommendations are received and considered. Within ten days after approval of the preliminary plat, notice must be sent to the Commissioner and the County Board explaining how their comments and recommendations have been met.

(3) *Public hearing*. At the public hearing set for consideration of the preliminary plat, the Planning Commission, if the city has a Planning Commission, or the City Council shall consider comments to the notice of plat, and it shall also review the preliminary plat from the standpoint of environmental impact, compatibility with surrounding area, suitability of area for subdividing, public health and welfare, crowding potential, the compatibility with the city Comprehensive Plan and overall city planning.

(4) *Planning Commission action*. At the conclusion of the public hearing set forth in the preceding division, the Planning Commission, if the city has a Planning Commission, shall either recommend approval, conditional approval or denial of the preliminary plat. The Planning Commission may also table the preliminary plat for future consideration. The Planning Commission shall not recommend approval of a preliminary plat unless the presentation requirements set forth in § 152.08 have all been met. No lot on the preliminary plat shall be recommended for approval if, in the opinion of the Planning Commission, a lot does not have dedicated road access, an adequate building site, or sufficient area for an on-site individual sewage treatment system in areas where public services are not available, meeting the requirements of all rules and regulations in this chapter and the code of the city. The action of the Planning Commission shall be stated in writing setting forth the conditions of approval, reasons for approval or the reasons for denial. The Planning Commission's recommendation shall then be submitted to the City Council.

(5) *City Council action*. The City Council shall consider the Planning Commission's action, if the city has a Planning Commission, at their next regularly scheduled meeting, and shall either approve, approve with conditions, deny or table for future consideration the application. As required by M.S.§ 462.358, Subd. 3b, as it may be amended from time to time, the Council must either approve or deny the application for a preliminary plat within 120 days after the application has been submitted, unless an extension of time has been agreed to in writing by the subdivider. The 120-day period does not begin to run until the application contains all of the information required by §§ 152.08(B) and 152.09. Failure to comply with the time limits for approval in M.S. § 462.358, Subd. 3b, as it may be amended from time to time, may result in automatic approval of a preliminary plat. The Council shall

not approve a preliminary plat unless the presentation requirements set forth in § 152.08 have all been met. No lot on the preliminary plat shall be approved if, in the opinion of the Council, a lot does not have dedicated road access, an adequate building site, or sufficient area for an on-site individual sewage treatment system in areas where public services are not available, meeting the requirements of all rules and regulations in this chapter and the code of the city. The action of the Council shall be stated in writing, setting forth the conditions of approval, reasons for approval or the reasons for denial. Approval shall mean the acceptance of the design as a basis for preparation of the final plat, and the submission of such final plat for approval. Approval by the City Council of all engineering proposals presented in the preliminary plat which pertain to such things as water supply, sewage disposal, storm drainage, gas and electric service, road gradients and widths and the surface of roads is required prior to the approval of the final plat. The Council may, after notifying the subdivider, employ qualified persons to check and verify each proposal, the costs of such services shall be paid by the subdivider.

(D) *Final plat.*

(1) *Filing of the final plat.*

(a) The owner or subdivider shall file with the Administrative Officer within one year of the date of the approval of the preliminary plat the final plat which shall substantially conform to the preliminary plat as approved (see § 152.08(C) for filing document requirements) and all applicable city regulations and ordinances, state and federal rules, regulations and laws.

(b) Final plat approval shall not be granted to any plat which is not filed within the time herein specified, unless an extension is requested in writing and for good cause, granted by the City Council. The final plat shall be presented to the City Council at a scheduled meeting which is at least two weeks after the date of filing with the Administrative Officer.

(2) *Contents.* The subdivider may file a final plat limited to such portion of the preliminary plat which the subdivider proposed to record and develop at one time, provided that such portion must conform to all requirements of this chapter. Lots which have received preliminary approval but are not included on the final plat must be considered as a new subdivision.

(3) *Review.* The Administrative Officer shall check the final plat to see that it is in substantial conformity with the preliminary plat as approved by the City Council and that it meets all applicable city regulations and ordinances, state and federal rules, regulations and laws.

(4) *City Council action.* Final plat approval shall not be granted unless all presentation requirements of § 152.08 have been met and the plat conforms to all applicable city regulations and ordinances, state and federal rules, regulations and laws. The City Council shall approve, deny or table the final plat, and the Clerk shall notify the owner or subdivider of the Board's actions within 60 days of the submittal of the final plat, as required by M.S. § 462.358, Subd. 3b, as it may be amended from time to time, unless an extension of time has been agreed to in writing by the subdivider. Failure to meet

the time limit requirements of M.S. § 462.358, Subd. 3b, as it may be amended from time to time, may result in automatic approval of the final plat. The final plat, if approved, shall then be recorded with the County Recorder by the subdivider. If any irregularity prevents recording of the final plat, the County Auditor shall notify the owner or subdivider. Any approval of the final plat by the Council shall be null and void if the plat is not recorded with the County Recorder within 90 days after the date of approval unless application for an extension of time is made, in writing, during said 90-day period, to the City Council and for good cause granted by the Council.

§ 152.08 PLATTING PRESENTATION REQUIREMENTS.

(A) *Lot suitability*. Each lot created through subdivision must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the city shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites or any other feature of the natural land likely to be harmful to the health, safety or welfare of future residents of the proposed subdivision or of the community.

(B) *Preliminary plat*.

(1) Preliminary plat must be prepared by a Minnesota Registered Land Surveyor and certified as such. Plats must conform to the technical requirements of M.S. § 505.021, as it may be amended from time to time.

(2) Scale: 1 inch equals 100 feet, if possible, but not smaller than 1 inch equals 200 feet.

(3) Identification and description:

(a) Proposed name of subdivision, which name shall not duplicate or closely resemble the name of any plat previously recorded in the city;

(b) Location by section, township, range or by other identifying description;

(c) Names and addresses of the owner, subdivider, surveyor and designer of the plan;

(d) Graphic scale;

(e) North point;

(f) Date of preparation; and

(g) A dedication statement as required by M.S. § 505.021, Subd. 2, as it may be amended from time to time, describing what part of the subdivision land is dedicated, to whom and for what purpose.

(4) Existing conditions in tract and in surrounding area to a distance of 300 feet:

(a) Boundary line of proposed subdivision, clearly outlined and dimensioned;

(b) Total acreage and total water frontage (shoreland areas) and water boundaries;

(c) Platted roads, rights-of-way and utility easements;

(d) Boundary lines and ownership of adjoining land;

(e) Sewers, water mains or wells, culverts or other underground facilities;

(f) Plans for the provision of potable water, sewage disposal, drainage and flood control;

(g) Existing structures;

(h) Summary of soil and vegetation types (terrestrial and aquatic);

(i) Lakes, water courses and wetlands and such other information as soil tests, location of the ordinary high water level and contours at vertical intervals of not more than ten feet. All elevation data shall be mean sea level or some other assumed, workable datum;

(j) Evidence that the ground water level is at least three feet below the level of finished grades or plans for resolving any ground water problems; and

(k) All other information required by M.S. § 505.021, as it may be amended from time to time.

(5) *Subdivision design features.*

(a) Layout and width of proposed road rights-of-way and utility easements, showing road names, approximate lot dimensions, parks and other public areas. All roads must be identified. The road right-of-way layout shall include all contiguous land owned or controlled by the subdivider.

(b) Proposed use of all parcels, and if zoning change is contemplated proposed rezoning.

(c) Preliminary road grades and drainage plans shall be shown on a copy of the contour map.

(d) Statement of proposed protective covenants.

(e) Statement of source of water supply.

(f) Statement of provisions for sewage treatment. In areas where a public sewage treatment system is unavailable, a lot must contain sufficient suitable area for the installation of two standard on-site sewage treatment systems. Lots that would require use of holding tanks shall not be approved.

(g) *Dedications*. Easement dedications must be provided over natural drainage or ponding areas for management of stormwater and significant wetlands. Provisions for surface water drainage and flood control must be provided.

(6) *Preliminary Title Opinion*. The subdivider shall provide a Preliminary Title Opinion, prepared by an attorney of the subdivider's choosing, in substantial conformity with the form set forth as Appendix I to this chapter.

(7) *On-site*. Within 14 days of submitting the preliminary plat, the subdivider must clearly stake and identify the tentative proposed lot corners and the proposed center line of the road serving the proposed subdivision.

(C) *Final plat*. The final plat shall include the following:

(1) Such information as was found necessary for review and requested by the Planning Commission, if the city has a Planning Commission, or City Council;

(2) (a) Data requirements as set forth in M.S. Ch. 505, as it may be amended from time to time; and

(b) All interior and exterior boundary lines shall be correctly designated on the plat and shall show bearings on all straight lines, or angles at all angle points, and central angle and radii and arc lines for all curves. Durable iron monuments shall be set at each angle and curve point on the interior and exterior boundary lines and at all block corners and at all intermediate points on the block or lot lines indicating a change of direction in the lines. The plat shall indicate that the monuments have been set;

(3) An identification system for all lots and blocks. All lots shall be numbered consecutively;

(4) The area (in square feet) and dimensions of all lots in feet;

(5) The subdivider shall submit two hardshells, one transparency copy and six duplicate copies of the final plat;

(6) All signatures on the plat must be in black ink;

(7) Certification by a registered land surveyor to the effect that the plat represents a survey made by him/her and that monuments and markers shown thereon exist as located and that all dimensional and geodesic details are correct;

(8) Notarized certification by the fee owner, any contract for deed vendees and by any mortgage holder of record, of the adoption of the plat and the dedication of roads and other public areas as required by M.S. § 505.021, Subd. 3, as it may be amended from time to time;

(9) Certification showing that all taxes, special assessments and utility charges currently due on the property to be subdivided have been paid in full for the calendar year in which the plat is filed;

(10) Form for approval by Registered Land Surveyor:

I hereby certify that I have reviewed this plat and found it to be in compliance with the surveying requirements of the Subdivision Control Ordinance of the City and Minnesota Statutes Ch. 505.

(11) The subdivider shall provide the County Auditor's Office with a Final Title Opinion prepared by the attorney who prepared the Preliminary Title Opinion in substantial conformity with the form set forth as Appendix II to this chapter, within 14 days of the final plat being recorded. The attorney shall also sign the following statement on the face of the plat prior to filing:

I hereby certify that proper evidence of title has been presented to and examined by me, and I hereby approve this plat as to form and execution.

(12) Form for Mortgage Statement:

I hereby attest to the fact that there are no mortgages, other than shown, outstanding against any of the property in this subdivision.

Signed_____ Dated_____.
Subdivider

(13) Form for comparison by Administrative Officer:

Comparison with Preliminary Plat made this_____ day of_____,_____.

Signed_____
City Administrative Officer

(14) Form for approval by City Council:

Accepted and approved by the City Council of the city of _____ , Minnesota, this_____day of,_____, _____.

Signed_____
Mayor Signed
Signed_____
City Clerk

(15) Form for approval by County Treasurer:

I hereby certify that the taxes for the year_____for the lands described within are paid.

Signed_____ Dated_____
County Treasurer

(16) Form for approval by County Auditor:

No delinquent taxes and transfer entered. Dated_____

Signed_____
County Auditor Signed
Signed_____
Deputy Auditor

(17) Form for approval by County Recorder:

I hereby certify that the within instrument was filed in this office for record on the_____day of_____, at_____o'clock_____.M., and was duly recorded in Book of_____on page_____.

Signed _____
County Recorder Signed
Signed _____
Deputy Recorder

§ 152.09 PLAT DESIGN STANDARDS.

(A) *Roads*. The design of all roads shall be considered in relation to existing and planned roads, to reasonable circulation of traffic, topographical conditions, to run off of storm waters and to the proposed uses of the areas to be served.

(1) Where adjoining areas are not subdivided, the arrangement of roads in new subdivisions shall make provisions for the proper projection of roads. When a new subdivision adjoins unsubdivided land susceptible of being subdivided, then the new road shall be carried to the boundaries of such unsubdivided land. Where new roads extend existing adjoining roads, their projections shall be at the same or greater width, but in no case, less than the minimum required width.

(2) The minimum road design standards of the city, including road width and grade standards, shall be observed by the subdivider, as set forth in Appendix III.

(3) Straight segments of at least 50 feet in length shall be introduced between reverse curves on city streets and alleys.

(4) Insofar as practical, road intersections shall be at right angles and no intersection shall be at an angle of less than 45 degrees. It must be evidenced that safe and efficient traffic flow is encouraged.

(5) Private roads shall not be approved nor shall public improvements be approved for any previously existing private road.

(6) Where a proposed plat is adjacent to a highway, the City Council may require the subdivider to provide a service road along the right-of-way.

(7) The road arrangements shall not be such as to cause hardship to owners of adjoining property in platting their own land and providing convenient access to it.

(8) At road intersections, curb lines shall be rounded at a radius of not less than 15 feet.

(B) *Easements*.

(1) Utility easements at least ten feet wide shall be provided for utilities where necessary. They shall be centered on rear and other lot lines or within alley rights-of-way. They shall have continuity of alignment from block to block. At deflection points, easements for pole line anchors shall be provided where necessary.

(2) Where a subdivision is traversed by a water course, drainage way, channel or road, there shall be provided a storm water easement or drainage right-of-way substantially with the lines of such

water course, together with such further width or construction or both as will be adequate for stream channel, but also adjoining areas that have been subject to flooding in years of heavy runoff.

(C) *Lots*.

(1) Where possible, side lot lines shall be at right angles to straight or radial to curved road lines. Each lot shall front on a public road or highway. Lots with frontage of two parallel roads shall be permitted only under unusual circumstances.

(2) Lot remnants which are below the minimum lot size must be added to adjacent or surrounding lots rather than be allowed to remain as an unusable outlot or parcel unless the owner can show plans consistent with the purpose of this chapter for the future use of such remnants.

(3) Lots must be designed and have adequate size to meet the zoning requirements of the zoning district in which they are located related to setbacks, width and required yard sizes. Lots must also be of adequate size to allow off-street parking, loading areas and such other facilities as are required by the zoning ordinances of the city. If the city does not have zoning ordinances in place, or if there are portions of the city not zoned but where subdivision is occurring, the following minimum lot sizes shall apply:

(a) For residential lots intended for single and-two-family dwellings:

1. Width of not less than 80 feet at the right-of-way line of inside street curvature; and

2. Width of not less than 65 feet at the right-of-way line of outside street curvature (including cul-de-sac).

(b) For residential lots intended for multiple family dwelling of three of more families living independently of one another:

1. Width of not less than 130 feet at the right-of-way line of inside street curvatures;

2. Width of not less than 80 feet at the right-of-way line of outside street curvatures (including cul-de-sac); and

(4) All lots must have a minimum of 30 feet in width at the rear lot line.

(5) Lots abutting on a water course, drainage way, channel or stream shall have an additional depth or width, as required, to assure house sites that are not subject to flooding.

(6) On lots determined to be irregular in shape (e.g., triangular), the developer shall demonstrate to the city an ability to properly place principal buildings and accessory structures upon the site which are compatible in size and character to the surrounding area.

§ 152.10 REQUIRED IMPROVEMENTS.

(A) As a condition of approval of a final plat and before the City Council approves a final plat, the subdivider shall give satisfactory assurance of the provision of the following requirements:

(1) *Monuments*. Steel monuments shall be placed at all block corners, angle points, points of curves in roads and at intermediate points as shown on the final plat. All U.S., state, city or other official benchmarks, monuments or triangulation stations in or adjacent to the property shall be preserved in precise position.

(2) *Roads*. All roads shall be improved in accordance with the road design standards as specified in Appendix III.

(a) Trees and boulevard sodding shall be planted in conformance with the standards and specifications as required by the City Council.

(b) Street signs of the design approved by City Council shall be installed at each street intersection.

(c) Driveway approaches and sidewalks of a standard design or pedestrian pathways as may be required by the City Council shall be installed.

(d) Street lighting fixtures as may be required by the City Council shall be installed.

(3) *Water supply*. Wherever connection with a community or public water system is possible, the public water shall be used. In other case, individual wells shall be used. Either shall be provided in accordance with state and city regulations.

(4) *Sanitary sewer*. Wherever trunk line sanitary sewer facilities are available, the subdivider shall be required to install sanitary sewers and connect the same to such trunk line sewers. In other cases, individual on-site sewage treatment systems shall be used. Either shall be provided in accordance with state and city regulations.

(5) *Stormwater management*.

(a) When possible, existing natural drainageways, wetlands and vegetated soil surfaces must be used to convey, store, filter and retain stormwater runoff before discharge to public waters.

(b) Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.

(c) When development density, topographic features, and soil runoff using natural features, and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways and ponds may be used. Preference must be given to designs using surface drainage, vegetation and infiltration rather than buried pipes and man-made materials and facilities.

(6) *Landscaping*. All developments shall be landscaped with a combination of overstory trees, understory trees, shrubs, flowers and ground cover materials. All areas not covered by buildings, streets, sidewalks, parking lots, driveways or similar hard surface materials shall be covered with sod or an equivalent ground cover approved by the city. This requirement shall not apply to site areas retained in a natural state. All new landscape trees and shrubs must meet the American Standard for Nursery Stock and American National Standard relating to planting guidelines, quality of stock and appropriate sizing of the root ball. Landscape trees must be balled and burlapped or moved from the growing site by tree spade. Deciduous trees will be not less than one and one quarter inches but not more than three inches caliper for balled and burlapped trees, and not less than three inches but not more than six inches caliper for spade-moved trees. Coniferous trees will not be less than six feet in height but no more than eight feet for balled and burlapped trees, and not less than eight feet in height but not more than fourteen feet for spade-moved coniferous trees. The city may allow larger balled and burlapped or spade moved trees if these trees are accompanied with a three year guarantee.

(7) *Erosion and sediment control.* The development shall conform to the natural limitations presented by topography and soil so as to create the least potential for soil erosion. If determined necessary by the City Engineer, the subdivider shall be required to submit an erosion and sediment control plan. Erosion and sediment control measures shall be consistent with best management practices (BMPs) for erosion and sedimentation control as specified in the "Minnesota Stormwater Manual" (MPCA, 2005), as amended, and shall be sufficient to retain sediment on site. Erosion and sediment controls shall meet the standards for the general permit authorization to discharge stormwater associated with construction activity under the national pollutant discharge elimination system/state disposal system permit program permit MN Rl00001 (NPDES general construction permit) issued by the Minnesota Pollution Control Agency, as amended. Final stabilization of the site must be completed in accordance with the NPDES construction permit requirements.

(B) All required improvements shall be installed by the subdivider except that the city reserves the right to elect to install all or part of the improvements required under the provisions of this title pursuant to M.S. Ch 429, as it may be amended from time to time. If the city elects to install the improvements the city may require the developer to post a cash escrow or letter of credit guaranteeing payment of the assessments.

(C) Satisfactory assurance that all required improvements shall be provided shall include:

(1) Entering into a development contract setting forth the conditions under which the plat is approved and setting forth required improvements.

(2) Furnishing the city financial security in the form of a cash escrow or letter of credit. Letters of credit must be from a state or federally chartered bank or savings and loan association, insured by the Federal Deposit Insurance Corporation, that has an office in the state of Minnesota or a subsidiary of such bank or savings association with an office in the state of Minnesota. If the subdivider fails to perform any obligations under the development contract, the city may apply the security to cure the default.

(a) If the subdivider is going to install the public improvements, the required security shall be the sum of the following fixed or estimated costs:

1. Utilities.

2. Streets.

3. Streetlights and operating cost for one year (if any are required).

4. Erosion control.

5. Engineering, to include developer's design, surveying and inspection.

6. Landscaping (if any is required).

7. Storm sewer connection charges.

8. Principal amount of special assessments previously levied against the property together with one year of interest.

9. Real estate tax for one year, if there are special assessments.

10. City engineering fees.

11. Sanitary sewer area charges (if any are required).

12. Lateral sanitary sewer and water main access charges.

13. Wetland mitigation (if any is required).

14. Custom graded lots (if any is required).

15. Removal of buildings and temporary improvements (if any is required).

16. Tree preservation.

17. Lot corners/iron monuments.

(b) If the city is going to install the public improvements, the required security shall be the sum of the following fixed or estimated costs:

1. Principal amount of special assessments for public improvements to be installed together with one year of interest.

2. Streetlights (if any are required).

3. Erosion control.

4. Landscaping.

5. Storm sewer connection charges.

6. Real estate tax for one year.

7. Principal amount of special assessments previously levied against the property together with one year of interest.

(3) The city shall require of a subdivider submission of a warranty/maintenance bond in the amount equal to the original cost of the improvements or such lesser amount as agreed to by the City Engineer. The required warranty period for materials and workmanship from the utility contractor installing public sewer and water mains shall be two years from the date of final acceptance or one year following final acceptance of the final bituminous wearing surface as approved by the City Engineer. The required period for sod, trees and landscaping is one growing season.

(D) No final plat shall be approved by the Council without first receiving a report from the City Engineer that the improvements described therein together with the agreements and documents required under this section, meet the requirements of the city.

(E) No final plat shall be approved by the Council without first receiving certification from the City Clerk, Administrator or Finance Officer that all fees required to be paid to the city in connection with the plat have been paid or that satisfactory arrangements have been made for payment.

§ 152.105 DEDICATION REQUIREMENTS.

(A) As a condition of subdivision approval, subdividers shall dedicate a portion of any proposed subdivision for conservation purposes or for public use as parks, recreational facilities as defined and outlined in M.S. § 471.191, playgrounds, trails, wetlands or open space; provided that the city may choose to accept an equivalent amount in cash for part or all of the portion required to be dedicated based on the fair market value of the land following the criteria of M.S. § 462.358, Subd. 2b, as it may be amended from time to time.

(B) Land shall be reasonably suitable for its intended use and shall be at a location convenient to the people to be served. Factors used in evaluating the adequacy of proposed park and recreation areas shall include size, shape, topography, geology, hydrology, tree cover, access and location. Land with trash, junk, pollutants, flooding or wetlands and unwanted structures is generally not acceptable.

(C) The Planning Commission, if the city has a Planning Commission, and the City Council, shall determine the land and/or cash contribution requirements for proposed subdivisions.

(D) Any increase in density of subdivisions shall be reviewed for reconsideration of park land and/or cash contribution requirements.

(E) When a proposed park, playground, recreation area or other public ground has been indicated in the city's official map or comprehensive plan and is located in whole or in part within a proposed subdivision, it shall be designated as such on the plat and shall be conveyed to the city. If the subdivider elects not to dedicate an area in excess of the land required hereunder for such proposed public site, the city may consider acquiring the site through purchase or condemnation.

(F) Land area conveyed or dedicated to the city shall not be used in calculating density requirements of the city zoning ordinance and shall be in addition to and not in lieu of open space requirements for planned unit developments.

(G) Where private open space for park and recreation purposes is provided in a proposed subdivision, these areas may be used for credit, at the discretion of the City Council, against the land or cash dedication requirement for park and recreation purposes, provided the City Council finds it is in the public interest to do so.

(H) The dedication requirements are presumptively appropriate. A subdivider may request a deviation from the presumptive requirements based upon the anticipated impact of that particular subdivision. The request must be made before final subdivision approval by the city.

(I) (1) In residential subdivisions where a land dedication is required, the following formula will be used to determine the dedication requirement:

Density: Units Per Acre	Land Dedication Percentage		
0	–	2.5	10%
2.5	–	4	11%
4+	–	6	13%
6+	–	8	15%
8+	–	10	17%
10+	–	17% - 20%	

(2) In commercial or industrial subdivisions where a land dedication is required, the following formula will be used to determine the dedication: 5% of the gross area of land being platted.

(J) In lieu of land dedication the city may require cash fees established pursuant to M.S. § 462.358, Subd. 2b, as it may be amended from time to time, for commercial, industrial, multi-family dwelling units and single-family dwelling units, in amounts established in a separate ordinance or in the Ordinance Establishing Fees and Charges adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time.

(K) The city may elect to receive a combination of cash, land and development of the land. The fair market value of the land the city wants and the value of the development of the land shall be calculated. That amount shall be subtracted from the cash contribution required by division (J) of this section. The remainder shall be the cash contribution requirement.

(L) Fair market value shall be determined as of the time of final subdivision approval in accordance with the following:

(1) The city and the developer may agree as to the fair market value; or

(2) The fair market value may be based upon a current appraisal submitted to the city by the subdivider at the subdivider's expense. The appraisal shall be made by appraisers who are approved members of the SREA or MAI, or equivalent real estate appraisal societies.

(3) If the city disputes such appraisal the city may, at the subdivider's expense, obtain an appraisal of the property by a qualified real estate appraiser, which appraisal shall be conclusive evidence of the fair market value of the land.

(M) Planned developments with mixed land uses shall make cash and/or land contributions in accordance with this section based upon the percentage of land devoted to the various uses.

(N) Cash contributions are to be calculated at the time of final subdivision approval. The council may require the payment at the time of final subdivision approval or at a later time under terms agreed upon in the development agreement. Delayed payment shall include interest at a rate set by the city.

(O) Cash contributions shall be deposited in the park dedication fund and shall only be used for the acquisition of land for the purposes set forth in division (A) of this section, and the planning and development of land for such purposes.

(P) Property being subdivided without an increase in the number of lots shall be exempt from park and trail dedication requirements if similar requirements were satisfied in conjunction with an earlier subdivision. If the number of lots is increased, then the dedication shall be based on the additional lots created.

§ 152.1051 PROTECTED AREAS AND TREE PRESERVATION.

(A) *Protected areas*. Where land proposed for subdivision is deemed environmentally sensitive by the city due to the existence of wetlands, drainageways, watercourses, floodable areas, significant trees, steep slopes or wooded areas, the design of said subdivision shall clearly reflect all necessary measures to ensure against adverse environmental impacts. Based upon the necessity to control and maintain certain sensitive areas, the city shall determine whether said protection will be accomplished through lot enlargement and redesign or dedication of those sensitive areas in the form of outlots. In general, measures of protection shall include design solutions that allow for construction and grading involving a minimum of alteration to sensitive areas. Such measures, when deemed appropriate by the city, may include, but shall not be limited to, the following:

(1) The establishment of buffers designed consistent with adopted management plans, if any, easements and/or outlots over wetlands, drainageways and watercourses as approved by the City Engineer.

(2) The implementation of flood control measures, including ponding and infiltration design standards as specified in adopted management plans, if any, and approved by the City Engineer.

(3) The enlargement of lots or redesign of the subdivision.

(4) The submission of a tree preservation plan subject to the approval of the City Council.

(5) The utilization of appropriate erosion control measures subject to approval by the City Engineer.

(6) Soil testing to determine the ability of the proposed subdivision to support development.

(7) The limitation of development on slopes steeper than three to one (3:1).

(8) Structure conformance to the natural limitations presented by the topography and soil so as to create the least potential of soil erosion, as determined by the City Engineer.

(B) *Tree preservation*. The following process for preserving significant trees shall be required of subdividers. Subdividers shall preserve, where feasible, all healthy trees of significant value even if the trees are less than six inches in diameter.

(1) *Definitions*. The following words and terms, whenever they occur in this section, are defined as follows:

(a) ***DIAMETER.*** The measurement of a tree's trunk measured four and one-half feet above the ground.

(b) ***DRIP LINE***. The farthest distance away from the trunk of a tree that rain or dew will fall directly to the ground from the leaves or branches of the tree or one foot per one inch of diameter, whichever is greater.

(c) ***SIGNIFICANT TREE.*** A healthy tree measuring six inches in diameter or greater.

(d) ***TREE CERTIFICATION.*** A certified inventory of trees on the site after work is complete listing all trees and their final disposition, which is signed by a licensed forester or landscape architect.

(e) ***TREE PRESERVATION PLAN.*** A plan and inventory certified by a forester or landscape architect indicating all of the significant trees and their locations in the proposed development or on the lot. The tree preservation plan shall include the size, species, tag numbers, and location of all significant trees proposed to be saved and removed on the area of development, and the measures proposed to protect the significant trees to be saved.

(f) ***TREE PROTECTION***. Snow fencing or polyethylene laminar safety netting placed at the drip line of the significant trees to be preserved. The tree protection measures shall be shown on tree preservation plan drawings and remain in place until all grading and construction activity is terminated.

(2) Subdivider responsibilities. Subdividers shall:

(a) Prepare a tree preservation plan. Such plan shall be superimposed on the grading plan, if any.

(b) Ensure the tree preservation plan is followed during the plan development including any mass grading.

(3) The tree preservation plan must be certified by a forester or landscape architect. The forester or landscape architect shall indicate on the plan the following items:

(a) Graded areas and proposed grades.

(b) Size, species, tag numbers, and location of all significant trees.

(c) Identification of all significant trees proposed to be saved and significant trees proposed to be removed.

(d) Measures proposed to protect significant trees shall include, but are not limited to:

1. Installation of snow fencing or polyethylene- laminar safety netting at the drip line.

2. Placing fill against the trunk of the tree, on the root crown, and under the drip line of the tree shall be prohibited.

3. Installation of erosion control measures.

4. Prevention of change in soil chemistry due to concrete washout and leakage or spillage of toxic materials such as fuels or paints.

5. Pruning of oak trees must not take place from April 15 through July 1. If wounding of oak trees occurs, a nontoxic tree wound dressing must be applied immediately. Excavators must have a nontoxic tree wound dressing with them on the development site.

(4) During preliminary plat review, the tree preservation plan will be reviewed according to the best available layout to preserve significant trees and the efforts of the subdivider to mitigate damage to significant trees.

(5) The subdivider shall provide a financial guarantee as part of the development contract in an amount necessary to guarantee replacement of all significant trees which were to have been saved but were actually destroyed or damaged.

(6) After grading has been completed and streets and utilities installed, the forester or landscape architect shall:

(a) Certify in writing to the city the status of all trees indicated as save trees in the approved plan.

(b) Certify in writing to the city whether tree protection measures were installed.

(c) Certify the status of any remove designated trees that were saved.

(7) If a significant tree indicated to be saved on the tree preservation plan is destroyed or damaged, tree replacement as required by this chapter will be enforced by the city.

(8) The financial security required in division (5) above will be released upon certification in writing by the forester or landscape architect indicating the tree protection measures were installed on graded lots and tree replacement is completed, if necessary;

(9) Removal of tree preservation measures shall require written approval from the City Engineer. Tree preservation measures shall not be removed from the site until the City Engineer has approved the grading as built plans for a mass graded site nor prior to the release of financial securities held by the city.

(10) Tree Replacement Policy. Subdividers shall be required to replace the significant trees which were indicated on the tree preservation plan to be saved but ultimately were destroyed or damaged. The subdivider and builder shall be required to replace each of the significant trees destroyed or damaged with two replacement trees. Replacement trees must consist of nursery stock and be no less than the following sizes:

(a) *Deciduous trees*. No less than two and one-half-inches in diameter.

(b) *Coniferous trees*. No less than six feet high.

(11) Replacement trees shall be species similar to the trees which were destroyed or damaged and shall comply with the requirements of § 152.10.

(12) Replacement trees shall not be placed on easements or street rights of way. The city shall determine the locations of tree replacement for subdivider's tree plans.

§ 152.11 METES AND BOUNDS STANDARDS.

No subdivision of real property in which the divided tract is described by metes and bounds shall be permitted, unless all tracts meet the following standards:

(A) Each lot, located in a shoreland area or containing a wetland area must be a minimum of five acres in size; and all other lots must be a minimum of two and one-half acres in size;

(B) Certification of public road access;

(C) All roads must be identified on the surveyor's drawing;

(D) Sufficient suitable area for the installation of two standard on-site sewage treatment systems;

(E) A registered surveyor's drawing accompanies the document creating the subdivision for recording, as required by § 152.03(D) above; and

(F) The surveyor's drawing contains the following form for signature by the property owner: I hereby certify that the subdivided property described in this survey meets the city requirements for public road access and sewage treatment systems.

§ 152.12 ADMINISTRATION.

(A) *Variances from standards*. In any case where, upon application of any subdivider to the Board of Adjustment, it appears by reason of exceptional circumstances, that the strict enforcement of any provision of the standards would cause unusual hardship under the circumstances, the Board of Adjustment may permit a variance therefrom upon such conditions as it may prescribe consistent with the general purposes of this chapter and the intent of this and all other applicable State and local regulation.

(B) *Appeals*. The Board of Adjustment shall hear and decide appeals from and review any order, requirements, decisions or determinations made by any city Administrative Officer charged with enforcing any provision of this chapter.

§ 152.13 FEES.

As provided by M.S. § 462.353, Subd. 4, as it may be amended from time to time, fees may be established as follows:

(A) The Council may in a separate ordinance or in the Ordinance Establishing Fees and Charges, adopted pursuant to § 30.11 of this code, as that ordinance may be amended from time to time, prescribe fees sufficient to defray the costs incurred in reviewing, investigating and administering applications for a preliminary or final plat, or an application for some other approval required under this chapter.

(B) These fees must be fair, reasonable and proportionate to the actual cost of the service for which the fee is imposed. The city shall adopt management and accounting procedures to ensure that fees are maintained and used only for the purpose for which they are collected.

(C) If a dispute arises over a specific fee imposed by a city, the amount of the fee must be deposited and held in escrow, and the person aggrieved by the fee may appeal to district court as provided by M.S. § 462.361, as it may be amended from time to time. The application shall proceed as if the fee had been paid, pending a decision by the court.

§ 152.99 ENFORCEMENT AND PENALTIES.

(A) This chapter shall be administered and enforced by the Administrative Officer who is hereby designated the enforcing officer.

(B) Any violation of the terms and provisions of this chapter shall constitute a misdemeanor and shall be punished as provided in § 10.99. All fines paid for violations shall be credited to the City General Revenue Fund. Each 24-hour day that a violation continues shall constitute a separate offense.

(C) In the event of a violation or threatened violation of this chapter, the City Council and/or the Administrative Officer, in addition to other remedies may institute appropriate actions or proceedings to prevent, restrain, correct or abate such violations or threatened violations, and it shall be the duty of the City Attorney to institute such action. This will include, but not be limited to, mandamus, injunction, or any other appropriate remedy in any court of competent jurisdiction.

(D) A person who knowingly makes or submits a false statement or document in connection with an application or procedure required by this section is guilty of a misdemeanor and shall be punished as provided by § 10.99.

APPENDIX I: PRELIMINARY TITLE OPINION

City Council of the City of _____

RE: Plat of_____

Subdividers_____

Preliminary Opinion

I hereby certify that I have examined the above-described plat including the signatories thereon and an abstract of title consisting of entries_____through_____inclusive, last certified by (Abstract Co.) to the hour of 8:00 a.m. on_____. From such examination I conclude that good record title in fee simple absolute is in the subdividers' so as to vest in the public those right-of-way rights and easement rights as in the plat, subject to the following:

1.

2.

3.

which shall be cured prior to the recording of the plat. I further agree to furnish the Final Title Opinion following the recording of the plat as required by Chapter 152 of the City Code of Ordinances.

Sincerely,

APPENDIX II: FINAL TITLE OPINION

City Council of the City of _____

RE: Plat of_____

Subdividers_____

Gentlemen:

Final Opinion

I hereby certify that I have examined all records relating to the above described plat in the office of the County Recorder from the date of the abstract of title to_____, the date the plat was recorded. From such examination I conclude:

1. That all defects cited in the Preliminary Opinion have been cured;

2. That as of the date of recording, good record title in fee simple absolute was in the subdividers; and

3. That the public is vested with those right-of-way rights and easement rights as in the plat indicated.

Sincerely,

APPENDIX III: MINIMUM ROAD STANDARDS

1. All construction of roads dedicated for public use shall be in compliance with the Minnesota Department of Transportation State Aid Design Standards for Roads as well as the following minimum standards.

2. All roads dedicated for public use or for the use of lot owners on a plat presented for the approval shall have a permanent minimum width of 66 feet right-of-way (during the road construction period the right-of-way width may exceed 66 feet to provide for the appropriate backslope). Dead end roads require a cul-de-sac which has a minimum 120-foot diameter. Alleys require a minimum width of 20 feet right-of-way.

3. All dedicated roadways have a roadbed of not less than 32 feet and shall have a bituminous surface. All cul-de-sacs, regardless of surface type, shall have a minimum traveled surface diameter of 100 feet.

4. When necessary for drainage, ditches along the roadbed shall not be less than two feet deep.

CHAPTER 153: ANTI-BLIGHT REGULATIONS

Section

153.01 Purpose
153.02 Findings
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153.04 Exceptions
153.05 Location of sexually oriented businesses
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§ 153.01 PURPOSE.

The purpose of this chapter is to control, through zoning regulations, certain land uses that have a direct and detrimental effect on the character of the city's residential and commercial neighborhoods. The City Council specifically recognizes the sanctity and fundamental nature of free speech and does not intend to regulate or ban speech based on content. This chapter is intended to supercede the provisions of M.S. § 617.242, as it may be amended from time to time, and to render M.S. § 617.242 inapplicable as authorized by the statute.

§ 153.02 FINDINGS.

The City Council makes the following findings regarding the effect sexually-oriented businesses have on the character of the city's neighborhoods. In making these findings, the City Council accepts the recommendations and conclusions of the *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses*, dated June 6, 1989, a copy of which is adopted by reference and included in Appendix II of Chapter 119 of this code. This Chapter 153 shall have no force and effect until the City Council accepts these recommendations by resolution of a majority of its members, using the model resolution contained in Appendix I of Chapter 119 of this code.

(A) Sexually oriented businesses have an impact on the neighborhoods surrounding them which is distinct from the impact caused by other uses.

(B) Residential and commercial neighborhoods located within close proximity to sexually oriented businesses experience the following negative impacts:

(1) Increased crime rates, particularly in sex-related crimes such as rapes, prostitution, indecent exposure and other lewd and lascivious behavior;

(2) Property values which are either diminished or fail to appreciate at the rate of other comparable properties not located in proximity to sexually oriented businesses;

(3) Increased transiency and decreased stability of ownership;

(4) Deteriorated neighborhood appearance from litter and graffiti;

(5) Sex-related harassment of residents and customers by motorists and pedestrians;

(6) A perception that the area is “unsafe”; and

(7) Difficulty in attracting and retaining customers, employees, and desirable tenants.

(C) The adverse impacts which sexually oriented businesses have on surrounding areas diminish as the distance from the sexually oriented business increases.

(D) The adverse impacts of sexually oriented businesses are exacerbated when the uses are located near each other.

(E) The presence of liquor establishments in the immediate vicinity of sexually oriented businesses also compounds the adverse impacts on the neighborhood.

(F) Sexually oriented businesses can exert a dehumanizing influence on persons attending places of worship, children attending day care centers or schools, and people using public parks and libraries.

(G) Sexually oriented businesses can significantly contribute to the deterioration of residential neighborhoods and can impair the character and quality of the residential housing in the area where they are located, thereby exacerbating the shortage of affordable and habitable housing for city residents.

(H) The concentration of sexually oriented businesses in one area can have a substantially detrimental effect on that area and on the overall quality of urban life. A cycle of decay can result from the influx and concentration of sexually oriented businesses. The presence of such businesses is perceived by others as an indication that the area is deteriorating and the result can be devastating: other businesses move out of the vicinity and residents flee from the area. The resulting decline in real estate values erodes the city's tax base and contributes to overall urban blight.

(I) Land-use regulations are appropriate to minimize the detrimental effects that sexually oriented businesses have on adjacent land uses.

§ 153.03 DEFINITIONS.

The following words and terms shall have the following meanings when used in this section, except as provided otherwise in § 153.04:

SEXUALLY ORIENTED BUSINESS. Shall include the following:

(1) A business that meets any of the following criteria, measured on a daily, weekly, monthly, or yearly basis:

(a) Has more than 25% of its inventory, stock-in-trade, or publicly displayed merchandise in sexually oriented materials;

(b) Devotes more than 25% 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; or

(c) Derives more than 25% of its gross revenues from sexually oriented materials; or

(2) A business that engages for any length of time in a sexually oriented use as defined in this section, or any other use that has an emphasis on specified sexual activities or specified anatomical areas.

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 USE. Includes any of the following activities and businesses, even if the activity exists for only a short-time:

(1) ***ADULT BODY PAINTING STUDIO.*** An establishment or business that provides the service of applying paint, ink or other substance, whether transparent or non-transparent, to the body of a patron when the person is nude.

(2) ***ADULT BOOKSTORE.*** An establishment or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audiotape, videotape, movies, or motion picture film if it meets the criteria established in the definition of "sexually oriented business," as defined in this section.

(3) ***ADULT CABARET.*** A business or establishment that provides dancing or other live entertainment distinguished or characterized by an emphasis on:

(a) The depiction of nudity, specified sexual activities or specified anatomical areas; or

(b) The presentation, display, or depiction of matter that seeks to evoke, arouse, or excite sexual or erotic feelings or desire.

(4) ***ADULT COMPANIONSHIP ESTABLISHMENT.*** A business or establishment that provides the service of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(5) ***ADULT CONVERSATION/RAP PARLOR.*** A business or establishment that provides the services of engaging in or listening to conversation, talk or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(6) ***ADULT HEALTH/SPORT CLUB.*** A health/sport club that is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(7) ***ADULT HOTEL OR MOTEL.*** A hotel or motel that presents material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(8) ***MASSAGE PARLOR/HEALTH CLUB.*** A massage parlor or health club that provides massage services distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(9) ***ADULT MINI-MOTION PICTURE THEATER.*** A business or establishment with a capacity of less than 50 persons that as a prevailing practice presents on-premises viewing of movies, motion pictures, or other material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(10) ***ADULT MODELING STUDIO.*** A business or establishment that provides live models who, with the intent of providing sexual stimulation or sexual gratification, engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted.

(11) ***ADULT MOTION PICTURE ARCADE.*** Any place to which the public is permitted or invited where coin or slug-operated or electronically, electrically, or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are used to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

(12) ***ADULT MOTION PICTURE THEATER.*** A motion picture theater with a capacity of 50 or more persons that as a prevailing practice presents material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons.

(13) ***ADULT NOVELTY BUSINESS.*** An establishment or business that has a variety of items for sale if it meets the criteria established in the definition of "sexually oriented business," as defined in this section.

(14) ***ADULT SAUNA.*** A sauna that excludes minors by reason of age, and that provides a steam bath or heat bathing room used for the purpose of bathing, relaxation or reducing, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(15) ***ADULT STEAM ROOM/BATHHOUSE FACILITY.*** A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation or reducing, if the building or portion of a building restricts minors by reason of age and if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

SPECIFIED ANATOMICAL AREAS. Shall include the following:

(1) Less than completely and opaquely covered human genitals, pubic area, buttock, anus, or female breast below a point immediately above the top of the areola; and

(2) Human male genitals in a state of sexual arousal, whether or not completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES. Shall include the following:

(1) Actual or simulated: sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation of unclothed genitals; flagellation or torture in the context of a sexual relationship; the use of excretory functions in the context of a sexual relationship; anilingus; coprophagy; coprophilia; cunnilingus; fellatio; necrophilia; pedophilia; piquerism or zooerastia;

(2) Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;

(3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;

(4) Fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts;

(5) Situations involving a person or persons, any of whom are nude, who are clad in undergarments or in sexually revealing costumes and engaged in the flagellation, torture, fettering, binding or other physical restraint of any person;

(6) Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or

(7) Human excretion, urination, menstruation, or vaginal or anal irrigation.

§ 153.04 EXCEPTIONS.

This section does not regulate the following:

(A) Any 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 (1) the sexually oriented material on each item is blocked from view by an opaque cover as required under M.S. § 617.293, and (2) each item is in an area accessible only by an employee of the business;

(C) Any person or organization exempted under M.S. § 617.295;

(D) Any activity regulated under M.S. § 617.202;

(E) Displaying 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; and

(F) Movies rated G, PG, PG-13, NC-17 or R.

§ 153.05 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(A) A sexually-oriented business may locate only in the C-2 and I zones.

(B) No person may operate a sexually oriented business on property, any part of which is within the area circumscribed by a circle that has a radius of 250 feet from any of the uses listed below. Distances must be measured by following a straight line, without regard to intervening structures or objects, between the closest points on the boundary lines of the property parcels where the two uses are located. This distance requirement applies to the following uses:

(1) Property used or zoned for residential uses;

(2) A day care facility, school, library, park, playground, state or federal wildlife area or preserve, religious institution or other public recreational facility;

(3) Premises licensed under city code Chapter 112, Liquor Regulations; and

(4) Another sexually-oriented business.

Cross-reference:

Sexually Oriented Businesses, Ch. 119

§ 153.06 SIGN RESTRICTIONS FOR SEXUALLY ORIENTED BUSINESSES.

In order to protect children from exposure to lurid signs and materials, to avoid the appearance that the windows are boarded up and that the property is deteriorating, and to preserve the value of property surrounding sexually oriented businesses, the following sign regulations apply to all sexually oriented businesses.

(A) All signs must be flat wall signs. No signs may be freestanding, located on the roof or contain any flashing lights, moving elements or electronically or mechanically changing messages.

(B) No merchandise, photos or pictures of the products or entertainment on the premises may be displayed in or immediately behind window areas or any other area, if they can be viewed from outside the portion of the building in which the business is located.

(C) Window areas must not be covered or made opaque in any way. No signs may be placed in a window. A sign no larger than one square foot must be placed on the main entrance door and must state, "adults only." The letters of this message must be a minimum of two inches high. The only other information on this sign may be the hours of operation.

Cross-reference:

Sexually Oriented Businesses, Ch. 119

§ 153.99 PENALTY.

A violation of this section is a misdemeanor under Minnesota law and is subject to the penalties and provisions of § 10.99

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INTRODUCTION

Many communities in Minnesota have raised concerns about the impact of sexually oriented businesses on their quality of life. It has been suggested that sexually oriented businesses serve as a magnet to draw prostitution and other crimes into a vulnerable neighborhood. Community groups have also voiced the concern that sexually oriented businesses can have an adverse effect on property values and impede neighborhood revitalization. It has been suggested that spillover effects of the businesses can lead to sexual harassment of residents and scatter unwanted evidence of sexual liaisons in the paths of children and the yards of neighbors.

Although many communities have sought to regulate sexually oriented businesses, these efforts have often been controversial and equally often unsuccessful. Much community sentiment against sexually oriented businesses is an outgrowth of hostility to sexually explicit forms of expression. Any successful strategy to combat sexually oriented businesses must take into account the constitutional rights to free speech which limit available remedies.

Only those pornographic materials which are determined to be "obscene" have no constitutional protection. As explained later in more detail, only that pornography which, according to community standards and taken as a whole, "appeals to the prurient interest" (as opposed to an interest in healthy sexuality), describes or depicts sexual conduct in a "patently offensive way" and "lacks serious literary, artistic, political or scientific value," can be prohibited or prosecuted. Miller v. California, 413 U.S. 15, 24 (1973).

Other pornography and the businesses which purvey it can only be regulated where a harm is demonstrated and the remedy is sufficiently tailored to prevent that harm without burdening First Amendment rights. In order to reduce or eliminate the impacts of sexually oriented businesses, each community must find the balance between the dangers of pornography and the constitutional rights to free speech. Each community must have evidence of harm. Each community must know the range of legal tools which can be used to combat the adverse impacts of pornography and sexually oriented businesses.

On June 21, 1988, Attorney General Hubert Humphrey III announced the formation of a Working Group on the Regulation of Sexually Oriented Businesses to assist public officials and private citizens in finding legal ways to reduce the impacts of sexually oriented businesses. Members of the Working Group were selected for their special expertise in the areas of zoning and law enforcement and included bipartisan representatives of the state Legislature as well as members of both the Minneapolis and St. Paul city councils who have played critical roles in developing city ordinances regulating sexually oriented businesses.

The Working Group heard testimony and conducted briefings on the impacts of sexually oriented businesses on crime and communities and the methods available to reduce or eliminate these impacts. Extensive research was conducted to review regulation and prosecution strategies used in other states and to analyze the legal ramifications of these strategies.

As testimony was presented, the Working Group reached a consensus that a comprehensive approach is required to reduce or eliminate the impacts of sexually oriented businesses. Zoning and licensing regulations are needed to protect residents from the intrusion of "combat zone" sexual crime and harassment into their neighborhoods. Prosecution of obscenity has played an important role in each of the cities which have significantly reduced or eliminated pornography. The additional threat posed by the involvement of organized crime, if proven to exist, may justify the resources needed for prosecution of obscenity or require use of a forfeiture or racketeering statute.

The Working Group determined that it could neither advocate prohibition of all sexually explicit material nor the use of regulation as a pretext to eliminate all sexually oriented businesses. This conclusion is no endorsement of pornography or the businesses which profit from it. The Working Group believes much pornography conveys a message which is degrading to women and an affront to human dignity. Commercial pornography promotes the misuse of vulnerable people and can be used by either a perpetrator or a victim to rationalize sexual violence. Sexually oriented businesses have a deteriorating effect upon neighborhoods and draw involvement of organized crime.

Communities are not powerless to combat these problems. But to be most effective in defending itself from pornography each community must work from the evidence and within the law. The report of this Working Group is designed to assist local communities in developing an appropriate and effective defense.

The first section of the report discusses evidence that sexually oriented businesses, and the materials from which they profit, have an adverse impact on the surrounding communities. It provides relevant evidence which local communities can use as part of their justification for reasonable regulation of sexually oriented businesses.

The Working Group also discussed the relationship between sexually oriented businesses and organized crime. Concerns about these broader effects of sexually oriented businesses underlie the Working Group's recommendations that obscenity should be prosecuted and the tools of obscenity seized when sexually oriented businesses break the law.

The second section of this report describes strategies for regulating sexually oriented businesses and prosecuting obscenity. The report presents the principal alternatives, the recommendations of the Working Group and some of the legal issues to consider when these strategies are adopted.

The goal of the Attorney General's Working Group in providing this report is to support and assist local communities who are struggling against the blight of pornography. When citizens, police officers and city officials are concerned about crime and the deterioration of neighborhoods, each of us lives next door. No community stands alone.

SUMMARY

The Attorney General's Working Group on the Regulation of Sexually Oriented Businesses makes the following recommendations to assist communities in protecting themselves from the adverse effects of sexually oriented businesses. Some or all of these recommendations may be needed in any given

community. Each community must decide for itself the nature of the problems it faces and the proposed solutions which would be most fitting.

1. City and county attorneys' offices in the Twin Cities metropolitan area should designate a prosecutor to pursue obscenity prosecutions and support that prosecutor with specialized training.

2. The Legislature should- consider funding a pilot program to demonstrate the efficacy of obscenity prosecution and should encourage the pooling of resources between urban and suburban prosecutor offices by making such cooperation a condition for receiving any such grant funds.

3. The Attorney General should provide informational resources for city and county attorneys who prosecute obscenity crimes.

4. Obscenity prosecutions should begin with cases involving those materials which most flagrantly offend community standards.

5. The Legislature should amend the present forfeiture statute to include as grounds for forfeiture all felonies and gross misdemeanors pertaining to solicitation, inducement, promotion or receiving profit from prostitution and operation of a "disorderly house."

6. The Legislature should consider the potential for a RICO-like statute with an obscenity predicate.

7. Prosecutors should use the public nuisance statute to enjoin operations of sexually oriented businesses which repeatedly violate laws pertaining to prostitution, gambling or operating a disorderly house.

8. Communities should document findings of adverse secondary effects of sexually oriented businesses prior to enacting zoning regulations to control these uses so that such regulations can be upheld if challenged in court.

9. To reduce the adverse effects of sexually oriented businesses, communities should adopt zoning regulations which set distance requirements between sexually oriented businesses and sensitive uses, including but not limited to residential areas, schools, child care facilities, churches and parks.

10. To reduce adverse impacts from concentration of these businesses, communities should adopt zoning ordinances which set distances between sexually oriented businesses and between sexually oriented businesses and liquor establishments, and should consider restricting sexually oriented businesses to one use per building.

11. Communities should require existing businesses to comply with new zoning or other regulation of sexually oriented businesses within a reasonable time so that prior uses will conform to new laws.

12. Prior to enacting licensing regulations, communities should document findings of adverse secondary effects of sexually oriented businesses and the relationship between these effects and proposed regulations so that such regulations can be upheld if challenged in court.

13. Communities should adopt regulations which reduce the likelihood of criminal activity related to sexually oriented businesses, including but not limited to open booth ordinances and ordinances which authorize denial or revocation of licenses when the licensee has committed offenses relevant to the operation of the business.

14. Communities should adopt regulations which reduce exposure of the community and minors to the blighting appearance of sexually oriented businesses, including but not limited to regulations of signage and exterior design of such businesses, and should enforce state law requiring sealed wrappers and opaque covers on sexually oriented material.

IMPACTS OF SEXUALLY ORIENTED BUSINESSES

The Working Group reviewed evidence from studies conducted in Minneapolis and St. Paul and in other cities throughout the country. These studies, taken together, provide compelling evidence that sexually oriented businesses are associated with high crime rates and depression of property values. In addition, the Working Group heard testimony that the character of a neighborhood can dramatically change when there is a concentration of sexually oriented businesses adjacent to residential property.

Minneapolis Study

In 1980, on direction from the Minneapolis City Council, the Minneapolis Crime Prevention Center examined the effects of sex-oriented and alcohol-oriented adult entertainment upon property values and crime rates. This study used both simple regression and multiple regression statistical analysis to evaluate whether there was a causal relationship between these businesses and neighborhood blight.

The study concluded that there was a close association between sexually oriented businesses, high crime rates and low housing values in a neighborhood. When the data was reexamined using control variables such as the mean income in the neighborhood to determine whether the association proved causation, it was unclear whether sexually oriented businesses caused a decline in property values. The Minneapolis study concluded that sexually oriented businesses concentrate in areas which are relatively deteriorated and, at most, they may weakly contribute to the continued depression of property values.

However, the Minneapolis study found a much stronger relationship between sexually oriented businesses and crime rates. A crime index was constructed including robbery, burglary, rape and assault. The rate of crime in areas near sexually oriented businesses was then compared to crime rates in other areas. The study drew the following conclusions:

1. The effects of sexually oriented businesses on the crime rate index is positive and significant regardless of which control variable is used.

2. Sexually oriented businesses continue to be associated with higher crime rates, even when the control variables' impacts are considered simultaneously.

According to the statistical analysis conducted in the Minneapolis study, the addition of one sexually oriented business to a census tract area will cause an increase in the overall crime rate index in that area by 9.15 crimes per thousand people per year even if all other social factors remain unchanged.

St. Paul

In 1978, the St. Paul Division of Planning and the Minnesota Crime Control Planning board conducted a study of the relationship between sex-oriented and alcohol-oriented adult entertainment businesses and neighborhood blight. This study looked at crime rates per thousand and median housing values over time as indices of neighborhood deterioration. The study combined sex-oriented and alcohol-oriented businesses, so its conclusions are only suggestive of the effects of sexually oriented businesses alone. Nevertheless, the study reached the following important conclusions:

1. There is a statistically significant correlation between the location of adult businesses and neighborhood deterioration.

2. Adult entertainment establishments tend to locate in somewhat deteriorated areas.

3. Additional relative deterioration of an area follows location of an adult business in the area.

4. There is a significantly higher crime rate associated with two such businesses in an area than is associated with only one adult business.

5. Housing values are also significantly lower in an area where there are three adult businesses than they are in an area with only one such business.

Similar conclusions about the adverse impact of sexually oriented businesses on the community were reached in studies conducted in cities across the nation.

Indianapolis

In 1983, the City of Indianapolis researched the relationship between sexually oriented businesses and property values. The study was based on data from a national random sample of 20 percent of the American Institute of Real Estate Appraisers.

The Study found the following:

1. The appraisers overwhelmingly (80%) felt that an adult bookstore located in a neighborhood would have a negative impact on residential property values within one block of the site.

2. The real estate experts also overwhelmingly (71%) believed that there would be a detrimental effect on commercial property values within the same one block radius.

3. This negative impact dissipates as the distance from the site increases, so that most appraisers believed that by three blocks away from an adult bookstore, its impact on property values would be minimal.

Indianapolis also studied the relationship between crime rates and sexually oriented bookstores, cabarets, theaters, arcades and massage parlors. A 1984 study entitled "Adult Entertainment Businesses in Indianapolis" found that areas with sexually oriented businesses had higher crime rates than similar areas with no sexually oriented businesses.

1. Major crimes, such as criminal homicide, rape, robbery, assault, burglary, and larceny, occurred at a rate that was 23 percent higher in those areas which had sexually oriented businesses.

2. The sex-related crime rate, including rape, indecent exposure, and child molestation, was found to be 77 percent higher in those areas with sexually oriented businesses.

Phoenix

The Planning Department of Phoenix, Arizona published a study in 1979 entitled "Relation of Criminal Activity and Adult Businesses." This study showed that arrests for sexual crimes and the location of sexually oriented businesses were directly related. The study compared three areas with sexually oriented businesses with three control areas which had similar demographic and land use characteristics, but no sexually oriented establishments. The study found that:

1. Property crimes were 43 percent higher in those areas which contained a sexually oriented business.

2. The sex crime rate was 500 percent higher in those areas with sexually oriented businesses.

3. The study area with the greatest concentration of sexually oriented businesses had a sex crimes rate over 11 times as large as a similar area having no sexually oriented businesses.

Los Angeles

A study released by the Los Angeles Police Department in 1984 supports a relationship between sexually oriented businesses and rising crime rates. This study is less definitive, since it was not designed to use similar areas as a control. The study indicated that there were 11 sexually oriented adult establishments in the Hollywood, California area in 1969. By 1975, the number had grown to 88. During the same time period, reported incidents of "Part I" crime (i.e., homicide, rape, aggravated assault, robbery, burglary, larceny and vehicle theft) increased 7.6 percent in the Hollywood area while the rest of Los Angeles had a 4.2 percent increase. "Part II" arrests (i.e. forgery, prostitution, narcotics, liquor law violations, and gambling) increased 3.4 percent in the rest of Los Angeles, but 45.4 percent in the Hollywood area.

Concentration of Sexually Oriented Businesses
Neighborhood Case Study

In St. Paul, there is one neighborhood which has an especially heavy concentration of sexually oriented businesses. The blocks adjacent to the intersection of University Avenue and Dale Street have more than 20 percent of the city's adult uses (4 out of 19), including all of St. Paul's sexually oriented bookstores and movie theaters.

The neighborhood, as a whole, shows signs of significant distress, including the highest unemployment rates in the city, the highest percentage of families below the poverty line in the city, the lowest median family income and the lowest percentage of high school and college graduates. (See 40-Acre Study on Adult Entertainment, St. Paul Department of Planning and Economic Development, Division of Planning, 1987 at p. 19.) It would be difficult to attribute these problems in any simple way to sexually oriented businesses.

However, it is likely that there is a relationship between the concentration of sexually oriented businesses and neighborhood crime rates. The St. Paul Police Department has determined that St. Paul's street prostitution is concentrated in a "street prostitution zone" immediately adjacent to the intersection where the sexually oriented businesses are located. Police statistics for 1986 show that, of 279 prostitution arrests for which specific locations could be identified, 70 percent (195) were within the "street prostitution zone." Moreover, all of the locations with 10 or more arrests for prostitution were within this zone.

The location of sexually oriented businesses has also created a perception in the community that this is an unsafe and undesirable part of the city. In 1983, Western State Bank, which is currently located across the street from an adult bookstore, hired a research firm to survey area residents regarding their preferred location for a bank and their perceptions of different locations. A sample of 305 people were given a list of locations and asked, "Are there any of these locations where you would not feel safe conducting your banking business?"

No more than 4 per cent of the respondents said they would feel unsafe banking at other locations in the city. But 36 percent said they would feel unsafe banking at Dale and University, the corner where the sexually oriented businesses are concentrated.

The Working Group reviewed the 1987 40-Acre Study on Adult Entertainment prepared by the Division of Planning in St. Paul's Department of Planning and Economic Development. This study summarized testimony presented to the Planning Commission regarding neighborhood problems:

> Residents in the University/Dale area report frequent sex-related harassment by motorists and pedestrians in the neighborhood. Although it cannot be proved that the harassers are patrons of adult businesses, it is reasonable to suspect such a connection. Moreover, neighborhood residents submitted evidence to the Planning Commission in the form of discarded pornographic literature allegedly found in the streets, sidewalks, bushes and alleys near adult businesses. Such

literature is sexually very explicit, even on the cover, and under the present circumstances becomes available to minors even though its sale to minors is prohibited.

Testimony

The Working Group heard testimony that a concentration of sexually oriented businesses has serious impacts upon the surrounding neighborhood. The Working Group heard that pornographic materials are left in adjacent lots. One person reported to the police that he had found 50 pieces of pornographic material in a church parking lot near a sexually oriented business. Neighbors report finding used condoms on their lawns and sidewalks and that sex acts with prostitutes occur on streets and alleys in plain view of families and children. The Working Group heard testimony that arrest rates understate the level of crime associated with sexually oriented businesses. Many robberies and thefts from "johns" and many assaults upon prostitutes are never reported to the police.

Prostitution also results in harassment of neighborhood residents. Young girls on their way to school or young women on their way to work are often propositioned by johns. The Flick theater caters to homosexual trade, and male prostitution has been noted in the area. Neighborhood boys and men are also accosted on the street. A police officer testified that one resident had informed him that he found used condoms in his yard all the time. Both his teenage son and daughter had been solicited on their way to school and to work.

The Working Group heard testimony that in the Frogtown neighborhood, immediately north of the University-Dale intersection in St. Paul, there has been a change over time in the quality of life since the sexually oriented businesses moved into the area. The Working Group heard that the neighborhood used to be primarily middle class, did not have a high crime rate and did not have prostitution. St. Paul police officers testified that they believed the sexually oriented businesses caused neighborhood problems, particularly the increase in prostitution and other crime rates. Property values were suffering, since the presence of high crime rates made the area less desirable to people who would have the ability and inclination to improve their homes.

The Working Group made some inquiry to determine to what extent smaller cities outside the Twin Cities Metropolitan area suffered adverse impacts of sexually oriented businesses. The Working Group was informed by the chiefs of police of Northfield and Owatonna that neither city had adult bookstores or similar sexually oriented businesses. Police chiefs in Rochester and Winona stated that sexually oriented businesses in their communities operate in non-residential areas. In addition, there is no "concentration" problem. In Rochester, there are two facilities in a shopping mall and a single bookstore in a depressed commercial/business neighborhood. The Winona store is located in a downtown business area. The police chiefs stated that they had no evidence of increased crime rates in the area adjacent to these facilities. They had no information as to the effect which these businesses might have on local property values.

Information presented to the Working Group indicates that community impacts of sexually oriented businesses are primarily a function of two variables, proximity to residential areas and concentration. Property values are directly affected within a small radius of the location of a sexually oriented business. Concentration may compound depression of property values and may lead to an increase in crime sufficient to change the quality of life and perceived desirability of property in a neighborhood.

The evidence suggests that the impacts of sexually oriented businesses are exacerbated when they are located near each other. Police officers testified to the Working Group, that "vice breeds vice." When sexually oriented businesses have multiple uses (i.e. theater, bookstore, nude dancing, peep booths), one building can have the impact of several separate businesses. The Working Group heard testimony that concentration of sexually oriented businesses creates a "war zone" which serves as a magnet for people from other areas who "know" where to find prostitutes and sexual entertainment. The presence of bars in the immediate vicinity of sexually oriented businesses also compounds impacts upon the neighborhood.

The Attorney General's Working Group believes that regulatory strategies designed to reduce the concentration of sexually oriented businesses, insulate residential areas from them, and reduce the likelihood of associated criminal activity would constitute a rational response to evidence of the impacts which these businesses have upon local communities.

SEXUALLY ORIENTED BUSINESSES AND ORGANIZED CRIME

Infiltration of organized crime into sexually oriented businesses reinforces the need for prosecution of obscenity and requires specific regulatory or law enforcement tools. The Working Group attempted to assess both the present and potential relationship between organized crime and sexually oriented businesses.

The Working Group heard testimony from a witness who had been prosecuting obscenity cases for the past thirteen years that many sexually oriented businesses have out-of-town absentee owners. If the manager of a local business is prosecuted on an obscenity charge, his testimony may make it possible to pierce the corporate veil and identify the true owners.

The Working Group heard testimony that an organized crime entity may operate somewhat like a franchisor. In order to stay in business, the local manager of a sexually oriented business may have to pay fees to organized crime. The makers and wholesalers of pornographic materials are also likely to be involved with organized crime.

The Working Group conducted additional research to assess the relationship between sexually oriented businesses and organized crime. The Working Group was informed by prosecutors of obscenity that there were many ways in which organized crime entities could derive a benefit from sexually oriented businesses. There is a large profit margin in pornography. The presence of coin-operated peep booths provides an opportunity to launder money. Cash obtained from illegal activities, such as prostitution or narcotics, can be explained as the income of peep booths. Cash income can also escape taxation, in violation of law.

Although it is clear that organized crime is involved to some degree in the pornography industry, various sources reach different conclusions as to the depth and extent of this involvement. Part of the difference in assessment is based on differences in the way the term "organized crime" is defined. Authorities who restrict their definition of organized crime to the highly organized ethnic hierarchy known as La Cosa Nostra (LCN) tend to find fewer links than those who define the term to include other organized criminal enterprises. Where there has been intensive law enforcement and prosecution, it is more likely that linkage between sexually oriented businesses and organized crime figures will be evident.

The Working Group has adopted the definition of organized crime contained in Minnesota's Report of the Legislative Commission on Organized Crime (1975). The Working Group is concerned about the relation between sexually oriented businesses and any "organized criminal conspiracy of two or more persons that is continuous in nature, involves activity generally crossing jurisdictional lines and results in third-party profit." The threat from organized crime includes, but is not limited to involvement of national crime enterprises such as LCN.

Recent federal indictments of James G. Hafiz in Indiana for perjury[1/] and of Harry V. Mohney in Michigan for tax evasion suggest a possible connection between organized crime and a Minnesota pornography business. Hafiz, a Minnesota resident who is an agent of Beverly Theater, Inc., the company which operated the Faust Theater in St. Paul[2/] has been linked to Mohney, a major pornographer based in Michigan. The indictments allege that Mohney caused the incorporation of the company which operated the Faust, that a corporation owned by Mohney paid for improvements to the Faust and that Mohney is, in fact, the owner of numerous sexually oriented businesses, including the Faust. See United States v. Hafiz, Indictment, No. IP 88-102-CR (S.D. Ind., Sept. 15, 1988); United States v. Mohney, Indictment, No. 88-50062 (E.D. Mich. Sept. 9, 1988)).

1/ Hafiz was acquitted of the perjury charges. St. Paul Pioneer Press, Jan. 11, 1989, p. 10A.

2/ The City of St. Paul bought out the Faust for $1.8 million, closing the entertainment complex on March 7, 1989.

Mohney, in turn, has been linked with national organized crime enterprises. A 1977 report of the United States Justice Department stated:

> It is believed that Harry V. Mohney of Durand, Michigan, is one of the largest dealers in pornography in the United States … He is alleged to have a close association with the LCN. Columbo and the LCN DeCavalcante, both of which are very influential in pornography in the eastern United States. In Michigan, Mohney is known to hire individuals with organized crime associations to manage his businesses. His businesses and corporations consist of 60 known adult bookstores, massage parlors, art theaters, adult drive-in movies, go-go type lounges and pornographic warehouses in Michigan, Indiana, Illinois, Kentucky, Tennessee, Wisconsin, Iowa, Ohio and California. He is involved in the financing and production of pornographic movies, magazines, books and newspapers. He also directs the importation and distribution of his own and other pornographic publications to retail and wholesale outlets throughout the United States and Canada … He has a working relationship with DeCavalcante's representative Robert DiBernardo and has met with Vito Giacalone and Joseph Zerilli of the LCN Detroit. He has to cater to both to operate in Michigan.

U.S. Justice Dep't, Organized Crime Involvement in Pornography, reprinted in the Attorney General's Comm'n on Pornography (hereinafter "Pornography Commission"), 2 Final Report at 1229-30 (1986).

Organized crime has the potential to infiltrate Minnesota's pornography industry. Evidence on a national level highlights the vulnerability of sexually oriented businesses to criminal control. A number of sources have reported that there is a connection between organized crime and the pornography industry.

The Pornography Commission reported that the Washington, D.C., Metropolitan Police Department "determined that traditional organized crime was substantially involved in and did essentially control much of the major pornography distribution in the United States during the years 1977 and 1978." 2 Final Report at 1044-45. The Washington, D.C., study "further concluded that the combination of the large amounts of money involved, the incredibly low priority obscenity enforcement had within police departments and prosecutors' offices in an area where manpower intensive investigations were essential

for success, and the imposition of minimal fines and no jail time upon random convictions resulted in a low risk and high profit endeavor for organized crime figures who became involved in pornography." Id. at 1045.

The FBI concluded in 1978:

> Information obtained … points out the vast control of the multi-million dollar pornography business in the United States by a few individuals with direct connections with what is commonly known as the organized crime establishment in the United States, specifically, La Cosa Nostra . . . Information received from sources of this bureau indicates that pornography is (a major) income maker for La Cosa Nostra in the United States behind gambling and narcotics. Although La Cosa Nostra does not physically oversee the day-to-day workings of the majority of pornography business in the United States, it is apparent that they have "agreements" with those involved in the pornography business in allowing these people to operate independently by paying off members of organized crime for the privilege of being allowed to operate in certain geographical areas.

Id. at 1046, (quoting Federal Bureau of Investigation Report Regarding the Extent of Organized Crime Development in Pornography, 6 (1978)).

A brief survey of 59 FBI field offices conducted in 1985 found that about three-quarters of those offices could not verify that traditional organized crime families were involved in the manufacture or distribution of pornography. Several offices did, however, report some involvement by members and associates of organized crime. Id. at 1046-47.

Stanley Ronquest, Jr., a supervisory FBI special agent for traditional organized crime at FBI headquarters in Washington, D.C., was interviewed by Attorney General staff. Ronquest stated that LCN has not been directly involved in the pornography industry in the last ten years. However, a former FBI agent told the Pornography Commission:

> In my opinion, based upon twenty-three years of experience in pornography and obscenity investigations and study, it is practically impossible to be in the retail end of pornography industry (today) without dealing in some fashion with organized crime either the mafia or some other facet of non-mafia never-the-less highly organized crime. Id. at 1047-48.

Thomas Bohling of the Chicago Police Department Organized Crime Division, Vice Control Section, told the Pornography Commission that "it is the belief of state, federal and local law enforcement that the pornography industry is controlled by organized crime families. If they do not own the business outright, they most certainly extract street tax from independent smut peddlers." Id. at 1048 (emphasis in original).

The Pornography Commission stated that it had been advised by Los Angeles Police Chief Daryl F. Gates that "organized crime families from Chicago, New York, New Jersey and Florida are openly controlling and directing the major pornography operations in Los Angeles." Id.

The Pornography Commission was told by Jimmy Fratianno, described by the Commission as a member of LCN, "that large profits have kept organized crime heavily involved in the obscenity industry." Id. at 1052. Fratianno testified that."95% of the families are involved in one way or another in pornography. … It's too big. They just won't let it go." Id. at 1052-53.

The Pornography Commission concluded that "organized crime in its traditional LCN forms and other forms exerts substantial influence and control over the obscenity industry. Though a number of significant producers and distributors are not members of LCN families, all major producers and distributors of obscene material are highly organized and carry out illegal activities with a great deal of sophistication." Id. at 1053.

The Pornography Commission reported that Michael George Thevis, reportedly one of the largest pornographers in the United States during the 1970's was convicted in 1979 of RICO (Racketeer Influenced and Corrupt Organizations) violations including murder, arson and extortion. The Commission also reported examples of other crimes associated with the pornography industry, including prostitution and other sexual abuse, narcotics distribution, money laundering and tax violations, copyright violations and fraud. Id. at 1056-65.

Although the Pornography Commission report has been criticized for relying on the testimony of unreliable informants in drawing its conclusions finding links between pornography and organized crime (See Scott, Book Reviews, 78 J. Crim. L & Criminology 1145, 1158-59 (1988)), its conclusions find additional support in recent state studies.

The California Department of Justice recently reported that:

> California's primacy in the adult videotape industry is of law enforcement concern because the pornography business has been prone to organized crime involvement. Immense profits can be realized through pornography operations, and until recently, making and distributing pornography involved a relatively low risk of prosecution. But more aggressive law enforcement efforts and turmoil within the pornography business has destabilized the smooth flow of easy money for some of its major operations ….
>
> As long as control over pornography distribution is contested, and organized crime figures continue their involvement in the business, the pornography industry will remain of interest to law enforcement officials statewide.

Bureau of Organized Crime and Criminal Intelligence, Department of Justice, State of California, Organized Crime in California 1987: Annual Report to the California Legislature at 59-62 (1988).

The Pennsylvania Crime Commission similarly determined in a 1980 report that most pornography stores examined were affiliated or owned by one of three men who had ties with "nationally known pornography figures who are members or associated of organized crime families." Pennsylvania Crime Commission, A Decade of Organized Crime: 1980 Report at 119.

For example, Reuben Sturman, a leading pornography industry figure based in Cleveland, was reported by the FBI in 1978 to have built his empire with the assistance of LCN member DiBernardo. Federal Bureau of Investigation Report Regarding the Extent of Organized Crime Involvement in Pornography (1978). Sturman, who reportedly controls half of the $8 billion United States pornography

industry, was recently indicted by a federal grand jury in Las Vegas for racketeering violations and by a federal grand jury in Cleveland for income tax evasion and tax fraud. Newsweek, August 8, 1988, p. 3.

Evidence of the vulnerability of sexually oriented businesses to organized crime involvement underscores the importance of criminal prosecution of these businesses when they engage in illegal activities, including distribution of obscenity and support of prostitution. Prosecution can increase the risk and reduce the profit margin of conducting illegal activities. It may also disclose organized crime association with local pornography businesses and increase the costs of criminal enterprise in Minnesota.

In addition to prosecution, forfeiture of property used in the illegal activities related to sexually oriented businesses can cut deeply into profits. Regulation to permit license revocation for conviction of subsequent crimes may also expose and increase control over criminal enterprises related to sexually oriented businesses.

PROSECUTORIAL AND REGULATORY ALTERNATIVES

The regulation of many sexually oriented businesses, like other businesses dealing in activity with an expressive component, is circumscribed by the First Amendment of the United States Constitution.[3/] Nonetheless, the First Amendment does not impose a barrier to the prosecution of obscenity, which is not protected by the First Amendment, or to reasonable regulation of sexually oriented businesses if the

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3/ The First Amendment provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, or to petition the government for a redress of grievances.

The constitutional guarantee of freedom of speech, often the basis for challenges to regulation of sexually oriented businesses, restricts state as well as federal actions. See, e.g., Fiske v. Kansas, 274 U.S. 380, 47 S. Ct. 655 (1927).

regulation is not designed to suppress the content of expressive activity. and is sufficiently tailored to accomplish the regulatory purpose.

The Working Group believes that communities have more prosecutorial and regulatory opportunities than they may currently recognize. The purpose of this section of the Report is to identify and recommend enforcement and regulatory opportunities. Of course, each community must decide on its own how to balance its limited resources and the wide variety of competing demands for such resources.

1. OBSCENITY PROSECUTION

Obscene material is not protected by the First Amendment. Miller v. California, 413 U.S. 15, 93 S. Ct. 2607 (1973). The sale or distribution of obscene material in Minnesota is a criminal offense. The penalty was recently increased to up to one year in jail and a $3,000 fine for a first offense, and up to two years in jail and a $10,000 fine for a second or subsequent offense within five years. Minn. Stat. § 617.241, subd. 3 (1988).[4/]

The Working Group believes that Minnesota's obscenity statutes are adequate to prosecute and penalize the sale and distribution of obscene materials. However, historically, widespread obscenity prosecution has not occurred.

The Working Group believes this is not because the sale or distribution of obscene publications in Minnesota is rare, but because prosecutors have been reluctant to bring obscenity charges, because of limited resources, difficulties faced when prosecuting obscenity, and because obscenity has historically been considered a victimless crime.

4/ The prior penalty was a fine only -- up to $10,000 for a first offense and up to $20,000 for a second or subsequent offense. Minn. Stat. § 617.241, subd. 3 (1986). Obscenity arrests are so infrequent that incidents involving possible violations of section 617.241 are not separately compiled by the Minnesota Bureau of Criminal Comprehension. See Bureau of Criminal Apprehension, 1987 Minnesota Annual Resort on Crime, Missing Children and Bureau of Criminal Apprehension Activities.

Obscenity, however, should no longer be viewed as a victimless crime.[5/] There is mounting evidence that sexually oriented businesses are, as described earlier in this report, often associated with increases in crime rates and a decline in the quality of life of neighborhoods in which they are located. Further, as discussed previously, when there is no prosecution of obscenity, large cash profits make pornographic operations very attractive to members of organized crime. The Working Group thus believes that prosecution of obscenity, particularly cases involving children, violence or bestiality, should assume a higher priority for law enforcement officials.

In addition, many of the difficulties faced when prosecuting obscenity can be addressed by adequate training and assistance. In order to prove that material is obscene, a prosecutor must prove:

> (i) that the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest in sex;
>
> (ii) that the work depicts sexual conduct … in a patently offensive manner; and
>
> (iii) that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Minn. Stat. § 617.241, subd. 1(a)(i-iii) (1988). This statutory standard was drawn to be consistent with constitutional standards set forth in Miller, supra.

5/ Two blue ribbon commissions have reached different conclusions regarding the harmfulness of sexually explicit material to individuals. A presidential Commission on Obscenity and Pornography concluded in 1970 that there was no evidence of "social or individual harms" caused by sexually explicit materials and, therefore, "federal, state and local legislation prohibiting the sale, exhibition, or distribution of sexual materials to consulting adults should be repealed." The Report of the Comm'n on Obscenity and Pornography at 57-8 (Bantam Paperback ed. 1970). However, in 1986, the Attorney General's Commission on Pornography concluded that "sexually violent materials … bear … a causal relationship to antisocial acts of sexual violence … [and that] the evidence supports the conclusion that substantial exposure to [non-violent] degrading material increases the likelihood for an individual [to] … commit an act of sexual violence or sexual coercion." Attorney General's Comm'n on Pornography, 1 Final Report at 326, 333 (1986).

To be sure, prosecutors face a number of hazards in prosecuting obscenity. They include inadequate training in this specialized area of law, attempts by defense attorneys to remove jurors who find pornography offensive, the offering into evidence of polls and surveys through expert testimony to prove tolerant community standards, efforts to guide jurors with jury instructions favorable to the defense, and discouragement with unsuccessful prosecutions.

But the hazards can be overcome. Alan E. Sears, former executive director of the U.S. Attorney General's Commission on Pornography has stated:

> Prosecutors can successfully obtain obscenity convictions in virtually any jurisdiction in the United States. In order to obtain a conviction, it is incumbent upon a prosecutor to prepare well, know the law, not fall into the "one case syndrome" trap, obtain a representative jury through proper voir dire, keep the focus of the trial on the unlawful conduct of the defendant, and obtain legally sound instructions.

Sears, "How To Lose A Pornography Case," The CDL Reporter (n.d.).

The Working Group heard testimony from prosecutors who have pursued obscenity cases nationally regarding effective ways to prosecute obscenity cases. Materials can be bought or rented, rather than seized under warrant. In the absence of survey data, community standards can be left to the wisdom of the jury. In that case, experts should be prepared to testify if the defense attempts to make a statistical case that the material is not obscene. Prosecution of obscenity is also likely to be most effective if initial prosecutions focus on materials which are patently offensive to the community, such as those involving children, violence or beastiality.

The experience of other cities has demonstrated that vigorous and sustained enforcement of obscenity statutes can sharply reduce or virtually eliminate sexually oriented businesses. Cincinnati, Omaha, Atlanta, Charlotte, Indianapolis and Fort Lauderdale were cited to the Working Group as "examples of

cities which have successful programs of obscenity prosecution.[6/] The Working Group encourages prosecutors to take advantage of increasing training opportunities and other assistance for obscenity prosecutions and to reassess the desirability of increased enforcement. The Working Group is pleased to note that county attorneys and law enforcement groups in Minnesota have recently held forums and seminars on obscenity law enforcement and prosecution. The U.S. Justice Department's National Obscenity Enforcement Unit offers assistance to local prosecutors, including sample pleadings, indictments, search warrants, motions, responses and trial memoranda.[7/]

RECOMMENDATIONS

1. City and county attorneys' offices in the Twin Cities metropolitan area should designate a prosecutor to pursue obscenity prosecutions and support that prosecutor with specialized training.

2. The Legislature should consider funding a pilot program to demonstrate the efficacy of obscenity prosecution and should encourage the pooling of resources between urban and suburban prosecuting offices by making such cooperation a condition of receiving any such grant funds.

6/ Memorandum to Jim Befus, executive assistant to St. Paul Mayor George Latimer (prepared by St. Paul Department of Planning and Economic Development) (July 5, 1988); see also Waters, "The Squeeze on Sleaze," Newsweek, Feb. 1, 1988, at 45 ("After more than 10 years of levying heavy fines and making arrests, Atlanta has won national renown as 'the city that cleaned up pornography.'").

7/ The Address of the National Obscenity Enforcement Unit is U.S. Justice Department, 10th & Pennsylvania Ave. N.W., Room 2216, Washington, D.C. 20530. Its telephone number is 202-633-5780. Assistance is also available from Citizens for Decency through Law, Inc., 2845 E. Camelback Rd., Suite 740, Phoenix, AZ 85016. It is the publisher of "The Preparation and Trial of an Obscenity Case: A Guide for the Prosecuting Attorney." Its telephone number is 602-381-1322. The National Obscenity Law Center, another private organization, is located at 475 Riverside Drive, Suite 236, New York, N.Y. 10115. It publishes an Obscenity Law Bulletin and the "Handbook on the Prosecution of Obscenity Cases." Its telephone number is 212-870-3216.

3. The Attorney General should provide Informational resources for city and county attorneys who prosecute obscenity crimes.

4. Obscenity prosecutions should concentrate on cases that most flagrantly offend community standards.

II. OTHER LEGAL REMEDIES

A. RICO/FORFEITURE

In addition to traditional criminal prosecutions, use of RICO statutes and criminal and civil forfeiture actions may also prove to be successful against obscenity offenders. By attacking the criminal organization and the profits of illegal activity, such actions can provide a strong disincentive to the establishment and operation of sexually oriented businesses. For example, the federal government and a number of the twenty-eight states which have enacted racketeer influenced and corrupt organization (RICO) statutes include obscenity offenses as predicate crimes. Generally speaking, to violate a RICO statute, a person must acquire or maintain an interest in or control of an enterprise, or must conduct the affairs of an enterprise through a "pattern of criminal activity." That pattern of criminal activity may include obscenity violations, which in turn can expose violators to increased fines and penalties as well as forfeiture of all property acquired or used in the course of a RICO violation. These statutes generally enable prosecutors to obtain either criminal or civil forfeiture orders to seize assets and may also be used to obtain injunctive relief to divest repeat offenders of financial interests in sexually oriented businesses. See 18 U.S.C. §§ 1961-68 (West Supp. 1988). RICO statutes may be particularly effective in dismantling businesses dominated by organized crime, but they may be applied against other targets as well.

The Working Group believes that Minnesota should enact a RICO-like statute that would encompass increased penalties for using a "pattern" of criminal obscenity acts to conduct the affairs of a business entity. Provisions authorizing the seizure of assets for obscenity violations should be considered, but the limitations imposed by the First Amendment must be taken into account.

It has been argued that a RICO or forfeiture statute based on obscenity crime violations threatens to "chill protected speech" because it would permit prosecutors to seize non-obscene materials from distributors convicted of violating the obscenity statute. American Civil Liberties Union, Polluting The Censorship Debate: A Summary And Critique Of The Final Report Of The Attorney General's Commission On Pornography at 116-117 (1986).

However, a narrow majority of the United States Supreme Court recently held that there is no constitutional bar to a state's inclusion of substantive obscenity violations among the predicate offenses for its RICO statute. Sappenfield v. Indiana, 57 U.S.L.W. 4180, 4183-4184 (February 21, 1989). The Court recognized that "any form of criminal obscenity statute applicable to a bookseller will induce some tendency to self-censorship and have some inhibitory effect on the dissemination of material not obscene." Id. at 4184. But the Court ruled that; "the mere assertion of some possible self-censorship resulting from a statute is not enough to render an anti-obscenity law unconstitutional under our precedent." Id. The Court specifically upheld RICO provisions which increase penalties where there is a pattern of multiple violations of obscenity laws.

However, in a companion case, the Court also invalidated a pretrial seizure of a bookstore and its contents after only a preliminary finding of "probable cause" to believe that a RICO violation had occurred. Fort Wayne Books, Inc. v. Indiana, 57 U.S.L.W. 4180, 4184-4185 (February 21, 1989). The Court explained there is a rebuttable presumption that expressive materials are protected by the First Amendment. That presumption is not rebutted until the claimed justification for seizure of materials, the elements of a RICO violation, are proved in an adversary proceeding. Id. at 4185.

The Court did not specifically reach the fundamental question of whether seizure of the assets of a sexually oriented business such as a bookstore is constitutionally permissible once a RICO violation is proved. The Court explained:

> [F]or the purposes of disposing of this case, we assume without deciding that bookstores and their contents are forfeitable (like other property such as a bank account or yacht) when it is

> proved that these items are property actually used in, or derived from, a pattern of violations of the state's obscenity laws.

Id. at 4185. The Working Group believes that a RICO statute which provided for seizure of the contents of a sexually oriented business upon proof of RICO violations would have the potential to significantly curtail the distribution of obscene materials.

Although Minnesota does not have a RICO statute, it does have a forfeiture statute permitting the seizure of money and property which are the proceeds of designated felony offenses. Minn. Stat. § 609.5312 (1988). But, this statute does not permit seizure of property related to commission of the offenses most likely to be associated with sexually oriented businesses. Obscenity crimes are not among the offenses which justify forfeiture. Although solicitation or inducement of a person under age 13 (Minn. Stat. § 609.322, subd. 1) or between the ages of 16 and 18 to practice prostitution (Minn. Stat. § 609.322, subd. 2) are included among the offenses which could justify seizure of property, many crimes involving prostitution are outside the reach of the present Minnesota forfeiture law.

The following crimes are not included among the crimes which can justify seizure of property and profits: solicitation, inducement, or promotion of a person between the ages of 13 and 16 to practice prostitution (Minn. Stat. § 609.322, subd. 1A); solicitation, inducement or promotion of a person 18 years of age or older to practice prostitution (Minn. Stat. § 609.322, subd. 3); receiving profit derived from prostitution (Minn. Stat. § 609.323); owning, operating or managing a "disorderly house," in which conduct habitually occurs in violation of laws pertaining to liquor, gambling, controlled substances or prostitution (Minn. Stat. § 609.33).

Although its reach would be much more limited, the legislature should also consider providing for forfeiture of property used to commit an obscenity offense or which represents the proceeds of obscenity offenses. Under the holding in Fort Wayne, Books, Inc. v. Indiana, such forfeiture could not take place, if at all, until it was proved that the underlying obscenity crimes had been committed.

There are no comparable constitutional issues raised by enacting or enforcement of forfeiture statutes based on violations of prostitution, gambling, or liquor laws. The legislature may require sexually oriented businesses which violate these laws to forfeit their profits. The Working Group believes that such an expansion of forfeiture laws would give prosecutors greater leverage to control the operation of those businesses which pose the greatest danger to the community.

RECOMMENDATIONS

1. The legislature should amend the present forfeiture statute to include as grounds for forfeiture all felonies and gross misdemeanors pertaining to solicitation, inducement, promotion or receiving profit from prostitution and operation of a "disorderly house."

2. The legislature should consider the potential for a RICO-like statute with an obscenity predicate.

B. NUISANCE INJUNCTIONS

Minnesota law enforcement authorities may obtain an injunction and close down operations when a facility constitutes a public nuisance. A public nuisance exists when a business repeatedly violates laws pertaining to prostitution, gambling or keeping a "disorderly house." The Minnesota public nuisance law permits a court to order a building to be closed for one year. Minn. Stat. §§ 617.80-.87 (1988).

Nuisance injunctions to close down sexually oriented businesses which repeatedly violate laws pertaining to prosecution, gambling or disorderly conduct are potentially powerful regulatory devices. The fact that a building in which prosecution or other offenses occur houses a sexually oriented business does not shield the facility from application of nuisance law based on such offenses. Arcara v. Cloud Books, Inc., 478 U.S. 697, 106 S. Ct. 3172 (1966) (First Amendment does not shield adult bookstore

from application of New York State nuisance law designed in part to close places of prostitution).

Although the Working Group believes that nuisance injunctions with an obscenity predicate would be effective in controlling sexually oriented businesses, such provisions would probably be unconstitutional under current U.S. Supreme Court decisions. Six Supreme Court justices joined in the Arcara result, but two of them --Justices O'Connor and Stevens -- concurred with these words of caution:

> If, however, a city were to use a nuisance statute as a pretext for closing down a book store because it sold indecent books or because of the perceived secondary effects of having a purveyor of such books in the neighborhood, the case would clearly implicate First Amendment concerns and require analysis under the appropriate First Amendment standard of review. Because there is no suggestion in the record or opinion below of such pretextual use of the New York nuisance provision in this case, I concur in the Court's opinion and judgment.

Arcara, supra, 478 U.S. at 708, 106 S. Ct. at 3178.

In an earlier case, Vance v. Universal Amusement, 445 U.S. 308, 100 S. Ct. 1156 (1980), the Court ruled unconstitutional a Texas public nuisance statute authorizing the closing of a building for a year if the building is used "habitual[ly]" for the "commercial exhibition of obscene material." Id. at 310 n.2, 100 S. Ct. at 1158 n.2.

The Court's recent holdings in Sappenfield and Fort Wayne Books, Inc. give no indication that the Court would now look more favorably upon an injunction to close down a facility which sold obscene materials. The Court assumed without deciding that forfeiture of bookstore assets could be constitutional in a RICO case. But, in making this assumption, the Court distinguished forfeiture of assets under RICO from a general restraint on presumptively protected speech. The court approved the reasoning of the Indiana Supreme Court that, "The remedy of forfeiture is intended hot to restrain the future distribution of presumptively protected speech but rather to disgorge assets acquired through racketeering activity." Fort Wayne Books, Inc. at 4185. The Court assumed that RICO provisions could be upheld on the basis

that "adding obscenity-law violations to the list of RICO predicate crimes was not a mere ruse to sidestep the First Amendment." Id. Without the relationship to proceeds of crime, a remedy which closed a facility for obscenity violations would be far less likely to withstand constitutional scrutiny.

RECOMMENDATIONS

1. Prosecutors should use the public nuisance statute to enjoin operations of sexually oriented businesses which repeatedly violate laws pertaining to prostitution, gambling or operating a disorderly house.

III. ZONING

Zoning ordinances can be adopted to regulate the location of sexually oriented businesses without violating the First Amendment. Such ordinances can be designed to disperse or concentrate sexually oriented businesses, to keep them at designated distances from specific buildings or areas, such as churches, schools and residential neighborhoods or to restrict buildings to a single sexually oriented usage. Because zoning is an important regulatory tool when properly enacted, the Working Group believes a careful explanation of the law and a review of potential problems in drafting zoning ordinances may be helpful to communities considering zoning to regulate sexually oriented businesses.

A. Supreme Court Decisions

The U.S. Supreme Court upheld the validity of municipal adult entertainment zoning regulations in Young v. American Mini Theaters, Inc., 427 U.S. 50, 96 S.Ct. 2440 (1976), and City of Renton v. Playtime Theaters Inc., 475 U.S. 41, 106 S.Ct. 926 (1986).[8/]

In Young, the Court upheld the validity of Detroit ordinances prohibiting the operation of theaters showing sexually explicit "adult movies" within 1,000 feet of any two other adult establishments.[9/] The ordinances authorized a waiver of the 1,000-foot restriction if a proposed use would not be contrary to the public interest and/or other factors were satisfied. Young, supra, 427 U.S. at 54 n.7, 96 S.Ct. at 2444 n.7. The ordinances were supported by urban planners and real estate experts who testified that concentration of adult-type establishments "tends to attract an undesirable quantity and quality of transients, adversely affects property values, causes an increase in crime, especially prostitution, and encourages residents and businesses to move elsewhere." Id. at 55, 96 S.Ct. at 2445. A "myriad" of locations were left available for adult establishments outside the forbidden 1,000-foot distance zone, and no existing establishments were affected. Id. at 71 n.35, 96 S.Ct. at 2453 n.35.

Writing for a plurality of four, Justice Stevens upheld the zoning ordinance as a reasonable regulation of the place where adult films may be shown because (1) there was a factual basis for the city's conclusion that the ordinance would prevent blight; (2) the ordinance was directed at preventing "secondary effects" of adult-establishment concentration rather than protecting citizens from unwanted "offensive" speech; (3) the ordinance did not greatly restrict access to lawful speech; and (4) "the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." Id. at 63 n.18, 71 nn.34, 35, 96 S.Ct. at 2448-49 n.18, 2452-53 nn.34, 35.

8/ The only reported Minnesota court case reviewing an adult entertainment zoning ordinance is City of St. Paul v. Carlone, 419 N.W.2d 129 (Minn. Ct. App. 1988) (upholding facial constitutionality of St. Paul ordinance).

9/ The ordinances also prohibited the location of an adult theaters within 500 feet of a residential area, but this provision was invalidated by the district court, and that decision was not appealed. Young v. American Mini Theaters, Inc., 427 U.S. 50, 52 n.2, 96 S.Ct. 2440, 2444 n.2 (1976).

Justice Stevens did not expressly describe the standard he had used, but it was clear that the plurality would afford non-obscene sexually explicit speech lesser First Amendment protection than other categories of speech. However, four dissenters and one concurring justice concluded that the degree of protection afforded speech by the First Amendment does not vary with the social value ascribed to that speech. In his concurring opinion, Justice Powell stated that the four-part test of United States v. O'Brien, 391 U.S. 367, 377, 88 S.Ct. 1673, 1679 (1968), should apply. Powell explained:

> Under that test, a governmental regulation is sufficiently justified, despite its incidental impact upon First Amendment interests, "if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on … First Amendment freedom is no greater than is essential to the furtherance of that interest."

427 U.S. at 79-80, 96 S.Ct. at 2457 (citation omitted), (Powell, J., concurring).

Perhaps because Justice Stevens' plurality opinion did not offer a clearly articulated standard of review, post-Young courts often applied the O'Brien test advocated by Justice Powell in his concurring opinion. Many ordinances regulating sexually oriented businesses were invalidated under the O'Brien test. See R.M. Stein, Regulation of Adult Businesses Through Zoning After Renton, 18 Pac. L.J. 351, 360 (1987) ("consistently invalidated"); S.A. Bender, Regulating Pornography Through, Zoning: Can We 'Clean Up' Honolulu? 8 U. Haw. L. Rev. 75, 105 (1986) (ordinances upheld in only about half the cases).

Applying Young, the Eighth Circuit Court of Appeals invalidated a zoning ordinance adopted by the city of Minneapolis. Alexander v. City of Minneapolis, 698 F.2d 936 (8th Cir. 1983). In Alexander, the challenged ordinance had three major restrictions on sexually oriented businesses: distancing from specified uses, prevention of concentration and amortization. It prohibited a sexually oriented business from operating within 500 feet of districts zoned for residential or office-residences, a church,

state-licensed day care facility and certain public schools. It forbade an adults-only facility from operating within 500 feet of any other adults-only facility. Finally, the ordinance required existing sexually oriented entertainment establishments to conform to its provisions by moving to a new location, if necessary, within four years.

The Eighth Circuit ruled that the Minneapolis ordinance created restrictions too severe to be upheld under the Young decision. It would have required all five of the city's sexually oriented theaters and between seven and nine of the city's ten sexually oriented bookstores to relocate and would have required these facilities to compete with another 18 adult-type establishments (saunas, massage parlors and "rap" parlors) for a maximum of 12 relocation sites. The effective result of enforcing the ordinance would be a substantial reduction in the number of adult bookstores and theaters, and no new adult bookstores or theaters would be able to open, the Court concluded. Alexander, supra, 698 F.2d at 938.

In Renton, supra, the United States Supreme Court adopted a clearer standard under which regulation of sexually oriented businesses could be tested and upheld. The Court upheld an ordinance prohibiting adult movie theaters from locating within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, park or school.

Justice Rehnquist, writing for a Court majority that included Justices Stevens and Powell, stated that the Renton ordinance did not ban adult theaters altogether and that, therefore, it was "properly analyzed as a form of time, place and manner regulation." Id. at 46, 106 S.Ct. at 928. When time, place and manner regulations are "content-neutral" and not enacted "for the purpose of restricting speech on the basis of its content," they are "acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication," Rehnquist stated. Id. He found the Renton ordinance to be content-neutral because it was not aimed at the content of films shown at adult theaters. Rather, the city's "predominate concerns" were with the secondary effects of the theaters. Id. at 47, 106 S.Ct. at 929 (emphasis in original). Once a time, place or manner regulation is determined to be content-neutral, "[t]he appropriate inquiry … is whether the … ordinance

is designed to serve a substantial governmental interest and allows for reasonable avenues of communication," Rehnquist wrote for the Court. Id. at 50, 106 S.Ct. at 930.

The Supreme Court found that Renton's "interest in preserving the quality of urban life" is a "vital" governmental interest. The substantiality of that interest was in no way diminished by the fact that Renton "relied heavily" on studies of the secondary effects of adult entertainment establishments by Seattle and the experiences of other cities, Rehnquist added. Id. at 51, 106 S.Ct. at 930-31.

> The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses. That was the case here. Nor is our holding affected by the fact that Seattle ultimately chose a different method of adult theater zoning than that chosen by Renton, since Seattle's choice of a different remedy to combat the secondary effects of adult theaters does not call into question either Seattle's identification of those secondary effects or the relevance of Seattle's experience to Renton.

Id. at 51-52, 106 S.Ct. at 931.

Rehnquist's inquiry then addressed the means chosen to further Renton's substantial interest and inquired into whether the Renton ordinance was sufficiently "narrowly tailored."

His comments on Renton's means to further its substantial interest suggest that municipalities have a wide latitude in enacting content-neutral ordinances aimed at the secondary effects of adult-entertainment establishments. He quoted the Young plurality for the proposition that:

> It is not our function to appraise the wisdom of [the city's] decision to require adult theaters to be separated rather than concentrated in the same areas … [T]he city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems.

Id. at 52, 106 S.Ct. at 931 (quoting Young, supra, 427 U.S. at 71, 96 S.Ct. at 2453).

As to the "narrowly tailored" requirement, Rehnquist found that the Renton ordinance only affected theaters producing unwanted secondary effects and, therefore, was satisfactory. Id.

The second prong of Renton's "time, place, manner" inquiry -- the availability of alternative avenues of communication -- was satisfied by the district court's finding that 520 acres of land, or more than five percent of Renton, were left available for adult-entertainment uses, even though some of that developed area was already occupied and the undeveloped land was not available for sale or lease. A majority of the Court found:

> That [adult theater owners] must fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees, does not give rise to a First Amendment violation.... In our view, the First Amendment requires only that Renton refrain from effectively denying [adult theater owners] a reasonable opportunity to open and operate an adult theater within the city, and the ordinance before us easily meets this requirement.

Id. at 54, 106 S.Ct. at 932.

B. Standards and Need for Legal Zoning

Unlike Young, the Renton case spells out the standards by which zoning of sexually oriented businesses should be tested. Renton and several lower court decisions rendered in its wake suggest that the two most critical areas by which the ordinances will be judged are 1) whether there is evidence that ordinances were enacted to address secondary impacts on the community, and 2) whether there are enough locations still available for sexually oriented businesses so that zoning is not just a pretext to eliminate pornographic speech.[10/]

10/ Of 11 recent post-Renton adult-entertainment zoning decisions by federal courts, five invalidated ordinances, three upheld ordinances and three ordered a remand to district court for further proceedings. Zoning ordinances were struck in Avalon Cinema Corp. v. Thompson, 667 F.2d 659 (6th Cir. 1967) (city council failed to offer evidence suggesting neighborhood decline would
(Footnote 10 Continued on Next Page)

This section first describes some of the legal considerations which communities must keep in mind in drafting zoning ordinances-for sexually oriented businesses. Then, some suggestions are provided, based on evidence reviewed by the Working Group, of types of zoning which can be enacted to reduce the secondary effects of sexually oriented businesses.

1. Documentation to Support Zoning Ordinances,

Sexually oriented speech which is not obscene cannot be restricted on the basis of its content without running afoul of the First Amendment. The justification for regulating sexually oriented businesses is based on proof that the zoning is needed to reduce secondary effects of the businesses on the community.

Since Renton, a number of adult entertainment zoning ordinances have been invalidated for failure of the enacting body to document the need for zoning regulations. Thus, one court invalidated a zoning ordinance because there was "very little, if any, evidence of the secondary effects of adult bookstores

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(Footnote 10 Continued from Previous Page)

result); Tollis, Inc. v. San Bernadino County, 827 F.2d 1329 (9th Cir. 1987) (no evidence presented to legislative body of secondary harmful effects); Ebel v. Corona, 767 F.2d 635 (9th Cir. 1985) (lack of effective alternative locations); 11126 Baltimore Boulevard, Inc. v. Prince George's County of Maryland, 684 F. Supp. 884 (D. Md. 1988) (insufficient evidence of secondary effects presented to legislative body; special exception provisions grant excessive discretionary authority to zoning officials); and Peoples Tags, Inc. v. Jackson County Legislature, 636 F. Supp. 1345 (W.D. Mo. 1986) (improper legislative purpose to prevent continued operation of adult-entertainment establishment). Zoning ordinances were upheld in SDJ, Inc. v. City of Houston, 837 F.2d 1268 (5th Cir. 1988); FW/PBS, Inc. v. City of Dallas, 837 F.2d 1298 (5th Cir. 1988); and S & G News, Inc. v. City of Southgate, 638 F.Supp. 1060 (E.D. Mich. 1986), aff'd without published opinion, 819 F.2d 1142 (6th Cir. 1987). Remands were ordered in Christy v. City of Ann Arbor, 824 F.2d 489 (6th Cir. 1987), cert. denied, _____ U.S. _____, 109 S.Ct 1013 (1988), (remand for determination of excessive restrictions); International Food & Beverage Systems v. City of Fort Lauderdale, 794 F.2d 1520 (11th Cir. 1986) (remand for reconsideration in light of Renton, supra; nude bar ordinance), and Walnut Properties, Inc. v. City of Whittier, 808 F.2d 1331 (9th Cir. 1986) (remand, in part, for determination of land availability).

… before the City Council ….” 11126 Baltimore Boulevard, supra, 684 F. Supp. at 895; see also Tollis v. San Bernadino County, 827 F.2d 1329, 1333 (9th Cir. 1987) (ordinance construed to prohibit single showing of adult movie in zoned area; invalidated for failure to present evidence of secondary effects of single showing); but see Thames Enterprises v. City of St. Louis, 851 F.2d 199, 201-02 (8th Cir. 1988) (observations by legislator of secondary effects sufficient).

On the other hand, it is not necessary for each municipality to conduct research independent of that already generated by other cities. The Renton court held that evidence of the need for zoning of sexually oriented businesses can be provided by studies from other cities “so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.” Id. at 51, 106 S.Ct. at 931. See also SDJ, Inc. v. City of Houston, 837 F.2d 1268, 1274 (5th Cir. 1988) (public testimony from experts, supporters and opponents and consideration of studies by Detroit, Boston, Dallas and Los Angeles sufficient evidence of legitimate purpose).

The first section of this report summarizes evidence from various cities documenting the secondary effects of sexually oriented businesses. Following Renton, it is intended that local communities will make use of this evidence in the course of assembling support for reasonable regulation of sexually oriented businesses.

2. Availability of Locations for Sexually Oriented Businesses

Courts also evaluate whether zoning of sexually oriented businesses is merely a pretext for prohibition by reviewing the alternative locations which remain for a sexually oriented business to operate under the zoning scheme. A municipality must “refrain from effectively denying … a reasonable opportunity to open and operate” a sexually oriented business. Renton, supra, 475 U.S. at 54, 106 S.Ct. at 932.

Access may be regarded as unduly restricted if adult entertainment zones are unreasonably small in area or if the number of locations is unreasonably few. There is no set amount of land or number of

locations constitutionally required. The Renton court found that 520 acres of "accessible real estate," including land "criss-crossed by freeways" -- more than five percent of the entire land area in Renton -- was sufficient. 475 U.S. at 53, 106 S.Ct. at 932. The Young court found the availability of "myriad" locations sufficient. 427 U.S. at 72 n.35, 96 S.Ct. at 2453 n.35.

Whether .058 square miles constituting .23 of 1 percent of the land area within the city's central business zone is sufficient is not clear. See Alexander v. The City of Minneapolis (Alexander II), No. 3-88-808, slip op. at 22 (D. Minn. May 22, 1989). (less than 1 % of land area could be valid if "ample actual opportunities" for relocation exist); Christy v. City of Ann Arbor, 824 F.2d 489, 490, 493 (6th Cir. 1987) (remanding for a determination of excessive restriction). See also 11126 Baltimore Boulevard, Inc. v. Prince George's County of Maryland, 684 F. Supp. 884 (D. Md. 1988) (20 alternative locations sufficient); Alexander v. City of Minneapolis, 698 F.2d 936, 939 n.7 (8th Cir. 1983) (pre-Renton; 12 relocation sites for at least 28 existing adult establishments not sufficient).

The sufficiency of sites available for adult entertainment uses may be measured in relation to a number of factors. See, e.g., Alexander II, supra, slip op. at 22-23 (insufficient if relocation site owners refuse to sell or lease); International Food & Beverage Systems, Inc., 794 F.2d 1520, 1526 (11th Cir. 1986) (suggesting number of sites should be determined by reference to community needs, incidence of establishments in other cities, goals of city plan); Basiardanes v. City of Galveston, 682 F.2d 1203, 1209 (5th Cir. 1962) (pre-Renton case striking zoning regulation restricting adult theaters to industrial areas that were "largely a patchwork of swamps, warehouses, and railroad tracks . . . . lack[ing] access roads and retail establishments").

However, the fact that land zoned for adult establishments is already occupied or not currently for sale or lease will not invalidate a zoning ordinance. Renton, supra, 475 U.S. at 53-54, 106 S.Ct. at 932; but see, Alexander II, supra, slip op. at 22-23 (reasonable relocation opportunity absent where owners refuse to sell or rent). There is no requirement that it be economically advantageous for a sexually oriented business to locate in the areas permitted by law.

3. Distance Requirements

Another factor that may be examined by some courts is the distance requirement established by an adult entertainment zoning ordinance. In SDJ, Inc. v. Houston, 837 F.2d 1268 (5th Cir. 1988), the Court was asked to invalidate a 750-foot distancing requirement on the ground that the city had not proved that 750 feet, as opposed to some other distance, was necessary to serve the city's interest.

The Court found that an adult entertainment zoning ordinance is "sufficiently well tailored if it effectively promotes the government's stated interest" and declined to "second-guess" the city council. Houston, supra, 837 F.2d at 1276.

Courts have sustained both requirements that sexually oriented businesses be located at specified distances from each other, see Young, supra, (upholding distance requirement of 1000 feet between sexually oriented businesses), and requirements that sexually oriented businesses be located at fixed distances from other sensitive uses, see Renton, supra, (upholding distance requirement of 1000 feet between sexually oriented businesses and residential zones, single-or-multiple-family dwellings, churches, parks or schools).

The Working Group heard testimony that when an ordinance establishes distances between sexually oriented uses, an additional regulation may be needed to prevent operators of these businesses to defeat the intent of the regulation by concentrating sexually oriented businesses of various types under one roof, as in a sexually oriented mini-mall. The city of St. Paul has adopted an ordinance preventing more than one adult use (e.g., sexually oriented theater, bookstore, massage parlor) from locating within a single building. A similar ordinance was upheld in the North Carolina case of Hart Book Stores, Inc. v. Edmisten, 612 F.2d 821 (4th Cir. 1979), cert. denied, 447 U.S. 929 (1980).

The experience with multiple-use sexually oriented businesses at the University-Dale intersection suggests that these businesses have a greater potential for causing neighborhood problems than do single-use sexually oriented businesses. Following Renton, it is suggested that lawmakers document the

adverse effects which the community seeks to prevent by prohibiting multiple-use businesses before enacting this type of ordinance.

4. Requiring Existing Businesses to Comply with New Zoning

Zoning ordinances can require existing sexually oriented businesses to close their operations provided they do not foreclose the operation of such businesses in new locations. Under such provisions, an existing business is allowed to remain at its present location, even though it is a non-conforming use, for a limited period.

The Minnesota Supreme Court has explained the theory this way:

> The theory behind this legislative device is that the useful life of the nonconforming use corresponds roughly to the amortization period, so that the owner is not deprived of his property until the end of its useful life. In addition, the monopoly position granted during the amortization period theoretically provides the owner with compensation for the loss of some property interest, since the period specified rarely corresponds precisely to the useful life of any particular structure constituting the nonconforming use.

Naegele Outdoor Advertising Co. v. Village of Minnetonka, 162 N.W.2d 206, 213 (Minn. 1968).

Such provisions applied to sexually oriented businesses have been said to be "uniformly upheld." Dumas v. City of Dallas, 648 F. Supp. 1061, 1071 (N.D. Tex. 1986), aff'd, FW/PBS, Inc. v. City of Dallas, 837 F.2d 1298 (5th Cir. 1988) (citing cases).

As detailed in the first section of this report (pp. 6-15), there are significant secondary impacts upon communities related to the location of sexually oriented businesses. These impacts are intensified when sexually oriented businesses are located in residential areas or near other sensitive uses and when sexually oriented businesses are concentrated near each other or near alcohol oriented businesses. The Working Group believes that evidence from studies such as those described in the first section of this

report and anecdotal evidence from neighborhood residents and police officers should be used to support the need for zoning ordinances which address these problems.

RECOMMENDATIONS

1. Communities should document findings of adverse secondary effects of sexually oriented businesses prior to enacting zoning regulations to control these uses so that such regulations can be upheld if challenged in court.

2. To reduce the adverse effects of sexually oriented businesses, communities should adopt zoning regulations to set distance requirements between sexually oriented businesses and sensitive uses, including but not limited to residential areas, schools, child care facilities, churches and parks.

3. To reduce adverse impacts from concentration of sexually oriented businesses, communities should adopt zoning ordinances which set distance requirements between liquor establishments and sexually oriented businesses and between sexually oriented businesses and should consider restricting sexually oriented businesses to one use per building.

4. Communities should require existing businesses to comply with new zoning or other regulation pertaining to sexually oriented businesses within a reasonable time so that prior uses will conform to new laws.

IV. LICENSING AND OTHER REGULATIONS

Licensing and other regulations may also be used to reduce the adverse effects of sexually oriented businesses. The critical requirements which communities must keep in mind are that regulations must

be narrowly crafted to address adverse secondary effects, they must be reasonably related to reduction of these effects and they must be capable of objective application. If these standards can be met, licensing and other regulatory provisions may play an important role in preventing unwanted exposure to sexually oriented materials and in reducing the crime problems associated with sexually oriented businesses.

It is clear that failure to act upon a license application for a sexually oriented business cannot take the place of regulation. Without justification, denial or failure to grant a license is a prior restraint in violation of the First Amendment. Parkway Theater Corporation v. City of Minneapolis, No. 716787, slip. op. (Henn. Co. Dist. Ct., Sept. 24, 1975).

An ordinance providing for license revocation of an adult motion picture theater if the licensee is convicted of an obscenity offense is also likely to be held unconstitutional as a prior restraint of free speech. Alexander v. City of St. Paul, 227 N.W.2d 370 (Minn. 1975). The Alexander court stated:

> [W]hen the city licenses a motion picture theater, it is licensing an activity protected by the First Amendment, and as a result the power of the city is more limited than when the city licenses activities which do not have First Amendment protection, such as the business of selling liquor or running a massage parlor.

Id. at 373 (footnote omitted); see also, Cohen v. City of Daleville, 695 F. Supp. 1168, 1171 (M.D. Ala. 1988) (past sale of obscene material cannot justify revocation of license).

However, the courts have permitted communities to deny licenses to sexually oriented businesses if the person seeking a license has been convicted of other crimes which are closely related to the operation of sexually oriented businesses.

In Dumas v. City of Dallas, supra, the court reviewed a requirement that a license applicant not have been convicted of certain crimes within a specified period. Five of the enumerated crimes were held to be not sufficiently related to the purpose of the adult entertainment licensing ordinance because the city

had made no findings on their justification. The invalid enumerated offenses were controlled substances act violations, bribery, robbery, kidnapping and organized criminal activity. The court upheld requirements that the licensee not have been convicted of prostitution and sexrelated offenses. Id. at 1074. if a community seeks to require that persons with a history of other crimes be denied licenses, clear findings must first be made which justify denial of licenses on that basis.

The Dumas court also invalidated portions of the licensing ordinance permitting the police chief to deny a license if he finds that the applicant "is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner" or is not "presently fit to operate a sexually oriented business." Neither provision satisfied the constitutional requirement that "any license requirement for an activity related to expression must contain narrow, objective, and definite standards to guide the licensing authority." Id. at 1072. See also Alexander II, supra, slip op. at 16 (unconstitutionally vague to define regulated bookstores as those selling "substantial or significant portion" of certain publications); 11126 Baltimore Boulevard, supra, 684 F. Supp. at 898-99 (striking ordinance allowing zoning officials to deny permit if adult entertainment establishment is not "in harmony" with zoning plan, does not "substantially impair" master plan, does not "adversely affect" health, safety and welfare and is not "detrimental" to neighborhood because such standards are "subject to possible manipulation and arbitrary application").

A number of courts have upheld ordinances requiring that viewing booths in adult theaters be open to discourage illegal and unsanitary sexual activity. See, e.g., Doe v. City of Minneapolis, 693 F. Supp. 774 (D. Minn. 1988).

Licensing provisions and ordinances forbidding massage parlors employees from administering massages to persons of the opposite sex have withstood equal protection and privacy and associational right challenges. See Clampitt v. City of Ft. Wayne, 682 F. Supp. 401, 407-408 (N.D. Ind. 1988) (equal protection); Wigginess, Inc. v. Fruchtman, 482 F. Supp. 681, 689-90 (S.D. N.Y. 1979), aff'd, 628 F.2d 1346 (2d Cir. 1980), cert. denied, 449 U.S. 842, 101 S.Ct. 122. However, some courts have found same-sex massage regulations to be in violation of Title VII of the Civil Rights Act of

1964. See Stratton v. Drumm, 445 F. Supp. 1305, 1310-11 (D. Conn. 1978); Cianciolo v. Members of City Council, 376 F. Supp. 719, 722-24 (E.D. Tenn. 1974); Joseph v. House, 353 F. Supp. 367, 374-75 (E.D. Va.), aff'd sub nom. Joseph v. Blair, 482 D.2d 575 (4th Cir.), cert. denied, 416 U.S. 955, 94 S.Ct. 1968 (1974). Contra, Aldred v. Dulin, 538 F.2d 637 (4th Cir. 1976).

Although the Working Group expressed strong concern about the operation of prostitution under the guise of massage parlors, this type of regulation is not advisable because legitimate therapeutic massage establishments could find their operations curtailed. Prostitution may be better controlled through prosecution and use of post-conviction actions such as forfeiture or enjoining a public nuisance.

In 1985, a court upheld an ordinance making it unlawful to display for commercial purposes material "harmful to minors" unless the material is in a sealed wrapper and, if the cover is harmful to minors, has an opaque cover. Upper Midwest Booksellers Ass'n v. City of Minneapolis, 780 F.2d 1389 (8th Cir. 1985). Last year, the legislature enacted a state law similarly prohibiting display of sexually explicit material which is harmful to minors unless items are kept in sealed wrappers and, where the cover itself would be harmful to minors, within opaque covers. Minn. Stat. § 617.293 (1988). This law has the potential to protect minors from exposure to sexually oriented materials. Communities also have considerable discretion to regulate signage so that the exterior of sexually oriented businesses does not expose unwitting observers to sexually explicit messages.

RECOMMENDATIONS

1. Prior to enacting licensing regulations, communities should document findings of adverse secondary effects of sexually oriented businesses and the relationship between these effects and proposed regulations so that such regulations can be upheld if challenged in court.

2. Communities should adopt regulations which reduce the likelihood of criminal activity related to sexually oriented businesses, including but not limited to open booth ordinances and ordinances which authorize denial or revocation of licenses when the licensee has committed offenses relevant to the operation of the business.

3. Communities should adopt regulations which reduce exposure of the community and minors to the blighting appearance of sexually oriented businesses Including but not limited to regulations of signage and exterior design of such businesses and should enforce state law requiring sealed wrappers and opaque covers on sexually oriented material.

CONCLUSION

There are many actions which communities may take within the law to protect themselves from the adverse secondary effects of sexually oriented businesses. Prosecution of obscenity crimes can play a vital role in decreasing the profitability of sexually oriented businesses and removing materials which violate community standards from local outlets. Forfeiture and injunction to prevent public nuisance should be available where sexually oriented businesses are the site of sex-related crimes and violations of laws pertaining to gambling, liquor or controlled substances. These actions will remove the most egregious establishments from communities.

Zoning can reduce the likelihood that sexually oriented businesses will lead to neighborhood blight. Licensing can sever the link between at least some crime figures and sexually oriented businesses. Regulation and enforcement can protect minors from exposure to sexually explicit materials.

The Attorney General's Working Group on the Regulation of Sexually Oriented Businesses believes that prosecution, seizure of profits, zoning and regulation of sexually oriented businesses should only be done in keeping with the constitutional requirements of the First Amendment. Rational regulation can be fashioned to protect both our communities and our constitutional rights.

PARALLEL REFERENCES

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