

LAND USE¹

Table of Contents

ARTICLE I. IN GENERAL	9
Secs. 12-1--12-50. Reserved.....	9
ARTICLE II. ZONING	9
DIVISION 1. GENERALLY	9
Sec. 12-51. Short title.....	9
Sec. 12-52. General purposes.....	9
Sec. 12-53. Specific purposes.....	9
Sec. 12-54. Interpretation and construction.....	10
Sec. 12-55. Definitions.....	10
Sec. 12-56. Application of article.....	24
Sec. 12-57. Nonconforming uses, buildings and structures.....	24
Sec. 12-58. Interpretation of conflicting provisions.....	26
Sec. 12-59. Enforcement.....	26
Sec. 12-60. Supremacy.....	26
Secs. 12-61 – 12-75. Reserved.....	27
DIVISION 2. ADMINISTRATION.....	26
Sec. 12-76. Duties of the Zoning Administrator.....	26
Sec. 12-77. Appeals and variances; Board of Adjustments and Appeals.....	29
Sec. 12-78. Conditional Use Permits.....	32
Sec. 12-79. Administrative Permit.....	34
Sec. 12-80. Amendments and rezonings.....	36
Sec. 12-81. Building permits and the building code.....	38
Sec. 12-82. Moving permits and relocated structures.....	39
Sec. 12-83. Septic permits.....	39
Sec. 12-84. Driveway access permits and standards.....	39
Sec. 12-85. Grading permits.....	42
Sec. 12-86. Farm site plan permits.....	42
Sec. 12-87. Certificate of occupancy.....	42
Sec. 12-88. Fees.....	43
Sec. 12-89. Environmental assessment worksheets (EAW) and environmental impact statements (EIS).....	43
Secs. 12-90--12-130. Reserved.....	44
DIVISION 3. DISTRICTS	45
Sec. 12-131. Districts generally.....	45
Sec. 12-132. Minimum requirements.....	45[SP1]
Sec. 12-133. Zoning district map.....	50
Sec. 12-134. Uses.....	51
Sec. 12-135. Floodplain overlay district.....	56
Sec. 12-136. Shoreland management overlay district.....	56
Sec. 12-137. Conservancy overlay district.....	56
Sec. 12-138. St. Croix River overlay district.....	57
Sec. 12-139. Agricultural preserves (AP) overlay district.....	57
Sec. 12-140. Agricultural (A) zoning district.....	61
Sec. 12-141. Rural residential (RR) zoning district.....	62
Sec. 12-142. Village historic site, residential (VHS-R) and commercial (VHS-C) zoning districts.....	63
Sec. 12-143. Light Industrial (I-1A), Light Industrial (I-1B), and Light Industrial (I-1C).....	64
Sec. 12-144. Marine Services (MS) zoning district.....	66
Sec. 12-145. Preservation and Land Conservation Development (PLCD).....	66
Secs. 12-146-12-184. Reserved.....	66
DIVISION 4. DESIGN AND PERFORMANCE STANDARDS.....	66
Sec. 12-185. Performance standards.....	66

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

Sec. 12-186.	Principal building.....	67
Sec. 12-187.	Types of accessory buildings.....	67
Sec. 12-188.	Livestock.....	70
Sec. 12-189.	Agricultural operations.....	72
Sec. 12-190.	Fences.....	73
Sec. 12-191.	Screening.....	73
Sec. 12-192.	Landscaping.....	74
Sec. 12-193.	Reasonable maintenance required.....	74
Sec. 12-194.	Exterior storage.....	74
Sec. 12-195.	Lighting, lighting fixtures and glare.....	75
Sec. 12-196.	Parking.....	75
Sec. 12-197.	Off-street loading areas.....	78
Sec. 12-198.	Traffic control.....	78
Sec. 12-199.	Fallout shelters.....	79
Sec. 12-200.	Guesthouses.....	79
Sec. 12-201.	Dwelling units in commercial and I zoning districts.....	79
Sec. 12-202.	Radiation and electrical interference prohibited.....	79
Sec. 12-203.	Storage of hazardous materials.....	79
Sec. 12-204.	Explosives.....	79
Sec. 12-205.	Environmental pollution.....	80
Sec. 12-206.	Environmental nuisances.....	80
Sec. 12-207.	Miscellaneous nuisances.....	80
Sec. 12-208.	Noise.....	81
Sec. 12-209.	Visual standards.....	84
Sec. 12-210.	Signs.....	84
Sec. 12-212.	Sign Permit chart.....	91
Sec. 12-213.	Manufactured homes.....	92
Sec. 12-214.	Mining.....	94
Sec. 12-215.	Land reclamation and land grading.....	94[SP2]
Sec. 12-216.	Soil conservation plans.....	95[SP3]
Sec. 12-217.	Drainage.....	95
Sec. 12-218.	Vegetative cutting.....	96
Sec. 12-219.	Swimming pools.....	96
Sec. 12-220.	Tennis courts.....	97
Sec. 12-221.	Private kennels.....	98
Sec. 12-222.	Bed and breakfast facilities.....	98
Sec. 12-223.	Hotels.....	99
Sec. 12-224.	Marinas.....	100
Sec. 12-225.	Coin-operated machines.....	100
Sec. 12-226.	Studio, art or crafts.....	100
Sec. 12-227.	Garage sales.....	100
Sec. 12-228.	Home occupations.....	101
Sec. 12-229.	Wind Energy Systems.....	101
Sec. 12-230.	Keeping Chickens on Parcels Less Than 5 Acres.....	103
Secs. 12-231--12-275.	Reserved.....	104
ARTICLE III. SHORELAND MANAGEMENT.....		104
DIVISION 1. GENERALLY.....		104
Sec. 12-276.	Statutory authorization.....	104
Sec. 12-277.	Policy.....	105
Sec. 12-278.	Jurisdiction.....	105
Sec. 12-279.	Compliance.....	105
Sec. 12-280.	Enforcement.....	105
Sec. 12-281.	Interpretation.....	105
Sec. 12-282.	Abrogation and greater restrictions.....	105
Sec. 12-283.	Definitions.....	105
Secs. 12-284--12-325.	Reserved.....	109
DIVISION 2. ADMINISTRATION.....		109
Sec. 12-326.	Permits required.....	109
Sec. 12-327.	Certificate of zoning compliance.....	109
Sec. 12-328.	Variances.....	109
Sec. 12-329.	Notifications to the department of natural resources.....	109
Secs. 12-330--12-360.	Reserved.....	110

AFTON CODE

DIVISION 3. CLASSIFICATION SYSTEMS	110
Sec. 12-361. Basis of classification.	110
Sec. 12-362. Criteria for designation.	110
Sec. 12-363. Land use district descriptions.	111
Sec. 12-364. Use, upgrading of inconsistent land use districts.	112
Secs. 12-365--12-400. Reserved.	112
DIVISION 4. ZONING AND WATER SUPPLY SANITARY REQUIREMENTS	112
Sec. 12-401. Lot area and width standards.	112
Sec. 12-402. Placement of structures on lots.	113
Sec. 12-403. Design criteria for structures.	113
Sec. 12-404. Height of structures.	114
Sec. 12-405. Shoreland alterations.	114
Sec. 12-406. Vegetation alterations.	115
Sec. 12-407. Topographic alterations; grading and filling.	115
Sec. 12-408. Placement and design of roads, driveways, and parking areas.	116
Sec. 12-409[SP4]. Stormwater management.	116
Sec. 12-410. Agricultural use standards.	117
Sec. 12-411. Special uses.	117
Sec. 12-412. Water supply.	118
Sec. 12-413. Sewage treatment.	118
Secs. 12-414--12-475. Reserved.	118
DIVISION 5. NONCONFORMITIES	118
Sec. 12-476. Non-conforming uses.	118
Sec. 12-477. Construction on nonconforming lots of record.	119
Sec. 12-478. Additions/expansions to nonconforming structures.	119
Secs. 12-479--12-500. Reserved.	119
DIVISION 6. SUBDIVISION REQUIREMENTS	119
Sec. 12-501. Land suitability.	120
Sec. 12-502. Consistency with other controls.	120
Sec. 12-503. Information requirements.	120
Sec. 12-504. Dedications.	121
Sec. 12-505. Platting.	121
Sec. 12-506. Controlled access or recreational lots.	121
Secs. 12-507--12-575. Reserved.	121
ARTICLE IV.	121
LOWER ST. CROIX RIVER BLUFFLAND AND SHORELAND MANAGEMENT	121
DIVISION 1. GENERALLY	121
Sec. 12-576. Short title.	121
Sec. 12-577. Intent and purpose.	121
Sec. 12-578. Existing codes.	122
Sec. 12-579. Definitions.	123
Sec. 12-580. Substandard structures.	124
Sec. 12-581. Substandard lots.	125
Sec. 12-582. Color of structures.	125
Sec. 12-583. Marinas.	125
Sec. 12-584. Alterations in public waters.	126
Sec. 12-585. Transmission services.	126
Sec. 12-586. Public roads.	126
Sec. 12-587. Requirements for sewage disposal.	126
Sec. 12-588. Conflicting provisions.	126
Sec. 12-589. Measurement of distances.	126
Secs. 12-590--12-635. Reserved.	126
DIVISION 2. DISTRICTS	126
Sec. 12-636. Designation of districts.	126
Sec. 12-637. Minimum district dimensional requirements.	127
Secs. 12-638--12-700. Reserved.	128
DIVISION 3. USES.	128
Sec. 12-701. Purpose.	128
Sec. 12-702. Permitted uses.	128
Sec. 12-703. Site preservation.	128
Sec. 12-704. Vegetative cutting.	128

Sec. 12-705. Grading and filling.....	129
Sec. 12-706. Conditionally Permitted Uses.....	129
Sec. 12-707. Prohibited uses.....	129
Sec. 12-708. Nonconforming uses.....	130
Secs. 12-709--12-830. Reserved.....	130
DIVISION 4. ADMINISTRATION.....	130
Sec. 12-831. Administrative procedure.....	130
Sec. 12-832. Certification by the commissioner.....	130
Sec. 12-833. Forwarding of a final decision.....	131
Sec. 12-834. Permit process.....	131
Sec. 12-835. Variances.....	131
Sec. 12-836. Requirements for public hearing.....	132
Sec. 12-837. Factors considered.....	132
Secs. 12-838--12-900. Reserved.....	132
ARTICLE V. FLOODPLAIN REGULATIONS.....	132
DIVISION 1. GENERALLY.....	133
Sec. 12-901. Statutory authorization.....	133
Sec. 12-902. Findings of Fact.....	133
Sec. 12-903. Statement of Purpose.....	133
Sec. 12-904. Scope of application.....	133
Sec. 12-905. Establishment of Official Zoning Map.....	133
Sec. 12-906. Regulatory Flood Protection Elevation.....	133
Sec. 12-907. Interpretation.....	133
Sec. 12-908. Abrogation and Greater Restrictions.....	134
Sec. 12-909. Warning and Disclaimer of Liability.....	134
Sec. 12-910. Severability.....	134
Sec. 12-911. Definitions.....	134
Sec. 12-912. Nonconforming Uses.....	136
Sec. 12-913. Manufactured homes, mobile homes, travel trailers, etc., prohibited.....	136
Sec. 12-914. Penalties for Violation.....	136
Sec. 12-915. Annexations.....	137
Sec. 12-916. Amendments.....	137
DIVISION 2. FLOODPLAIN DISTRICT.....	138
Subdivision I. Generally.....	138
Sec. 12-917. Establishment of Districts.....	138
Sec. 12-918. Compliance.....	138
Sec. 12-919 - 12-1000. Reserved.....	138
Subdivision II. Floodway District (FW).....	138
Sec. 12-1001. Permitted Uses.....	138
Sec. 12-1002. Standards for Floodway Permitted Uses.....	139
Sec. 12-1003. Conditional Uses.....	139
Sec. 12-1004. Standards for Floodway Conditional Uses.....	139
Subdivision III. Flood Fringe District (FF).....	140
Sec. 12-1005. Permitted Uses.....	140
Sec. 12-1006. Standards for Flood Fringe Permitted Uses.....	140
Sec. 12-1007. Conditional Uses.....	141
Sec. 12-1008. Standards for Flood Fringe Conditional Uses.....	141
Sec. 12-1009. Standards for All Flood Fringe Uses.....	142
Subdivision IV. General Flood Plain District.....	143
Sec. 12-1010. Permissible Uses.....	143
Sec. 12-1011. Procedures for Floodway and Flood Fringe Determinations Within the General Flood Plain District. 143	
DIVISION 3. SUBDIVIDING PROPERTY.....	143
Sec. 12-1012. Land Suitability Review Criteria.....	143
Sec. 12-1013. Requirements for Floodway/Flood Fringe Determinations in the General Flood Plain District. 144	
Sec. 12-1014. Removal of Special Flood Hazard Area Designation.....	144
DIVISION 4. PUBLIC SERVICES.....	144
Sec. 12-1015. Public Utilities.....	144
Sec. 12-1016. Public Transportation Facilities.....	144
Sec. 12-1017. On-site Sewage Treatment and Water Supply Systems.....	144
DIVISION 5. ADMINISTRATION.....	144

AFTON CODE

Sec. 12-1018. Zoning Administrator	144
Sec. 12-1019. Permits, Certification Requirements and Record Keeping	145
Sec. 12-1020. Appeals and Variances/Duties of the Board of Adjustment	145
Sec. 12-1021. Conditional Uses-Standards and Elevation Procedures	147
Sec. 12-1022 – 12-1250. Reserved	148
ARTICLE VI. SUBDIVISIONS	148
DIVISION 1. GENERALLY	148
Sec. 12-1251. Purpose of article	148
Sec. 12-1252. Basis of need	148
Sec. 12-1253. Basic procedures	149
Sec. 12-1254. Purpose	149
Sec. 12-1255. Scope	150
Sec. 12-1256. Definitions	150
Sec. 12-1257. Protection of natural features	153
Sec. 12-1258. Solar access planning	154
Sec. 12-1259. Public sites and open spaces	154
Sec. 12-1260. Minor subdivision	154
Sec. 12-1261. Simple subdivision	155
Sec. 12-1262. Land division	155
Sec. 12-1263. Registered land surveys	156
Sec. 12-1264. Metes and bounds	156
Sec. 12-1265. Unapproved subdivisions	156
Sec. 12-1266. Variances	156
Sec. 12-1267. Security interest	157
Sec. 12-1268. Building permits	157
Sec. 12-1269. Violation and penalties	157
Sec. 12-1270. Park and open space dedication	157
Sec. 12-1271. Conflicting provisions	160
Secs. 12-1272--12-1325. Reserved	160
DIVISION 2. PLATTING PROCEDURE	160
Sec. 12-1326. Sketch plan	160
Sec. 12-1327. Preparing and submitting the preliminary plat	161
Sec. 12-1328. Data required for preliminary plat	161
Sec. 12-1329. Review of the preliminary plat	163
Sec. 12-1330. Preparing and submitting the final plat	164
Sec. 12-1331. Data required for final plat	164
Sec. 12-1332. Review of the final plat	164
Secs. 12-1333--12-1375. Reserved	165
DIVISION 3. MINIMUM DESIGN STANDARDS	165
Sec. 12-1376. Conformity with comprehensive development plan	165
Sec. 12-1377. Land requirements	165
Sec. 12-1378. Street plan	165
Sec. 12-1379. Cul-de-sac streets	166
Sec. 12-1380. Street design	166
Sec. 12-1381. Private streets	168
Sec. 12-1382. Alley design	168
Sec. 12-1383. Drainage	168
Sec. 12-1384. Easements	168
Sec. 12-1385. Street names	169
Sec. 12-1386. Block design	169
Sec. 12-1387. Lot requirements	169
Secs. 12-1388--12-1425. Reserved	170
DIVISION 4. ENGINEERING STANDARDS	170
Sec. 12-1426. Streets	170
Sec. 12-1427. Utilities	171
Sec. 12-1428. Sanitation, sewer and water rural areas	171
Sec. 12-1429. Stormwater drainage	172
Sec. 12-1430. Street signs	172
Sec. 12-1431. Inspection	172
Secs. 12-1432--12-1470. Reserved	172
DIVISION 5. IMPROVEMENTS	172
Sec. 12-1471. Required	172

Sec. 12-1472. Payment for installation.....	173
Sec. 12-1473. Agreement providing for the installation.....	173
Sec. 12-1474. Financial guarantee.....	174
Sec. 12-1475. Construction plans and inspections.....	174
Sec. 12-1476. Completion prior to approval of plat.....	174
Secs. 12-1477--12-1479. Reserved.....	174
DIVISION 6. PROTECTIVE COVENANTS REQUIRED FOR ALL MAJOR SUBDIVISIONS.....	174
Sec. 12-1480. Covenants required.....	175
Sec. 12-1481. Covenant regulations.....	175
Secs. 12-1481 – 12-1495. Reserved.....	175
DIVISION 7. REQUIREMENTS FOR THE LOWER ST. CROIX RIVER.....	175
SHORELAND MANAGEMENT.....	175
Sec. 12-1496. Land suitability.....	175
Sec. 12-1497. Planned cluster developments.....	175
Secs. 12-1498--12-1525. Reserved.....	175
ARTICLE VII. HERITAGE PRESERVATION.....	176
DIVISION 1. GENERALLY.....	176
Sec. 12-1526. Public policy and purpose.....	176
Sec. 12-1527. Definitions.....	176
Sec. 12-1528. Review of activities.....	176
Sec. 12-1529. Enforcement.....	177
Secs. 12-1530--12-1620. Reserved.....	177
DIVISION 2. DESIGN REVIEW GUIDELINES.....	177
Subdivision I. General Provisions.....	177
Sec. 12-1621. Purpose and intent.....	177
Sec. 12-1622. General principles.....	178
Secs. 12-1623--12-1665. Reserved.....	178
Subdivision II. Restoration and Rehabilitation.....	178
Sec. 12-1666. Masonry walls and foundations.....	178
Sec. 12-1667. Walls; wood sided.....	179
Sec. 12-1668. Roofs and chimneys.....	179
Sec. 12-1669. Windows.....	180
Sec. 12-1670. Entries.....	180
Sec. 12-1671. Porches and steps.....	181
Sec. 12-1672. Exterior trim and architectural features.....	181
Sec. 12-1673. Commercial buildings; rehabilitation and restoration.....	182
Secs. 12-1674--12-1710. Reserved.....	182
Subdivision III. New Constructions and Additions.....	182
Sec. 12-1711. General guidelines.....	182
Sec. 12-1712. New construction.....	183
Sec. 12-1713. Additions to principal buildings.....	183
Sec. 12-1714. Accessory buildings.....	184
Sec. 12-1715. Site considerations.....	184
Sec. 12-1716. Public improvements.....	184
Sec. 12-1717. Signs.....	184
Secs. 12-1718--12-1770. Reserved.....	184
ARTICLE VIII. BUILDINGS AND BUILDING REGULATIONS.....	185
DIVISION 1. GENERALLY.....	185
Secs. 12-1771--12-1800. Reserved.....	185
DIVISION 2. BUILDING CODE.....	185
Sec. 12-1801. Adopted.....	185
Sec. 12-1802. Administration required.....	185
Sec. 12-1803. Application, administration and enforcement.....	185
Sec. 12-1804. Permits, inspections and fees.....	185
Sec. 12-1805. Violations and penalties.....	185
Secs. 12-1806--12-1850. Reserved.....	186
DIVISION 3. FIRE PREVENTION AND LIFE SAFETY CODE.....	186
Sec. 12-1851. Adopted.....	186
Sec. 12-1852. Establishment, duties of bureau of fire prevention.....	186
Sec. 12-1853. Definition.....	186
Sec. 12-1854. New construction and renovation.....	186
Sec. 12-1855. Appeals.....	186

AFTON CODE

Sec. 12-1856. Open burning prohibited.....	187
Sec. 12-1857. Rules adopted by reference.....	187
Secs. 12-1858--12-1900. Reserved.....	187
ARTICLE IX. SEWAGE.....	187
DIVISION 1. GENERALLY.....	187
Secs. 12-1901--12-1950. Reserved.....	187
DIVISION 2. SEWER USE.....	187
Subdivision I. Generally.....	187
Sec. 12-1951. Purpose.....	187
Sec. 12-1952. Definitions.....	187
Sec. 12-1953. Applicability.....	189
Sec. 12-1954. Enforcement.....	189
Sec. 12-1955. Appeals and variance requests.....	189
Sec. 12-1956. Inspections.....	189
Sec. 12-1957. Violations and penalties.....	190
Secs. 12-1958--12-1980. Reserved.....	190
Subdivision II. Use of Public Sewage Treatment Systems.....	190
Sec. 12-1981. Unlawful surface discharge.....	190
Sec. 12-1982. Unlawful connection to public sewage treatment system, permit.....	190
Sec. 12-1983. Lawful connections to public sewers.....	190
Sec. 12-1984. Unlawful discharge to public sewers.....	191
Sec. 12-1985. Pretreatment, control and refusal of extraordinary wastes.....	193
Secs. 12-1986--12-2005. Reserved.....	194
Subdivision III. Use of Individual Sewage Treatment Systems.....	194
Sec. 12-2006. Reserved.....	194
Secs. 12-2007--12-2040. Reserved.....	194
Subdivision IV. Maintenance.....	194
Secs. 12-2041 – 12-2044. Reserved.....	194
Secs. 12-2045 -- 12-2075. Reserved.....	194
DIVISION 3. SEWAGE TREATMENT.....	194
Secs. 12-2076 -- 12-2200. Reserved.....	194
DIVISION 4. WASTEWATER SERVICE CHARGE SYSTEM.....	194
Subdivision I. Charge Established.....	194
Sec. 12-2201. User Categories.....	194
Sec. 12-2202. Equivalent Residential Units.....	194
Sec. 12-2203. Annual User Charge Rates.....	195
Sec. 12-2204. Records.....	195
Secs. 12-2205-12-2210. Reserved.....	195
Subdivision II. Determination of Charges.....	195
Sec. 12-2211. Recovery of Costs.....	195
Sec. 12-2212. Determination of User Charge.....	195
Sec. 12-2213. Annual Fees and Payments.....	195
Sec. 12-2214. Septic Tank Effluent Pumping Surcharge.....	196
Sec. 12-2215. Fees for Unusual Wastes.....	196
Sec. 12-2216. Toxic or Incompatible Waste Clean-Up.....	196
Sec. 12-2217. Establishment of Special Accounts.....	196
Secs. 12-2218 – 12-2225. Reserved.....	196
Subdivision III. Administration.....	196
Sec. 12-2226. Applicability.....	196
Sec. 12-2227. Enforcement.....	196
Sec. 12-2228. Appeals and Variances.....	196
Secs. 12-2229 – 12-2235. Reserved.....	197
Subdivision IV. Enforcement.....	197
Sec. 12-2236. Violations and Penalties.....	197
Sec. 12-2237. Interest on Unpaid Balances.....	197
Sec. 12-2238. Permit Revocation and Service Disconnection.....	197
Sec. 12-2239. Effective Date.....	197
Sec. 12-2240 – 12-2300. Reserved.....	197
ARTICLE X. MINING.....	197
DIVISION 1. GENERALLY.....	197
Sec. 12-2301. Purpose.....	198
Sec. 12-2302. Definitions.....	198

Sec. 12-2303. Nuisance abatement.....	198
Sec. 12-2304. Existing codes.....	198
Sec. 12-2305. Violation, penalties.....	198
Secs. 12-2306--12-2320. Reserved.....	199
DIVISION 2. PERMIT.....	199
Sec. 12-2321. Required.....	199
Sec. 12-2322. Termination.....	199
Sec. 12-2323. Application.....	199
Sec. 12-2324. Operating and land rehabilitation practices.....	200
Sec. 12-2325. Operating conditions.....	201
Secs. 12-2326--12-2350. Reserved.....	202
ARTICLE XI. PERSONAL WIRELESS COMMUNICATIONS ANTENNAS AND TOWERS.....	202
Section 12-2351. Intent and Purpose.....	202
Sec. 12-2352. Definitions.....	203
Sec. 12-2353. Permit and Location Requirements.....	203
Sec. 12-2354. Permit Application Requirements for Conditional Use Permits for New and Modified Towers and Administrative Permits for Additional Antennas on Existing Mounts.....	204
Sec. 12-2355. Conditional Use Permits.....	206
Secs. 12-2356 – 12-2370. Reserved.....	207
ARTICLE XII. PRESERVATION AND LAND CONSERVATION DEVELOPMENTS.....	207
Sec. 12-2371. Scope.....	207
Sec. 12-2372. General provisions.....	207
Sec. 12-2373. Purpose.....	207
Sec. 12-2374. Permitted uses.....	207
Sec. 12-2375. General standards for approval.....	207
Sec. 12-2376. Density, Frontage on a Public Street and Length of Cul-de-sac requirements.....	208
Sec. 12-2377. Coordination with subdivision regulations.....	208
Sec. 12-2378. Pre-application meeting.....	208
Sec. 12-2379. General development plan.....	208
Sec. 12-2380. Final development plan.....	209
Sec. 12-2381. Enforcement of development schedule.....	210
Sec. 12-2382. Conveyance and maintenance of undeveloped parcel.....	210
Sec. 12-2383. Standards for undeveloped parcel.....	210
Sec. 12-2384. Review and amendments.....	211

ARTICLE I. IN GENERAL

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

ARTICLE II. ZONING²

DIVISION 1.

GENERALLY

Sec. 12-51. Short title.³

This article may be cited as the Zoning

Ordinance. **Sec. 12-52. General purposes.⁴**

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

Sec. 12-53. Specific purposes.⁵

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

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

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

³ Code 1982, § 301.101

⁴ Code 1982, § 301.201

⁵ Code 1982, § 301.202

LAND USE

- L. Protect and preserve economically viable agricultural land.
- M. Provide for the wise use and conservation of energy resources.
- N. Implement the City's Comprehensive Land Use Plan as prepared by the Planning Commission and adopted by the City Council.

Sec. 12-54. Interpretation and construction.⁶

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

Sec. 12-55. Definitions.⁷

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

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

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

Administrator means the City Zoning Administrator.

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

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

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

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

- A. More than 30 percent of the facility's income shall be derived from the impounding of stray animals.
- B. Less than ten percent of the facility's income may be derived from the sale of pet food, leashes, pet training, and other activities incidental to the impounding and adoption of animals.
- C. No breeding of animals for sale or any other purpose shall be done on the premises.
- D. Structure shall be completely enclosed to prevent noise from reaching adjacent properties. Structure

⁶ Code 1982, § 301.203

⁷ Code 1982, § 301.301; Res. No. 1997-5, 2-11-97; Res. No. 1997-16, § 9, 6-17-97; Ord. No. 1997-19, 7-15-97; Ord. No. 02-2011, 7-19-2011. **Cross reference(s)--Definitions generally, § 1-2.**

⁸ See Section 12-178.

AFTON CODE

shall be required to meet architectural standards required in this Code and City ordinances.

- E. Proper and healthful disposal of animal waste and dead animals shall be required.
- F. Lighting, fencing, screening, berming, etc., may be required by the City.
- G. Other conditions as may be deemed reasonable by the City.

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

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

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

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

Applicant, means the owner of land submitting an application under the provisions of this ordinance for a Stormwater Management Permit (SWMP) and/or Erosion and Sediment Control Plan (ESC Plan) to be issued by the community.

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

Automobile repair means the replacement of any part or repair of any part which does not require the removal of the engine head or pan, engine, transmission or differential; incidental body and fender work, minor painting and upholstering service when such service above stated is applied to passenger automobiles and trucks not in excess of 7,000 pounds gross vehicle weight.

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

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

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

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

Best Management Practices (BMPs) means the most effective and practicable means of erosion prevention and sediment control, and water quality management practices that are the most effective and practicable means to control, prevent, and minimize degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, pollution prevention through good housekeeping, and other management practices published by state or designated area-wide planning agencies.

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

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

⁹ Ord 02-2011, 7/19/2011

LAND USE

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

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

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

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

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

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

Building code means the Minnesota State Building Code.

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

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

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

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

Certificate of occupancy. See Section 12-87.

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

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

*Church see Places of Worship*¹¹

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

¹⁰ Ord 1997-10, 5/19/1998

¹¹ Ordinance 5-2005, 4/19/2005

Commercial. See Section 12-134 for permitted uses.

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

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

Common Plan of Development or Sale, means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

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

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

Construction Activity, includes construction activity as defined in 40 CFR pt. 122.26(b)(14)(x) and small construction activity as defined in 40 CFR pt. 122.26(b)(15) and construction activity as defined by Minn. R. 709.0080, subp. 4. This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling, and excavating. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more. Construction activity does not include a disturbance to the land of less than five (5) acres for the purpose of routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. (NOTE – The community may wish to change this to a smaller disturbance area. A smaller area is more restrictive than the state/federal requirements, so it would be allowable for a local government.)

Council means the governing body of the City.

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

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

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

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

Drive-in means any use where products and/or services are provided to the customer under conditions where the customer does not have to leave the car or where fast service to the automobile occupants is a service offered regardless of whether service is also provided within a building. A drive-in shall also include any restaurant, cafe, or other food and drink business which offers take home prepared food or food which can be carried outside of the building for human consumption; any and all restaurants commonly known as fast-food operations.

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

LAND USE

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

Easement means a grant by a property owner for the use of a strip of land by the public or any person for any specific purpose or purposes.

Engineer means the City Engineer.

Erosion and Sediment Control Plan (ESC Plan,) means a plan for projects disturbing less than one acre that is in compliance with the minimum requirements of the MSCWMO and VBWD. The plan identifies erosion prevention and sediment control practices, location and timelines for installation. The plan also includes responsible parties and timelines for inspection and maintenance.

Erosion Prevention, means measures employed to prevent erosion. Examples include but not limited to: soil stabilization practices, limited grading, mulch, temporary erosion protection or permanent cover, and construction phasing.

Essential services (public utility uses) means underground or overhead gas, electrical, steam or water distribution systems; collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, or other similar equipment, accessories and buildings in conjunction therewith.

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

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

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

Farm. (See also Agriculture, rural.)

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

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

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

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

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

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

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

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

Floor plan, general means a graphic representation of the anticipated utilization of the floor area within a building or structure, but not necessarily as detailed as construction plans.

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

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

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

Garage sale means an offering of goods to the public on a temporary basis by a person or organization at a sale site which is not principally used for the purpose of retail sales and where no other license or permit has been issued by the City authorizing such sales. As used in this article, the term "garage sale" encompasses yard sales, estate sales, moving sales, block sales, rummage sales, boutiques and related sales where secondhand or other goods are sold or displayed to members of the public on a temporary basis. "Garage sale" as used in this article does not include estate sales or auction sales, provided the number of sales in any calendar year does not exceed the limitations imposed by this article, and further provided that such sale is conducted by a licensed auctioneer.

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

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

Governing body means the City Council.

Grade Plane means a reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829 mm) from the building.¹²

Height, Building means the vertical distance from grade plane to the average height of the highest roof surface.¹³

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

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

Impervious Surface, means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.

Institutional housing see *Facilities for Institutionalized Persons*

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

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

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

Kenel, private means anyplace where four or more dogs over six months of age are owned by any member or

¹² Ord 02-2011, 7/19/2011

¹³ Ord 02-2011, 7/19/2011

LAND USE

members of the household.

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

Land Disturbance, means any activity that result in a change or alteration in the existing ground cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, stockpiling, excavation, and borrow pits. Routine vegetation management, and mill and overlay/resurfacing activities that do not alter the soil material beneath the pavement base, are not considered land disturbance. In addition, other maintenance activities such as catch basin and pipe repair/replacement, lighting, and pedestrian ramp improvements shall not be considered land disturbance for the purposes of determining permanent stormwater management requirements.

¹⁴*Land reclamation and land grading* means changing the grade of the land by depositing, removing, or moving material. Depositing, removing, or moving a total of 50 cubic yards or more and/or the disturbance of land area of 1,000 square feet or more of material per lot, either by hauling in and/or out or moving materials in, out, or within the lot, shall constitute land reclamation and land grading.

Landscaping means planting of trees, shrubs and ground covers.

¹⁵*Lean-to* means a structural element on a building that is open on three sides and has a roof that is attached to and supported by the building on one side and by posts on the other side.

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

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

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

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

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

Lot, corner means a lot situated at the junction of, and abutting on, two or more intersecting streets; or a lot at the point of deflection in alignment of a single street, the interior angle of which does not exceed 135 degrees.

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

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

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

Lot line, rear means that boundary of a lot which is opposite the front lot line. If the rear lot line is less than ten feet in length, or if the lot forms a point at the rear, the rear lot line shall be a line ten feet in length within the lot, parallel to, and at the maximum distance from the front lot line.

¹⁴ Ord 8-2005, 5/17/2005

¹⁵ Ord 05-2013, 3/19/2013

Lot line, side means any boundary of a lot which is not a front lot line or a rear lot line.

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

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

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

Major Subdivision, means all subdivisions not classified as minor subdivisions including, but not limited to, subdivisions of four (4) or more lots, or any size subdivision requiring any new street or extension of an existing street.

¹⁶*Manufactured home* means a structure transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except that the term includes any structure which meets all the requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary and complies with the standards established under M.S.A. § 327.32. *Manufactured home* excludes prefabricated homes and modular homes. No manufactured dwelling shall be moved in the City that does not meet the manufactured home building code as defined in M.S.A. § 327.32.

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

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

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

Manure means any solid or liquid containing animal excreta.

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

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

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

Mezzanine shall be considered a portion of the story below and shall not exceed one-third of the floor area of that room or space in which they are located. A mezzanine shall be open and unobstructed to the room in which such

¹⁶ Ord 05-2013, 3/19/2013

LAND USE

mezzanine is located except for walls not more than 42 inches (1067 mm) high, columns and posts.¹⁷

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

Minor Subdivision, means any subdivision containing three (3) or less lots fronting on an existing street, not part of a common plan of development nor involving any new street or road or the extension of municipal facilities.

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

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

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

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

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

Municipality means the City of Afton.

National Pollutant Discharge Elimination System (NPDES), means the program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.

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

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

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

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

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

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

Nursery, landscape means a business growing and selling trees, flowering and decorative plants, and shrubs, and which may be conducted within a building or without, for the purpose of landscape construction.

Nursing home means a building with facilities for the care of children, the aged, infirm, or place of rest for those suffering bodily disorder. Such nursing home shall be licensed by the state board of health as provided for in M.S.A. § 144.50.

AFTON CODE

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

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

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

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

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

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

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

Owner, means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease, easement, or mineral rights license holder, the party or individual identified as the lease, easement or mineral rights license holder; or the contracting government agency responsible for the construction activity.

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

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

Permittee, means a person or persons, firm, or governmental agency or other entity that signs the application submitted to the Town and is responsible for compliance with the terms and conditions of the permit.

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

Places of Worship means a building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.¹⁷

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

Predevelopment State, means the rate and volume of stormwater is unchanged. The calculation of predevelopment is based on native soils and vegetation.

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

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

Property line means the legal boundaries of a parcel of property which may also coincide with a right-of-way line of a road, cartway, and the like.

Protective covenant means a contract entered into between private parties which constitutes a restriction of the use of a particular parcel of property.

Public land means land owned and/or operated by a governmental unit including school districts.

¹⁷ Ord 02-2011, 7/19/2011

LAND USE

Publication means an official notice as prescribed by state statute.

Public Waters means all water basins and watercourses that are described in Minn. Stat. § 103G.005 subd. 15.

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

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

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

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

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

Redevelopment, means any development that is not considered new development.

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

Registered land survey means a survey map of registered land designed to simplify a complicated metes and bounds description, designating the same into a tract or tracts of a Registered Land Survey Number. See M.S.A. § 508.47. A registered land survey shall not be used as a means to subdivide property.

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

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

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

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

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

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

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

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

Resort means any structure or group of structures containing more than two dwelling units or separate living quarters designed or intended to serve as seasonal or temporary dwellings on a rental or lease basis for profit with the primary purpose of such structures being recreational in nature. Uses may include a grocery for guests only,

fish cleaning house, marine service, boat landing and rental, recreational area and equipment, and similar uses normally associated with a resort operation.

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

Restrictive covenant. See Protective covenant.

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

Retain, means manage stormwater on site using a low-impact development approach so that the rate and volume of predevelopment stormwater reaching receiving waters is unchanged.

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

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

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

Sales, Seasonal Agricultural. A business selling agricultural goods of a temporary or seasonal nature. Such a business is limited to agricultural goods actually raised on land owned or leased by the business operator. Such sales activities are¹⁸ limited to the following period: Saturdays from 7:00 a.m. to noon, from May 15th to November 1st. Such sales activities shall be located only in the VHS-C District on private property with permission of the landowner or upon public property with the permission of the City, or both.¹⁹

Saturated Soil, means the highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information.

Sediment Control, means methods employed to prevent sediment from leaving the site. Sediment control practices include: silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, bio rolls, rock logs, compost logs, storm drain inlet protection, and temporary or permanent sedimentation basins.

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

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

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

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

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

¹⁸ Ordinance 5-2005, 4/19/2005

¹⁹ Amendment 02-2009, 4/21/2009

LAND USE

Sign means a notice which directs attention to a product, place, activity, person, institution, organization, or business for public view.²⁰

Slope means rise or fall in land surface, expressed as the ratio h:v in which 'h' is horizontal distance and 'v' is vertical rise or fall of the land surface. Equivalently, slope may be expressed as a percentage, calculated to be 100 times 'v' divided by 'h'.²¹

Small Construction Activity, means as defined in 40 CFR part 122.26(b)(15). Small construction activities include clearing, grading and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres.

St. Croix Riverway, means all lands and public waters within the riverway boundary subject to the standards and criteria for the Lower Saint Croix National Scenic Riverway in Minnesota.

Stabilized means exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, mats or other material that prevents erosion from occurring. Grass, agricultural crop or other seeding alone is not stabilization. Mulch materials must achieve approximately 90 percent ground coverage (typically 2 ton/acre).

Stormwater means as defined under Minn. R. 7077.0105, subp. 41(b), and includes precipitation runoff, stormwater runoff, snowmelt runoff, and any other surface runoff and drainage.

Stormwater Facility, means a stationary and permanent BMP that is designed, constructed and operated to prevent or reduce the discharge of pollutants in stormwater.

Stormwater Pollution Prevention Plan (SWPPP), means a plan for stormwater discharge that includes erosion prevention BMPs, sediment control BMPs and permanent stormwater management systems that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution.

Story means that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. A basement shall be counted as a story. A mezzanine shall not be counted as a story.²²

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

1. More than 6 feet (1829 mm) above grade plane.
2. More than 6 feet (1829 mm) above the finished ground level for more than 50 percent of the total building perimeter.
3. More than 12 feet (3658 mm) above the finished ground level at any point.²³

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

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

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

Street, intermediate or minor arterial means a street which serves or is designed to serve heavy flows of traffic and

²⁰ Ord 1997-12, 8/22/98

²¹ Repealed Ord 02-2008; Ord 01-2014, 5/20/2014

²² Ord 02-2011, 7/19/2011

²³ Ord 02-2011, 7/19/2011

which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

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

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

Street width means the width of the right-of-way, measured at right angles to the centerline of the street.

Structural alteration means any change, other than incidental repairs, which would affect the supporting members of a building, such as bearing walls, columns, beams, girders, or foundations.

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

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

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

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

Surface Water(s), means all streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland.

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

Temporary Erosion Protection, means methods employed to prevent erosion during construction activities. Examples of temporary erosion protection include: straw, wood fiber blanket, wood chips, vegetation, mulch and rolled erosion control products.

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

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

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

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

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

Underground Waters (Groundwater), means water contained below the surface of the earth in the saturated zone

LAND USE

including, without limitation, all waters whether under confined, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground. The term groundwater shall be synonymous with underground water.

Use means the purpose or activity for which the land or building thereon is designated, arranged, or intended, or for which it is occupied, utilized, or maintained.

Use, accessory means a use subordinate to and serving the principal use or structure on the same lot and customarily incidental thereto.

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

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

Use, permitted means a public or private use which of itself conforms with the purposes, objectives, requirements, regulations and performance standards of a particular district.

Use, principal means the main use of land or buildings as distinguished from subordinate or accessory uses. A "principal use" may be either permitted, conditional, or special.

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

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

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

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

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

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

1. At least periodically, the land supports predominantly wetland vegetation. Wetland vegetation is listed in the National List of Plant Species that Occur in Wetlands: North Central (Region 3), Fish and Wildlife Service, May, 1988, or later revisions.
2. The substrata is predominantly undrained hydric soil. Hydric soils are those which have been exposed to water for long enough periods of time to experience oxygen depletion. Hydric soils are listed in Hydric Soils in the United States, Soil Conservation Service, October, 1985, or later revisions.
3. Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.²⁴

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

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

²⁴ Ord 02-2011, 7/24/2011

AFTON CODE

the final customer.

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

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

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

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

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

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

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

Sec. 12-56. Application of article.²⁵

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

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

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

²⁵ Code 1982, § 301.401

LAND USE

LAND USE

1. The structure involved is the principal structure;²⁶
 2. The structure was built prior to September 18, 1975;
 3. The existing setback of the structure is within 60 percent of the current minimum required setback;
 4. The proposed improvement to the structure is on the side of the structure opposite from the substandard setback, or the improvement is extended laterally or parallel with the substandard setback;
 5. The proposed improvement will not encroach farther into the substandard setback than does the structure; and
 6. The proposed improvement will be in compliance with all other requirements and dimensional standards of this article.
- E. *Unlawful uses, buildings and structures.* No unlawful use of property existing on the effective date of the ordinance from which this article was derived or any amendment thereto nor any building or structure which is unlawfully existing on such date shall be deemed a nonconforming use or a nonconforming building or structure.
- F. *Permit holders and permit applicants.* Any nonconforming structure that is ready for or under construction on the effective date of the ordinance from which this article was derived or any amendment thereto may be completed and occupied in accordance with the requirements of any valid building permit issued therefore²⁷ prior to such effective date.
- G. *Change of a nonconforming use.*
1. *Change from one nonconforming use to another.* A nonconforming use may be changed only to a use permitted in the district in which it is located; except that if the original use has ceased to be in use for less than one year, a building may be changed to another nonconforming use of the same or a more restrictive classification, provided such change is approved by the Board of Adjustment and appeals as hereinafter provided. Any alterations made to the building to make the change in nonconforming use possible must be reviewed and approved in conjunction with the approval of the changed nonconforming use. Once changed to a conforming use, no building or land shall be permitted to revert to the original nonconforming use.
 2. *Change of use with approval of the Board of Adjustment.* A nonconforming use, all or partially conducted in a building or buildings, may be changed to another nonconforming use only upon determination by the Board of Adjustment, after a public hearing, that the proposed new use will be no more detrimental to its neighborhood and surroundings than is the use it is to replace. In determining relative detriment, the Board of Adjustment shall take into consideration, among other things: Traffic generated; nuisance characteristics, such as emission of noise, dust and smoke; fire hazards; and hours and manners of operation.
- H. *Restoration of nonconforming uses or substandard structures or buildings.* A substandard building or structure which is damaged or destroyed by fire, flood, wind, earthquake or other calamity may be restored and the occupancy, use or nonconforming use of such building or structure, or part thereof, which existed at the time of such partial destruction, may be continued or resumed, provided that the restoration is started within a period of one year and is diligently pursued to completion, unless the damage to such building or structure is equal to 50 percent or more of the current assessed market value according to the City Assessor, in which case the reconstruction of the building or structure and the restoration of the use shall conform to the provisions of this article.
- I. *Abandonment of use.* When any nonconforming use of land or of a building or structure is abandoned for a period in excess of one year, such land, building or structure shall, thereafter, be used only as provided by this article.²⁸
- J. *Exceptions to slope requirements for substandard structures.* An extension, enlargement or iteration of a structure may be permitted by Administrative Permit if the structure is located on a slope in excess of 18% provided:

²⁶ Ord 1997-25, 8/17/99

²⁷ Amendment 02-2009, 4/21/2009

LAND USE
AFTON CODE

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

Sec. 12-58. Interpretation of conflicting provisions.²⁹

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

Sec. 12-59. Enforcement.³⁰

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

Sec. 12-60. Supremacy.³¹

When any condition imposed by any provision of this article on the use of land or buildings or on the bulk of buildings is either more restrictive or less restrictive than similar conditions imposed by any provision of any other city ordinance or regulation, or statute or law in effect in the City, the more restrictive condition shall prevail.

Secs. 12-61 – 12-75. Reserved.

DIVISION 2. ADMINISTRATION³²

Sec. 12-76. Duties of the Zoning Administrator.³³

²⁹ Code 1982, § 301.203

³⁰ Code 1982, § 301.800

³¹ Code 1982, § 301.901

³² **Cross reference** – Administration, Ch. 2.

³³ Code 1982, § 301.502, Ord 97-42, 9/18/01

LAND USE

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

- A. Issue permits required by this article;
- B. Conduct inspections of land, buildings, or structures at reasonable times, to determine compliance with and enforce the provisions of this article;
- C. Maintain all records necessary for the enforcement of this article, including, but not limited to all maps, amendments, and Conditional Use Permits, variances, appeal notices and applications therefore³⁴;
- D. Receive, file and forward all appeals, notices, applications for variances, Conditional Use Permits or other matters to the appropriate officials or boards;
- E. Institute in the name of the City, any appropriate actions or proceedings to enforce this article.

<i>Action</i>	<i>When Applicable</i>	<i>Property Owner Should Apply To</i>	<i>Application Approved or Denied By</i>	<i>Appeal Considered By</i>	<i>Public Hearing Required</i>	<i>Reference</i>
Tree or vegetative cutting permit	See Lower St. Croix River Bluffland & Shoreland Management Ordinance, Article IV of this Chapter	Zoning Administrator	Zoning Administrator	Court	No	Lower St. Croix River Bluffland & Shoreland Management Ordinance, article IV of this chapter
Driveway Permit	Prior to application for building permit	Zoning Administrator	Zoning Administrator	Court	No	12-84
Septic Permit	Prior to application for driveway permit and building permit	Building Official	Building Official	Court	No	Sanitary Sewer Ordinance, Article IX of this chapter
³⁵ Land Reclamation and Land Grading	Moving 50 cubic yards or more of materials and/or disturbance of 1,000 s.f. or more of land per lot	Zoning Administrator	Zoning Administrator	Court	No	12-85, 12-215, 12-216
Moving Permit	Relocating a structure	Zoning Administrator	City Administrator	Court	No	12-82
Sign permit	Erection of a sign ³⁶	Zoning Administrator	See 12-210	Court	Option of City Council	12-210
Administrative Permit	Ensure compliance with more unusual uses or zoning requirements	Zoning Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	No	12-79
Conditional Use Permit	May allow for uses not normally permitted in a specific zoning district	Zoning Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	No	12-78

³⁴ Amendment 02-2009, 4/21/2009

³⁵ Ord 08-2005, 5/17/2005

³⁶ Ord 01-2014, 5/20/2014

LAND USE

AFTON CODE

Variance	Difficulties with dimensional provisions of zoning ordinance	Zoning Administrator	Review and recommendation by Planning Commission; approval by Board of Adjustment and appeals	Court	Yes	12-77
Building permits	Any proposed construction	Building Official	Building Official or inspector	Court	No	Building code
Zoning Ordinance Amendment	Petition of property owner or initiative of Planning Commission or City Council	City Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	Yes	12-80
Certificate of occupancy	Certifies building or structure meets current codes and can be occupied	Building Official (issued upon completion of structure)	Building Official and Zoning Administrator	Court	No	12-87
Subdivision	Creating new lots	City Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	Yes	Subdivision Ordinance, article VI of this chapter and 12-131
Tree or vegetative cutting permit	See Lower St. Croix River Bluffland & Shoreland Management Ordinance, Article IV of this Chapter	Zoning Administration	Zoning Administrator	Court	No	Lower St. Croix River Bluffland & Shoreland Management Ordinance, article IV of this chapter
Driveway Permit	Prior to application for building permit	Zoning Administrator	Zoning Administrator	Court	No	12-84
Septic Permit	Prior to application for driveway permit and building permit	Building Official	Building Official	Court	No	Sanitary Sewer Disposal Ordinance, Article IX of this chapter
³⁷ Land Reclamation and Land Grading	Moving 50 cubic yards or more of materials and/or disturbance of 1,000 s.f. or more of land per lot	Zoning Administrator	Zoning Administrator	Court	No	12-85, 12-215, 12-216
Moving Permit	Relocating a structure	Zoning Administrator	City Administrator	Court	No	12-82
Sign permit	Erection of any sign	Zoning Administrator	See 12-210	Court	Option of City Council	12-210
Administrative Permit	Ensure compliance with more unusual uses or zoning requirements	Zoning Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	No	12-79
Conditional Use Permit	May allow for uses not normally permitted in a specific zoning district	Zoning Administrator	Review and recommendation by Planning Commission,	Court	No	12-78

³⁷ Ord 8-2005, 5/17/2005

LAND USE

			final approval by City Council			
Variance	Difficulties with dimensional provisions of zoning ordinance	Zoning Administrator	Review and recommendation by Planning Commission; approval by Board of Adjustment and appeals	Court	Yes	12-77
Building permits	Any proposed construction	Building Official	Building Official or inspector	Court	No	Building code
Amendment of zoning ordinance	Petition of property owner or initiative of Planning Commission or City Council	City Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	Yes	12-80
Certificate of occupancy	Certifies building or structure meets current codes and can be occupied	Building Official (issued upon completion of structure)	Building Official and Zoning Administrator	Court	No	12-87
Subdivision	Creating new lots	City Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	Yes	Subdivision Ordinance, article VI of this chapter and 12-131

*Fees are established from time to time by resolution of the City Council, see Section 12-88.³⁸

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

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

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

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

The Board may impose conditions in the granting of variances to insure compliance and to protect adjacent

³⁸ Res. No. 1997-16, § 10, 6-17-97

LAND USE

AFTON CODE

properties. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

- B. *Composition.* The City Council shall serve as the Board of Adjustments and Appeals. Any question of whether a particular Board member should be disqualified from voting upon an issue shall be determined by a majority vote of all members, except the member who is being challenged.
- C. *Appeals.* An appeal from any order, requirement, decision or determination of any administrative official may be initiated by any person affected thereby, or by any officer, department, board or bureau of the City, County or State within 30 days from the date of any such order, requirement, decision or determination by filing with the Zoning Administrator a written notice of appeal.
1. The notice of appeal shall state:
 - a. The particular order, requirement, decision or determination from which the appeal is taken;
 - b. The name and address of the appellant;
 - c. The grounds for the appeal;
 - d. The relief requested by the appellant.
 2. An appeal stays all proceedings in furtherance of the action appealed from unless the Board of Adjustments and Appeals, to whom the appeal is taken certifies that by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property.
 3. The Board of Adjustments and Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and to that extent shall have all the powers of the officer from whom the appeal was taken, and may direct the issuance of a permit.
- D. *VariANCES.* Application for a variance shall be filed with the Zoning Administrator. The application shall be accompanied by development plans for the proposed use showing such information as may be reasonably required by the administrator, including but not limited to those items listed below. Such plans shall contain sufficient information for the City to determine whether the proposed development will meet all applicable development standards.
1. Name and mailing address of the applicant;
 2. The legal property description of the land involved in the request, including the street address, if any, of the property;
 3. The names and mailing addresses of the owners of the property and any other persons having a legal interest therein;
 4. Site plan drawn to scale, dimensions indicated, including: Proposed structure, house, existing accessory buildings, well, septic system (tank and drainfield), adjacent public streets, driveway, lot size, and lot dimensions:
 - a. Distance between existing structures, proposed structures, well and septic system.
 - b. Setbacks of existing and proposed structures from: Lot lines, non-buildable easements, public street right-of-way line or centerline, shoreline, bluffline or crest of slope 18 percent or steeper.
 - c. Possible location of any and all detached accessory buildings permitted by this article for the property for which the application is being made.
 5. Landscaping and screening plans including species and size of trees and shrubs proposed;
 6. Finished grading and drainage plans sufficient to drain the developed portion of the site and to retain as much run-off on the site as possible;
 7. Type of business or activity and proposed number of employees or occupants;
 8. Proposed floor plan and elevations of all buildings with the use indicated;
 9. Soil type and soil limitations for the intended use. A plan or statement indicating the soil conservation practice or practices to be used to overcome any soil limitation shall be made part of the application;
 10. A location map showing the parcel's general location within the City;
 11. Proof of ownership of the property for which the application is submitted, consisting of an abstract of title or registered property certificate certified by a licensed abstractor, or a title opinion prepared by an attorney licensed to practice in the state, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership;
 12. An accurate list showing the names and mailing addresses of the record owners of all property located within 500 feet of the property owned by the applicant.

LAND USE

13. A complete description of the request for variance including a description of the unique conditions and practical difficulties that make a Variance necessary, the Sections of the City Code from which a Variance is requested, and the reasons for the Variance request.³⁹

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

- E. *Hearing procedure.* The Zoning Administrator shall, upon the filing of a notice of appeal or an application for a variance, refer the matter to the Board of Adjustments and Appeals and the Planning Commission and establish a time for the hearing thereof by said board and commission no less than 15 days after the filing of the notice or application and no more than 45 days after the filing thereof. On variance applications, the Planning Commission shall hold at least one public hearing, affording an opportunity for all parties interested to be heard, and shall give no less than ten days' nor more than 30 days' notice of the time and place of such hearing, published in the designated legal newspaper for the City. Such notice shall also contain a description of the land and the requested variance. At least ten days before the hearing, the Zoning Administrator shall mail an identical notice to the owner and to each of the property owners of record for property within 500 feet of the outside boundaries of the land in question. The Planning Commission shall review all requests for variances prior to final action by the board; a recommendation may be made to the board for approval, denial or approval with conditions deemed to be in the public interest. The Board of Adjustment and appeals shall decide any appeal or any application for a variance and issue its order with respect thereto within 30 days from the date of the hearing thereon.
- F. *Findings of the Board.* The Board of Adjustments and Appeals shall make written findings in any case of an appeal or application for a Variance and shall state therein the reasons for its decision.
1. In addition to meeting the criteria set forth in Section 12-77 (A), the following criteria must be met before a Variance may be granted:
 - a. The Variance, if granted, will not have a significant adverse effect on the public health, safety, welfare or environment.
 - b. The granting of the Variance requested will not confer on the applicant any special privilege that is denied by the Ordinance to owners of other land, structures or buildings in the same district.
 - c. Exceptional or extraordinary circumstances apply to the property which does not apply generally to other properties in the same zoning district or vicinity, and result from lot size or shape, topography, or other circumstances over which the owners of the property have had no control.
 - d. The literal interpretation of the provisions of this Ordinance would deprive the applicant of the rights commonly enjoyed by other property in the same district under the terms of this Ordinance.
 - e. The Variance requested is the minimum Variance that would alleviate the practical difficulty.⁴⁰
 2. The order issued by the Board of Adjustments and Appeals shall include the legal description of the land involved. Any such order shall be filed with the Zoning Administrator who shall immediately mail a copy thereof, bearing the notation of the filing date, to the appellant or applicant.
 - a. A certified copy of any order issued by the Board of Adjustments and Appeals acting upon any appeal from an order, requirement, decision or determination of an administrative officer, or upon any application for a Variance, shall be filed with the County Recorder.
 - b. Such filing shall be made by the Zoning Administrator or other agent designated by the Board as soon as is reasonably possible after the filing of the order with the Zoning Administrator.
 - c. The cost of such filing with the County Recorder shall be borne by the appellant or applicant.
- G. *Finality of decision.* All decisions of the Board of Adjustment and appeals acting upon an appeal from an order, requirement, decision or determination by an administrative officer or upon an application for a variance shall be final except that any aggrieved person may have any decision or order of the board reviewed by an appropriate remedy in district court as provided by law.

³⁹ Ord 1997-10, 5/19/1998; Ord 02-2014, 5/20/2014

⁴⁰ Ord 02-2014, 5/20/2014

LAND USE

AFTON CODE

- H. *Time limit for implementing a variance.* A variance must be implemented within one year from the date the variance was issued. Any variance not implemented within one year from the date of issuance must be reapplied for and is subject to any amendment to this article and any new conditions the Board of Adjustment and appeals deems necessary to insure compliance with the terms of the variance.
- I. Variances to Impervious Coverage in VHS-C and VHS-R Districts
1. Based on the findings listed below, the City of Afton has determined that a variance to exceed 20 percent impervious surface as required per the Department of Natural Resources⁴¹ Lower St. Croix River Bluffland and Shoreland District is acceptable in the VHS-C and VHS-R Districts subject to meeting the requirements of Section 12-132 (B) (12) of the Afton Code of Ordinances, including the review and comment of the Department of Natural Resources.
 - a. The properties in the VHS-C and VHS-R districts are constrained in lot size.
 - b. A precedent has been set that a maximum of 20 percent impervious coverage prohibits reasonable use within the district.
 - c. The conditions of Section 12-132 (B)(12) allow for adequate review and improved protection from erosion concerns, groundwater contamination, and surface water discharge.
 - d. The City of Afton is required to adhere to and enforce the Lower St. Croix River Bluffland and Shoreland regulations.⁴²

Sec. 12-78. Conditional Use Permits.⁴³

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

⁴¹ Amendment 02-2009, 4/21/2009

⁴² Ord. 2004-17, 12/21/04

⁴³ Ord. 2004-16, Amended 12/21/04

LAND USE

10. Soil type and soil limitations for the intended use. A plan or statement indicating the soil conservation practice or practices to be used to overcome any soil limitation shall be made part of the application;
 11. A location map showing the parcels general location within the City;
 12. Proof of ownership of the property for which the application is submitted, consisting of an abstract of title or registered property certificate certified by a licensed abstractor, or a title opinion prepared by an attorney licensed to practice in the state, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership;
 13. An accurate list showing the names and mailing addresses of the recorded owner of all property within a minimum of 500 feet of the boundaries of the property for which the application is submitted, the accuracy of which is verified by the applicant.
- C. *Staff review/Technical Procedure Reports.* Upon receipt of an application for a conditional use permit, the Zoning Administrator shall refer the request to appropriate staff to ensure that informational requirements are complied with. When all informational requirements have been complied with, the request shall be considered officially submitted. The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports and/or provide general assistance in preparing a recommendation on the request to the Planning Commission and City Council.
- D. *Public Hearing.* Upon official submission of the request, the Zoning Administrator shall set a public hearing on the request for the next regularly scheduled Planning Commission meeting occurring at least ten (10) working days from such date as a notice of the hearing is published in the official newspaper. Such notice shall contain a legal property description and description of the request, and shall be published no more than thirty (30) days and no less than ten (10) days prior to the hearing. Written notification of the hearing shall also be mailed at least ten (10) working days prior to the date of the hearing to all owners of land within five hundred (500) feet of the boundary of the property in question. Failure of the property owner to receive said notice shall not invalidate any such proceedings as set forth within this Ordinance.
- E. *Planning Commission Action.* The Planning Commission shall conduct the public hearing at which time the applicant or a representative thereof shall appear to answer questions concerning the proposed request.
1. The Planning Commission shall consider possible⁴⁴ adverse effects of the proposed conditional use permit. Its judgment shall be based upon (but not limited to) the following factors:
 - a. The proposed action has been considered in relation to the specific policies and provision of and has been found to be consistent with the official City Comprehensive Plan; and
 - b. The proposed use is or will be compatible with present and future land uses of the surrounding area; and
 - c. The proposed use will not seriously depreciate surrounding property values or scenic views; and
 - d. The proposed use conforms with all performance standards contained herein.
 2. The Planning Commission and City staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relations to all pertinent sections of the Ordinance.
 3. The Planning Commission shall make a recommendation for either denial or approval with conditions as they deem necessary to carry out the intent and purpose of this Ordinance. Such recommendation shall be in writing and accompanied by any report and recommendation of the City staff. The written recommendation of the Planning Commission shall be forwarded to the Zoning Administrator for referral to the City Council.
- F. *Referral to City Council.* Upon receipt of the Planning Commission report and recommendation, or within sixty (60) days of receipt of a complete application, unless the review period of the application is extended pursuant to Minnesota Statutes 15.99, the Zoning Administrator shall place the request and any report and recommendation on the agenda of the next regularly scheduled meeting of the City Council
- G. *City Council Action.* Upon receiving the request and any report and recommendation of the Planning Commission and the City Staff, the City Council shall have the option to set and hold a public hearing if deemed necessary and shall make a recorded finding of fact.

⁴⁴ 02-2009, 4/21/2009

LAND USE

AFTON CODE

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

H. *Performance Bond.*

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

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

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

Sec. 12-79. Administrative Permit⁴⁵

- A. *Purpose.* The purpose of this section is to establish regulations and procedures for the processing and consideration of activities allowed by administrative permit, and of matter requiring the approvals of the Zoning Administrator with the goal of protecting the health, safety, and welfare of the citizens of the City.
- B. *Application.* Requests for administrative permits, as provided within this Ordinance, shall be filed with the Zoning Administrator on an official application form. Such application shall be accompanied by a deposit and fee per the City's current fee schedule. The application shall also include the information required below, however, the Zoning Administrator may waive submission information not deemed necessary for the administrative review.
 1. Name and mailing address of the applicant;

LAND USE

2. The legal property description of the land involved in the request, including the street address, if any, of the property;
 3. The names and mailing addresses of the owners of the property and any other persons having a legal interest therein;
 4. Site plan drawn to scale, dimensions indicated, including: proposed structure, house, existing accessory buildings, well, septic system (tank and drainfield), adjacent public streets, driveway, location of existing and proposed utility lines, lot size and lot dimensions:
 - a. Distance between existing structures, proposed structures, well, and septic system.
 - b. Setbacks of existing and proposed structures from: Lot lines, non-buildable easements, public street right-of-way line or centerline, shoreline, bluffline or crest of slope 18 percent or steeper.
 - c. Possible location of any and all detached accessory buildings permitted by this article for the property for which the application is being made.
 5. Landscaping and screening plans including species and size of trees and shrubs proposed;
 6. Finished grading and drainage plans sufficient to drain the developed portion of the site and to retain as much run-off on the site as possible;
 7. Type of business or activity and proposed number of employees or occupants;
 8. Proposed floor plan and elevations of all buildings with use indicated;
 9. Photometric lighting plan;
 10. Soil type and soil limitations for the intended use. A plan or statement indicating the soil conservation practice or practices to be used to overcome any soil limitation shall be made part of the application;
 11. A location map showing the parcel's general location within the City;
 12. Proof of ownership of the property for which the application is submitted, consisting of an abstract of title or registered property certificate certified by a licensed abstractor, or a title opinion prepared by an attorney licensed to practice in the state, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership.
 13. An accurate list showing the names and mailing addresses of the recorded owner of all property within a minimum of 500 feet of the boundaries of the property for which the application is submitted, the accuracy of which is verified by the applicant.
- C. *Administrative Action.* The Zoning Administrator shall make a determination on approval or denial of the administrative permit within sixty (60) days from the date of submission of a complete application unless the review is extended as allowed by Minnesota Statutes 15.99.
- D. *Review Criteria.* The Zoning Administrator shall consider possible adverse effects of the proposed administrative permit. Its decision shall be based upon (but not limited to) the following factors:
1. The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the official City Comprehensive Plan.
 2. The proposed use is or will be compatible with present and future land uses of the area.
 3. The proposed use conforms with all performance standards contained herein.
 4. The use, event, or activity is allowed by administrative permit and conforms to the applicable standards outlined in the zoning district in which⁴⁶ such use, event or activity is proposed.
- E. *Approval Report.* A written report or letter of approval shall be issued to the applicant when a determination⁴⁷ of compliance has been made. Specific conditions to assure compliance with applicable evaluation criteria, codes, ordinances, and the standards of this Ordinance shall be attached to the permit or letter.
- F. *Non-Compliance.* Determination of non-compliance with applicable codes, ordinances, and the standards in this Ordinance shall be communicated to the applicant in writing and the application of the permit shall be considered denied; unless, within ten (10) days of the date of such notice, the applicant submits revised plans and/or information with which the Zoning Administrator is able to determine compliance.
- G. *Disputes.* Unresolved disputes as to administrative application of the requirements of this ordinance shall be subject to appeal to the City Council.
- H. *Administration and Enforcement.*

⁴⁶ Amendment 02-2009, 4/21/2009

⁴⁷ Amendment 02-2009, 4/21/2009

AFTON CODE

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

Sec. 12-80. Amendments and rezonings.⁴⁸

- A. *Initiation.* An amendment to this article may be initiated by the City Council, the Planning Commission or by petition of affected property owners as defined herein. An amendment not initiated by the Planning Commission shall be referred to the Planning Commission for study and report, as hereinafter provided, and may not be acted upon by the Council until it has received the recommendation of the Planning Commission on the proposed amendment or until 60 days have elapsed from the date of reference of the amendment without a report by the Planning Commission.
- B. *Records.* The City Administrator shall maintain a record of all applications for amendments to this article.
- C. *Application.* Where an amendment to this article is proposed by a property owner, an application therefore⁴⁹ shall be filed with the City Administrator; such application shall be accompanied by development plans, if any, for the use which requires the rezoning.
 1. The development plans shall show such information as may be reasonably required by the administrator, including but not limited to those things listed below;
 2. Such plans shall contain sufficient information for the City to determine whether the proposed development is in keeping with the intent and purpose of this article and the comprehensive plan:
 - a. Site plan drawn to scale showing the parcel, building dimensions and topography;
 - b. Location of all buildings and their sizes;
 - c. Curb cuts, driveways, access roads, parking spaces, off-street loading areas and sidewalks;
 - d. Landscaping and screening plans including species and size of trees and shrubs proposed;
 - e. Finished grading and drainage plan sufficient to drain the developed portion of the site and to retain as much run-off on the site as possible;
 - f. Type of business or activity and proposed number of employees or occupants;
 - g. Proposed floor plan and elevations of all buildings with the use indicated;
 - h. Location of on-site sewage treatment system and well with the estimated flow rates;
 - i. Soil type and soil limitations for the intended use. A plan or statement indicating the soil conservation practice or practice to be used to overcome any soil limitation shall be made part of the application;
 - j. A location map showing the parcel's general location within the City;
 - k. A map showing all principal land use within 500 feet of the parcel for which the application is being made;
 - l. Proof of ownership of the property for which the amendment or rezoning is requested, consisting of an abstract of title or registered property certificate certified by a licensed abstractor, or a title opinion prepared by an attorney licensed to practice in the state, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership;
 - m. An accurate list of the names and mailing addresses of the record owners of all property within a minimum of 500 feet of the boundaries of the property for which the amendment or rezoning is sought, verified as to accuracy by the applicant.
- D. *Hearing.* The City Administrator shall refer the application to the Planning Commission for consideration at its next regular meeting; provided however, if the next regular meeting of the Planning Commission is within seven days of the date of filing, then such consideration may be at the second regular meeting after such filing.

⁴⁸ Code 1982, § 301.506; Res. No. 1997-18, 6-17-97, Ord. 97-45, 11/13/01

⁴⁹ Amendment 02-2009, 4/21/2009

LAND USE

LAND USE

1. At that meeting, the Planning Commission shall set a date for a public hearing on such application. The public hearing shall be not more than 60 days after the date of filing of the application with the City Administrator.
 2. Notice of the purpose, time and place of such public hearing shall be published in the official newspaper of the City and mailed to each of the owners of all property located within a minimum of 500 feet of the property described in the application, and such other persons as the Planning Commission may direct at least ten days prior to the date of the hearing. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the record of the proceedings. The failure to give mailed notice to individual property owners, or defects in notice shall not invalidate the proceedings, provided a bona fide attempt to comply with the provisions of this section has been made.
 3. The applicant or his representative shall appear at the public hearing to answer questions concerning the proposal.
- E. *Planning Commission report.* The Planning Commission shall make its report on the application to the Council, in writing, within 60 days after the public hearing, unless the applicant consents to extended consideration by the Planning Commission. The report shall recommend that the amendment or rezoning be granted or denied and shall include the Planning Commission's recommendation as to any conditions to be imposed if the amendment or rezoning is granted, including time limits or provisions for periodic review and shall state the reasons therefore⁵⁰.
1. The Planning Commission's report shall be filed with the City Administrator who shall refer the same to the Council for consideration at its next regular meeting; provided however, if the next regular meeting of the Council is within seven days of the date of filing, then such consideration may be at the second regular meeting after such filing. At the same time, the City Administrator shall mail to the applicant a copy of the Planning Commission's report and a notice of the time and place of the meeting at which the report will be considered by the Council.
 2. If the Planning Commission fails to file a report with the City Administrator within the time provided by this section, the application shall be referred to the Council as herein provided, without report, after the time for filing the report has expired. Minutes of the public hearing and its regular meeting may be used by the Planning Commission as its report.
- F. *Council action on application.* The Council shall make its decision on the application within 60 days of the filing of the Planning Commission's report with the City Administrator or after the last day for filing same, if no report is filed.
1. The Council shall make written findings and shall state therein the reasons for its decision. Any such order shall be filed with the City Administrator who shall immediately mail a copy thereof bearing the notation of the filing date, to the applicant.
 2. If such order directs amendment of this article, the City Administrator shall refer the order to the City attorney to prepare an amendment of this article as provided by law.
 3. Any Amendment must be approved by a Two-Thirds Vote of the Members of the City Council
- G. *Reapplication.* No reapplication for zoning amendment or rezoning shall be resubmitted for a period of six months from the date of the denial of a previous application.
- H. *Zoning and the comprehensive plan.* Any amendment to this article or rezoning shall amend the comprehensive plan in accordance therewith. The Planning Commission shall inform the Council of any zoning proposal which does not conform to the comprehensive plan and inform the Council as to why the plan should or should not be amended.
- I. *Public hearing.* Prior to approval of any rezoning or amendment of this article that does not conform to the comprehensive plan, a public hearing shall be conducted by the Planning Commission and the results noted in the minutes of the official proceedings. The public hearing required for the rezoning or amendment may also serve as the public hearing for an amendment to the comprehensive plan.
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LAND USE

AFTON CODE

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

Sec. 12-81. Building permits and the building code.⁵¹

- A. No structure shall hereinafter be erected or structurally altered until a building permit shall have been issued, indicating that the existing or proposed structure and the use of the land comply with this article and all building codes.
- B. No building permit shall be required for normal maintenance such as painting and other similar improvements, which do not involve structural changes to the building,⁵² with the exception of the installation of siding, windows and doors for which the International Residential Code (IRC) requires such building permit.⁵³
- C. Deleted.⁵⁴
- D. No site preparation work, including rough grading, driveway construction, footing excavation, tree removal or other physical changes to the site shall occur prior to the issuance of a building permit and any zoning permits as required by this article.
- E. Applications for permits as required by this section shall be made to the building official. The building official shall maintain a record of all applications for and all permits issued under this section.
- F. Application for a building permit shall be accompanied by a site plan drawn to scale showing the dimensions of the lot to be built upon; the size and location of the building, utilities including on-site septic systems, and accessory buildings to be erected; the vegetation and major topographic changes; drawings of the improvement in sufficient detail to allow checking against the building code; and such other information as the building official may reasonably require to determine compliance with this article and the building code. The building official may require a certificate of survey before a building permit will be issued.
- G. No building permit shall be issued for any improvement which would result in a use, building or structure violation of this article, or the subdivision, shoreland management, floodplain, sanitary sewer disposal, mining, Lower St. Croix River Bluffland and shoreland management, articles III through X of this chapter, or other city ordinances.
- H. The work for which a building permit is issued shall commence within 180 days after the date thereof unless an application for an extension of 90 days has been submitted to the building official and approved by him.⁵⁵
- I. Permits issued by the building official under the provisions of this section and the building code shall expire and be null and void if the work authorized by a permit is abandoned or suspended for a period of 180 days or if work is not commenced or completed within the time limitations of Subsection (H) of this section.⁵⁶
- J. A building permit for new construction shall not be issued for a lot which either does not meet the minimum area of acceptable soils for on-site sewage disposal and treatment or does not have enough acceptable soils within the lot or under legal contract to construct at least two complete septic drainfield systems.
- K. The building official may, in writing, suspend or revoke a permit issued under the provisions of this article and the building code whenever such permit is issued in error or on the basis of incorrect information supplied, or in violation of any city ordinance, regulation or code.

⁵¹ Code 1982, § 301.507; Res. No. 1997-18, 6-17-97 **Cross reference(s)**--Buildings and building regulations, § 12-1771 et seq.

⁵² Ord 1997-20, 4/20/99

⁵³ Ord 07-2012, 12/18/12

⁵⁴ Ord 1997-20, 4/20/99

⁵⁵ Ord 1997-20, 4/20/99

⁵⁶ Ord 1997-20, 4/20/99

Sec. 12-82. Moving permits and relocated structures.⁵⁷

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

Sec. 12-83. Septic permits.⁵⁸

- A. No building permit for any use requiring on-site sewage treatment and disposal shall be issued until a septic permit has first been issued by the building official.
- B. A septic permit shall be issued only after proof is furnished by the applicant that a suitable on-site sewage treatment and disposal system can be installed on the applicant's lot. However, in the VHS zoning districts the City will provide utility easements on suitable city property, as far as practical, for existing buildings with failing septic systems and no area for the installation of a standard septic system exists on the subject lot. All septic systems shall conform to all of the requirements of the sanitary sewer disposal ordinance, Article IX of this chapter.
- C. Existing on-site sewage treatment systems shall be evaluated to determine location, condition and function, and shall be brought into conformance with this article and the sanitary sewer disposal ordinance, Article IX of this chapter when:
 - 1. An application for a building permit for construction of an addition onto the principal structure or a structural alteration of the principal structure is submitted to and approved by the building official;
 - 2. The use of a structure or property changes.
 - 3. A Conditional Use Permit for a duplex is granted by the City Council.
 - 4. The building official deems it necessary to upgrade the existing system, based upon evidence of the system failing to function properly, failing to adequately treat sewage, or otherwise posing a hazard to the public health.

Sec. 12-84. Driveway access permits and standards.⁵⁹

- A. *Access required.* All lots or parcels shall have direct adequate physical access for emergency or public safety vehicles along the frontage of the lot or parcel from either an existing improved city street or an existing private road approved by the City. In addition to the required direct physical access, a lot or parcel may have a private easement access driveway to the lot over adjacent lots or parcels.
- B. *Permit required.* Construction or alteration of all driveways onto city streets, approved private roads, county roads, and state roads shall require a driveway access permit. All driveways onto a street designated as a state highway shall require an access permit from the state. All driveways onto a street designated as an approved private road or city street shall require an access permit from the City Engineer. All driveways onto a county

⁵⁷ Code 1982, § 301.508; Res. No. 1997-18, 6-17-97

⁵⁸ Code 1982, § 301.509; Res. No. 1997-18, 6-17-97, Ord 1997-10, 5/19/98), **Cross reference(s)--Sewage, § 12-1951 et seq.**

⁵⁹ Code 1982, § 301.510; Res. No. 1997-16, § 11, 6-17-97

Cross reference(s)--Streets and sidewalks, Ch. 20.

LAND USE

AFTON CODE

road shall require an access permit from the county highway department and must meet all county regulations. A performance deposit shall be required as per the City ordinance.

C. *Permit application.* All applications for a city driveway permit shall be submitted to the Zoning Administrator. Applications shall include:

1. Application for driveway permit;
2. A site plan drawn to scale including, but not limited to, the following information: Proposed location of driveway, all structures on the lot, septic system drainfield, well, and major topographic features;
3. Financial guarantee;
4. Copy of an issued county or state access permit if required.

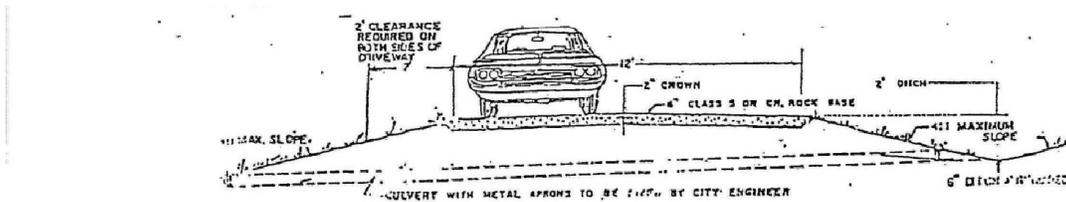
D. *Driveway design standards.* All driveways and all applications for such shall indicate that the proposed driveway meets the following standards:

	Residential Uses	Commercial and Industrial Uses
Maximum slope	12%, but driveways with slopes greater than 10% must have bituminous surface	8%
Minimum width	12 feet	16 feet
Maximum width	22 feet	As determined by the City
Minimum clearance each side of centerline	6 feet, but if less 10 feet bituminous surface may be required by City Engineer	10 feet
Surface strength	Minimum of 6 inches class V gravel or its equivalent as determined by the City Engineer	
Culverts	Size and type to be determined by the Zoning Administrator as per engineering standards. Aprons or an alternative as per engineering standards shall be required.	
Maximum side	4:1, but slopes as steep as 3:1 may be allowed in an area of fill subject to approval of the City Engineer. Where existing slopes are steeper than 3:1, a driveway may be permitted upon compliance with a stabilization plan prepared by a registered professional engineer to the satisfaction of the City Engineer.	4:1
Minimum width in right-of-way	16 feet	As determined by the Zoning Administrator
Maximum grade in right-of-way	3%	3%
Minimum turning radius onto street	5 feet	10 feet
Maximum turning radius onto street	15 feet	40 feet
Minimum driveway angle in right-of-way	60°-90°	60° - 90°
Minimum vertical	12 feet	12 feet clearance
Minimum lot line setback	10 feet	10 feet
Minimum setback from principal structure	3 feet	5 feet
Minimum setback from intersection of two or more rights-of way	60 feet (20 feet in VHS)	60 feet

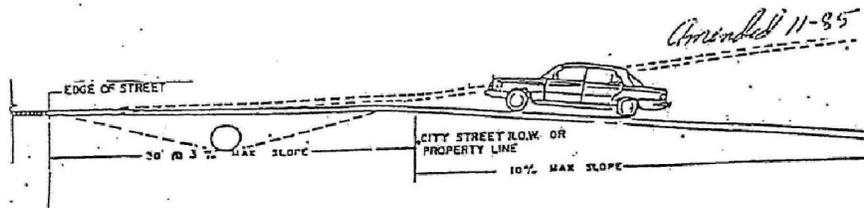
LAND USE

All applications for a driveway permit that do not meet these minimum standards shall submit any additional information as may be required by the Zoning Administrator.

- E. *Turnaround.* All residential structures set back more than 150 feet from the centerline of the fronting city street or approved private road shall provide a turnaround in the driveway near the principal structure. The turnaround area shall be a minimum of 36 feet by 50 feet, have a minimum turning radius of 36 feet if a cul-de-sac, or be a design approved by the Zoning Administrator. All turnarounds shall have the same surface strength as required for the driveway.
- F. *Permit issuance restricted.* No building or septic permit shall be issued for a particular parcel of property until a driveway permit has been approved or issued.
- G. *Conformity of work.* Before any site preparation work is done, that part of the driveway located in the street right-of-way shall be constructed according to the permit.
- H. *Number and type.* The number and types of driveways onto city streets may be controlled and limited in the interests of public safety and efficient traffic flow as determined by the Zoning Administrator.
- I. *Change of use.* Upon a change in land use or a major change in the traffic pattern of the existing use, existing driveways are not automatically perpetuated and a new driveway application may be required.
- J. *Typical Driveway Cross Section.*



- K. *Typical Driveway Profile.*



- L. *Review and approval.* The City Engineer shall review and approve driveway plans that have greater than a ten percent grade, provide less than a 16-foot clearance, and have less than a 4:1 side slope. The City Engineer shall determine if the plans must be prepared by a registered professional engineer and if a financial guarantee in the amount of 125 percent of the cost of construction of the driveway and stabilization of the slopes must be posted with the City. A financial guarantee valid for one year following completion may be required for erosion control and slope stabilization. Soil conservation service and watershed district approval (where applicable) will be required. The applicant will be responsible for all costs incurred by the City for review of the plans, inspection, as well as preparation of any legal documents required for approval.

LAND USE
AFTON CODE

Sec. 12-85. Grading permits.

Repealed.⁶⁰

Sec. 12-86. Farm site plan permits.⁶¹

Agricultural buildings and/or structures, as defined in Minnesota Statute 326B.103, on parcels of 20 and more acres shall require a farm site plan permit to be issued by the Zoning Administrator. An application for a farm site plan permit shall include but not be limited to the following:

- A. Location of all existing structures on the property;
- B. Dimensions of existing structures;
- C. Use of existing structures;
- D. Location of driveway, well, septic tank and septic drainfield;
- E. Location of proposed structure;
- F. Dimensions of proposed structure;
- G. Use of proposed structure;
- H. Setbacks of all existing and proposed structures from lot lines, street, slopes exceeding 18 percent, drainage courses, wetlands and bodies of waters; and
- I. Any other information as may be required by the Zoning Administrator.

Sec. 12-87. Certificate of occupancy.⁶²

- A. No person may change the use of any land except for agricultural purposes or for the construction of essential services and transmission lines, or occupy a new or structurally altered building used for nonagricultural use after the effective date of the ordinance from which this article was derived, unless he has first obtained a certificate of occupancy.
- B. Application for a certificate of occupancy for a new building or for an existing building which has been so altered may be filed with the building official any time after the application for a building permit for such building. The certificate of occupancy shall be issued within ten days after the construction or alteration of such building or part thereof has been completed in conformity with the provisions of this article and the building code. Pending the issuance of such certificate, a temporary certificate of occupancy may be issued, subject to the provisions of the building code for a period not to exceed 12 months during the completion of the erection or the alteration of such a building. The temporary certificate shall not be construed as in any way altering the respective rights, duties or obligations of the owners or of the City relating to the use or occupancy of the premises or any other matter except under such restrictions and provisions as will adequately insure the safety of the occupants. The use of any structure for which a building permit is required shall be considered a violation of this article unless a certificate of occupancy has been issued.
- C. Application for a certificate of occupancy for a new use of land shall be made to the building official before any such land shall be so used. Such certificate shall be issued within ten days after this application if the use is in conformity with the provisions of this article.
- D. A record of all applications for and certificates of occupancy shall be kept on file.

⁶⁰ Ordinance 08-2005, 5/17/08

⁶¹ Code 1982, § 301.512, Ordinance 12-2005, 9/20/2005

⁶² Code 1982, § 301.513

LAND USE

Sec. 12-88. Fees.⁶³

There shall be an application fee for all applications made pursuant to the provisions of this article and other city ordinances as set by resolution from time to time by the City Council.

Sec. 12-89. Environmental assessment worksheets (EAW) and environmental impact statements (EIS).⁶⁴

- A. No zoning use permit, building permit, structure or land use, variance or ordinance amendment shall be approved prior to review by the Zoning Administrator to determine the necessity for completion of an EAW as required by the environmental quality board (EQB) environmental review program, 6 Mn Rules, §§ 3.021-3.056.
- B. The purpose of an EAW is to assess rapidly, in a worksheet format, whether a proposed action is a major action with the potential for significant environmental affects, or in the case of a private action, whether it is of more than local significance.
- C. Projects which shall be required to file a mandatory EAW with the City shall include:
 1. Construction of a new or expansion of an existing industrial or commercial facility equal to or in excess of 100,000 square feet of gross floor area.
 2. Development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals which will excavate 40 or more acres of land to a mean depth of ten or more feet during its existence.
 3. Construction of a permanent or potentially permanent residential development of 50 or more unattached dwelling units.
 4. Construction of a street on a new location over one mile in length that will function as a collector.
 5. Construction of additional travel lanes on an existing street for a length of one or more miles.
 6. The addition of one or more new interchanges to a completed limited-access highway.
 7. Construction or cumulative expansion of a marina or harbor project which results in a total of 20,000 or more square feet of temporary or permanent water surface area used for docks, docking, or maneuvering of watercraft.
 8. The diversion or channelization of a designated trout stream or a natural watercourse with a total watershed of ten or more square miles.
 9. Actions that will change or diminish the course, current, or cross-section of one acre or more of any protected water or protected wetland.
 10. Actions that will change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of a Type 3 through Type 8 wetland (as defined in United States Department of Interior, Fish and Wildlife Service, Circular 39, Wetlands of the United States, 1956, excluding protected wetlands, if any part of the wetland is within a shoreland area, delineated floodplain or a state or federally designated wild and scenic river district.
 11. Actions resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different open space land use.
 12. Actions resulting in the permanent conversion of 80 or more acres of agricultural, forest, or naturally vegetated land to a more intensive, developed land use.
 13. The construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 or more animal units.
 14. Destruction of a property that is listed on the National Register of Historic Places.
- D. An optional EAW may be required by the Zoning Administrator or City Council if it determines that because of the nature or location of any proposed action or development, the action or development may have the potential for significant adverse environmental effects.
- E. As part of any permit approval, the City shall require the applicant to submit an EAW to any governmental unit that might require one for the particular proposed use or action.
- F. Those activities listed in 6 MN Rules, § 3.041 shall be exempt from these regulations.

⁶³ Code 1982, § 301.514

⁶⁴ Code 1982, § 301.515, **Cross reference(s)--Environment, ch. 10.**

LAND USE
AFTON CODE

- G. Prior to or together with any application for a permit or other form of approval for an activity, the proposer shall prepare an EAW of the action's environmental effects, reasonable alternatives to the project and measures for mitigating the adverse environmental effects. Blank EAW forms will be available from the Zoning Administrator and the City Clerk. The proposer shall submit the completed EAW to the Zoning Administrator. The Zoning Administrator shall review the EAW and determine the adequacy of the document. The Zoning Administrator shall use the standards of the state's environmental review program rules in its determination of adequacy. If the Zoning Administrator determines the document is inadequate, he shall return the document to the proposer to correct the inadequacies.
- H. The Zoning Administrator shall submit a copy of the EAW to the Planning Commission and City Council members, to any person upon request, to any local unit of government that might be affected by the proposal, and to the EQB. The EQB shall publish notice of the availability of the EAW in the EQB Monitor. The Zoning Administrator shall also publish a release in the official newspaper stating the name and location of the action, a brief description of the activity, the location at which copies of the EAW are available for review, the date the comment period expires, and the procedures for commenting.
1. The Planning Commission shall review the EAW at its next regularly scheduled meeting after the Zoning Administrator accepts the EAW from the proposer. The Planning Commission shall recommend to the City Council whether or not there are significant environmental effects from the project to require the preparation of an EIS.
 2. Comments on the EAW shall be submitted to the Zoning Administrator within 30 days following the publication of the notice of availability in the EQB Monitor. The Planning Commission may hold a public hearing to receive comments on the EAW if it determines that a hearing is necessary or useful. The hearing may be combined with any other meeting or hearing for a permit or other approval for the project. Public notice of the hearing shall be published as required in Section 12-78.
- I. The City Council shall decide whether or not an EIS must be filed according to its review of the EAW no later than 60 days after the publication of the notice of availability in the EQB Monitor. The City Council shall, whenever practicable and consistent with other ordinances and regulations, require that mitigation measures identified in the analysis be incorporated in the project's design and construction. The City Council shall notify the EQB and all persons and governmental units that commented on the EAW of its decision within ten days.
- J. If preparation of an EIS is required, the proposer shall follow the procedure outlined in the state's environmental review program rules.
- K. Any proposed project or use for which an EIS is required shall be considered a Conditional Use Permit as defined in this article and shall comply with the procedure for approval of a Conditional Use Permit.
- L. Time delays in the normal permit process caused by the filing and review of an EAW and/or EIS shall not be considered part of the permit approval time requirements within this article. Such delays shall be considered as additional required time for each required permit. The permit process for the proposed project may be continued from the point it was interrupted by the EAW/EIS process.
- M. Any applicant shall reimburse the City prior to the issuance of any permits, for all reasonable costs, including legal and consulting fees, incurred by the City in review of the applicant's project and its impact on the community.
- N. The applicant shall deposit with the City from time to time an amount determined by the Zoning Administrator, necessary to cover such costs prior to commencement of the review or stage of the review. The applicant shall reimburse the security fund for any deficits caused if the amount actually expended or billed to the City by the consultants exceeds the security fund balance. The City shall refund any money deposited in the security fund and not expended within 30 days after final action on the application. The City shall not pay interest on such security funds.

Secs. 12-90--12-130. Reserved.

LAND USE

DIVISION 3. DISTRICTS

Sec. 12-131. Districts generally.⁶⁵

A. *Basic districts.* For the purpose of this article, the community is hereby divided into the following basic zoning districts:

District Symbol	Intent and Primary Use
A	Preserve agriculture as a viable permanent land use and a significant economic activity within the City.
MS	Provide an area for storage and repair of boats and boat trailers to complement the river access and marinas in Afton.
RR	Provide rural low density housing on lands not capable of supporting long term, permanent agricultural production.
VHS-R	Provide higher density housing consistent with a village atmosphere on lots capable of supporting on-site sewage treatment systems in order to prevent the need for public services.
VHS-C	Provide a mix of commercial and residential uses within the old village consistent with the atmosphere of a rural village.
I	Provide areas adjacent to major thoroughfares for the express use of industrial developments.

B. *Overlay districts.* The following overlay regulations are in addition to regulations imposed by the existing basic zoning district:

District Symbol	Intent and Primary Use
AP	Preserve large areas of agricultural production and provide owners of these areas with economic incentives in accordance with the Agricultural Preserves Act.
C	Preserve, protect and manage environmentally sensitive areas having wet soils, steep slopes, exposed bedrock or unique natural and biological features in accordance with compatible uses.
FP	Protect the natural environment, homes and other structures from floodwaters by preserving the natural overflow of lakes, streams, rivers, and watersheds.
LS-1	Protect the ecological and scenic values of water bodies by regulating setbacks and lot sizes.
SCRU	Provide urban density residential and commercial uses within the old village while conserving and protecting the natural scenic values and resources of the St. Croix River Valley.
SCRR	Conserve and protect the natural scenic values and resources of the St. Croix River Valley in order to maintain the high standard of environmental quality indicative of one of the few remaining wild rivers in the nation.

Sec. 12-132. Minimum requirements.⁶⁶

A. *Minimum area, height, etc.* The following chart sets out the dimensional requirements of each basic zoning district:

	A	RR	VHS-R	VHS-C	I-1A	I-1B	I-1C	MS
1. Lot area per dwelling unit (d.u.)								
One-family structure	⁶⁷ 1 du/10A*** (5 A min)	5A***	22,500 sf***	22,500 sf***				5A
Two-family		10A***						
2. Minimum main floor area per du (sf)	800	800	800	800	800	800	800	800
3. Minimum nonresidential area				22,500 sf	5A	5A	5A	5A

⁶⁵ Ord 1997-19, 4/20/99, MS added, Code 1982, § 301.601

⁶⁶ Ord 1997-19, 4/20/99, MS added, Code 1982, § 301.602; Res. No. 1997-16, §§ 12--14, 6-17-97, Ord. 97-39, 3/20/00

⁶⁷ Ordinance 7-2006, 3/16/2006

LAND USE
AFTON CODE

	A	RR	VHS-R	VHS-C	I-1A	I-1B	I-1C	MS
4. Frontage on improved public street (ft) and lot width on cul de sac	300***	300***	150***	150***	300***	300***	300***	300***
5. Lot depth (ft)	300*	300*	130*	130*	300*	300*	300*	300*
6. Front yard setback for all structures from centerline ⁶⁸								
a. Local Afton Roads (except 15th St., 60th St. and 50th St. west of Co. Hwy. 21)	105	105	0*****	65	105	105	105	105
b. State and County Hwys. And 15th St., 60th St. and 50th St. west of Co. Hwy. 21	150**	150**	0*****	65	150**	150**	150**	150**
7. Side yard setback for all structures (except accessory bldgs. Over 1500 sf)								
a. From street	As required in Subsection (A)(6) of this section for corner lot (ft)							
b. From interior lot line (ft)	50	50	10	10	50	50	50	50
	See Subsection (D)(6) of this section							
8. Rear yard setback for all structures (except accessory bldgs. Over 1500 sf)	50	50	30	30	50	50	50	50
9. Setbacks - Accessory Buildings over 1500 sf (ft)								
a. Side	100	100	NA	NA	50	50	50	50
b. Rear	100	100	NA	NA	50	50	50	50
c. Well	200	200	NA	NA	50	50	50	50
10. Maximum structure height (ft)	35	35	35	35	35	35	35	35
11. Maximum site coverage by any structure and/or impervious surface ^{69,70}	10% or ½ acre, whichever is greater	10% or ½ acre, whichever is greater	20% *	20% or 4,350 square feet, whichever is greater *	35% ⁷¹ *	35% ⁷²	35% ⁷³	25%
12. Maximum buildable slope for structures (percent) except substandard structures****	18	18	12	12	18	18	18	12
13. Maximum slope for on-site sewage treatment systems and driveways	12	12	12	12	12	12	12	12

sf = square feet du = dwelling unit

- * Maximum three times the width of the lot on any lot of ten or more acres.
- ** Whenever the street right of way is greater than 66 feet, the setback shall be 117 feet from the edge of the street right-of-way.
- *** Any division of land resulting in two or more parcels of less than 20 acres, having a width of less than 500 feet at the front lot line shall require subdivision approval. The state legislature has restricted, in municipalities having subdivision regulations, the filing and recording of conveyances on parcels of residential or agricultural land of less than 20 acres and having a width of less than 500 feet where the conveyance results in a division of the parcel into two or more parcels, any one of which is less than 20 acres in area or 500 feet in width.
- **** Exceptions to the slope requirement for substandard structures are found in Section 12-57(J)⁷⁴
- ***** Subject to all corner lots meeting an 80-foot site triangle.

^ The maximum site coverage and/or impervious surface in the I-1C Industrial District may exceed 35 percent per conditional use approval subject to the site not exceeding a maximum of 65 percent and meeting the requirements of Section 12-132(B)(12) and 12-132(C)(1-4). Any site with coverage and/or impervious surface in excess of 25 or 35

⁶⁸ Repealed Ordinance 02-2008

⁶⁹ Ordinance 11-2008, 12/17/08, Repealed Ordinance 02-2008

⁷⁰ Ordinance 11-2008, 12/17/08

⁷¹ Ordinance 05-2009, 6/16/2009

⁷² Ordinance 05-2009, 6/16/2009

⁷³ Ordinance 05-2009, 6/16/2009

⁷⁴ Repealed Ordinance 02-2008

LAND USE

percent shall require an effective reduction of the impact of such impervious surface to the equivalent of 25 or 35 percent impervious surface site coverage through the use of Low Impact Design (LID) methods and the completion and acceptance by the City Engineer, Washington Conservation District (WCD) engineer, and Valley Branch Watershed Organization (VBWD) engineer of the Impervious Surface Worksheet, as set forth in the City of Afton Best Management Practice (BMP) and Storm water Guide.⁷⁵

B. *Exceptions to minimum area, height, and other requirements:*

1. For the purpose of this article, the term "existing lot" means a lot or parcel of land which was of record as a separate lot or parcel in the office of the county recorder, on or before the adoption date of the ordinance from which this article was derived, except as provided for in Subsection (B)(2).
2. Except in the VHS-R and VHS-C zoning districts, any such lot or parcel created in accordance with the City subdivision ordinance, article VI of this chapter, which contains at least 2 1/2 acres of buildable or net developable area as defined by this article and has at least 60 percent of the required frontage on an improved public street for the zoning district in which it is located shall be considered buildable provided the lot or parcel can comply with all other requirements of this article, including Subsection (B)(3) of this section.⁷⁶
3. If in a group of two or more contiguous lots or parcels of land owned or controlled by the same person, any individual lot or parcel does not meet the full width or area requirements of this article, such individual lot or parcel cannot be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots or parcels under the same ownership so that the combination of lots or parcels will equal one or more parcels of land each meeting the full lot width and area requirements of this Article.
4. Subdivision of lots. Any lot or parcel of land subdivided by any means after the effective date of the ordinance from which this was derived for purposes of erecting a structure, must be approved as required in the subdivision ordinance, Article VI of this chapter.
5. Lake and stream frontage lots. All lots having frontage on a water body or lying within a shoreland management area shall be subject to the regulations of the shoreland management ordinance, Article III of this chapter.
6. Lots in floodplains. All lots in a designated floodplain shall be subject to the regulations of the floodplain ordinance, Article V of this chapter.
7. Through or double frontage lots. Such lots are those as defined in the subdivision ordinance, Article VI of this chapter and include lake and stream frontage lots having a public street as one lot line and a water body as the opposite lot line. The Zoning Administrator shall determine what shall be considered the front, side and rear yards for application of the provisions of this.
8. Reduction of required area. No lot or parcel shall be reduced in area or dimension so as to make such lot or parcel less than the minimum required by this Article; and if the existing lot or parcel is less than the minimum required, it shall not be further reduced.
9. Minimum area requirements for lots. Since no public sanitary sewer is planned to be installed in the City, all single and two family homes shall demonstrate suitable soil conditions for a minimum on-site sewage treatment area of one acre per dwelling unit. A building permit shall not be issued for a lot which does not either meet the minimum acreage of acceptable soils for on-site sewage treatment or does not have enough acceptable soils within the lot or under legal contract to construct at least two complete septic/drainfield treatment systems.
10. All on-site sewage treatment systems shall be maintained in conformity with the regulations of the sanitary sewer disposal ordinance, Article IX of this chapter. Where there is evidence of the system failing to function properly, failing to treat sewage adequately, septic tank effluent percolating from the ground or where there is evidence a failing system is posing a hazard to the public health, the system shall be corrected and conform to these standards within 30 days.⁷⁷
11. Land having a slope between 13 percent and 18 percent, outside of the Lower St. Croix bluffland district, may be included in the required buildable area of a lot or parcel if the Washington County Soil and Water Conservation District has determined that:
 - a. The soils on the land will support the structures, on-site sewage treatment systems and driveways without significant risk of erosion, groundwater contamination or damage to structures thereafter constructed; and,

⁷⁵ Ordinance 05-2009, 6/16/2009

⁷⁶ Ord 1997-19, 4/20/99, MS added

⁷⁷ Ord 1997-10, 5/19/98

LAND USE

AFTON CODE

- b. The development of this land will not damage heavily wooded areas or other significant natural features; and,
 - c. All structures, including driveways, are set back at least 40 feet from the crest of any 18 percent slope; and,
 - d. There is at least one acre of contiguous land with a slope of less than 13 percent that is suitable for the required on-site sewage treatment systems and the driveways.
12. Wherever in this article a parcel or lot area of five or more acres is required, except for the subdivision or creation of new parcels or lots, that requirement may be met by a “nominal parcel” as defined in the Article. All new parcels or subdivision of existing parcels must meet all of the requirements of this Article”
13. The maximum impervious surface coverage in the I1-A, I1-B and I1-C⁷⁹ zoning districts may be increased up to 35 percent, provided that the storm water impact and runoff from the site, both as to volume and rate, is equivalent of a surface coverage of 25 percent. The method and completion of reduction shall be approved by the City Engineer, Washington County Engineer and Valley Branch Watershed District.⁸⁰
- C. The following additional engineering and design guidelines are to be met for any use within the agricultural, except for agricultural activities and residences, rural residential, except for residences and agricultural activities, and industrial zoning districts:
1. The applicant shall also submit a plan for the entire site, showing what low-impact design methods are used. The applicant shall work directly with the City to develop the plan, using low-impact design methods, as established by the Washington County Soil and Conservation Office and the appropriate governing bodies Water Management Organization or Watershed District Management Office. The plan shall be reviewed and approved by both the City and the Washington County Conservation Office prior to any building permits being issued.[SP5]
 2. The applicant must identify⁸¹ in the development agreement all areas where there is any fractured bedrock. The City may require, as part of the study, a geotechnical analysis including soil borings taken, at a minimum radius of every 150 feet. In addition, any fractured bedrock found within 150 feet of any area of construction, must be covered with a minimum of 5 feet of soil to reduce the potential for any pollutants reaching the ground water.
 3. The applicant may be asked, as a condition, to install a time dosing device to control rate of the flow of effluents from the septic system.
 4. The development agreement must address traffic concerns, and any improvements needed to accommodate additional traffic, as a result of the use.

⁷⁸ Repealed Ordinance 02-2008

⁷⁹ Ordinance 01-2009, 1/20/2009

⁸⁰ Ordinance 09-2008, 9/16/2008

⁸¹ Amendment 02-2009, 4/21/2009

LAND USE

5. The applicant shall also enter into a development agreement, to address all of the conditions as set forth in Sec. 12-132(12)(b)(a)(1-10) and Sec. 12-132(12)(b)(c)(1-4), along with a cash escrow deposit or an irrevocable letter of credit, equal to 150 percent of the City Engineer's estimate to implement the low-impact design plan and for the maintenance of the low-impact areas for the next 20 years. A separate cash escrow deposit or an irrevocable letter of credit equal to 150 percent of the City Engineer's estimate shall also be required to satisfy any conditions agreed to in the development agreement, in order to satisfy Sec. 12-132(12)(b)(4).

D. *Permitted encroachments on required yards.* The following shall be permitted encroachments into setback and height requirements, except as restricted by other sections of this article:

1. In any yards: Posts, off-street parking spaces, flues, belt course, leaders, sills, pilasters, lintels, cornices, eaves, gutters, awnings, canopies, steps, chimneys, flag poles, ornamental features, open fire escapes, sidewalks, fences, essential services; exposed ramps (wheelchair) and similar features provided they do not extend above the height of the ground floor level of the principal structure or to a distance less than three feet from any lot line nor less than one foot from any existing or proposed driveway; floodlights or other sources of light illuminating authorized illuminated areas, loading areas or yards for safety and security reasons, provided the direct source of light is not visible from the public right-of-way or adjacent residential property.
2. On a corner lot, nothing shall be placed or allowed to grow in such a manner as to impede vision between a height of 2 1/2 and ten feet above the centerline grades of the intersecting streets within 100 feet of such intersection.
3. In rear yards: Recreational and laundry drying equipment, picnic tables, open arbors and eating facilities, provided these are not less than five feet from any lot line.
4. In yards abutting streets: Encroachments in any yard that abuts a public or private street shall be considered as permitted encroachments as outlined above, except that no encroachment shall be permitted within two feet of the present or proposed right-of-way lines.

E. *Setbacks.*

1. Front setbacks. Where a vacant lot is adjacent to structures existing at the time of adoption of this article having a substandard setback from that required by this section, the Zoning Administrator shall determine a reasonable, average, calculated front yard setback to implement the requirements of this section, and to fulfill its purpose and intent. However, in no case shall a building be required to be setback more than 180 feet from the street centerline, except where an industrial district is adjacent to a residential district. In a residential zoning district, the front yard setback shall conform to the established setback line, unless the Zoning Administrator determines that another setback is more appropriate as provided herein.⁸²Setbacks from slopes. All structures, including but not limited to, driveways, decks, swimming pools, and so forth, shall be setback a minimum of 2020 feet from the crest of all slopes exceeding 18 percent as determined by the Zoning Administrator. An exception to this requirement, allowing an encroachment within the 20 setback from an 18 percent slope, is allowed outside of the Lower St. Croix River Bluffland and Shoreland Management District via a CUP. As a condition of approval the applicant must submit an erosion control plan for the proposed encroachment. The erosion control plan shall be reviewed and approved by the City Engineer. IN addition, the Zoning Administrator shall require a performance bond or Letter of Credit for a period of two (2) years beginning at the time of completion to ensure the applicant adheres to the erosion control, landscaping and any revegetation plan. The performance bond or letter of credit shall equal 125% of the total cost of the erosion control as recommended by the City Engineer.⁸³
2. Setbacks adjacent to residential zoning districts. Where a commercial or industrial zoning district is adjacent to a residential zoning district, the minimum commercial or industrial building setback from the lot line shall be 75 feet.
3. Setbacks along collector and arterial streets. Along streets designated as collectors and arterials in the comprehensive plan, the minimum setback for all structures shall be as required in Subsection (A)(6) of this section from the nearest planned street centerline.
4. Setbacks from private roads. All setback requirements of this section shall also be applicable to private roads and easement access rights-of-way.

⁸² Ord. 1997-27, 1/18/00, Ord. 1997-32, 3/14/00

⁸³ Ordinance 13-2004, 9/21/2004

LAND USE

AFTON CODE

5. Side yard setback from interior lot line on substandard lots. The side yard setbacks for all structures from interior lot lines on lots in the rural residential and agricultural zones, which are less than five acres in size and which were of record prior to March 3, 1970, shall be 25 feet rather than 50 feet if the proposed structure meets the requirements for a Administrative Permit as set out in Section 12-79 and meets all other zoning ordinance requirements.
6. Side yard setback from interior lot line on extreme substandard rural residential lots. The sideyard setback for all structures from interior lot lines on lots in the rural residential district which are two acres or less in size and/or have a lot width of 200 feet or less the setback shall be 10 feet rather than 25 feet if the proposed use meets all other zoning ordinance requirements.⁸⁴

F. *Height.*

1. No structure except those for public utilities, wind generators, farm buildings, churches and other places of worship shall exceed a height of 35 feet. The maximum height limitations for churches and other places of worship shall be as follows:
 - a. A maximum height of thirty-five (35) feet for the occupied area of the structure;
 - b. A maximum height of fifty (50) feet for the structural elements;
 - c. A maximum height of sixty (60) feet for the following non-structural elements: spires or steeples, belfries or bell towers, cupolas, crosses or other religious symbols or decorative elements;
2. No structure shall be erected that will block solar access for existing principal structures or infringe on the solar access of the buildable area of a vacant lot or parcel.

- #### G. *Public convenience structures.*
- No public convenience structure shall be located within the public right-of-way except by Administrative Permit issued by the Zoning Administrator. Such structures shall include but not be limited to trash containers, institutional directional signs, bicycle racks, benches, planting boxes, awnings, flag poles, light standards, stairs, stoops, light wells, signs (except as may be allowed in Section 12-210. C.) and others. Such structures do not include public utility facilities.⁸⁵

Sec. 12-133. Zoning district map.⁸⁶

- A. The boundaries of the districts as established by this article are as shown on the map published herewith and made part of this article, such map is designated as the official zoning map of the City and shall be maintained as provided herein by the City Administrator. The district boundary lines on such map are intended to follow street right-of-way lines, street centerlines or lot lines unless such boundary line is otherwise indicated on the map. In the case of unsubdivided property or in any case where street or lot lines are not used as boundaries, the district boundary lines shall be determined by use of dimensions or the scale appearing on the map. All of the notations, references and other information shown thereon shall have the same force and effect as if fully set forth herein and are hereby made a part of this article by reference and incorporated herein as fully as if set forth herein at length. Whenever any street or other public way is vacated, any zoning district line following the centerline of said vacated street or way shall not be affected by such vacation.
- B. When any permit as provided for in this article is issued which affects any zoning district in a substantial way, such permit shall be coded and noted on the zoning district map by the City Administrator so as to clearly indicate the use so permitted which may not otherwise be clearly evident from the map or text of this article.
- C. When uses in a zoning district are listed as both permitted and conditionally permitted uses, or when any other conflict appears in this article with respect to permitted uses within a zoning district, the more restrictive portion shall be applied.
- D. Determination of similar uses. Any landowner may request a determination that a use not included in any district of this article is substantially similar to a use classified as permitted, conditionally permitted or other specially permitted in the zoning district in which the property is located. An application for such a determination shall be filed with the City Administrator who shall refer it to the Planning Commission. The Planning Commission shall review the application in accordance with this article and the comprehensive plan

⁸⁴ Ordinance 2004-45, 8/17/2004

⁸⁵ Ord 01-2014, 5/20/2014

⁸⁶ Code 1982, § 301.603

LAND USE

and forward a recommendation of approval or denial to the City Council along with an explanation for taking such action. If the City Council determines the use is substantially similar to a use included in these regulations, such use shall thereafter be an allowable use whenever the similar listed use is authorized.

Sec. 12-134. Uses.⁸⁷

Uses in the various districts shall be as follows:

- P = Permitted use
- A = Permitted accessory use
- A/C = Permitted accessory, conditional use permit required⁸⁸
- C = Conditionally Permitted Use
- I = Interim Use Permit⁸⁹
- ADMIN = Administrative Permit Required
- N = Not allowed
- * = Except as otherwise noted

	Agricultural (A)	Rural Residential (R)	VHS- Residential (VHS-R)	VHS- Commercial (VHS-C)	Light Industrial (I1-A)	Light Industrial (I1-B)	Light Industrial (I1-C)	Marine Service (MS)
Agricultural, rural	P	P	N	N	P	P	P	N
Agricultural, suburban	P	P	N	N	P	P	P	N
Airports, airstrips, heliports	N	N	N	N	N	N	N	N
Animal impounding facility	N	N	N	N	P	P	C ⁹⁰	N
Animals, commercial training	C	N	N	N	C	C	C ⁹¹	N
Antennae or towers over 35 feet in height	C	C	N	N	C	C	N	N
Archery range, commercial	N	N	N	N	N	N	N	N
Armories, convention halls and similar uses	N	N	N	N	N	N	N	N
Auto/car wash	N	N	N	N	N	N	N	N
Auto reduction yard, junkyard	N	N	N	N	N	N	N	N
Auto repair	N	N	N	N	N	N	N	N
Automobile service station	N	N	N	N	N	N	N	N
Barbershop, beauty shops	N	N	N	C	N	N	N	N
Bed and breakfast (see Sec. 12-222)	C	C	C	C	N	N	N	N
Blacktop or crushing equipment for highway construction (temporary use only)	C	N	N	N	C	C	I ⁹²	N
Boarders (no more than two)	Deleted							
Boat dock (non-commercial)	A	A	A	N	N	N	N	N
Boat, boat trailer, marine sales	N	N	N	C	N	N	N	A

⁸⁷ Ord 1997-15, 1/19/99, MS added; Code 1982, § 301.604; Res. No. 1997-16, § 15, 6-17-97

⁸⁸ Ordinance 06-2009, 6/16/2009

⁸⁹ Ordinance 06-2009, 6/16/2009

⁹⁰ Ordinance 06-2009, 6/16/2009

⁹¹ Ordinance 06-2009, 6/16/2009

⁹² Ordinance 06-2009, 6/16/2009

LAND USE

AFTON CODE

	Agricultural	Rural	VHS-	VHS-	Light Industrial	Light Industrial	Light Industrial	Marine Service
	(A)	Residential	Residential	Commercial	(I1-A)	(I1-B)	(I1-C)	(MS)
		(R)	(VHS-R)	(VHS-C)				
Boat, boat trailer and marine storage and repair, enclosed or screened	N	N	N	N	N	N	N	C
Broadcasting studio	N	N	N	C	N	N	C	N
Cafes and restaurants	N	N	N	C	N	N	N	N
Campgrounds	N	N	N	N	N	N	N	N
Cemeteries	C	N	N	N	N	N	N	N
Churches	C	C	C	C	N	N	N	N
Clear cutting	See Section 12-218							
*Clubs or lodges	N	N	N	N	N	N	N	N
*Commercial recreation	N	N	N	N	N	N	N	N
Commercial schools	N	N	N	C	N	N	N	N
Disposal, solid & liquid waste	N	N	N	C	N	N	N	N
Domestic pets	A	A	A	A	N	N	A/C ⁹³	N
Drive-in business	N	N	N	N	N	N	N	N
Duplex	N	C	N	N	N	N	N	N
Essential services, government uses	N	C	C	C	C	C	C	N
Essential services, public utility	C	C	C	C	C	C	C	N
Explosives, manufacture, storage or use	N	N	N	N	N	N	N	N
Exterior sales and storage	N	N	N	N	N	N	N	N
Exterior sales and storage (wholesale only)	N	N	N	N	C	C	N	N
Farm, see agriculture								
Farm equipment sales	N	N	N	N	N	N	N	N
Farmers market	N	N	N	N	N	N	N	N
Feedlots, commercial (see sec. 12-188)	C	N	N	N	N	N	N	N
Fences	See Section 12-190							
Flammable gases and liquids, business distribution	N	N	N	N	N	N	N	N
Forests	P	P	P	P	P	P	C ⁹⁴	N
Fuel sales (wholesale and storage)	N	N	N	N	N	N	N	N
Funeral Homes	N	N	N	N	N	N	N	N
Garage, private	A	A	A	A	A	A	A/C ⁹⁵	N
Garage, repair (commercial)	N	N	N	N	N	N	N	N
Garage, storage (commercial)	N	N	N	N	N	N	N	N

⁹³ Ordinance 06-2009, 6/16/2009

⁹⁴ Ord 06-2009, 6/16/2009

⁹⁵ Ord 06-2009, 6/16/2009

LAND USE

	Agricultural	Rural	VHS-	VHS-	Light Industrial	Light Industrial	Light Industrial	Marine Service
	(A)	Residential	Residential	Commercial	(I1-A)	(I1-B)	(I1-C)	(MS)
		(R)	(VHS-R)	(VHS-C)				
Golf courses	C	N	N	N	N	N	N	N
Grading	See Sections 12-215, 12-216							
Greenhouses (commercial production only)	C	N	N	N	N	N	N	N
Guest house ⁹⁶	Deleted							
Gun clubs	N	N	N	N	N	N	N	N
Gun ranges	N	N	N	N	N	N	N	N
Home occupation	P	P	P	P	N	N	P	N
Hotel (see Section 12-223)	N	N	N	C	<u>N</u>	<u>N</u>	<u>N</u>	N
Institutional housing	N	C	N	N	<u>N</u>	<u>N</u>	<u>N</u>	N
Junkyard	N	N	N	N	<u>N</u>	<u>N</u>	<u>N</u>	N
Kennels, private (see Section 12-55)	C	C	N	N	<u>N</u>	<u>N</u>	<u>N</u>	N
Kennels, commercial (see Section 12-55)	N	N	N	N	<u>N</u>	<u>N</u>	<u>N</u>	N
Land reclamation	See Section 12-215							
Live entertainment or dancing ⁹⁷	Deleted							
Lodging room (not more than two)	A	C	C	N	N	N	N	N
Manufacturing, heavy	N	N	N	N	N	N	N	N
Manufacturing, light industrial (maximum height of 25 feet in I-1C) ⁹⁸	N	N	N	N	C	C	C	N
Marina (including boat rental) ⁹⁹	N	N	N	C	N	N	N	N
Medical uses	N	N	N	C	N	N	N	N
Mining, sand and gravel	N	N	N	N	N	N	N	N
Mobile home court/park	N	N	N	N	N	N	N	N
Motel	N	N	N	N	N	N	N	N
Multiple family dwellings (three or more units)	N	N	N	N	N	N	N	N
Nature center (public and private)	C	C	N	N	N	N	C	N
Nursery, retail sale of plants ¹⁰⁰	S	N	N	N	C	C	N	N
Nursery, wholesale growing of plants	P	C	N	N	N	N	N	N

⁹⁶ Ord 1997-21, 12/15/98

⁹⁷ Ord 1997-21, 12/15/98

⁹⁸ Ord 1997-10, 5/19/98

⁹⁹ Ord 1997-21, 12/15/98

¹⁰⁰ Ord 1997-21, 12/15/98

LAND USE

AFTON CODE

	Agricultural	Rural	VHS-	VHS-	Light Industrial	Light Industrial	Light Industrial	Marine Service
	(A)	Residential	Residential	Commercial	(I1-A)	(I1-B)	(I1-C)	(MS)
		(R)	(VHS-R)	(VHS-C)				
Nursery and garden supplies (wholesale)	C	N	N	N	C	C	C ¹⁰¹	N
Offices (Maximum Height of 35 feet in I-1C) ¹⁰²	N	N	C	C	C ¹⁰³	C ¹⁰⁴	C	N
Offices, accessory	N	N	N	C	C	C	C	A
Off-street loading	N	N	N	A	A	A	A/C ¹⁰⁵	A
Off-street parking	A	A	A	A	A	A	A/C ¹⁰⁶	N
Photo/art studio	N	N	N	C	N	N	N	N
Race tracks	N	N	N	N	N	N	N	N
*Recreation areas (commercial)	N	N	N	N	N	N	N	N
Recreation equipment storage (private)	A	A	A	A	N	N	A	N
Reduction or processing of refuse, trash and garbage	N	N	N	N	N	N	N	N
Rental of cars, trailers, campers, trucks and similar equipment	N	N	N	N	N	N	N	N
Repair garage (commercial)	N	N	N	N	N	N	N	N
Repair shop (small appliances)	N	N	N	C	N	N	N	N
Research (see Section 12-55)	C	C	N	N	C	C	C	N
Research, agricultural	C	C	N	N	C	C	C	N
	NO CUP FOR HOMES							
Residential, multiple family	N	N	N	N	N	N	N	N
Residential, single-family detached ¹⁰⁷	P	P	P	P	N	N	P	C
Residential waterfront uses	A	A	A	A	N	N	A	N
Resorts	N	N	N	N	N	N	N	N
Rest or nursing home	N	N	N	N	N	N	N	N
Retail business	N	N	N	C	N	N	N	N
Retail business, accessory to office ¹⁰⁸	N	N	N	C	C	C	C	N
Retail sales of agricultural supplies	C	N	N	N	N	N	N	N

¹⁰¹ Ord 06-2009, 6/16/2009

¹⁰² Ord 1997-10, 5/19/98; Ord 1997-21, 12/15/98; Ord 06-2009, 6/16/2009

¹⁰³ Ord 09-2008, 9/16/2008

¹⁰⁴ Ord 09-2008, 9/16/2008

¹⁰⁵ Ord 06-2009, 6/16/2009

¹⁰⁶ Ord 06-2009, 6/16/2009

¹⁰⁷ Ord 1997-21, 12/15/1998

¹⁰⁸ Ord 06-2009, 6/16/2009

LAND USE

	Agricultural	Rural	VHS-	VHS-	Light Industrial	Light Industrial	Light Industrial	Marine Service
	(A)	Residential	Residential	Commercial	(I1-A)	(I1-B)	(I1-C)	(MS)
		(R)	(VHS-R)	(VHS-C)				
Riding stable, private (minimum of 20 acres)	C	C	N	N	N	N	C	N
Riding stable, commercial (minimum of 20 acres) ¹⁰⁹	C	N	N	N	N	N	N	N
Sales, open lot and outdoor	N	N	N	N	N	N	N	N
Sales, seasonal agricultural ¹¹⁰	N	N	N	C	N	N	N	N
Schools, private	N	N	N	N	N	N	N	N
Schools, public	N	C	N	N	N	N	C	N
Service station	N	N	N	N	N	N	N	N
Shopping center ¹¹¹	Deleted							
Signs	See Section 12-210							
Stand, private roadside (notify neighbor for CUP) ¹¹²	ADMIN	C	N	C	N	N	C	N
Storage, highway during construction	ADMIN	ADMIN	ADMIN	ADMIN	ADMIN	ADMIN	I ¹¹³	N
Storage, enclosed or screened principal use	N	N	N	N	C	C	N	A
Storage, open principal use	N	N	N	N	N	N	N	N
Storage, enclosed, accessory to a principal use	A	A	A	A	A	A	C ¹¹⁴	N
Storage, not accessory to permitted principal use	N	N	N	N	N	N	N	N
Storage, underground, flammable materials accessory to agricultural or residential use	C	C	C	C	N	N	N ¹¹⁵	N
Studio, arts or crafts	C	C	C	C	N	N	C	N
Supper Club ¹¹⁶	N	N	N	C	N	N	N	N
Swimming pool (commercial)	N	N	N	N	N	N	N	N
Swimming pool (private)	ADMIN	ADMIN	ADMIN	ADMIN	N	N	ADMIN	N
Taverns and bars ¹¹⁷	N	N	N	C	N	N	N	N
Tennis courts, private	ADMIN	ADMIN	ADMIN	ADMIN	N	N	C ¹¹⁸	N
Terminal, transportation/motor freight	N	N	N	N	C	C	N	N

¹⁰⁹ Ord 02-2014, 5/20/2014

¹¹⁰ Ord 1997-12, 8/18/1998

¹¹¹ Ord 1997-21, 12/15/1998

¹¹² Ord 1997-21, 12/15/1998

¹¹³ Ord 06-2009, 6/16/2009

¹¹⁴ Ord 06-2009, 6/16/2009

¹¹⁵ Ord 06-2009, 6/16/2009

¹¹⁶ Ord 1997-12, 8/18/1998

¹¹⁷ Ord 12-21, 12/15/1998

¹¹⁸ Ord 06-2009, 6/16/2009

LAND USE
AFTON CODE

	Agricultural	Rural	VHS-	VHS-	Light Industrial	Light Industrial	Light Industrial	Marine Service
	(A)	Residential	Residential	Commercial	(I1-A)	(I1-B)	(I1-C)	(MS)
		(R)	(VHS-R)	(VHS-C)				
Theater	N	N	N	C	N	N	N	N
Theater, drive-in	N	N	N	N	N	N	N	N
Townhouses	N	N	N	N	N	N	N	N
Trailer Parks	N	N	N	N	N	N	N	N
Truck and auto service station	N	N	N	N	N	N	N	N
Temporary farm dwelling (mobile home)	ADMIN	ADMIN	N	N	N	N	N ¹¹⁹	N
Transportation School ¹²⁰	N	N	N	N	N	C	N	N
Used auto parts	N	N	N	N	N	N	N	N
Utility substation	C	C	C	C	C	C	C	C
Vegetative cutting	See Section 12-218							
Vehicle sales	N	N	N	N	N	N	N	N
Veterinary clinic	C	N	N	N	N	N	N	N
Warehousing	N	N	N	N	C ¹²¹	C ¹²²	C ¹²³	N
Waterfront uses (commercial)	N	N	N	C	N	N	N	N
Waterfront uses (residential)	A	A	A	A	N	N	A	N
Wholesale business	N	N	N	N	C ¹²⁴	C ¹²⁵	C ¹²⁶	N

Sec. 12-135. Floodplain overlay district.¹²⁷

- A. Permitted uses. As permitted and regulated under the City's floodplain ordinance, article V of this chapter.
- B. Accessory uses. As permitted and regulated under the City's floodplain ordinance, article V of this chapter.

Sec. 12-136. Shoreland management overlay district.¹²⁸

- A. *Permitted uses.* As permitted and regulated under the City's shoreland management ordinance, article III of this chapter.
- B. *Accessory uses.* As permitted and regulated under the City's shoreland management ordinance, article III of this chapter.

Sec. 12-137. Conservancy overlay district.¹²⁹

¹¹⁹ Ord 06-2009, 6/16/2009

¹²⁰ Ord 07-2008, 4/18/2008

¹²¹ Ord 09-2008, 9/16/2008

¹²² Ord 09-2008, 9/16/2008

¹²³ Ord 06-2009, 6/16/2009

¹²⁴ Ordinance 09-2008, 9/16/2008

¹²⁵ Ordinance 09-2008, 9/16/2008

¹²⁶ Ordinance 06-2009, 6/16/2009

¹²⁷ Code 1982, § 301.605

¹²⁸ Code 1982, § 301.606

¹²⁹ Code 1982, § 301.607

LAND USE

- A. *Purpose.* To manage areas unsuitable for development due to wet soils, steep slopes, or large areas of exposed bedrock, and manage areas of unique natural and biological characteristics in accordance with compatible uses. These are areas which may be unsuitable for development due to wet soils, steep slopes, heavy vegetation, scenic views, bedrock formations, and/or other physical features of unique natural and biological characteristics in need of proper land use management. Such areas shall also include the following:
1. Elements of the local hydrological system in need of protection and preservation;
 2. Protection of open space as designated in the comprehensive plan; and
 3. Critical areas and state management areas as designated by federal and state actions and regulations related to the Lower St. Croix River.
- B. *Permitted and accessory uses.* All uses permitted in the basic zoning district and other regulating overlay districts shall require an Administrative Permit.
- C. *Conditionally Permitted Uses.* All uses allowed by Conditional Use Permit in the basic zoning district and other regulating overlay districts shall require a Conditional Use Permit.
- D. *Designation of conservancy areas.* Any land area within the City which meets the criteria listed in Subsection (A) of this section, whether or not so designated on the official zoning map shall be considered conservancy for permit purposes. Areas designated on the official zoning map as conservancy may be excluded by action of the City Council if it is demonstrated conservancy conditions do not exist.

Sec. 12-138. St. Croix River overlay district.¹³⁰

- A. *Permitted uses.* As permitted and regulated under the City's Lower St. Croix River bluffland and shoreland management ordinance, article IV of this chapter.
- B. *Accessory uses.* As permitted and regulated under the City's Lower St. Croix River bluffland and shoreland management ordinance, article IV of this chapter.

Sec. 12-139. Agricultural preserves (AP) overlay district.¹³¹

- A. *Purpose.* To preserve, promote, maintain and enhance the use of land for agricultural purposes where it is necessary and desirable because of high quality soils, availability of water and/or highly productive agricultural capability and to protect such land from encroachment by nonagricultural uses, structures or activities.
- B. *Permitted uses and structures.* The following uses shall be permitted by right:
1. Commercial agricultural and horticulture;
 2. Farm buildings;
 3. Farm drainage and irrigation systems;
 4. Forestry and tree farms;
 5. One farm dwelling on each farm;
 6. Up to three dwelling units on each quarter-quarter (1/4-1/4) section to include at most one farm dwelling and two non-farm dwellings, or three non-farm dwellings provided:
 - a. The landowner has enough acres in AP so that the overall density does not exceed the one dwelling unit per quarter-quarter (1/4-1/4) section limitation of the agricultural preserve, and agrees to covenant that the acreage necessary to maintain that density may not be subdivided, or developed with additional dwelling units, until the encumbered acres have been removed from the agricultural preserve, and in conformance with the provisions of Section 12-140;
 - b. Each dwelling unit shall be located on a separately owned parcel which shall be at least five acres in size and entirely within one quarter-quarter (1/4-1/4) section;

¹³⁰ Code 1982, § 301.608

¹³¹ Code 1982, § 301.609; Ord 01-2012, §12-139, 1/17/2012

LAND USE

AFTON CODE

- c. This procedure is subject to the regulations of the subdivision ordinance and Section 12-140(K). When the parcels on which the dwelling units are located are created by a minor subdivision, at most three parcels may be created in each quarter-quarter (1/4-1/4) section;
 - d. Each parcel on which a dwelling unit is located must have at least 300 feet of frontage along an existing, improved public street;
 - e. The driveway serving the parcel shall be separated from adjacent driveways on the same side of the street by the following distances depending upon street type:

i. Local street	300 feet
ii. Collector street	300 feet
iii. Minor arterial	500 feet
iv. Minimum distance from the intersection of two or more of the above	100 feet
 - f. The dwelling shall be set back at least 105 feet from the nearest existing or planned street centerline and be separated at least 500 feet from the nearest farm building;
 7. Historic sites; and
 8. Other uses as permitted by Section 12-134 for the zoning district.
- C. *Permitted accessory uses and structures.* The following accessory uses and structures shall be permitted: Uses and structures which are customarily accessory and clearly incidental and subordinate to permitted uses and structures, and those accessory uses permitted by Section 12-134 for the zoning district.
- D. *Conditionally Permitted Uses.* The following Conditionally Permitted Uses may be approved by the City Council provided that the provisions and requirements of this article are fully met:
1. Feedlots and poultry facilities;
 2. Home occupations;
 3. Agricultural service establishments incidental to the principal agricultural use of the property primarily engaged in performing agricultural animal husbandry or horticultural services on a fee or contract basis including corn shelling, hay baling, thrashing, sorting, grading and packing of fruits and vegetables for the grower; agricultural produce milling and processing; horticultural services; fruit picking; grain cleaning; harvesting and plowing; farm equipment service and repair; veterinary services; and the boarding and training of horses.
- E. *Other Specially Permitted Uses.* Other uses as allowed by Administrative Permit by Section 12-134 for the zoning district.
- F. *Standards for granting Conditional Use Permits.* No Conditional Use Permit shall be issued by the City Council unless following review and written findings it determines that the proposed use satisfies the following conditions and the conditions set forth in Section 12-78:
1. Non-farm structures shall be sited on a separately surveyed and described parcel;
 2. The use shall not be one to which the noise, odor, dust or chemical residues of commercial agriculture may have an adverse impact on or result in the agricultural use being designated a nuisance or trespass;
 3. All agricultural service establishments shall be located at least 300 feet from any driveway affording access to a farm dwelling or field and at least 500 feet from any single family dwelling;
 4. All agricultural service establishments shall be screened on the perimeter of the establishment by a solid fence, wall or natural vegetation of not less than six feet in height;
 5. An agricultural service establishment shall be incidental and necessary to the conduct of agriculture within the agricultural zoning district; and Public utility and service structures shall be located and constructed at such places and in such manner that they will not interfere with the conduct of agriculture by limiting or interfering with the access of fields or the effectiveness and efficiency of the farmer and farm equipment including crop spraying aircraft.
- G. *Prohibited uses and structures.* All other uses and structures which are not specifically permitted by right or by Conditional Use Permit shall be prohibited in the AP overlay district.
- H. *Minimum lot sizes, yard requirements and structure spacings.*

LAND USE

1. *Lot size.* Five acres with a minimum buildable area of 2 ½ acres, not to exceed a density of one dwelling unit for each quarter-quarter (1/4-1/4) section of at least 35 acres.
 2. *Yard requirements.* As regulated by Section 12-132 for A and AP zoning districts of this article.
 3. *Structure spacing.* Non-farm uses shall be separated at least 500 feet from the nearest farm building.
- I. *Conservation.* Land within an agricultural preserve shall be farmed and otherwise managed according to sound soil and water conservation management practices. Management practices which are not sound shall be any use of the land resulting in wind or water erosion in excess of the soil loss tolerance for each soil type as found in the United States Soil Conservation Service, Minnesota technical guide.
- J. *Complaint.* Upon receipt of a written complaint stating the conditions or land management practices which are believed to be in violation of Subsection (H) of this section, the City Council shall consult with the county soil conservation district. The district shall determine the average soil loss in tons per acre per year for each field cited in the complaint according to the universal soil loss equation and the wind erosion equation, and shall return to the City Council a report showing the average soil loss in tons per acre per year for each field and a list of alternative practices that the landowner can use to reduce the soil loss to the allowed limit mentioned in Subsection (H) of this section. After consultation, and if in the judgment of the City Council the land is not being managed properly as required herein, the City Council shall adopt a resolution to this effect and shall seek corrective measures from the owner. At the request of the landowner, the district shall assist in the planning, design and application of the practices selected to reduce the soil loss to an acceptable level and shall give such landowners a high priority for providing technical and cost share assistance.
- K. *Corrective measures; penalty.* Any owner who fails to implement corrective measures to the satisfaction of the City Council according to Subsections (H) and (I) of this section within one year of notice shall be subject to a fine of not more than \$1,000.00. The City Council may recover the penalty by a civil action in a court of competent jurisdiction. Costs incurred by the City in the enforcement of this section may be charged to the property owner. Charges not timely paid may be placed on the tax rolls and collected as a special assessment against the property.
- L. *Subdivision.* Subdivision of property within an AP overlay district shall be subject to the following regulations in addition to the regulations of the subdivision ordinance:
1. To the extent feasible, each lot created for a non-farm use shall be located on land not suitable for agricultural use. Such land includes areas of nonprime agricultural soils as defined in the comprehensive plan, areas with slopes of 13 percent and greater, areas of heavy natural vegetation, and areas unsuitable for agricultural production because of size.
 2. Each lot less than one quarter-quarter (1/4-1/4) section in area created for nonagricultural use shall be approved by the City Council prior to recording of the deed at the county recorder's office. No building or zoning use permit shall be issued for any lot created after the adoption date of the ordinance from which this article was derived unless the City Council has approved the property description and certificate of survey for such lot.
 3. No lot shall be created that results in a need for the construction of any public or private street or access easement.
 4. Each lot created shall have a minimum buildable area of 2 ½ acres. Buildable area shall be defined as land having a slope of 13 percent or less and enough soils suitable for the installation of two on-site sewage treatment systems.
 5. No lot shall be created that might be adversely affected by adjacent agricultural operations in terms of noise, dust, odors or other activities that might result in the agricultural operation being designated a nuisance or trespass.
- M. *Eligibility.* To be eligible for agricultural preserve certification, the landowner must submit a rezoning application to the City Administrator requesting that his land be zoned at a density of one dwelling unit for each quarter-quarter (1/4-1/4) section and prove the land meets the following criteria:
1. The land shall be designated as being agricultural on the comprehensive plan land use map;
 2. The land comprises 40 or more contiguous acres or a minimum of 35 acres provided the land is a single quarter-quarter (1/4-1/4) parcel and the amount less than 40 acres is due to a public right-of-way or a perturbation in the rectangular survey system resulting in a quarter-quarter (1/4-1/4) section of less than 40 acres; noncontiguous parcels may be included to achieve the minimum acreage requirement provided

LAND USE

AFTON CODE

- that each parcel is at least ten acres in size and provided that all separate parcels are farmed together as a unit;
3. The land comprises not less than 20 acres, is surrounded by eligible land on not less than two sides, consists predominately of class I, II, or III soils according to the land capability classification system of the county soil conservation district, is considered by the City Council to be an essential part of the agricultural district, and was a parcel of record prior to January 1, 1980, or was an agricultural preserve prior to becoming a separate parcel of at least 20 acres.
- N. *Application for rezoning.* An application for rezoning shall be processed as regulated by Section 12-80.
- O. *Forms.* An application for agricultural preserve certification shall consist of the following completed forms to be submitted to the City Administrator:
1. Application for initiating placement of land into a metropolitan agricultural preserve;
 2. Affidavit of authority; and
 3. Metropolitan agricultural preserves restrictive covenant.
- These forms may be obtained from the Zoning Administrator or City Clerk.
- P. *Review.* The City Administrator shall submit the application for agricultural preserve certification to the Planning Commission for its review and recommendation at its next regularly scheduled meeting following submission of the application to the City Administrator.
- Q. *Recommendation.* The Planning Commission shall review the application and forward a recommendation of certification or denial to the City Council at its next regularly scheduled meeting following the Planning Commission's meeting at which the review was conducted.
- R. *Granting or denial of certification.* The City Council shall either grant or deny the application for certification. If certification is granted, the City Council shall submit the original application to the county recorder for proper recording within five days, and copies to:
1. the county auditor, county assessor, county soil conservation district; and
 2. the Metropolitan Council.
- S. *Fee.* The City Council may require an application fee not to exceed \$50.00 to defray administrative costs.
- T. *Termination of an agricultural preserve.* An agricultural preserve shall continue until either the landowner or the City Council initiates expiration as follows:
1. A landowner may initiate expiration by submitting a notice initiating expiration of a metropolitan agricultural preserve, available from the City Administrator to the City Council. The applicant may rescind the notice and expiration at any time during the first two years following the notice.
 2. The City Council may initiate expiration by notifying the landowner by registered letter provided the comprehensive plan and zoning for the land have been officially amended so that the land is no longer planned and zoned for long term agriculture, evidenced by a maximum residential density permitting more than one dwelling unit on each quarter-quarter (1/4-1/4) section. The notice shall describe the property for which the expiration is desired and shall state the date of expiration which shall be at least eight years from the date of the notice. Upon receipt of the notice provided in this section, or upon notice served by the City Council as provided in this section, the City Council shall notify the county recorder, county auditor, county assessor, county soil conservation district and the metropolitan Council of the date of expiration. An agricultural preserve shall not expire any sooner than eight years after the date of the notice initiating expiration of a metropolitan agricultural preserve.
- U. *Expiration.* Expiration of an agricultural preserve initiated by the landowner shall not automatically result in a rezoning of the property to a greater density.
- V. *Early termination.* Termination of an agricultural preserve earlier than a date derived through application as regulated in this section shall be permitted only if the governor declares a public emergency pursuant to a petition submitted to him by either the landowner or the City Council.

LAND USE

Sec. 12-140. Agricultural (A) zoning district.¹³²

- A. *Purpose.* The A zoning district is intended to recognize land in the City that is primarily rural in character with the primary land use being farming or agriculture. This district is designated in recognition of the comprehensive plan that states the City's policy to retain prime agricultural land and to encourage the continuance of commercial farming. While non-farm housing is a permitted use as regulated herein, the primary purpose of the district is to preserve and protect land for commercial farming.
- B. *Permitted uses and structures.* The following uses shall be permitted:
1. Single Family Residential housing at a density of one dwelling unit per 10 acres provided that: (Total Acreage / 10 = allowed density) All numbers shall be rounded down. Each dwelling unit shall be located on a separately owned parcel which shall be at least five acres in area;
 2. The parcel on which a dwelling unit is located shall have at least 300 feet of frontage along an existing, improved public street;
 3. The driveway serving the parcel shall be separated from adjacent driveways on the same side of the street by the following distances depending upon street type:
 - a. Local street..... 300 feet
 - b. Collector street..... 300 feet
 - c. Minor arterial..... 500 feet
 - d. Minimum distance from the intersection of two or more of the above..... 100 feet
 4. The dwelling shall be set back at least 105 feet from the nearest existing or planned street centerline and be separated at least 500 feet from the nearest farm building;
 5. 20 acres are required to subdivide a property, of which two or more parcels may qualify if 100% of all of the land owners apply.
 6. Other uses as permitted by Section 12-134 for the zoning district.
- C. *Accessory uses and structures.* Uses and structures which are customarily accessory and clearly incidental and subordinate to permitted uses and structures, and those accessory uses permitted by Section 12-134 for the zoning district shall be permitted.
- D. *Conditionally Permitted Uses.* The following Conditionally Permitted Uses may be approved by the City Council provided that the provisions and requirements of this article are fully met:
1. Agricultural service establishments incidental to the principal agricultural use of the property primarily engaged in performing agricultural animal husbandry or horticultural services on a fee or contract basis including corn shelling, hay baling, thrashing, sorting, grading and packing of fruits and vegetables for the grower; agricultural produce milling and processing; horticultural services; fruit picking, grain cleaning; harvesting and plowing; farm equipment service and repair; veterinary services; and the boarding and training of horses; and
 2. Those uses listed as being allowed by Conditional Use Permit in the A zoning district in Section 12-134.
- E. *Standards for granting Conditional Use Permits.* No Conditional Use Permit shall be issued by the City Council unless following review and written findings it determines that the proposed use satisfies the conditions set forth in Sections 12-78 and 12-139.
- F. *Prohibited uses and structures.* All other uses and structures which are not specifically permitted or permitted by Conditional Use Permit shall be prohibited.
- G. *Minimum lot sizes, yard requirements and structure spacings:*
1. Lot size. Five acres with a minimum buildable area of 2 ½ acres, not to exceed a density of three dwelling units in any quarter-quarter (1/4-1/4) section.
 2. Yard requirements. As regulated by Section 12-132.

¹³² Code 1982, § 301.610, Ord 7-2006, 8/15/2006; Ord 01-2012, §12-140, 1/17/2012

LAND USE
AFTON CODE

3. Structure spacing. Non-farm uses shall be separated at least 500 feet from the nearest farm building.

H. *Nuisances.*

1. In areas where agricultural and nonagricultural uses interface, the nonagricultural developer is to be responsible for any desired screening or fencing that does not interfere with the agricultural use.
2. No condition such as animals, dust, noise or odors shall be considered a nuisance if doing so would inhibit normal agricultural practices and operations unless a condition must be controlled to protect the health and safety of the public.

I. *Development of substandard parcels.*

1. In areas where the maximum density of three dwelling units for each quarter-quarter (1/4-1/4) section was exceeded at the time the ordinance from which this article was derived was adopted, individual lots of record before the adoption of such ordinance that are at least five acres in size, and have at least 300 feet of frontage on an existing, improved public street and have enough soils suitable for the installation of two on-site sewage treatment systems may be developed in accordance with the regulations for the RR zoning district contained in Section 12-132.
2. Existing dwelling units in areas where the maximum density of three dwelling units for each quarter-quarter (1/4-1/4) section was exceeded prior to the adoption date of the ordinance from which this article was derived shall not be considered nonconforming uses and may be altered or otherwise developed in accordance with the regulations for the RR zoning district contained in Section 12-132.

J. *Conservation.* Land within the A zoning district shall be farmed and otherwise managed according to sound soil and water conservation management practices.

K. *Subdivision.* Subdivision of property within the A zoning district shall be subject to the following regulations in addition to the regulations of the subdivision ordinance, article VI of this chapter:

1. To the extent feasible, each lot created for a non-farm use shall be located on land not suitable for agricultural use. Such land includes areas of nonprime agricultural soils as defined in the comprehensive plan, areas with slopes of 13 percent and greater, areas of heavy natural vegetation, and areas unsuitable for agricultural production because of size.
2. Each lot less than 20 acres in size shall be approved by the City Council prior to recording the deed at the county recorder's office. No building or zoning use permit shall be issued for any lot created after the adoption date of the ordinance from which this article was derived unless the City Council has approved the property description and certificate of survey.
3. No lot shall be created that results in a need for the construction of any public or private street or access easement.
4. Each lot shall have a minimum buildable area of 2 ½ acres.

L. *Rezoning.* In accordance with the comprehensive plan, the City Council shall consider rezoning requests to allow a greater residential density for property within this district only for those properties adjacent to or contiguous with the RR zoning district.

Sec. 12-141. Rural residential (RR) zoning district.¹³³

- A. *Purpose.* The RR district is intended to be primarily a residential district, but which may also accommodate agriculture and related and accessory uses. This is the general area of the City which is not primarily suited to farming due to soil conditions, slope, tree cover, rock formations and other physical features as indicated in the comprehensive plan and is better suited to non-farm housing and related accessory uses.
- B. *Permitted uses.* As permitted and regulated under Section 12-134.
- C. *Accessory uses.* As permitted and regulated under Section 12-134.

¹³³ Code 1982, § 301.611

LAND USE

- D. *Minimum lot requirements.* Each lot shall be a minimum of five acres in size with a minimum buildable area of 2 1/2 acres except as provided for in this article. Due to limiting environmental conditions, some lots may have to be larger than five acres to assure that those lots will have the minimum required buildable area.

Sec. 12-142. Village historic site, residential (VHS-R) and commercial (VHS-C) zoning districts.¹³⁴

- A. *Purpose.* These districts are intended to recognize the unique and special environmental qualities and problems of the old village. The purposes of these regulations are as follows:
1. To assure that all uses, new development and construction, building and site rehabilitation, remodeling, property access, parking and pedestrian circulation are in conformity with the comprehensive plan;
 2. To develop and maintain these districts as an economic, social, and physical asset to the entire city;
 3. To recognize the unique and special problems of the old village not common to new commercial and residential areas;
 4. To provide an opportunity for all landowners and tenants to be aware of and comment upon all significant activities and development which may affect the well-being of the area; and
 5. To promote the preservation and protection of historic structures to enhance the environmental quality of neighborhoods and to establish and improve property values.
- B. *Permitted uses.* In addition to those uses permitted by Section 12-134, the following uses shall be permitted: Interior remodeling, except those requiring structural alterations and those allowing a more intensive use of the structure.
- C. *Other Specially Permitted Uses.* The following uses shall require an Administrative permit:¹³⁵
1. All public improvements;
 2. Signs as required in Section 12-210;
 3. All new construction requiring a building permit and exceeding \$500.00 in assessed value as determined by the building official; and
 4. All exterior construction, alteration, remodeling or restoration of any structure or sign, except normal maintenance or repairs.
- D. *Standards for granting administrative permits.* An administrative permit shall be issued by the Zoning Administrator if he determines the proposed use satisfies the following conditions and the conditions set forth in Section 12-79:
1. All work should be of a character and quality that maintains the distinguishing features of the building and the environment. The removal or alteration of distinctive architectural features should be avoided as should alterations that have no historical basis and which seek to create an earlier appearance. The restoration of altered original features, if documentable, is encouraged.
 2. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
 3. Deteriorated architectural features should be repaired rather than replaced whenever possible. In the event of replacement, new materials should match the original in composition, design including consideration of proportion, texture and detail, color and overall appearance.
 4. New additions or alterations to structures should be constructed in such a manner that if such conditions or alterations were to be removed in the future, the form and integrity of the original structure would be unimpaired.
 5. The impact of alterations or additions on individual buildings as well as on the surrounding streetscape will be considered; major alterations to buildings which occupy a corner lot or are otherwise prominently sited should be avoided.
 6. New construction should be compatible with the historic and architectural character of the district.
 7. The City design guidelines that are adopted by the City Council as Section 12-1621 et seq., provide additional guidance for administrative permit design review.

¹³⁴ Ord 02-2008, 1/9/2008

¹³⁵ Ord 01-2014, 5/20/2014

LAND USE
AFTON CODE

E. *Special uses.*

1. As permitted by Section 12-134; and
2. As regulated by the standards contained in Section 12-78 and Subsection (D) of this section.

F. *The design review committee.*

1. *Established; members.* The design review committee is a function of the Heritage Preservation Commission described in 2-152.
2. *Determination of level of review; minor work.* The Zoning Administrator may apply the guidelines in Subsection (D) of this section and Section 12-1621 et seq., and, if the work is conforming, approve permits for the following types of work without convening the design review committee:
 - a. Reroofing.
 - b. Repair or replacement of porches, windows, siding, trim and doors if new materials match existing.
 - c. Masonry finishing and chimney reconstruction.
3. *Determination of level of review; major work.* The Zoning Administrator shall convene the design review committee review of all other types of work, including:
 - a. Roof alterations and skylights.
 - b. Alterations to the front or side elevations visible from the public street including alterations to windows, siding, entries, and trim.
 - c. Additions.
 - d. New construction, including garages.
 - e. Demolition.

G. *Exemptions.*

1. Properties abutting Pennington Avenue and west of Pennington Avenue are exempt from Subsection (D) of this section and Section 12-1621 et seq.
2. Residences constructed after 1940 and before January 1, 1995, shall be exempt from
3. Subsection (D) of this section and Section 12-1621 et seq., unless the proposed work
4. involves additions, the construction of new accessory buildings or demolition.

Sec. 12-143. Light Industrial (I-1A), Light Industrial (I-1B), and Light Industrial (I-1C).¹³⁶

- A. *Purpose.* The purpose of these districts is to preserve land along major traffic routes to be used by industrial uses that will provide a sound tax base for the City.
- B. *Permitted Uses.* As permitted and regulated in Section 12-134.
- C. *Accessory uses.* As permitted and regulated in Section 12-134.
- D. *Architectural Standards.* The following architectural standards shall apply to all Light Industrial properties.
 1. *Color.* All building materials shall be of earthtones or other tones or colors in harmony with the natural characteristics of the area in which it its constructed.
 2. *Primary Exterior Building Materials.* The primary exterior building facade finishes for industrial uses shall consist of materials comparable in grade to the following:
 - a. Brick.
 - b. Concrete composite board.
 - c. Stone (natural or artificial).
 - d. Cast in place concrete or precast concrete panels.
 - e. Integral colored split face (rock face) concrete block.
 - f. Wood, natural or composite, provided the surfaces are finished for exterior use or wood of proven exterior durability is used, such as cedar, redwood or cypress.
 - g. Glass curtain wall panels.
 - h. Stucco (natural or artificial)/EIFS (exterior insulated finish system).
 - i. Steel or aluminum siding.

¹³⁶ Ord 11-2007, 8/7/2007; Ordinance 07-2009, 6/16/2009

LAND USE

3. Building Foundations. Building foundations not exceeding two feet (2') and other such portions of a building's facade need not comply with the requirements for the primary facade treatment or materials.
4. Accent Materials. Accent materials shall be wrapped around walls visible from public view. Painting accent bands on a major exterior material shall not be allowed as or substituted for visual relief, accenting, or a required element. Use of fiber cement trim, soffit and fascia shall be allowed as accent materials. The City also encourages the use of brick, stone, copper and glass as accent materials. Accent materials shall be required on all exterior building walls.
5. Restricted Exterior Materials. All buildings constructed of curtain wall panels of finished steel, aluminum or fiberglass shall be required to be faced with brick, wood, stone, architectural concrete cast in place or precast concrete panels on wall surfaces abutting public rights of way, a residential zoning district, or public areas. The required wall surface treatment may allow a maximum of twenty percent (20%) of the metal or fiberglass wall to remain exposed if it is coordinated into the architectural design and is similar to the building frontage. Said requirement shall apply to all exterior walls.
6. Glass Coverage. A minimum of twenty five percent (25%) glass coverage shall be required on all exterior building facades.
7. Rooftop Equipment. The view of all rooftop equipment and related piping, ducting, electrical and mechanical utilities abutting a street on buildings constructed shall be screened from the ground level view. Screening may include parapet walls, penthouses, or other architecturally integrated elements. Wood fencing or chainlink with slats shall not be used for screening. The term "ground level view" shall be defined as the view of the building from the property line(s) that abuts a street. A cross sectional drawing shall be provided that illustrates the sight lines from the ground level view.
8. Roofline. Roof slopes shall not exceed 1:12 for all principal buildings.
9. Architectural Review. Building design shall be reviewed and evaluated by the City Planner and/or Zoning Administrator. Input may also be sought from the Planning Commission and neighboring property owners.

E. *Landscaping Standards.* All properties zoned Light Industrial shall be landscaped in accordance with the following:

1. The minimum number of major or overstory trees on any given site shall be as indicated below. These are the minimum substantial plantings, in addition to other understory trees, shrubs, flowers, and ground cover deemed appropriate for a complete quality landscape treatment of the site.
 - a. Industrial sites shall contain at a minimum the greater of one (1) tree per 500 square feet of gross building floor area, or one (1) tree per 25 lineal feet of site perimeter.
2. Minimum Size of Plantings. Required trees and shrubs shall be of the following minimum planting size:
 - a. Deciduous trees-Three (3) inches in diameter as measured 6 inches above ground.
 - b. Coniferous trees- Six (6) feet in height.
 - c. Shrubs- Shrubs used for screening shall be in #5 containers.
3. Sodding and Ground Cover. All areas not otherwise improved in accordance with approved site plans shall be planted with tough native materials where appropriate to reduce the amount of watering required and to increase permeability of the site as approved by the Planning Commission and City Council.
4. Buffer Yard. Where any business or industrial use (structure, parking or storage) is adjacent to property zoned for residential use, that business or industry shall provide a landscaped buffer yard a minimum of 100200 feet in width along the boundary of the residential property to provide screening. Where the use is adjacent to property zoned for industrial use, a landscaped buffer yard a minimum of 50 feet in width shall be required. The screening required in this section shall provide 95 percent opacity year round.
 - a. Plant Units Required. Within the landscaped buffer yard, a minimum of two hundred (200) plant units shall be required for each one hundred (100) feet of property line. Credit for plant units shall be assigned as follows:

<u>Vegetation</u>	<u>Plant Unit Value</u>
Evergreen Trees	15
Deciduous Trees	10
Evergreen/Coniferous Shrubs	5
Shrubs/Bushes	1

5. Landscape Guarantee. An agreement will be signed between the City and the owner which states that in exchange for issuance of a building permit, the owner will construct, install, and maintain all items shown on the approved plan and that he/she will replace and/or correct any deficiencies or defaults that occur in the plan for a period of two complete growing seasons subsequent to the installation of the

LAND USE

AFTON CODE

landscaping plan. A landscaping performance bond will be submitted along with the agreement at this time.

- a. If after two growing seasons all the commitments are met, then the bond and contract agreement are released to the applicant or property owner.
 - b. According to ordinance, the developer/owner is responsible for permanently maintaining the landscaping in a neat and proper fashion.
6. All landscaping shall comply with Sections 12-191 and 12-192.

F. *Lighting.* The following shall apply to all Industrial properties in addition to the requirements set forth in Section 12-195.

1. Any light fixture intended to illuminate the site shall contain a cutoff which directs the light at an angle of ninety (90) degrees or less. Exposure of the light source shall not be permitted in view of adjacent property or public right-of-way.
2. The maximum height above the ground grade for light fixtures mounted on a pole is twenty-five (25 feet).
3. No light sources shall be located on the roof unless said light enhances the architectural features of the building and is approved by the Zoning Administrator.

Sec. 12-144. Marine Services (MS) zoning district.¹³⁷

- A. *Purpose.* The purpose of this district is to complement the river accesses and marinas by providing storage and repair of boats and boat trailers.
- B. *Permitted uses.* As provided in Section 12-134.
- C. *Accessory uses.* As provided in Section 12-134.
- D. *Architectural standards.* In harmony with the natural characteristics of the area in which it is constructed and approved by the Design Review Committee, acting as the architectural standards committee.

Sec. 12-145. Preservation and Land Conservation Development (PLCD).¹³⁸

- A. *Purpose.* To encourage a more creative and efficient development of land and its improvements through the preservation of agricultural land, natural features and amenities than is possible under the more restrictive application of zoning requirements, while at the same time, meeting the standards and purposes of the comprehensive plan and preserving the health, safety, and welfare of the citizens of the City, as provided in Article XII of Chapter 12.
- B. *Permitted Uses.* As permitted and regulated under Chapter 12.

Secs. 12-146-12-184. Reserved.¹³⁹

DIVISION 4. DESIGN AND PERFORMANCE STANDARDS

Sec. 12-185. Performance standards.¹⁴⁰

All uses, buildings and structures permitted pursuant to this article shall conform to the performance and design standards set forth in this section; such standards are determined to be the minimum standards necessary to comply with the intent and purposes of this article as set forth in this division.

¹³⁷ Ord 1997-15, 1/19/99

¹³⁸ Ord 06-2008, 4/15/2008

¹³⁹ Ord 1997-41, 6/4/01

¹⁴⁰ Code 1982, § 301.700

LAND USE

Sec. 12-186. Principal building.¹⁴¹

- A. There shall be no more than one residential dwelling unit on any one parcel of land described in Section 12-132, unless otherwise allowed in the Zoning Code.¹⁴²
- B. No cellar, garage, recreational vehicle or trailer, basement with unfinished exterior above or accessory building shall be used at any time as a dwelling unit.
- C. There shall be no more than two dwelling units in any principal residential structure as permitted by this article.
- D. Principal buildings with more than one use, in which one of those uses is a dwelling unit shall require a Conditional Use Permit.
- E. All principal buildings hereafter erected on unplatted land shall be so placed as to avoid obstruction of future street or utility extensions and shall be so placed as to permit reasonably anticipated future subdivisions and land use.
- F. All principal buildings shall meet or exceed the minimum standards of the state building code, the state uniform fire code, the department of health, the pollution control agency and the sanitary sewer disposal ordinance, Article IX of this chapter, except that manufactured homes shall meet or exceed the requirements of the state manufactured home building code in lieu of the state building code.
- G. The keeping of animals except for domesticated pets inside of a dwelling unit shall be prohibited.
- H. All existing residential principal buildings with non-winterized construction or inadequate nonconforming year-round on-site sewage treatment systems as described in this article and the sanitary sewer disposal ordinance, Article IX of this chapter, shall be considered a seasonal principal building. No building permit shall be issued for the improvement of a seasonal principal building to a continuous year-round (365 days) habitable dwelling unit unless the existing building conforms or the building after such improvement (including septic system) will conform with all the requirements of the City's ordinances and any applicable state requirements.
- I. Any alterations, modifications or enlargements of an existing seasonal principal building for the purpose of continuing the seasonal use shall require a Conditional Use Permit.
- J. In all districts where single-family detached dwellings are permitted, the following standards shall apply for single-family detached dwellings, including manufactured homes, except that these standards shall not apply to manufactured homes permitted by Section 12-213(B), (C), (D) or (E):
 - 1. Minimum width. The minimum width of the main portion of the structure shall not be less than 20 feet, as measured across the narrowest portion.
 - 2. Foundations. All dwellings shall be placed on a permanent foundation extending below the frostline and anchored to resist overturning, uplift and sliding in compliance with the state building code.
- K. The size of a garage attached to a principal residential building shall not have a foundation that exceeds 2,000 square feet.¹⁴³

Sec. 12-187. Types of accessory buildings.¹⁴⁴

- A. Storage or tool sheds; detached residential accessory buildings; detached domesticated farm animal buildings on residential parcels; and agricultural buildings on rural farms. Such accessory buildings are defined as follows:

¹⁴¹ Code 1982, § 301.702

¹⁴² Ord 05-2013, 3/19/2013

¹⁴³ Ord 03-2012, § 12-186 (K), 4/17/2012

¹⁴⁴ Code 1982, § 301.703

LAND USE

AFTON CODE

1. *Storage or tool sheds:* A one-story accessory building of less than 160 square feet gross area with a maximum roof height of 12 feet. No door or other access opening in a storage or tool shed shall exceed 28 square feet in area.
2. *Detached residential accessory building.* A one-story accessory building used or intended for the storage of motor-driven passenger vehicles, hobby tools, garden equipment, workshop equipment and so forth. The total area of all accessory buildings shall not exceed 2,500 square feet, subject to the acreage requirements in Subsection (B) of this section. (Also see Paragraph (4) of this section.)¹⁴⁵
3. *Detached domesticated farm animal building on residential parcels.* A one-story accessory building used or intended for the shelter of domestic farm animals and/or related feed or other farm animal supportive materials on any nonagricultural parcel as defined in Section 12-55. The total area of all accessory building shall not exceed 2,500 square feet, subject to the acreage requirements in Subsection (B) of this section. Such buildings shall be regulated by Subsections (B), (M), and (N) of this section.
4. *Agricultural buildings on rural farms.* An accessory building used or intended for use on a parcel on which rural agriculture, as defined in Section 12-55, is the principal use, and shall be subject to the following restrictions: No accessory building, except for agricultural buildings on rural farms, shall be more than 20 feet in height, nor have a roof pitch which exceeds that of the principal building. On any lot of less than five acres no accessory building shall exceed the square footage of the principal structure.¹⁴⁶
5. *Existing agricultural buildings* at the time of a subdivision are exempt from the limits on the maximum square footage and on the total number of accessory buildings imposed by Subsection (B) of this section. Any additions to or expansions of accessory buildings shall thereafter be subject to requirements of this section with the existing agricultural buildings being included in both the square footage and building number calculations.
6. *Temporary Accessory Dwelling Unit.* A temporary dwelling unit that is accessory to a residential principal structure, and that can be easily removed. A temporary accessory dwelling unit requires an administrative permit. Such permit shall expire 180 days from the date of issuance, unless there is specific ordinance language setting out a longer timeframe, and may be renewed for one additional 180 day period.¹⁴⁷

B. Permitted uses of accessory buildings.¹⁴⁸

	A	R	VHS
Storage or tool shed:			
Permit required	Building	Building	Building
Maximum square footage	160	160	160
Maximum roof height	12 feet	12 feet	12 feet
Maximum door opening area	28 sq. ft.	28 sq. ft.	28 sq. ft.
Maximum number of stories	One story*	One story*	One story*

Detached residential accessory building:			
Permit required	Admin & Bldg.	Admin & Bldg.	Bldg.
Maximum square footage	***	***	720
Maximum number of stories	One story*	One story*	One story*

Detached domesticated farm animal building on residential parcels:			
Permit required	Admin & Bldg.	Admin & Bldg.	N****
Maximum square footage	***	***	

¹⁴⁵ Ord 05-2013, 3/19/2013

¹⁴⁶ Ord 05-2015, 3/19/2013

¹⁴⁷ Ord 05-2013, 3/19/2013

LAND USE

Maximum number of stories	One story*	One story*	
Agricultural building on rural farm of:			
More than 10 but less than 20 acres:			
Permit required	Admin	Admin	N
Maximum square footage	***	***	
20 or more acres:			
Permit required	Admin/Farm Site Plan	Admin/Farm Site Plan	N

* See Ch. 11, Sec. 1102 of the International Building Code (IBC)

<p>***Total number of accessory buildings possible:</p>	<p>1 or 2 on parcels of 10-20 acres not to exceed a total of 2,500 square feet; 2 on parcels less than 10 acres not to exceed 2,000 square feet. Residential parcels shall be regulated by the RR district. Permit shall be recorded. No Admin permit required on buildings 1,000 s.f. or less.</p>	<p>1 or 2 on parcels of 5 and more ac. Not to exceed a total of 2,000 square feet; 1 on parcels less than 5 acres not to exceed 1,000 square feet. Agricultural parcels shall be regulated by the A and AP districts. Permit shall be recorded. No Admin permit required on buildings 1,000 s.f. or less.</p>	
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**** See Section 12-230 regulating the keeping of chickens on parcels less than five (5) acres.¹⁴⁹

- C. A storage or tool shed as defined in this section may be placed on any lot in addition to the permitted type and number of accessory buildings.
- D. No accessory building shall be constructed nor accessory use located on a lot until a building permit has been issued for the principal building to which it is accessory.
- E. A building shall be considered an integral part of the principal building if it is located six feet or less from the principal building. The exterior design and color shall be the same as that of the principal building and the height shall not exceed the height of the principal structure.
- F. No accessory building in a Commercial or Industrial Zoning District shall exceed the height of the principal building.
- G. No accessory building shall be located nearer the front lot line than the principal building on that lot except by Administrative Permit as provided for herein:
 - 1. The proposed accessory building shall be located on a lot of five or more acres; and
 - 2. The proposed accessory building shall be screened from the public street and neighboring parcels by existing vegetation that provides year-round screening and exceeds the height of the accessory building unless the accessory building is of the same design and material as the principal building and is located 25 feet or less from the principal building, provided all other required setbacks are met.
- H. Accessory structures located on lake or stream frontage lots may be located between the public street and the principal structure as regulated by the shoreland management ordinance and Subsection (G) of this section.
- I. Houseboats and buildings used as shelters from which to fish during open water months are to be considered accessory structures for purposes of this article. All houseboats used within the City limits for a period of 30 consecutive days or more shall require a Administrative Permit. Such permit shall show the owner, owner's address, boat license number, whether the boat is to be used as a seasonal residence, and if so, for what period of time during the year, type of sanitary sewage facility, water supply and site plan showing the method of

¹⁴⁹ Ord 05-2013, 3/19/2013

LAND USE

AFTON CODE

access to the public street. Each houseboat shall have one off-street parking space within 400 feet of the docking of such houseboat. No houseboat shall be used as a permanent residence.

- J. Ice fishing houses stored on parcels of land during summer months shall be considered an accessory storage building equivalent to a storage or tool shed as defined in Subsection (A)(1) of this section. Ice fishing houses shall meet the size limitations of Subsection (B)(1) of this section and all other provisions of this article, except Subsection (K) of this section.
- K. All accessory buildings shall be securely anchored. Those over 100 square feet shall have a foundation, concrete slab or footings. Nonagricultural accessory buildings larger than 100 square feet shall require a building permit regardless of improvement value. Roof and wind loads shall conform to requirements as contained in the building code.
- L. All accessory buildings shall meet the minimum required setbacks contained in Section 12-132(A) for the zoning district in which it is to be located.
- M. An Administrative Permit is required for approval and construction of a detached domesticated farm animal building on a residential parcel of at least five acres and up to 20 acres. No detached domesticated farm animal building shall be permitted on any lot less than five acres. An application for an Administrative Permit shall include the following:
 - 1. A dimensioned site plan or aerial photograph illustrating within 500 feet of the proposed structure: All adjacent property owners' lot lines, houses, septic systems, fences, wells, animal buildings and other structures and feed storage areas; all wet marshy areas, drainageways, and shorelines; all proposed grazing areas on the site; all new utility extensions and driveway access to the proposed building; and all manure storage and disposal areas.
 - 2. A written soil inventory and evaluation from the county soil conservation district.
 - 3. Details of the building floor plan, elevations, materials and color of structure.
- N. Performance standards for detached agricultural buildings and domesticated farm animal buildings shall include the following:
 - 1. *Setbacks.* All domestic farm animal buildings, feedlots and manure storage areas shall be setback as follows:

Natural or Manmade Feature	Minimum Horizontal Setback
a. Any property line:	100 feet
b. Any existing well or residential structure on the same parcel:	50 feet
c. Any existing well or residential structure on adjacent or nearby parcels:	200 feet
d. Any body of seasonal or year-round surface water, stream, or drainageway	200 feet
 - 2. *Slopes.* Such building, feedlot or manure storage area shall not be placed on slopes that exceed 13 percent.
 - 3. *Marsh or wetland.* No marsh or wetland (as established by the predominant wetland vegetation and/or soils) shall be utilized for placement of the proposed structure, feedlot or grazing area.
- O. The size of a lean-to shall not exceed 40% of the size of the enclosed portion of the building to which it is attached.¹⁵⁰

Sec. 12-188. Livestock.¹⁵¹

- A. *Prohibition of manure deposition without safeguards.* No manure or livestock waste shall be deposited, stored, kept or allowed to remain in or upon any storage site or feedlot without reasonable safeguards adequate to prevent the escape or movement of such manure or waste or a solution thereof from the site that

¹⁵⁰ Ord 05-2013, 3/19/2013

¹⁵¹ Code 1982, § 301.704; **Cross reference(s)**--Animals, Ch. 6.

LAND USE

may result in pollution of any public waters or any health hazard. No manure shall be stored within 100 feet of any property line.

- B. *Pollution control agency standard minimum requirements.* All regulations imposed by the state pollution control agency relating to keeping of livestock shall be adhered to, and such regulations shall be considered the minimum safeguard necessary to prevent pollution of public waters or creation of health hazards. New livestock feedlots, poultry lots and other animal lots are prohibited within the following areas:
1. Within 1,000 feet of the ordinary high water mark of any lake, pond or flowage; or within 300 feet of the landward extent of a floodplain;
 2. Within 1,000 feet of the boundary of a public park; and
 3. Within one-half mile of the nearest point to a concentration of ten or more private non-farm residences.
- C. *Permit required.* No feedlot or manure storage site shall be maintained unless a permit therefore¹⁵² has first been issued by the state pollution control agency and a Conditional Use Permit has been issued by the City Council. The application for a permit by the owner or other person responsible for a feedlot or manure storage site shall be accompanied by plans showing the features and method of operation and construction and existing or proposed safeguards or disposal systems. The City Council may thereafter issue a Conditional Use Permit therefore¹⁵³ upon such conditions as it shall prescribe to prevent pollution of any public water or creation of health hazard.
- D. *Inadequate safeguards.* In case the Zoning Administrator shall find that any manure is stored or kept on any feedlot or storage site without a safeguard, or that any existing safeguard is inadequate, he may order the owner or other responsible person to immediately remove the manure from the feedlot or storage site and refrain from further storage or keeping of any manure thereat unless and until an adequate safeguard is provided as herein prescribed.
- E. *Notice concerning loss.* It shall be the duty of the owner of a feedlot or manure storage site or other responsible person in charge thereof to notify immediately the Zoning Administrator of any loss of stored manure by accident or otherwise when such loss of stored manure involves a substantial amount that would be likely to enter any waters of the City. Such notice shall be by telephone or other comparable means and shall be made without delay after the discovery of the loss. The notification shall include the location and nature of the loss and such other pertinent information as may be available at the time.
- F. *Acreage requirement.*¹⁵⁴ Chickens can be kept on parcels less than five acres as regulated by Section 12-230. A parcel of at least five acres, with a minimum of two acres of natural pasture having a slope of less than 12 percent is required for the keeping of horses, cattle or other domestic farm animals. The allowable density shall be one animal or its equivalent on each two acres of such land. This requirement does not apply to parcels of 40 acres or more or to parcels of less than 40 acres that are part of a larger agricultural operation. In a situation where land is leased, the parcel on which the residence occupied by the owner of the land is located must be at least five acres, and the leased land must meet the above requirements and the following conditions:
1. Leased land shall be contiguous to the parcel upon which the owner of the horses resides.
 2. Farm animals shall have access to the leased land from the residence parcel.
 3. Leased land shall be grazable and fenced.
 4. Any lease agreement shall be reviewed annually by the City and shall be filed with the City. If the lease is cancelled, the City shall be notified and the applicant shall come into compliance within 30 days.
- G. *Animal unit.* On parcels of five acres or more one animal unit or its equivalent is permitted on each two acres of natural pasture land having a slope of less than 12 percent and with the ability to feed grazing animals. For the purposes of these regulations, the following animal unit equivalents apply:

¹⁵² Amendment 02-2009, 4/21/2009

¹⁵³ Amendment 02-2009, 4/21/2009

¹⁵⁴ Amendment 04-2011, 11/15/2011

LAND USE

AFTON CODE

<i>Animal</i>	<i>Animal Units</i>
1 Slaughter steer or heifer	1.0
1 Horse	1.0
1 Mature dairy cow	1.4
1 Swine over 55 pounds	0.4
1 Sheep	0.1
1 Turkey	0.018
1 Chicken	0.01
1 Duck	0.2

- H. *Determination of conditions.* Prior to the issuance of a building permit for a residential parcel, the Zoning Administrator shall determine if there are any existing nonconforming animal conditions. If such conditions exist, building permits shall not be issued until the property is brought into conformance with the regulations of this article.
- I. *Administrative Permit.* An Administrative Permit shall be required whenever there are more than five horses on a parcel less than 20 acres owned in fee simple.
- J. *Fencing.* All land used as pasture shall be appropriately fenced to contain animals.
- K. *Barns.* A barn located on a five acre lot where contiguous land is leased shall not house more than four horses during the winter months. During the remainder of the year, horses shall be kept on leased land as well as on the parcel held in fee title.
- L. *Nuisance.* All livestock shall be managed in a humane manner and maintained in such a manner as not to create a nuisance.

Sec. 12-189. Agricultural operations.¹⁵⁵

- A. All agricultural operations in existence upon the effective date of the ordinance from which this article was derived shall be a permitted use. However, all regulations contained herein and other city ordinances in effect shall apply to all changes of the agricultural operation that will cause all or part of the area to become more intensively used or more residential in character. Setback and other regulations shall apply to agricultural operations just as they do to residential developments. Any agricultural building erected on a farm shall require a farm site plan permit (See Section 12-86) and shall meet the provisions of this article.
- B. Rural agricultural operations may occur on parcels of ten or more contiguous acres in A and AP zoning districts. Rural agricultural operations may include the production of farm crops such as vegetables, fruit trees, grain and other crops and their storage on the farm, as well as for the raising thereon of farm poultry, domestic pets and domestic farm animals.
- C. Rural agricultural operations may include necessary accessory uses for treating, storing or producing retail farm market products; provided however, that the operation of any such accessory uses shall be secondary to that of the primary agricultural activity.
- D. Suburban agricultural operations may occur on parcels of less than ten contiguous acres in A, AP or RR zoning districts. Suburban agricultural operations may include the production of crops such as fruit trees, shrubs, plants and flowers, vegetables and domestic pets, provided such produce is intended for the use of the residents on the property or sale away from the property, or for temporary seasonal produce sales that require no roadside sales stand.
- E. Suburban agricultural operations shall not include the raising of domestic farm animals on parcels of less than five acres, roadside sales stands, processing or packaging operations or similar uses.
- F. The City Council may require any farm operation not located in an A or AP zoning district to secure a Conditional Use Permit to continue such operations upon the following conditions:

¹⁵⁵ Code 1982, § 301.705; **Cross reference(s)**--Animals, Ch. 6.

LAND USE

1. A nuisance on a farm is determined to be detrimental to the health and safety of adjoining property owners; and
2. The farm operations are so intensive as to constitute an industrial type use consisting of the compounding, processing and packaging of products for wholesale or retail trade and further, that such operations may tend to become a permanent industrial type operation that cannot be terminated as can a normal farming operation. Excessive trucking operations shall be considered an intensive use.

Sec. 12-190. Fences.¹⁵⁶

- A. Fences may be permitted in all yards subject to the following:
1. Solid walls in excess of four feet above adjacent ground grades shall be prohibited;
 2. That side of the fence considered to be the face (finished side as opposed to structural supports) shall face abutting property;
 3. Fences over six feet in height from the finished grade shall require a building permit in addition to any other required permits;
 4. No fences shall be permitted on public rights-of-way; and
 5. All fences shall be maintained and kept in good repair.
- B. Fences may be permitted along property lines subject to the following:
1. Fences may be placed along property lines provided no physical damage of any kind results to abutting property;
 2. Fences on commercial and industrial property may be erected on the lot line to a height of six feet; to a height of eight feet with a security arm for barbed wire;
 3. Fences along any lot lines or within any building setback lines as defined in Section 12-55 may be a maximum of six feet in height, except as provided in Subsection (B)(5) of this section. All fences parallel to any road shall be set back a minimum of 20 feet from the road right-of-way for line-of-sight safety reasons. All fences which exceed four feet in height and which are parallel to any road shall be screened in accordance with Subsection (8) of this section.
 4. Should the rear lot line of a lot be common with the side lot line of an abutting lot, that portion of the rear lot line equal to the required front yard of the abutting lot shall not be fenced to a height of more than four feet;
 5. All fences on lake lots shall be set back a minimum of 20 feet from the ordinary high water mark. Fences along interior lot lines between the 20-foot setback from the ordinary high water mark and the required building setback from the ordinary high water mark shall not exceed four feet in height;
 6. Fences located within the buildable area of a lot or eight feet or more from the rear lot line may be up to eight feet in height;
 7. Where the property line is not clearly defined, a certificate of survey may be required by the Zoning Administrator to establish the property line;
 8. The screening required in this section shall consist of forms of landscaping (plant materials) so as to block direct visual access to the fence from the street.

Sec. 12-191. Screening.¹⁵⁷

- A. Screening shall be required in all zoning districts where:
1. Any off-street parking area contains more than four parking spaces and is within 30 feet of an adjoining residential zoning district; and
 2. Where the driveway to a parking area of more than six parking spaces is within 15 feet of an adjoining residential use or zoning district.
- B. Where any business or industrial use (structure, parking or storage) is adjacent to property zoned for residential use, that business or industry shall provide screening along the boundary of the residential

¹⁵⁶ Code 1982, § 301.706

¹⁵⁷ Code 1982, § 301.707

LAND USE
AFTON CODE

property. Screening shall also be provided where a business, parking lot or industry is across the street from a residential zoning district, but not on the side of a business or industry considered to be the front.

- C. All exterior storage shall be screened except materials and equipment currently being used for construction on the premises and exterior storage on farms, except those required to do so on an individual basis by action of the City Council.
- D. The screening required in this section shall mean the installation of a solid wooden fence of a required height, and/or plantings, and/or berms. All plantings used as screening shall be a minimum of six feet in height when planted, shall be of a variety that the soil and water conservation district recommends as suitable for the site, and shall be a variety which is fast growing and non-deciduous. In addition, earth berms shall be considered to be screening. Any berm required as a condition of a Conditional Use Permit shall be high enough to prevent visual access to the structure it is screening. Berms may be required to have plantings, watering systems to support life for the plants, fences, or other screening. All screening of whatever type shall provide 90 percent screening of the structure or facility being screened.

Sec. 12-192. Landscaping.¹⁵⁸

- A. Landscaping on a lot shall consist of a finished grade and a soil retention cover such as sod, seed and mulch, plantings or as may be required by the Zoning Administrator to protect the soil and aesthetic values on the lot and adjacent property.
- B. In all zoning districts, all developed uses shall provide landscaping from the edge of the street pavement to the street right-of-way lines. This landscaped yard shall be kept clear of all structures, exterior storage and off-street parking.
- C. No trees or shrubs shall be planted within a public right-of-way except as provided in Subsection (D) of this section.
- D. The grassy area on the public right-of-way adjoining the traveled portion of the City streets in the old village is designated as a boulevard and as such may be planted and maintained by the abutting property owner subject to the following conditions:
 - 1. Nothing shall be planted or allowed to grow in such a manner as to obscure signage or impede vision on the traveled portion of the street.
 - 2. All boulevards shall be maintained by the abutting property owner in a neat and orderly fashion consistent with the atmosphere of the old village.
 - 3. The City shall remain the sole owner of the boulevard area.
 - 4. The City reserves the right to enter on the boulevard for any lawful purpose including, but not limited to, mowing, trimming, snow plowing, or any street or utility maintenance.
 - 5. The City reserves the right to reclaim any boulevard area and remove any plantings if, in the sole discretion of the City, the boulevard area is needed for any lawful purpose including, but not limited to, street widening, parking, or utility easements.
- E. Landscaping shall be provided and maintained on all required front and side yards on all developed lots except where pavement or crushed stone is used for walkways or driveways.

Sec. 12-193. Reasonable maintenance required.¹⁵⁹

In all zoning districts, all structures, landscaping and fences shall be reasonably maintained so as to avoid health and safety hazards and prevent a degradation in the value of adjacent property.

Sec. 12-194. Exterior storage.¹⁶⁰

¹⁵⁸ Code 1982, § 301.708

LAND USE

- A. In all zoning districts except for the uses permitted in the MS District, only personal property of the property owner or tenant shall be stored on the premises. Such property shall be stored within a building or fully screened so as not to be visible from adjoining properties and public places and streets, except for the following: Laundry drying and recreational equipment, construction and landscaping materials and equipment currently (within a period of 12 months) being used on the premises, agricultural equipment and materials if these are used or intended for use on the premises; off-street parking of licensed passenger automobiles, pick-up trucks, recreational vehicles, boats and unoccupied trailers are permissible if stored more than ten feet from any property line, except as regulated by Subsection (B) of this section. Existing uses shall comply with this provision within 12 months following enactment of the ordinance from which this article was derived.¹⁶¹
- B. In the VHS-R and VHS-C zoning districts, only one of the following items may be stored on any residential premises: Recreational vehicle, boat, unoccupied trailer or similar item. Such an item may not be more than 25 feet in length and shall be stored behind the front building line of the principal structure at least ten feet from each lot line.
- C. In nonresidential zoning districts, exterior storage of personal property may be permitted by Conditional Use Permit provided any such property is so stored for purposes relating to a use of the property permitted by this article and will not be contrary to the intent and purposes of this article.¹⁶²
- D. In all zoning districts, all waste, refuse or garbage shall be kept in an enclosed building or properly contained in a container designed for such purposes. The owner of vacant land shall be responsible for keeping such land free of refuse and noxious weeds. Existing uses shall comply with this provision within 90 days following enactment of the ordinance from which this article was derived.
- E. Unlicensed passenger vehicles and trucks shall not be parked on any property for a period exceeding seven days.
- F. All exterior storage not included as a permitted accessory use, a permitted use or included as part of a Conditional Use Permit or otherwise permitted by provisions of this article shall be considered to be refuse.

Sec. 12-195. Lighting, lighting fixtures and glare.¹⁶³

- A. In all zoning districts, any lighting used to illuminate an off-street parking area, or other structure or area, shall be arranged to deflect light away from any adjoining residential zoning districts or from the public streets. Direct or sky-reflected glare, whether from floodlights or from high temperature processes such as combustion or welding shall not be directed onto any adjoining property. The source of light shall be hooded or controlled so as not to light adjacent property. Bare light bulbs shall not be permitted in view of adjacent property or public rights-of-way. No light or combination of lights that cast light on a public street shall exceed one footcandle meter reading as measured from the centerline of said street nor shall any light or combination of lights that cast light on residential property exceed 0.4 footcandles.
- B. Lighting standards shall not exceed 35 feet in height.

Sec. 12-196. O8.¹⁶⁴

- A. *General provisions.*
 - 1. Existing off-street parking spaces and loading spaces upon the effective date of the ordinance from which this article was derived shall not be reduced in number unless such number exceeds the requirements set forth herein for a similar use.
 - 2. Benches in places of public assembly, in stadiums, sport arenas, churches and other places of public assembly, in which patrons or spectators occupy benches, pews or other similar seating facilities, each

¹⁶¹ Ord 1997-19, 4/20/99

¹⁶² Ord 1997-19, 4/20/99

¹⁶³ Code 1982, § 301.712

¹⁶⁴ **Cross reference(s)**--Parking generally, § 22-56 et seq. Code 1982, § 301.713

AFTON CODE

- 22 inches of such seating shall be counted as one seat for the purpose of determining requirements for off-street parking facilities under this article.
3. Each parking space shall not be less than nine feet wide and 18 feet in length exclusive of an adequately designed system of access drives. Parking lots that separate vehicles based on size may be designed with parking spaces less than or greater than nine feet wide and 18 feet deep depending upon the size of the vehicle as long as adequate space is provided for easy and safe ingress and egress for the vehicle. Each parking space shall be served by an access aisle at least 24 feet in width. Parking spaces for semi-trailers shall be a minimum length of 50 feet. Proposed reductions in or additions to the parking space size must be submitted in a dimensioned site plan with the size of vehicle to use parking spaces indicated to the Zoning Administrator for review and approval. Signs specifying the vehicle size to use the parking space may be required by the Zoning Administrator. Parking spaces for vehicles used by disabled persons shall not be less than 12 feet wide and 20 feet long.
 4. Off-street parking facilities accessory to residential uses shall be utilized solely for the parking of passenger vehicles and/or one truck not to exceed 9,000 pounds gross capacity for each dwelling unit. Under no circumstances shall required parking facilities accessory to residential structures be used for the storage of commercial vehicles or for the parking of vehicles belonging to the employees, owners, tenants or customers of nearby business or manufacturing establishments, provided however, that the parking of not more than three commercial vehicles in a single garage not to exceed 1,500 square feet in gross area may be permitted by a Conditional Use Permit if parking the vehicles is accessory to a residential use by the owner of the vehicles and the business in which they are used. Such Conditional Use Permit may be issued only for a parcel not less than 20 acres in size, zoned A or AP and conditioned upon no exterior storage, no on-site sales and no office open to the public. The permit shall state that the Council reserves the right to revoke the permit at such time as the use becomes incompatible with adjacent land uses or surrounding parcels become platted. Typical uses which may be eligible for a Conditional Use Permit include contractor, electrician, painter, plumber, roofer, and septic system pumper and servicer.
 5. Off-street parking facilities for a combination of mixed buildings, structures or uses may be provided collectively in any marine services, commercial or I zoning district in which separate parking facilities for each separate building, structure or use would be required, provided that the total number of spaces provided shall equal the sum of the separate requirements of each use during any peak hour parking period.¹⁶⁵
 6. When required accessory off-street parking facilities are provided elsewhere than on the lot the principal use served is located, they shall be in the same ownership or control, either by deed or long-term lease, as the property occupied by such principal use, the owner of the principal use shall file a recordable document with the county recorder requiring the owner and his heirs and assigns to maintain the required number of off-street parking spaces during the existence of such principal use, and shall be located within the same zoning district as the principal use.
 7. Required off-street parking space in any zoning district shall not be utilized for open storage of goods, or for the storage of vehicles that are inoperable, for sale or for rent.

B. *Design and maintenance of off-street parking areas.*

1. Parking areas shall be designed so as to provide adequate means of access to a public alley or street. In no case shall a driveway exceed 32 feet in width unless an Administrative Permit has been obtained approving the larger width. Driveway access shall be so located as to cause the least interference with traffic movement. There shall be only one driveway access for each residential lot, except by Administrative Permit.
2. When the calculation of the number of off-street parking spaces required results in a fraction, such fraction shall require a full space.
3. No signs shall be located in any parking area except as necessary for orderly operation of traffic movement and such signs shall not be a part of the permitted advertising space.
4. Off-street parking areas shall be improved with a durable and dustless surface. Such areas shall be so graded and drained as to dispose of all surface water accumulation within the parking area. Durable and dustless surface may include crushed rock and similar treatment for parking accessory to residential structures; all other uses shall utilize asphalt, concrete or a reasonable substitute surface as approved by the City Engineer. All surfacing must be completed prior to occupancy of the structure unless other arrangements have been made with the City. Parking areas for less than three vehicles shall be exempt.

¹⁶⁵ Ord 1997-19, 4/20/99

LAND USE

LAND USE

5. Any lighting used to illuminate an off-street parking area shall be so arranged so it is not directly visible from the adjoining property and in a downward vertical direction.
6. All open off-street parking areas designed to have head-in parking along the property line shall provide a bumper curb or guard not less than ten feet from the property line. When such area is for six or more spaces, screening not over four feet in height shall be erected along the street side of the parking area and grass or planting shall occupy the space between the screening and the street.
7. Each parking space in a lot with a nonporous surface shall be delineated with four-inch wide stripes painted the entire length of the parking space.
8. Parking bays that do not head into a lawn area at least six feet wide and parking bays designed with angle parking of less than 90 degrees shall be defined with vertical markers at each end of the bay. Vertical markers may include concrete curbing, bermed planting islands with six-inch concrete curbing, lighting standards, sign posts, bumper guards at least three feet high or other devices approved by the Zoning Administrator.
9. When a required off-street parking space for six or more cars is located adjacent to a residential lot, a fence or screen not less than four feet in height shall be erected along the side and/or rear of the parking area adjacent to the residential lot or zoning district.
10. All accessory off-street parking facilities required herein shall be located as follows:
 - a. Spaces accessory to one- and two-family dwellings shall be on the same lot as the principal use served;
 - b. Spaces accessory to uses located in a marine services, commercial or I zoning district shall be within 800 feet of a main entrance to the principal building served and in the same zoning district. Parking as required by the building code for disabled persons shall be provided;¹⁶⁶
 - c. There shall be no off-street parking space within ten feet of any street right-of-way;
 - d. No off-street parking area shall be located closer than ten feet from any lot line, except when adjoining an existing parking area on the adjacent lot in any marine services, commercial and I zoning districts; and,¹⁶⁷
 - e. No parking space shall be closer than ten feet to any building.
11. All off-street parking spaces shall have access from driveways and not directly from the public street.
12. Fire access lanes shall be provided as required by the building code or fire code.
13. It shall be the joint responsibility of the operator and the owner of the principal use or building to reasonably maintain the parking space, accessways, landscaping and required fences.

C. *Truck parking in residential areas.* No motor vehicle over one-ton capacity bearing a commercial license and no commercially licensed trailer shall be parked or stored in a residential zoning district except when loading, unloading or rendering a service, or as provided in Subsection (A)(4) of this section.

D. *Parking limited.* Both off-street and on-street parking in residential areas shall be limited to the use of the residents and their guests, except for short-term parking of six or fewer hours.

E. *Reduction of number.* Off-street parking spaces shall not be reduced in number unless such number exceeds the requirements set forth herein.¹⁶⁸

F. *Number required.* Off-street parking spaces required shall be as follows:

One- and two-family residences	2 spaces per dwelling unit but not to exceed 4 per unit.
Churches and other places of assembly	1 space for each 3 seats or for each 5 feet of pew length, based upon maximum design capacity.
Offices	3 spaces for each 1000 square feet gross floor area.
Schools: Elementary and junior high	3 spaces for each classroom.
Schools: High school through college	1 space for each 4 students based upon design capacity plus 3 additional spaces for each classroom.

¹⁶⁶ Ord 1997-19, 4/20/99

¹⁶⁷ Ord 1997-19, 4/20/99

LAND USE

AFTON CODE

Sanitarium, convalescent home rest home, nursing home or institution	1 space for each 6 beds, for which accommodations are offered, plus 1 space for each 2 employees on maximum shift.
Retail store	4.5 spaces for each 1000 square feet of gross floor area.
Restaurants, cafes, bars, taverns or supper clubs	1 space for each 21/2 seats, based on capacity design.
Medical or dental clinic	6 spaces per doctor or dentist.
Industrial, warehouse, storage, whole-sale, furniture store, handling of bulk goods	1 space for each 2 employees on maximum shift or 1 for each 2,000 square feet of gross floor area, whichever is larger.
Marinas	1 1/2 spaces per slip plus 1 space per employee and a minimum of 20 12-foot by 25-foot trailer stalls.
Uses not specifically noted	As determined by the Planning Commission.

Sec. 12-197. Off-street loading areas.¹⁶⁹

- A. *Location.* All required loading berths shall be off-street and shall be located on the same lot as the building or use to be served. A loading berth shall be located at least 25 feet from the intersection of two street rights-of-way and at least 50 feet from a residential zoning district, unless within a building. Loading berths shall be located to the rear of the structure.
- B. *Size.* Unless otherwise specified in this article, a required loading berth shall be not less than 12 feet in width, 50 feet in length and 14 feet in height, exclusive of aisle and maneuvering space.
- C. *Access.* Each required loading berth shall be located with appropriate means of vehicular access to a street or public alley in a manner that will least interfere with traffic.
- D. *Surfacing.* All loading berths and accessways shall be improved with a hard surface to control the dust and drainage before occupancy of the building.
- E. *Accessory use.* Any space allocated as a loading berth or maneuvering area so as to comply with the terms of this article shall not be used for the storage of goods, inoperable vehicles or be included as a part of the space requirements to meet the off-street parking area.
- F. *Deliveries.* Any structure erected or substantially altered for a use that requires the receipt or distribution of materials or merchandise by trucks or similar vehicles, shall provide off-street loading space as required for a new structure.

Sec. 12-198. Traffic control.¹⁷⁰

- A. The traffic generated by any use shall be controlled so as to prevent:
 - 1. Congestion of the public streets;
 - 2. Traffic hazards; and
 - 3. Excessive traffic through residential areas, particularly truck traffic.
- B. Internal traffic shall be so regulated as to ensure its safe and orderly flow. Traffic into and out of commercial and industrial areas shall in all cases be forward moving with no backing into streets.
- C. On any corner lot, nothing shall be placed or allowed to grow in such a manner as to impede vision between a height of 21/2 and ten feet above the centerline grades of the intersecting streets within 15 feet of the intersecting street right-of-way lines. This restriction shall also apply to the planting of crops and to yard grades that result in elevations that impede vision within 15 feet of any intersecting right-of-way lines.

¹⁶⁹ Code 1982, § 301.714

¹⁷⁰ **Cross reference(s)**--Traffic and vehicles, Ch. 22.; Code 1982, § 301.715

LAND USE

Sec. 12-199. Fallout shelters.¹⁷¹

Fallout shelters may be permitted in any district subject to the yard regulations of the zoning district. Such shelters may contain or be contained in other structures or be constructed separately, and in addition to shelter use, may be used for any use permitted in the district, subject to the district regulations on such use.

Sec. 12-200. Guesthouses.¹⁷²

Guesthouses shall not be permitted in any zoning district.

Sec. 12-201. Dwelling units in commercial and I zoning districts.¹⁷³

A dwelling unit for a watchman, alone or with family, shall be considered an accessory use and shall conform to all applicable regulations for the zoning district in which it is located, except as herein modified:

1. A dwelling unit in the commercial district located in a commercial structure shall not occupy the front half of the ground floor or basement.
2. A dwelling unit in a commercial or industrial building shall not contain more than one bedroom.
3. No detached dwelling unit shall be permitted in the Industrial zoning district.¹⁷⁴
4. A dwelling unit that is part of the principal building shall be provided with two exits; one shall be a direct outside exit.
5. All buildings shall conform to the building code and applicable fire codes.

Sec. 12-202. Radiation and electrical interference prohibited.¹⁷⁵

No activities shall be permitted that emit dangerous radioactivity beyond enclosed areas. There shall be no electrical disturbance (except from domestic household appliances) adversely affecting the operation of ordinary business or household equipment and appliances. Any such omissions are hereby declared a nuisance.

Sec. 12-203. Storage of hazardous materials.¹⁷⁶

All uses associated with the bulk storage of over 500 gallons of oil, gasoline, liquid fertilizer, chemicals, and similar liquids, except fuel oil stored for residential use on residential property, shall require a Conditional Use Permit in order that the City may have the assurance that fire, explosion, or water or soil contamination hazards are not present that would be detrimental to the public health, safety and general welfare. All existing, aboveground liquid storage tanks having a capacity in excess of 500 gallons shall secure a Conditional Use Permit within 12 months following enactment of the ordinance from which this article was derived. Suitably sealed diking capable of holding a leakage capacity equal to 115 percent of the tank capacity shall be required around such tanks. Any existing storage tank that, in the opinion of the Planning Commission, constitutes a hazard to the public safety, shall discontinue operations within 90 days following notification by the Zoning Administrator.

Sec. 12-204. Explosives.¹⁷⁷

No activities involving the commercial storage, use or manufacture of materials or products that could decompose by detonation shall be permitted except as are specifically permitted by the Council. Such materials shall include but not be confined to all primary explosives such as lead azide and mercury fulminate, all high explosives and boosters such as TNT, tetryl and nitrates, propellants and components thereof such as nitrocellulose, black powder and nitroglycerine, blasting explosives such as dynamite and nuclear fuel and reactor elements such as uranium 235 and plutonium.

¹⁷¹ Code 1982, § 301.716

¹⁷² Code 1982, § 301.717

¹⁷³ Code 1982, § 301.718

¹⁷⁴ Ord 1997-21, 12/15/98

¹⁷⁵ **Cross reference**--Environment, Ch. 10.; Code 1982, § 301.719

¹⁷⁶ **Cross reference**--Environment, Ch. 10.; Code 1982, § 301.720

¹⁷⁷ **Cross reference(s)**--Environment, Ch. 10.; Code 1982, § 301.721

LAND USE
AFTON CODE

Sec. 12-205. Environmental pollution.¹⁷⁸

- A. All uses, buildings, and structures shall conform to the regulations of the state pollution control agency relating to air, water, noise and solid wastes.
- B. No use, practice, site design, or structure shall be permitted that will cause or result in the pollution of any tributary of the St. Croix River, any lake, stream, ground water or other body of water in the City.
- C. Chemical insecticides or herbicides shall be stored, handled, utilized and disposed of according to the standards set forth by the state pollution control agency.

Sec. 12-206. Environmental nuisances.¹⁷⁹

No odors, vibration, noise, smoke, air pollution, liquid or solid wastes, heat, glare, dust or other such sensory irritations or health hazards shall be permitted in any zoning district in excess of the minimum standards as set forth in this section. Any violation of such standards is hereby declared a nuisance. The minimum standards shall be as follows:

- A. *Odors.* Any use shall be so operated as to prevent the emission of odorous or solid matter of such quality or quantity as to be reasonably objectionable at any point beyond the lot line of the site on which the use is located, except as regulated by sections 12-139 and 12-140 regulating agricultural operations.
- B. *Vibrations.* The following vibrations are prohibited:
 - 1. Any vibration discernible beyond the property line to the human sense of feeling for three minutes or more duration in any one hour; and
 - 2. Any vibration resulting in any combination of amplitudes and frequencies beyond the safe range of the most current standards of the United States Bureau of Mines on any structure.
- C. *Toxic and noxious matter.* Any use shall be so operated as not to discharge across the boundaries of the lot or through percolation into the atmosphere or the subsoil beyond the boundaries of the lot wherein such use is located toxic or noxious matter in such concentration as to be detrimental to or endanger the public health, safety, comfort or welfare, or cause injury or damage to property or business.
- D. *Air pollution.* Any use shall be so operated as to control emission of smoke or particulate matter to the degree that it is not detrimental to or shall endanger the public health, safety, comfort or general welfare.
- E. *Animals.* Any building in which domestic farm animals are kept shall be a minimum distance of 100 feet from all lot lines.¹⁸⁰

Notwithstanding anything contained herein to the contrary, the minimum standards of the pollution control agency for noise, air and water pollution and glare, these shall be the minimum standards for the purposes of this section.¹⁸¹

Sec. 12-207. Miscellaneous nuisances.¹⁸²

- A. It shall be a nuisance for any person to store or keep any vehicle of a type requiring a license to operate on the public highway, but without a current license attached thereto, whether such vehicle is dismantled or not, outside of an enclosed building in any zoning district.
- B. Creating or maintaining a junkyard or vehicle dismantling yard shall be a nuisance and shall be prohibited.
- C. The following are declared to be nuisances endangering public health:

¹⁷⁸ **Cross reference(s)**--Environment, Ch. 10; Code 1982, § 301.722

¹⁷⁹ **Cross reference(s)**--Environment, Ch. 10.

¹⁸⁰ See Section 12-187(n)(1).

¹⁸¹ Code 1982, § 301.723

¹⁸² **Cross reference(s)**--Environment, Ch. 10; Code 1982, § 301.724

LAND USE

1. Causing or suffering the effluent from any cesspool, septic tank, drainfield or human sewage disposal system to discharge upon the surface of the ground, or dumping the contents thereof at any place except as authorized by the state pollution control agency.
2. Causing or suffering the pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances.
3. Causing or suffering carcasses of animals to not be buried or destroyed or otherwise disposed of within 24 hours after death.

D. The following are declared to be nuisances affecting the public peace and safety:

1. The placing or throwing on any street, alley, road, highway, sidewalk or other public property of any glass, tacks, nails, bottles or other nuisances that may injure any person or animal or may cause damage to any pneumatic tire when passing over the same.
2. The ownership, possession or control of any unused refrigerator or other container, with doors that fasten automatically when closed, of sufficient size to retain any person and that is exposed and accessible to the public without having the doors, lids, hinges or latches removed or having locks to prevent access by the public.

Sec. 12-208. Noise.¹⁸³

A. *Definitions.* Except as provided in this section, words or phrases used in this section and defined in the rules of the state pollution control agency noise section, Mn Rules, § 7030, shall have the meanings given in those rules.

1. A-weighted means a specific weighting of the sound pressure level for the purpose of determining the human response to sound. The specific weighting characteristics and tolerances are those given in American National Standards Institute S1.4-1983, section 5.1.
2. *Cut-out or bypass* means a mechanism which varies the exhaust system gas flow so as to discharge the exhaust gas and acoustic energy to the atmosphere without passing through the entire length of the system including all exhaust system sound attenuation components.
3. *dB(A)* means a unit of sound level expressed in decibels (dB) and A-weighted.
4. *Exhaust system* means a combination of components which provides an enclosed flow of exhaust gas from engine parts to the atmosphere.
5. *Holiday* means any day fixed by the United States or by state law for suspension of business in whole or in part.
6. *L10* means the sound level, expressed in dB(A) which is exceeded ten percent of the time for a one-hour period, as measured by test procedures approved by the director of the MPCA.
7. *L50* means the sound level, expressed in dB(A) which is exceeded 50 percent of the time for a one-hour period, as measured by test procedures approved by the director of the MPCA.
8. *MPCA* means the state pollution control agency.
9. *Noise* means any sound not occurring in the natural environment, including but not limited to, sounds emanating from airways, roadways, waterways, industrial, commercial, and residential sources.
10. *Noise control officer* means the City Zoning Administrator or other person appointed by the City Council.
11. *Noise pollution* means the presence of any noise or combination of noises in such quantity, at such levels, of such nature and duration, or under such conditions as could potentially be injurious to human health, safety, or welfare; or to animal life; or could interfere unreasonably with the enjoyment of life or property.
12. *Person* means any individual, firm, partnership, corporation, trustee, association, the state and its agencies and subdivision, or any body of persons whether incorporated or not. With respect to acts prohibited or required herein, person shall include employees and licensees.

B. *General noise standard.*

1. *Incorporation by reference.* The MPCA Noise Rule, Mn Rules, §§ 7030.0010 through 7030.0080, and all amendments thereof and supplements thereto are hereby referred to, adopted, incorporated by

¹⁸³ Cross reference(s)--Environment, Ch. 10.

LAND USE
AFTON CODE

reference, and made a part of this article. A current copy shall be available for public inspection through the City Clerk's office.

2. *Maximum noise levels by receiving land use districts.* No person shall operate or cause or permit to be operated any source of noise in such a manner as to create a noise level outdoors exceeding the dB limit set in Table 1 for the receiving land use district specified.

Table 1. Sound Levels by Receiving Land Use Districts

Land Use Districts	Day (7:00 a.m. - 10:00 p.m.)		Night (10:00 p.m. - 7:00 a.m.)	
	L10	L50	L10	L50
Residential (RR, VHS-R)	65	60	55	50
Commercial (VHS-C)	70	65	70	65
Industrial	80	75	80	75

C. *Exemptions:*

1. The levels prescribed in the section above do not apply to noise originating on public streets and alleys but such noise shall be subject to other ordinances.
2. The levels prescribed above do not apply to farm machinery being operated by a person actively engaged in productive agricultural operations provided the machinery is not stationary.

D. *Noises prohibited.*

1. *Horns, audible signaling devices, etc.* No person shall sound any signaling device on any vehicle except as a warning of danger.¹⁸⁴
2. *Engine exhausts.* No person shall discharge the exhaust or permit the discharge of the exhaust of any steam engine, stationary internal combustion engine, motor boat, motor vehicle, motorcycle, all terrain vehicle, snowmobile or any recreational device except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws, regulations, and this article. No exhaust system on any engine shall be modified, altered, or repaired in any manner, including the use of a muffler cut-out or bypass, that shall amplify or otherwise increase noise above that emitted by the device as originally equipped.
3. *Radios, phonographs, paging systems, etc.* No person shall use or operate or permit the use or operation of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for production or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet, and comfort of any person nearby. Operation of any such set, instrument, phonograph, machine or other device between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building, shall be prima facie evidence of violation of this section.
4. *Social gatherings.* No person shall participate in any party or other gathering of people giving rise to noise which disturbs the peace, quiet or repose of the occupants of adjoining or other property. When a police officer determines that a gathering is creating such noise disturbance, the officer shall order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave after being ordered by a police officer to do so. Every owner or tenant of such premises who has knowledge of the disturbance shall cooperate with police officers and shall make every reasonable effort to see that the disturbance is abated.
5. *Loudspeakers, amplifiers for advertising, etc.* No person shall operate or permit the use or operation of any loudspeaker, sound amplifier, or other device for the production or reproduction of sound on a street or other public place for the purpose of commercial advertising or attracting the attention of the public for any purpose whatsoever.
6. *Schools, churches, etc.* No person shall create any excessive noise on a street, alley or public grounds adjacent to any school, institution of learning, church or other place of worship.

LAND USE

E. *Hourly restriction on certain operations.*

1. *Domestic power equipment.* No person shall operate a garden or lawn tractor, power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, power device for bug eradication, drill, or other similar domestic power maintenance equipment except between the hours of 7:00 a.m. and 10:00 p.m. Snow removal equipment is exempt from this provision.
2. *Refuse hauling.* No person shall collect or remove garbage or refuse in any residential district except between the hours of 6:00 a.m. and 6:00 p.m., Monday through Saturday.
3. *Construction activities.* No person shall engage in or permit construction activities involving the use of any electric, diesel, or gas-powered machine or other power equipment except between the hours of 7:00 a.m. and 10:00 p.m.

F. *Exception for emergency work.* Noise created exclusively in the performance of emergency work to preserve the public health, safety or welfare, or in the performance of emergency work necessary to restore public service or eliminate a public hazard shall be exempt from the provisions of this article for a period not to exceed 48 hours after the work is commenced. Persons responsible for such work shall inform the noise control officer of the need to initiate such work or, if the work is commenced during non-business hours of the City, at the beginning of business hours of the first business day thereafter. Any person responsible for such emergency work shall take all reasonable actions to minimize the amount of noise and the duration thereof.

G. *Powers and duties of noise control officer.*

1. *Administering officer.* The noise control program established by this chapter shall be administered by the noise control officer.
2. *Testing procedures.* The noise control officer shall adopt guidelines establishing the test procedures and instrumentation used in enforcing the provisions of this section. A copy of such guidelines shall be kept in the office of the City Clerk and shall be available to the public for reference during business hours.
3. *Investigation and inspection.* The noise control officer, with the assistance of other professional agencies or persons as may be necessary, shall conduct all research monitoring and other studies related to sound as are necessary in order to enforce this article and shall make all investigations and inspections in accordance with law as required in applying the provisions of this article.
4. *Noise impact statements.* The noise control officer may require any person applying to the City for a change in zoning classification, permit, license for any structure, operation, process, installation, or alteration or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the officer. Each such statement shall be reviewed to ascertain whether the granting of such change in zoning classification, permit, or license would result in the violation of any provision of this article. Reviews of noise impact statements shall be made by the zoning committee, Planning Commission if appropriate, and recommendations shall be made to the City Council.
5. *Other powers and duties.* The noise control officer shall exercise such other powers and perform such other duties as are reasonable and necessary to enforce the provisions of this section.

H. *Enforcement and penalties.*

1. When the noise control officer, after appropriate testing has been done, determines that a noise exceeds the maximum sound level permitted under Subsection (B) of this section, the noise control officer shall give written notice of the violation to the owner or occupant of the premises where the noise originates, and order such person to correct or remove each specified violation within such reasonable time as is prescribed in the notice.
2. In all other cases, the noise control officer or the City's law enforcement officer may demand immediate termination of the excessive noise. Failure to adhere to such demand would subject the violator to appropriate criminal enforcement procedure.
3. Section 1-13 shall apply to a violation of this section.¹⁸⁵

¹⁸⁵ Code 1982, § 301.725

LAND USE
AFTON CODE

Sec. 12-209. Visual standards.¹⁸⁶

- A. It is hereby affirmed as essential public policy that the appearance of this city is a proper matter for public concern and that all open spaces, buildings, signs, plantings, surfaces and structures which may be seen from the public ways and water bodies are subject to the provisions of this article.
- B. The comprehensive plan as adopted clearly states that scenic views, tree cover, slopes and other features of the natural environment are a city concern, therefore, a conditional or Conditional Use Permit for any new use or development may include conditions affecting building setbacks, restrictions on removal of trees and other vegetation, placement and type of driveway access and other conditions on appearance from any public street.

Sec. 12-210. Signs.¹⁸⁷

- A. *Purpose.* The purpose of this section is to protect and retain the natural scenic beauty of the roadsides throughout the City. By the construction of public roads, the public has created views to which the public retains a right-of-way view, and it is the intent of these standards to prevent the taking of that right.
- B. *Definitions.* As used in this section, the following words and phrases shall have the meaning indicated:¹⁸⁸
 - 1. *Sign* means a notice that directs attention to a product, place, activity, person, institution, organization or business for public view.
 - 2. *Sign, advertising,* means a sign that directs attention to a business or profession or to a commodity, service or entertainment.
 - 3. *Sign, area,* means the entire area within a continuous perimeter enclosing the extreme limits of such sign. However, such perimeter shall not include any structural elements lying outside of such sign and not forming an integral part or border of the sign.
 - 4. *Sign, banner,* means any sign made of flexible material hung up on a crossbar or between two points of any permanent structure or poles advertising an event such as a grand opening, special sale or similar situation.
 - 5. *Sign, billboard,* means an outdoor panel for the display of large advertisements in public places, such as alongside highways, roads and streets.
 - 6. *Sign, business,* means a sign that directs attention to a business or profession or to the commodity, service or entertainment sold or offered upon the premises where such sign is located or to which it is attached.
 - 7. *Sign, display,* means any commodity that is sold or produced by the occupant which is exhibited outside the premises for the purpose of bringing to the attention of others, those items currently for sale within the premises.
 - 8. *Sign, flashing,* means an illuminated sign which has a light source not constant in intensity or color at all times while such sign is in use.
 - 9. *Sign, ground,* means a sign which is supported by one or more uprights, poles or braces in or upon the ground.
 - 10. *Sign, illuminated,* means a sign which is lighted with an artificial light source, that meets government mandated regulations and is appropriate to the application of a building's historic period.
 - 11. *Sign, motion,* means a sign that has moving parts.
 - 12. *Sign, nameplate,* means a sign which states the address of a property, or in the case of a business or industrial property, the name and/or address of the business or industrial occupant.
 - 13. *Sign, off premise directional,* means a sign for public or non-profit organizations, including religious organizations, that is located distant from a building or activity area, and may or may not be located on the same parcel as the building or activity area.
 - 14. *Sign, portable,* means an unlighted sign not affixed to the ground or building and easily carried or moved.
 - 15. *Sign, real estate,* means a sign offering property (land and/or buildings) for sale, lease or rent and located on the property being offered.
 - 16. *Sign, roof,* means a sign erected upon or above a roof or parapet of a building.

¹⁸⁶ Code 1982, § 301.726

¹⁸⁷ **Cross reference(s)**--Street signs, § 12-1430; signs in heritage preservation areas, § 12-1717; Ord 01-2014, 5/20/2014

LAND USE

17. *Sign, structure*, means the supports, uprights, braces and framework of the sign.
18. *Sign, temporary*, means any sign, except a banner sign, placed in such a manner as not to be solidly affixed to any building, structure or land and advertising an event such as a bazaar, special sale, sporting event, or similar situation.
19. *Sign, wall*, means a sign attached to or erected against the wall of a building with the exposed face of the sign parallel to such wall.
20. *Sign, warning*, means a sign which warns the public of a danger or hazard in the immediate vicinity and is obviously not intended for advertising purposes.

C. *Permit required.*¹⁸⁹

1. Except as otherwise provided in this article, no sign shall be erected, constructed, altered, rebuilt or relocated until a Conditional Use Permit or Sign Permit for the sign has been issued according to the Sign Permit Chart in Section 12-212.
2. No permit will be required under this section for the following signs:
 - a. Real estate sale signs nine square feet or less.
 - b. Political signs.
 - c. Warning signs which do not exceed five square feet in area.
 - d. Public notices defined as notices placed or authorized by the City which are located on private property with permission of the landowner, or on public property or right-of-way.
 - e. Nameplate signs two square feet in area or less.

D. *Exceptions.*¹⁹⁰

1. The regulations contained in this section do not apply to signs attached by adhesive or otherwise attached to or visible through windows and glass portions of doors.
2. On-premise signs for churches or other places of worship shall be permitted by Conditional Use Permit. The total surface area of all on-premise signs for churches or other places of worship shall not exceed 100 square feet. The top of the signs including supporting structure shall not exceed 14 feet above the average grade. The width of the signs shall not exceed 16 feet. The maximum surface area for any sign shall not exceed 0.1 (1/10) square feet per foot of road frontage. Said signs may be illuminated as restricted in Section 12-210 (E) and 12-211.5 (E).

E. *General prohibitions.*¹⁹¹

1. No sign shall be allowed that prevents ingress or egress from any door, window or fire escape; that tends to accumulate debris as a fire hazard; or that is attached to a standpipe or fire escape or in any other way constitutes a hazard to health, safety, or general welfare of the public.
2. Signs shall not be painted directly on the outside wall of a building except by a Sign Permit. Signs shall not be placed or mounted on a fence, tree, stone or other natural growth nor on any utility pole or structure.
3. Roof signs are prohibited in all zoning districts.
4. Signs on benches, newsstands, car stands, bus stop shelters and similar places shall be prohibited.
5. No sign shall contain any indecent or offensive picture or written matter.
6. Signs flashing shall be prohibited.
7. Neon and fluorescent signs are not allowed except for interior use.

F. *Sign design, construction and maintenance.*¹⁹²

1. *Required marking on signs.* Every sign for which a permit is required shall have painted in a conspicuous place thereon in letters not less than one inch in height, the date of erection, the permit number and the voltage of any electrical apparatus used in connection therewith.

¹⁸⁹ Ord 01-2014, 5/20/2014

¹⁹⁰ Ord 01-2014, 5/20/2014

¹⁹¹ Ord 01-2014, 5/20/2014

¹⁹² Ord 01-2014, 5/20/2014

LAND USE

AFTON CODE

2. *Projecting signs.* Signs shall in no case project from a building or structure to any point closer than two feet of a line drawn perpendicularly upward from the curb line. No projecting sign shall be less than nine feet above the sidewalk or the ground level. All projecting signs for which a permit is required shall be constructed entirely of fire resistant material.
3. *Ground signs.*
 - a. No ground sign for which a permit is required shall be erected to a height of more than 12 feet above the ground, unless the face is constructed of sheet metal or other noncombustible facing materials.
 - b. The bottom of the facing of every ground sign shall be a minimum of one foot and a maximum of three feet above the ground, which space may be filled with landscaping, platform or decorative trim of light wood or metal construction.
 - c. The soil used for the dug-in type of anchor or post support shall be carefully placed and thoroughly compacted. The anchors and supports shall penetrate to a depth below ground level of 42 inches.
4. *Multi-faced signs.* Multi-faced signs shall not exceed two times the allowed square footage of single faced signs, except for billboard signs which shall be limited to single facing.
5. *Wall signs.* Wall signs attached to exterior walls of solid masonry or concrete shall be safely and securely attached to the same by means of metal anchors, bolts or expansion screws of not less than three-eighths inch in diameter which shall be embedded at least five inches. No wooden blocks or anchorage with wood used in connection with screws or nails shall be considered proper anchorage, except in the case of wall signs attached to buildings with walls of wood. No wall sign shall be entirely supported by an unbraced parapet wall.
6. *Sign maintenance.*
 - a. The owner of any sign shall be required to have such sign properly painted at least once every two years, if needed, including all parts and supports of the sign, unless such parts or supports are galvanized or otherwise treated to prevent rust or decay.
 - b. The owner or lessee of any sign, or the owner of the land on which the sign is located shall keep the grass, weeds, or other growth cut and the area free from refuse between the sign and the street and also for a distance of six feet all around such sign.
7. *Unsafe or dangerous signs.* Any sign which becomes structurally unsafe, in disrepair, abandoned or endangers the safety of a building or premises shall be taken down and removed or structurally improved by the owner, agent, or person having the beneficial use of the building, structure, or land upon which the sign is located within ten days after written notification from the Zoning Administrator.
8. *Obsolete signs.* Any sign for which no permit has been issued or business has ceased to function shall be taken down and removed by the owner, agent or person having the beneficial use of the building, or land upon which the sign may be found within 30 days after written notice from the Zoning Administrator.¹⁹³

Sec. 12-211. Regulations by zoning districts.¹⁹⁴

- A. *Required signs.* In all zoning districts one nameplate sign shall be required per building, except accessory structures and residential buildings which shall be required only to display the street address or property number.
- B. *Signs by Conditional Use Permit.* Where a use is permitted in a zoning district by Conditional Use Permit, the sign for that use shall require a Conditional Use Permit unless the sign is otherwise provided for in this article.
- C. *"A", "AP" and "MS" zoning districts.* No sign shall be permitted in an A, AP or MS zoning district except the following signs if authorized by a permit or as provided in this article:¹⁹⁵
 1. Banner, business, nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning signs are allowed.
 2. No sign shall be so constructed as to have more than two surfaces.
 3. One of each of the permitted type signs, except temporary signs where two will be permitted and political signs where one for each candidate, will be permitted per lot frontage.

LAND USE

4. The size of sign may be no more than a total of 32 square feet, with an eight foot maximum for any dimension except as otherwise provided in Section 12-210 (D)(2).
5. The top of the sign and supporting structure shall not exceed ten feet above grade except as otherwise provided in Section 12-210 (D)(2).
6. Any sign over two square feet shall be setback at least ten feet from any lot line or right-of-way.

D. "RR" zoning district.¹⁹⁶

1. Gateway, Nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning signs are allowed.
2. No sign shall be so constructed as to have more than two surfaces.
3. The number of each type of sign allowed per lot frontage is one of each of the permitted type signs, except temporary signs where two will be permitted and political signs where one for each candidate will be permitted.
4. The size of signs may be no more than a total of 16 square feet with a four-foot maximum for any dimension except as otherwise provided in this section. The total surface area for all signs shall not exceed 32 square feet per lot except as otherwise provided in Section 12-210 (D)(2).
5. The top of the sign shall not exceed eight feet above grade except as otherwise provided in Section 12-210 (D)(2).
6. The number and size of a gateway sign is exempted from this section of the code and is instead regulated in Section 12-211.5 (F).
7. All signs shall be setback at least ten feet from any lot line or right-of-way.

E. "VHS-R" and "VHS-C" zoning districts.¹⁹⁷

1. All applications for a Sign Permit shall be reviewed by the Design Review/Heritage Preservation Commission.
2. The types of signs allowed are: Banner (VHS-C only), business (VHS-C only), illuminated (VHS-C only), nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning.
3. The number of each type of sign allowed per lot frontage, is one real estate sales sign, two temporary signs, one nameplate sign, one political sign for each candidate, and one business sign or one sign for a church or other place of worship.
4. The size of signs permitted is as follows:
 - a. Each real estate sales sign, temporary sign and political sign shall not exceed 16 square feet in area.
 - b. Total area of permanent business signs shall not exceed 16 square feet.
 - c. Total area of nameplate signs shall not exceed 6 square feet.
 - d. In addition to the total sign area of 16 square feet, one eight-inch by ten-inch sign may be posted on the outside of the principal structure.
 - e. The total surface area of all on-premise signs for churches or other places of worship shall not exceed 100 square feet. The top of the signs and supporting structures shall not exceed 14 feet above the average grade. The width of the signs shall not exceed 16 feet. The maximum square feet for any sign shall not exceed 0.1 (1/10) square feet per foot of frontage.
5. The top of the sign shall not exceed 14 feet above the average grade.
6. In no case shall any part of a sign be closer than two feet to a vertical line drawn at the property line.

F. "I" zoning districts.¹⁹⁸

1. The type of signs allowed are: Advertising, banner, business, illuminated, nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning.
2. The number of each type of sign allowed per lot frontage is one of each of the permitted type signs, except temporary where two will be permitted and political where one for each candidate will be permitted.

¹⁹⁶ Ord 09-2006, 9/13/2006; Ord 01-2014, 5/20/2014

¹⁹⁷ Ord 01-2014, 5/20/2014

¹⁹⁸ Ord 01-2014, 5/20/2014

LAND USE

AFTON CODE

3. No business sign shall exceed 100 square feet in area or face a residential zoning district. No other sign shall exceed 35 square feet in area, except a billboard sign.
4. The top of the sign shall not exceed 20 feet above the average grade.
5. Any sign over ten square feet, with the exception of a billboard sign, shall be set back at least ten feet from any lot line or right-of-way. All signs shall be set back at least 50 feet from any residential or agricultural zoning district.

Sec. 12-211.5 Regulations by sign type.¹⁹⁹

A. Banner signs.²⁰⁰

1. Banner signs shall conform to the provisions of this article just as permanently affixed signs.
2. Banners shall not exceed 30 square feet.
3. In no event shall banner signs be placed on any lot or parcel of land for a period to exceed 30 days out of any 12-month period.

B. Billboard signs.

1. No billboard sign may face a residential district causing it to obscure the residents' view.
2. There shall be no more than one advertisement on the face of the billboard sign. The sign may not be multi-faced.
3. Any billboard sign is limited to one side and the advertising area on that one side is not to exceed 160 square feet.
4. The sign structure, including border, trim and apron, is not to exceed 20 feet overall height. The bottom of the sign is to be no more than eight feet from the ground.
5. The sign area is not to exceed eight feet by 20 feet (160 sq. ft.). The structure, including the border, trim and apron is not to exceed 10 ½ feet by 22 feet (231 sq. ft.).
6. Any off-site billboard sign is to be a minimum of 3,000 feet from any other billboard, business or nameplate sign.
7. The setback shall be 150 feet from any public road right-of-way, 100 feet from any building, a minimum of 500 feet from the intersection of any public road.
8. Billboard signs are permitted only in the Industrial Zoning District.

C. Construction signs.

1. Construction signs not exceeding 32 square feet in area shall be allowed in all zoning districts during construction.
2. Such signs shall be removed when the project is substantially completed.

D. Displays.²⁰¹

1. A Sign Permit is required for all displays.
2. Displays shall not contain any light, sign, audio advertising, or other device which would otherwise not be permitted under this article.
3. Permanent displays shall not be permitted.
4. No display will be allowed that prevents ingress or egress from any door, window or fire escape; that tends to accumulate debris as a fire hazard; or that is attached to a standpipe, fire escape or in any other way constitutes a hazard to the health, safety, or general welfare of the public.
5. Displays cannot reduce the number of required parking spaces established by the current parking ordinance. Displays cannot be located within the public right-of-way of any street or way or other public right-of-way or placed so as to interfere with pedestrian traffic.
6. Roof displays are not allowed.
7. Displays cannot be located outside a ten-foot radius from the building or structure. In no case shall displays be closer than ten feet from any property line or right-of-way. All displays must be located on the same parcel on which the business is located.

¹⁹⁹ Ord 01-2014, 5/20/2014

²⁰⁰ Ord 01-2014, 5/20/2014

²⁰¹ Code 1982, § 301.727(B); Ord 01-2014, 5/20/2014

LAND USE

8. No display will be permitted which by reason of content, location, shape or overall impression interfere with or serve as a traffic hazard or disturbance to surrounding properties.
 9. The top of the display shall not exceed eight feet above the average grade.
 10. Exceptions may be granted to permit displays for preexisting nonconforming uses if it is determined that no intensification or expansion of the nonconforming use would occur if the permit were granted.
- E. *Electrical signs.*²⁰² No electrically illuminated sign shall be permitted in a residential or agricultural zoning district except as otherwise provided in Section 12-210 (D)(2).
1. Illuminated signs may be permitted, but flashing signs or digitally animated signs, shall be prohibited. Signs giving off intermittent, rotating or direction lights and neon are prohibited.
 2. Illuminated signs shall be diffused or indirect so as not to direct rays of light into adjacent property or onto any public street or way.
 3. No illuminated signs or their support structures shall be located closer than 25 feet to the roadway surface or closer than 10 feet to a street right-of-way line or property line, notwithstanding more restrictive portions of this section, except as otherwise provided in Section 12-211 (E).
- F. *Gateway signs.*²⁰³ The City may consider proposals to construct City gateway signage that serve the purpose of welcoming persons to the City and directing them to various business areas. Approval or denial of such proposals shall be at the discretion of the City Council. The following performance standards shall be adhered to and utilized in the City's consideration of such a proposal:
1. The sign is to be constructed on City and/or County owned property and/or right-of-way and may be owned and maintained by the City and/or County.
 2. The sign shall function as a "gateway" feature for the City. The design of the sign must include a visible reference to the City of Afton and exude a feeling of welcome.
 3. The sign shall be a monument sign, which is a type or style of a ground sign that is characterized by a block-type structure, not supported or elevated above ground by poles or braces.
 4. The sign area shall not exceed 100 square feet.
 5. The sign shall not exceed 12 feet in height.
 6. The sign shall be finished in high quality, finish materials.
 7. The signage design shall be reviewed and commented on by the Design Review/Heritage Preservation Commission if the sign is located within the VHS District.
- G. *Nameplate signs.*²⁰⁴
1. Nameplate signs shall be surface-mounted on the wall of the building of the property.
 2. Nameplate signs shall be no more than six square feet in area.
- H. *Off-premise directional signs for public and non-profit organizations, including religious organizations.*²⁰⁵
1. Signs for public and non-profit organizations, including religious organizations are permitted.
 2. Signs advertising commercial businesses are prohibited.
 3. Each sign shall not exceed 20 inches by 30 inches. Signs shall be erected on a single steel post.
 4. The setback required for public and non-profit organizations, including religious organization signs in agricultural, industrial and rural residential districts, is ten feet from property line or right-of-way; in VHS districts, two feet from property line.
 5. The number of signs allowed for public or non-profit organizations, including religious organizations, will be determined through the sign permit process.
 6. A Sign Permit is required.
- I. *Political signs.*²⁰⁶

²⁰² Ord 01-2014, 5/20/2014

²⁰³ Ord 09-2006, 9/13/2006; Ord 01-2014, 5/20/2014

²⁰⁴ Ord 01-2014, 5/20/2014

²⁰⁵ Ord 01-2014, 5/20/2014

²⁰⁶ Ord 01-2014, 5/20/2014

LAND USE

AFTON CODE

1. Political signs are allowed in any zoning district, on private property, with the consent of the owner of the property.
 2. Political signs must be removed within seven days following the date of the election or elections to which they apply.
- J. *Portable sign.*²⁰⁷ A portable sign shall only give the name and nature of the business and hours of operation.
1. There will be no more than one portable sign per business.
 2. Portable signs shall not be larger than 36 inches by 48 inches (12 sq. ft.) of display space on each side with a total height of no more than four feet. The size of a portable sign shall not be included in the total square footage allowed on other permitted signs.
 3. A Sign Permit shall be required for all portable signs. In the VHS district, approval by the Design Review/Heritage Preservation Commission is also required for portable signs.
 4. All portable signs shall be located on the same parcel on which the business is located. The sign shall not be located in the road right-of-way or placed so as to interfere with pedestrian traffic.
 5. Portable signs and mobile signs on wheels shall be in place only during the hours the business is open.
 6. Portable signs and mobile signs on wheels must be secured so as to not create a public safety hazard by acts of nature or movement by vandals.
 7. Inflatable signs are not permitted.
- K. *Private signs.* Private signs, other than public utility warning signs, are prohibited within the public right-of-way of any street or way or other public right-of-way.
- L. *Real estate signs.*²⁰⁸
1. Real estate sales signs may be placed in any yard providing such signs are not closer than ten feet to any property line.
 2. Real estate development project sales signs may be erected for the purpose of selling or promoting a single family residential project of five or more dwelling units provided:
 - a. Such signs shall not exceed 32 square feet in area and shall require a Sign Permit;
 - b. Only one such sign shall be erected on each road frontage with a maximum of two signs per project;
 - c. Such signs shall be removed when the project is 80 percent completed or within six months or when sold or leased, whichever comes first; and
 - d. Such signs shall not be located closer than 100 feet to any existing residence.
- M. *Temporary signs.*²⁰⁹
1. Signs for non-profit organizations, city sponsored events, fairs, etc. are permitted.
 2. Signs advertising businesses are prohibited.
 3. The maximum size of temporary signs is 12 square feet of total advertising area.
 4. The sign structure is not to exceed five feet.
 5. The setback required for temporary signs in agricultural and rural residential districts is ten feet from property line or right-of-way; in VHS districts, two feet from property line.
 6. No more than two temporary signs are allowed per parcel.
 7. A Temporary Sign Permit is required.
 8. In no event, however, shall such sign be placed on any lot or parcel of land for a period to exceed 30 days out of any 12-month period.
- N. *Traffic signs.*
1. No sign may be erected that, by reason of position, shape, movement, color or any other characteristic, interferes with the proper functioning of a traffic sign or signal or otherwise constitutes a traffic hazard; nor shall signs be permitted which would otherwise interfere with traffic control.
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LAND USE

2. No sign will be permitted which by reason of advertising content, location, shape, or overall impression may be expected to be confused with, obscure or interfere with any official traffic sign or device or otherwise serve as a traffic hazard.
3. Private traffic circulation sign and traffic warning signs in alleys, parking lots or in other hazardous situations may be allowed on private property, provided that such signs do not exceed three square feet and are used exclusively for traffic control purposes.

Sec. 12-212. Sign Permit chart.²¹⁰

<i>Zoning District</i>	<i>MS, A or AP</i>	<i>RR</i>	<i>VHS-R or VHS-C</i>	<i>I</i>
Advertising/Billboard sign	N	N	N	CUP
Banner sign ²¹¹	SP	N	SP (in VHS-C) N (in VHS-R)	SP
Business sign	CUP	N	CUP (in VHS-R) P (in VHS-C)	P
Churches and other places of worship--On-premise signs	CUP	CUP	CUP	N
Displays ²¹²	N	N	SP	N
Flashing sign	N	N	N	N
Gateway Sign	CC	CC	CC	CC
Illuminated sign	N	N	CUP	P
Motion sign	N	N	N	N
Nameplate sign ²¹³	P	P	SP (in VHS-C) N (in VHS-R)	P
Political sign	P	P	P	P
Portable sign	SP	SP	SP	SP
Real estate sales sign ²¹⁴ (up to nine sq. ft. in area)	P	P	P	P
Real estate sales sign ²¹⁵ (over nine square feet in area)	SP	SP	SP	SP
Real estate development project sales sign ²¹⁶	SP	SP	SP	N
Off-premise directional signs (non-profit & religious)	SP	SP	SP	SP
Roof sign	N	N	N	N
Temporary sign	SP	SP	SP	SP
Wall sign	P	P	SP	SP
Warning sign	P	P	P	P

KEY: SP = Sign permit (Issued by Zoning Administrator)
P = Permitted use
CUP = Conditional use permit (Issued by Zoning Administrator)
CC = Requires City Council review and approval
N = Not allowed

²¹⁰ Ord 1997-19, 4/20/99, MS added, Code 1982, § 301.728(C); Ord 97-40, 6/12/01; Ord 01-2014, 5/20/2014

²¹¹ Ord 01-2014, 5/20/2014

²¹² Ord 01-2014, 5/20/2014

²¹³ Ord 01-2014, 5/20/2014

²¹⁴ Ord 01-2014, 5/20/2014

²¹⁵ Ord 01-2014, 5/20/2014

²¹⁶ Ord 01-2014, 5/20/2014

AFTON CODE

Zoning District Abbreviations:²¹⁷

VHS-R	=	Village Historic Site-Residential zoning district
VHS-C	=	Village Historic Site - Commercial zoning district
AP	=	Ag. Preserve, which is an overlay of the Agricultural zoning district
A	=	Agricultural zoning district
MS	=	Marine Services zoning district
RR	=	Rural Residential zoning district
I	=	Industrial zoning district

Sec. 12-213. Manufactured homes.²¹⁸

- A. *Compliance.* No person shall park or occupy a manufactured home on the premises of a lot with any occupied dwelling or on any land in the City except as provided for in this section.
- B. *Care facilities.* A manufactured home may be permitted in an A, AP or RR zoning district if the Zoning Administrator finds the following conditions are satisfied:
1. The manufactured home will be a temporary accessory dwelling unit to be occupied by persons who are:²¹⁹
 - a. Infirm to the extent that they require extraordinary care;
 - b. That such care can only be provided, without great economic hardship, by family members residing in the principal dwelling on the premises; and
 - c. The infirmity and the need for care required by Subsections A and B of this Subsection shall be shown by written statement of a physician.
 2. The Administrative Permit is so conditioned that it will expire and terminate at such time as the care facility is no longer the residence of the person suffering from the infirmity who requires such care, or at such time as such care is no longer required.
 3. At the time of termination of the Administrative Permit, the manufactured home care facility shall be removed from the premises within 30 days.
 4. The Administrative Permit is so conditioned so as to be reviewed annually by the Zoning Administrator.
- C. *Temporary farm dwelling.* A manufactured home may be permitted by Administrative Permit in an A or AP zoning district if the Zoning Administrator finds the following conditions are satisfied:
1. The manufactured home will be a temporary accessory dwelling unit located on a farm of at least 75 acres.²²⁰
 2. The manufactured home will be occupied by persons who are:
 - a. Members of the family of the persons occupying the principal dwelling on the premises; and
 - b. Engaged in the occupation of farming on the premises as partners or other business associates, or employees, of the persons living in the principal dwelling on the premises and who earn 50 percent or more of their annual gross income for federal income tax purposes from such farming on the premises.²²¹
 3. The Administrative Permit is so conditioned that it will expire and terminate at such time as the persons occupying the manufactured home are no longer engaged in farming on the premises as required by Subsection (2)(b) of this Subsection.
 4. At the time of termination of the Administrative Permit, the manufactured home temporary farm dwelling shall be removed from the premises within 30 days.
 5. The Administrative Permit is conditioned so as to be reviewed annually by the Zoning Administrator.
- D. *Temporary construction office.* A manufactured home may be permitted by a Administrative Permit in any zoning district if the Zoning Administrator finds the following conditions are satisfied:

²¹⁷ Ord 01-2014, 5/20/2014

²¹⁸ Code 1982, § 301.728

²¹⁹ Ord 05-2013, 3/19/2013

²²⁰ Ord 05-2013, 3/19/2013

²²¹ Ord 5-2013, 3/19/2013

LAND USE

LAND USE

1. The manufactured home will be utilized as a field headquarters for directing the on-going construction of a project.
 2. Only one manufactured home shall be permitted on each project.
 3. The manufactured home shall have adequate sanitary facilities or the site shall have temporary sanitary facilities installed.
 4. The manufactured home and parking spaces shall adhere to all setback requirements for the zoning district and shall only utilize the permitted driveway access.
 5. The manufactured home shall not be used as a dwelling unit.
 6. The Administrative Permit is issued only after the building permit has been issued. The manufactured home shall not be placed on the construction site until both a Administrative Permit and a building permit have been issued.
 7. Such permit shall expire 90 days from the date of issuance and may be renewed for one additional 90-day period.
 8. The applicant shall execute a contract with the City agreeing to remove the manufactured home temporary construction office from the City prior to the expiration of the permit, secured by a certified check or cash deposit in an amount set by the Zoning Administrator, and authorizing the City to remove the manufactured home immediately upon expiration of the permit should the applicant fail to do so, and to charge all costs of removal including a reasonable attorney's fee against the security deposit.
- E. *Temporary dwelling unit during construction.* A manufactured home may be permitted by Administrative Permit in any residential or agricultural zoning district if the Zoning Administrator finds the following conditions are satisfied:
1. The manufactured home will be utilized as a temporary accessory dwelling unit by the present or potential occupant of a single-family residence during the construction, reconstruction or alteration of said residency by the present or potential occupant.²²²
 2. The manufactured home shall have adequate sanitary facilities as prescribed by the sanitary sewer disposal ordinance, Article IX of this chapter.
 3. The Administrative Permit shall be issued only after the building permit has been obtained for the proposed construction.
 4. The manufactured home and parking spaces shall adhere to all setback requirements for the zoning district and shall utilize the permitted driveway access.
 5. ²²³Such permit shall expire 180 days from the date of issuance and may be renewed for one additional 180-day period.
 6. The applicant shall execute a contract with the City agreeing to remove the manufactured home temporary dwelling unit from the City prior to the expiration of the permit, secured by a certified check or cash deposit in an amount set by the Zoning Administrator, and authorizing the City to remove the manufactured home immediately upon expiration of the permit should the applicant fail to do so, and to charge all costs of removal including a reasonable attorney's fee against the security deposit.
- F. *Technical code requirements.* All manufactured homes permitted under this section shall meet or exceed the current manufactured homes building code as defined in M.S.A. § 327.32. The manufactured home shall have a sanitary sewer treatment and disposal system in compliance with the sanitary sewer disposal ordinance, Article IX of this chapter, the state pollution control agency and the health department.
- G. *Location.* When a manufactured home is utilized as allowed by this section, the placement of the manufactured home is subject to the same zoning district dimensional setbacks as a principal structure.
- H. *Additional requirements.* Manufactured homes utilized as accessory dwelling units shall:
1. Use the existing driveway access of the principal dwelling unit.
 2. Be separated by a minimum horizontal distance of 40 feet from any other structure.
 3. Have ground anchors or tie downs as approved by the state manufactured home building code.
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LAND USE
AFTON CODE

Sec. 12-214. Mining.²²⁴

All mining and related uses of land, including but not limited to the excavation, removal or storage of sand, gravel, rock, clay and other natural deposits, are subject to the adopted standards, codes, ordinances and regulations of the City related to such activities and all regulations in the mining ordinance, article X of this chapter.²²⁵

Sec. 12-215. Land reclamation and land grading.²²⁶

- A. Within this article, land reclamation and land grading is the depositing, removing, and/or moving of material so as to alter the topography of a lot.
1. Land reclamation and land grading shall be permitted only by a Conditional Use Permit in all zoning districts.
 2. The depositing, moving and/or removing of more than 50 cubic yards and/or the disturbance of land area of 1,000 square feet or more of material per lot, either by hauling in and/or out or regrading²²⁷ of an area shall constitute land reclamation and land grading.
 3. Land reclamation and land grading in floodplains shall be in accordance with the floodplain ordinance, Article V of this chapter.
 4. The permit shall include as a condition thereof a finished grading plan that will not adversely affect the adjacent land and as conditions thereof shall regulate the type of material permitted, program for rodent control, plan for fire control, and general maintenance of the site, controls of vehicular ingress and egress, drainage and control of material disburshed from wind or hauling of material to or from the site, and erosion control and stabilization plans for the deposited material or excavated area..
 5. In addition to a finished grading plan, a drainage-stormwater pollution prevention plan (SWPP), and an erosion and sediment control plan (ESCP) may be required, if in the judgment²²⁸ of the Zoning Administrator, significant soil erosion, vegetation destruction, ~~or drainage damage,~~ or pollution from stormwater -may occur during, or after the land alteration process. These plans shall achieve at least the minimum standards described in Chapter 13.
 6. The finished grading plan and drainage-stormwater pollution prevention and erosion control plans shall be reviewed by the City Engineer and may be reviewed, as deemed necessary by the Zoning Administrator or the City Council, by the Minnesota Department of Natural Resources, the Washington County Soil and Water Conservation District, and the appropriate Watershed Management Organization and/or district.
 7. The Zoning Administrator may require the applicant to post a bond or other financial guarantee to ensure compliance with the permit.

LAND USE

- B. No person, county, municipality or other political subdivision shall appropriate or use any public water, surface or underground, without first obtaining a use of public waters permit and written permission of the commissioner of the division of waters, soils and minerals of the state department of natural resources. For purposes of these regulations, public waters shall be defined in M.S.A. ch. 103G, and as follows:
1. Public waters shall include all lakes, ponds, swamps, streams, drainageways, floodplains, floodways, natural watercourses, underground water resources and similar features involving directly or indirectly the use of water within the City.
 2. No public water area shall be filled, partially filled, dredged, altered by grading, mining or otherwise utilized or disturbed in any manner without first securing a public waters use permit from the state department of natural resources and the U.S. Army Corps of Engineers, and a grading permit from the City. Such grading permits shall be reviewed and approved by the department of natural resources, the City Engineer, the watershed district, the Planning Commission and the City Council.
- C. A land reclamation and land grading permit is not required for the following activities:
1. Grading activities associated with a construction project provided a building permit is used and there is a minimal amount of land disturbance; and
 2. Subdivisions that have received preliminary plat approval; and
 3. Driveways permitted in conjunction with a driveway permit; and
 4. Cemetery graves; and
 5. Refuse disposal sites controlled by other regulations; and
 6. Excavations for wells or tunnels for utilities; and
 7. Mining, quarrying, excavating, processing or stockpiling of sand, gravel, rock, aggregate or clay where regulated by the mining ordinance, article X of this chapter; and
 8. Exploratory excavations under the direction of soil engineers or engineering geologists.
- D. Grading of Slopes
1. No slopes of 18% or greater shall be disturbed.
 2. Within the Lower St. Croix River Bluffland and Shoreland Management District, no slopes of 12% or greater shall be disturbed (See Sec. 12-702).
 3. Additional grading and filling requirements are applicable if in Shoreland Management District (See Sec. 12-407).
- E. The work for which a land reclamation and land grading permit is used shall commence within 180 days after the date of permit issuance unless an application for an extension of 90 days has been submitted to and approved by the Zoning Administrator.
- F. Permits issued by the Zoning Administrator under the provisions of this section shall expire and be null and void if the work authorized by a permit is abandoned or suspended for a period of 180 days or if work is not commenced or completed within the time limitations of Subsection (E) of this section.

Sec. 12-216. Soil conservation plans.²²⁹

- A. On any development or land reclamation project with more than one acre of soil, drainage patterns or

²³¹ Code 1982, § 301.733

²³² Code 1982, § 301.734

LAND USE

vegetation cover that would be either destroyed or disturbed by the construction process, the Zoning Administrator may require the owner or contractor on such project to request the soil conservation district to prepare a soil conservation plan to protect the soil from erosion or sheet run-off for the duration of the construction project and/or over the long term occupancy of the site.

- B. The Zoning Administrator may require a soil conservation plan on projects that disturb less than one acre of soil, drainage patterns or vegetation cover if, in the judgment of the Zoning Administrator, significant soil erosion, vegetation destruction or drainage damage may occur during the construction process.
- C. A soil conservation plan shall consist of specific written recommendations on how to protect the soil, vegetation and drainage patterns during the construction process. The Zoning Administrator may require construction fencing along the edges of the construction area.
- D. Where construction of a structure is proposed on slopes of 13 percent to 18 percent, the Zoning Administrator shall require the applicant to provide a grading and erosion control plan and to obtain an Administrative Permit.

²²⁴ Code 1982, § 301.729, **Cross reference(s)**--Mining, § 12-2301 et seq.

²²⁵ Ord 08-2005, 5/17/2005

²²⁶ Code 1982, § 301.730

²²⁷ Amendment 02-2009, 4/21/2009

Sec. 12-217. Drainage.²³⁰

- A. No land shall be developed or altered and no use shall be permitted that results in surface or stormwater run-off causing or with the potential to cause unreasonable flooding, erosion or deposit of materials on adjacent properties or water bodies. Such run-off shall be properly channeled into a stormwater management facility that are ~~drain, a natural watercourse or drainageway, a ponding area or other facility. To the extent feasible consistent with the stormwater management and erosion and sediment control requirements of Chapter 13, through ponding or other means,~~ any increase in run-off rate or volume as a result of the developed portion of a property shall achieve at least the minimum requirements of Chapter 13, shall be retained on the property.
- B. The Zoning Administrator, upon inspection of any site that has created drainage problems, or could create drainage problems with proposed new development, may require the owner of such site or the contractor of such development to complete a grading plan and apply for a grading permit.
- C. The owner or contractor of any natural drainage improvement or alteration may be required by the Zoning Administrator to obtain recommendations from the state department of natural resources, the county soil conservation district, the affected watershed district and/or the City Engineer, as well as obtaining a grading permit.
- D. On any slope in excess of 13 percent where, in the opinion of the Zoning Administrator, the natural drainage pattern may be disturbed or altered, the Zoning Administrator may require the applicant to submit both a grading plan and a soil conservation plan prior to applying for a building permit.

Sec. 12-218. Vegetative cutting.²³¹

- A. For purposes of this article, the following definitions are made:
 - 1. *Clear cutting* means the removal of all live vegetation in excess of six inches in diameter at breast height on any area of 20,000 square feet or more in size.
 - 2. *Selective cutting* means the removal of single scattered live trees or shrubs in excess of six inches in diameter at breast height.
- B. Clear cutting of any site shall require a Conditional Use Permit, except as regulated by Subsection (E) of this section. A reclamation, soil conservation or revegetation plan may be required by the Zoning Administrator as part of the Conditional Use Permit application.

- C. Clear cutting of vegetation shall not be permitted within any required yard of any lot or parcel within any zoning district.

AFTON CODE

- D. Clear cutting shall not be permitted on slopes greater than 13 percent.
- E. Clear cutting for commercial tree production purposes shall require a Administrative Permit.
- F. Selective tree cutting may occur on any lot provided:
 - 1. The slope does not exceed 30 percent;
 - 2. On slopes greater than 13 percent the Zoning Administrator may require a revegetation plan and a Administrative Permit;
 - 3. Cutting within the St. Croix River District shall be regulated by the Lower St. Croix River Bluffland and Shoreland Management Ordinance, article IV of this chapter.

Sec. 12-219. Swimming pools.²³²

- A. A pool is defined as any swimming pool, outdoor hot tub, or other pool of any type with a capacity of over 3,000 gallons or with a depth of over 3½ feet of water.
- B. In all zoning districts where single- and two-family dwelling units are permitted uses, the following standards apply:
 - 1. An Administrative Permit shall be required for any pool.
 - 2. Any swimming pool requiring an Administrative Permit shall also be required to obtain a building permit.
 - 3. An application for an Administrative Permit shall include a site plan showing:
 - a. The type and size of pool;
 - b. Location of pool;
 - c. Location of house, garage, fencing and other improvements on the lot;
 - d. Location of structures on all adjacent lots;
 - e. Location of filter unit, pump and writing indicating the type of such units;
 - f. Location of back-flush and drainage outlets;

²³¹ Code 1982, § 301.733

²³² Code 1982, § 301.734

LAND USE

LAND USE

- g. Grading plan, finished elevations and final treatment (decking, landscaping, etc.) around the pool;
 - h. Location of existing overhead and underground wiring, utility easements, trees and similar features; and location of any water heating unit.
4. Pools shall not be located within 20 feet of any septic tank, drainfield or line nor within six feet of any principal structure or frost footing. Pools shall not be located within any required front, side or rear yards.
 5. Pools shall not be located beneath overhead utility lines nor over underground utility lines of any type.
 6. Pools shall not be located within any private or public utility, walkway, drainage or other easement.
 7. The necessary precautions shall be taken during construction to:
 - a. Avoid damage, hazards or inconvenience to adjacent or nearby property; and
 - b. Assure that proper care shall be taken in stockpiling excavated material to avoid erosion, dust or other infringements upon adjacent property.
 8. All access for construction shall be over the owner's land and due care shall be taken to avoid damage to public streets and adjacent private or public property.
 9. To the extent feasible, back-flush water or water from pool drainage shall be directed onto the owner's property or into approved public drainageways. Water shall not drain onto adjacent or nearby private land.
 10. The filter unit, pump, heating unit and any other noise making mechanical equipment shall be located at least 50 feet from any neighboring residential structure and not closer than ten feet to any lot line.
 11. Lighting for the pool shall be directed toward the pool and not toward adjacent property.
 12. Fencing at least five feet in height shall completely enclose all pools.
 13. Required structure or fencing shall be completely installed within three weeks following the installation of the pool and before any water is allowed in the pool.
 14. Water in the pool shall be maintained in a suitable manner to avoid health hazards of any type. Such water shall be subject to periodic inspection by the appointed health officer.
 15. All wiring, installation of heating units, grading, installation of pipes and all other installations and construction shall be subject to inspection.
 16. Any proposed deviation from these standards and requirements shall require a variance in accordance with normal zoning procedures.

Sec. 12-220. Tennis courts.²³³

In all zoning districts, the following standards for tennis courts shall apply:

- A. An Administrative Permit shall be required for all private tennis courts on residential lots.
 - B. A Conditional Use Permit shall be required for all public, semipublic and commercial tennis courts.
 - C. An application for an Administrative Permit or a Conditional Use Permit shall include a site plan drawn to scale showing:
 1. The size, shape and pavement and sub-pavement materials;
 2. The location of the court;
 3. The location of the house, garage, fencing, septic system and other structural improvements on the lot;
 4. The location of structures on all adjacent lots;
 5. A grading plan showing all revised drainage patterns and finished elevations at the four corners of the court;
 6. Landscaping and turf protection around the court;
 7. Location of existing and proposed wiring and lighting facilities.
 - D. Tennis courts shall not be placed within any required yard.
 - E. Tennis courts shall not be located over underground utility lines of any type, nor shall any court be located within any private or public utility, walkway, drainage or other easement.
 - F. Solid tennis court practice walls shall not exceed ten feet in height. A building permit shall be required for said walls.
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LAND USE
AFTON CODE

- G. Chain link fencing surrounding the tennis court may extend up to 12 feet in height above the tennis court surface elevation.

Sec. 12-221. Private kennels.²³⁴

- A. Private kennels are only permitted after the issuance of a Conditional Use Permit in the agricultural and rural residential zoning districts. Private kennels are prohibited in other zoning districts.
- B. The following standards must be met for private kennels:
1. The kennel shall be operated as a private residential kennel without any boarding of dogs owned by others, no offering of or actual training of dogs owned by others and no regular offering of dogs for sale.
 2. The minimum acreage required for a residential kennel is five acres.
 3. No more than six dogs over six months of age will be permitted on a five-acre parcel. For each additional acre one additional dog over six months of age will be permitted, up to a maximum of ten dogs.
 4. If the land is subdivided, the number of dogs permitted will be reduced if necessary to comply with this article.
 5. The setback from the side and rear lot line shall be a minimum of 100 feet for any part of the kennel operation, except that it shall be a minimum of 200 feet from any existing dwelling on an adjacent parcel.
 6. There shall be a 2,000-foot separation between kennels.
 7. All dogs shall be kenneled within the residence. Outside runs are permitted provided they do not exceed a total area of 5,000 square feet.
 8. No buildings shall be constructed within the runs.
 9. All runs shall be attached to the principal dwelling.
 10. The fencing shall be constructed so that dogs cannot go over, under or through the fence.
 11. The fencing shall be constructed as per the plans accompanying the application which shall be on file in the City hall.
 12. The applicant shall take such measures as are required to limit the noise from the dogs. Complaints of the dogs frequently or habitually howling, yelping, barking or complaints of odor may be grounds for revoking the permit.
 13. Owner shall be present on the premises when more than three dogs are outside.
 14. The permit for private kennel shall be subject to annual review. Adjoining landowners shall be notified at least two weeks before the permit is to be reviewed in order that they may have time to comment on the use. The applicant shall provide a list of adjoining landowners at least 30 days before the required review and pay such fees as are set from time to time by Resolution of the City Council²³⁵
 15. All waste materials shall be disposed of in accordance with the ordinances of the City and state law and in such a manner as to avoid the creation of a nuisance.
 16. Periodic inspection shall be made by the Zoning Administrator.
 17. Failure to meet the conditions of the Conditional Use Permit shall constitute grounds for revocation of the permit.
 18. All dogs in the kennel shall be licensed by the City.

Sec. 12-222. Bed and breakfast facilities.²³⁶

- A. Bed and breakfast facilities are permitted only after the issuance of a Conditional Use Permit, which shall be subject to annual renewal. Bed and breakfast facilities are prohibited in the industrial zone.
- B. The following standards must be met for bed and breakfast facilities:
1. The owner shall be in residence when the rooms are being rented by paying guests.
 2. The rooms rented out shall be within the residence and not in any accessory building.
 3. No more than two rooms shall be rented, and there shall be no more than four paying guests at one time.

²³⁴ Code 1982, § 301.738, **Cross reference(s)**--Kennels, § 6-101 et seq.

²³⁵ Ord. No. 1997-3, 12-16-97

LAND USE

4. Off-street parking shall be provided, with a minimum of one space per guest room and one space for the operator. An additional space shall be provided for any type of trailer or other towed item belonging to a paying guest.
5. The septic system shall be to code and sized for the proposed use, and the property must contain adequate space for an alternate septic system.
6. There shall be no signs other than those allowed for the district.
7. There shall be no exterior indication that the residence is a bed and breakfast facility.
8. No paying guest shall stay in the facility for more than 14 consecutive days.
9. The facility shall not be used for commercial receptions, parties, etc., for the serving to paying guests of meals other than breakfast or the serving of meals to nonresident guests for compensation. There shall be no cooking in guestrooms.
10. Smoke alarms shall be installed. Certification that the facility has passed inspection by the fire district shall be submitted to the City before the permit is issued.
11. The building official shall inspect and approve the facility, and certification that the facility has passed inspection by the building official shall be submitted to the City before the permit is issued.
12. A license is required by the county public health department and a copy of the license issued by the public health department shall be submitted to the City within ten days of its receipt by the operator of the bed and breakfast facility.
13. Bed and breakfast facilities shall meet the current side and rear setback requirements for the zone in which they are located.
14. Operators of bed and breakfast facilities are required to give clients directions for reaching the residence.
15. Failure to meet the conditions of the Conditional Use Permit shall constitute grounds for withdrawal of the permit.
16. If ownership is transferred, an amended SUP must be applied for by the new owner within 60 days of the change in ownership.
17. The Conditional Use Permit will terminate if the amended permit is not requested within 60 days or if there is no request for annual renewal.

Sec. 12-223. Hotels.²³⁷

- A. A hotel as defined in Section 12-55 shall be permitted in the VHS-C zoning district only, upon the issuance of a Conditional Use Permit.
- B. One off-street parking space as defined in Section 12-196 shall be required for each guest room in a hotel and one space for each employee shall be provided. These parking spaces are in addition to off-street parking spaces required for any associated use such as a restaurant, bar, and related facilities.
- C. Minimum lot size, lot width, setbacks (except where the structure involved exists as nonconforming and no increase in the violation of the setback occurs) and maximum site coverage shall be regulated as per Section 12-132, and the number of hotel rooms in the structure shall be limited to two double occupancy hotel rooms per old village lot contained within the contiguous property upon which the structure is located, or within the contiguous property in an adjacent block situated entirely within the VHS-C zoning district. If lots in an adjacent block are used for density purposes for hotel rooms, they shall not be used for any principal purpose, but may be used only for septic area or parking spaces required for the hotel and associated uses such as a restaurant or bar.
- D. Sanitary facilities must comply with all state, county, and city codes and the sanitary facilities of the hotel shall be exclusively for the use of hotel room guests.
- E. Signage for a hotel shall be regulated as per Section 12-210.
- F. Hotel shall not be of more than two stories in height unless approved by the City Council upon recommendation of the fire marshal.
- G. The fire safety, sprinkler and alarm systems shall be in compliance with the state, county and local codes, and shall be adequate in the view of the fire marshal and the City Engineer for the health and safety of the occupants of the hotel and the adjoining landowners.

²³⁷ Code 1982, § 301.737, **Cross reference(s)**--Businesses, ch. 8.

LAND USE
AFTON CODE

- H. All other codes, including the Lower St. Croix River Bluffland and Shoreland Management ordinance, Section 12-576 et seq. and floodplain ordinances, Section 12-901 et seq. must be complied with.

Sec. 12-224. Marinas.²³⁸

- A. A marina may be permitted in the VHS district only, upon the issuance of a Conditional Use Permit.
- B. One and one-half parking spaces (as defined in Section 12-196) per slip, plus one space per employee, shall be provided. Additional parking for trailers may be required as determined necessary by the City.
- C. Minimum lot size, lot widths, and maximum site coverage shall be regulated as per this article and the Lower St. Croix River Bluffland and Shoreland Management ordinance, Section 12-576 et seq.
- D. Sanitary facilities must comply with all state, county and city codes.
- E. All structures and other facilities associated with the marina must meet applicable setbacks from the river as outlined in the Lower St. Croix River Bluffland and Shoreland Management ordinance, Section 12-576 et seq.
- F. Design and operation of facilities must be consistent with applicable provisions of the state fire code, various licenses, permits, or design standards of the state pollution control agency, state department of natural resources, and state department of public health.
- G. Docks must be at least as long as watercraft moored and must be at least three feet wide if provided on both sides of watercraft or at least five feet wide if provided on only one side. Replacement of docks at existing marinas may be replaced at the same width and length as they existed at time of replacement.
- H. Covered slips may be allowed if they are earth tone in color.
- I. All other codes, including the Lower St. Croix River Bluffland and Shoreland Management ordinance, Section 12-576 et seq. and floodplain ordinances, Section 12-901 et seq. must be complied with.

Sec. 12-225. Coin-operated machines.²³⁹

Coin-operated, automatic machines dispensing food, soft drinks, and other food and materials shall not be permitted outside of a building, except as approved by Conditional Use Permit.

Sec. 12-226. Studio, art or crafts.²⁴⁰

Sec. 12-227. Garage sales.²⁴¹

- A. No person or organization shall hold more than four garage sale occasions in the course of any calendar year.
- B. All garage sales held within the City limits shall abide by the following provisions:
1. No garage sales shall last for more than three consecutive days.
 2. Garage sales shall not commence earlier than 8:00 a.m. and shall not conduct business beyond 8:00 p.m.
 3. Signs advertising garage sales must comply with the existing city ordinances at the time of the sale and must be retrieved by 6:00 p.m. on the day following the last day of the sale.
- C. Any person or organization violating the provisions of this section is guilty of a misdemeanor.

²³⁸ Code 1982, § 301.740, **Cross reference(s)**--Businesses, Ch. 8.

²³⁹ Code 1982, § 301.711, **Cross reference(s)**--Businesses, Ch. 8.

²⁴⁰ Repealed in Ordinance 2005-1, 2/15/05 (Refer to Sec. 12-1324)

²⁴¹ Res. No. 1997-5, 2-11-97; Res. No. 1997-16, § 8, 6-17-97

LAND USE

Sec. 12-228. Home occupations.²⁴²

Requirements for home occupations are as follows:

- A. There shall be no outward indication that the residence is anything other than a single-family residential dwelling unit.
- B. Each permitted home occupation must be conducted within the principal dwelling unit and shall not be conducted in an accessory building.
- C. No exterior storage of equipment or materials used in a home occupation shall be permitted.
- D. Uses which are otherwise permitted by Conditional Use Permit or Administrative Permit shall not be considered home occupations but shall be subject to the requirements of Section 12-134.
- E. No home occupation shall be permitted that creates the need for more than three parking spaces at any given time in addition to the parking spaces required by the occupants.
- F. There shall be no signage visible from outside the dwelling other than those otherwise permitted in the zoning district in which the dwelling is located.
- G. The home occupation shall not produce light, glare, noise, fumes, smoke, dust, heat, odors or vibration detectable to the normal senses off the property, or traffic. Pollutants and toxic wastes of any nature are not allowed.
- H. No equipment shall be permitted to be used in the home occupation, which may create electromagnetic interference to surrounding property.
- I. There shall be no retail sales of goods allowed as part of any home occupation.
- J. Any interior or exterior alterations resulting from home occupations shall be prohibited, except those customarily found in a single-family dwelling.

Sec. 12-229. Wind Energy Systems.²⁴³

- A. *Purpose.* The purpose of this Section is to regulate the installation and operation of a Wind Energy Conversion System (WECS) within the City of Afton not otherwise subject to siting and oversight by the State of Minnesota under the Minnesota Power Plant Siting Act (MS 116C.S1-116C).
- B. *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where expressly defined in another section, article or the context clearly indicates a different meaning.

A-weighted –means a specific weighting of the sound pressure level for the purpose of determining the human response to sound.

dB(A)-means a unit of sound level expressed in decibels (dB) and A-weighted.

L10 –means the sound level, expressed in dB(A) which is exceeded ten percent of the time for a one-hour period, as measured by test procedures approved by the director of the MPCA.

L50 –means the sound level, expressed in dB(A) which is exceeded 50 percent of the time for a one-hour period, as measured by test procedures approved by the director of the MPCA.

Nacelle - compartment containing the electrical generator.

²⁴² Res. No. 1997-16, § 8, 6-17-97

²⁴³ Ord 05-2010, § 12-229, 6/15/2010; Ord 10-2010, § 12-229, 11/16/2010

LAND USE

AFTON CODE

Rotor diameter - The diameter of the circle described by the moving rotor blades.

Total height of WECS - The total height shall be measured from the surrounding grade at the base of the tower before construction to the highest component of each WECS.

Tower for WECS - The vertical structure that supports the electrical generator or rotor blades.

WECS - Wind Energy Conversion System: An electrical generating facility comprised of one wind turbine and accessory facilities, including but not limited to: power lines, transformers and substations that operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site and/or distributed into the electrical grid.

Wind Turbine - A wind turbine is any electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy.

C. GENERAL REQUIREMENTS

1. *Safety Design Standards*

- a. Engineering Certification - For each WECS, the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.
- b. Clearance - Rotor blades or airfoils must maintain at least 12 feet of clearance between their lowest point and the ground.

2. *Standards*

- a. A WECS of no more than 40 kW in total name plate generating capacity shall be permitted in Afton.
- b. Number per Lot - No more than one (1) WECS per lot shall be permitted.
- c. Tower configuration – Each WECS shall be installed with monopole or lattice tower type; no guyed towers shall be permitted.
- d. Height – Total height shall not exceed 135 feet from grade existing at the base of the tower prior to construction or grading.
- e. Property Line Setback – The setback from all property lines and other structures shall be 1 ½ times the tower height plus the minimum accessory structure setback as defined in Section 132.
- f. Color and Finish - All wind turbines and towers that are part of a WECS shall be white, grey or another non-obtrusive color. Finishes shall be matte or non-reflective.
- g. Lighting - No tower requiring a light shall be allowed. Lighting of or on the tower shall be prohibited.
- h. Signage - No signage shall be permitted on each WECS with the exception that the manufacturer’s or owner's company name and/or logo may be placed upon the nacelle.
- i. Waste Disposal- Solid and Hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations.
- j. Discontinuation and Decommissioning - A WECS shall be considered a discontinued use after 180 days without energy production, unless a plan is developed and submitted to the Afton City Administrator outlining the steps and schedule for returning the WECS to service. Each WECS and any accessory facilities shall be removed to four feet below ground level within 90 days of the decommissioning of use. The site shall be restored to its pre-existing condition.
- k. Orderly Development - Upon issuance of a conditional use permit, each WECS applicant shall notify the appropriate Minnesota agency of the project location and details.

4. *Performance Standards*

- a. Noise – The following standards which shall include ambient noise shall be measured and applied at all property lines.

Table 1

Day 7:00 a.m. – 10:00 p.m.	Night 10:00 p.m. – 7:00 a.m.
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LAND USE

L10	L50	L10	L50
65 dB	60 dB	55 dB	50 dB

The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed WECS for the following:

- (1) Existing or ambient noise.
- (2) Existing plus proposed WECS: maximum estimate of noise from the proposed WECS plus the existing noise environment.

No WECS shall be operated in such a manner as to create a noise level exceeding the decibel limit set in Table 1 at any location outside the parcel on which the WECS is located.

- b. Electrical codes and standards - Each WECS and any accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.
- c. Federal Aviation Administration- Each WECS shall comply with FAA standards and permits.
- d. Minnesota State Building Code - Each WECS shall comply with the International Building Code as adopted by the State of Minnesota.
- e. Interference - The applicant shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all communication tower operators within two miles of the proposed WECS location upon application to the City for permits. No WECS shall be constructed so as to interfere with City, County or Minnesota Department of Transportation microwave transmissions.

D. REQUIRED PERMITS

No person, firm or corporation shall erect, construct in place, re-erect, replace or make structural repairs to any tower without making application for and receiving an approved conditional use or administrative permit and building permit, when applicable. In all cases, review by the City of Afton Zoning Administrator and Building Official are required to ensure that necessary Administrative Permits and Conditional Use Permits are applied for and reviewed under the procedures established in this Ordinance.

E. SUBMITTAL REQUIREMENTS

- 1. The names of project applicant.
- 2. The name of the project owner.
- 3. The legal description and address of the project.
- 4. A description of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid, if applicable.
- 5. Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale.
- 6. Engineer's Minnesota State certification and project design specifications.
- 7. Documentation of land ownership or legal control of the property.

F. DISTRICT REGULATIONS

WECS will not be allowed in the VHS District. WECS will be administratively permitted in all other zoning districts.

Sec. 12-230. Keeping Chickens on Parcels Less Than 5 Acres.²⁴⁴

- A. PERMIT REQUIRED. No person shall, on any lot less than 5 acres anywhere in the city keep, harbor, or maintain care, custody, or control over any chicken, without obtaining a permit issued by the City of Afton.

²⁴⁴ Ord 03-2011, § 12-230, 11/15/2011; Ord 07-2013, 6/18/2013

LAND USE
AFTON CODE

The permit shall be subject to all terms and conditions of this Section and any additional conditions deemed necessary by the City to protect the public health, safety, and welfare. The necessary permit may be obtained from the City Administrator's Office.

- B. APPLICATION. Included with the information required prior to issuance of the permit must be a scaled diagram that indicates the lot size, the number of chickens, the location of any chicken coop and run, which includes the distance from dwelling units on the parcel and abutting properties and the approximate size of the chicken coop and run. If the coop exceeds 160 square feet a building permit will be required.
- C. PERMIT FEE. A one-time fee of \$20 will be charged for each permit and the fee may be amended by resolution.
- D. NUMBER ALLOWED. For parcels that are less than one-half (1/2) acre the maximum number of chickens is five (5). For every additional one-half (1/2) acre of land an additional five (5) chickens can be kept. On parcels greater than four and one-half (4 ½) acres and less than five (5) acres up to 45 chickens are allowed.
- E. CONFINEMENT STANDARDS. Every person who owns, controls, keeps, maintains or harbors hen chickens by permit must keep them confined on the premises at all times. If confinement is in a chicken coop or chicken run the following standards apply:
 - 1. Where more than five chickens are being kept the coop and run shall be at least 25 feet from any residential structure, wells, and any other premises or wells on any adjacent lots.
 - 2. All chicken coops and runs must be located within the rear yard subject to the required setbacks for the principal building.
 - 3. Chicken feed must be kept in metal, predator proof containers.
- F. CONDITIONS AND INSPECTION. No person who owns, controls, keeps, maintains or harbors hen chickens shall permit the premises where the hen chickens are kept to be or remain in an unhealthy, unsanitary or noxious condition or to permit the premises to be in such condition that noxious odors are carried to adjacent public or private property.
- G. PROHIBITED USES. The following uses are not allowed as they pertain to this Section:
 - 1. Roosters
 - 2. Breeding, raising or slaughtering of chickens for a commercial purpose
 - 3. Odors, solid matter or noise of such quality or quantity as to be reasonably objectionable at any point beyond the lot line of the site on which the use is located.
- H. PUBLIC NUISANCE. Failure to comply with this ordinance constitutes a public nuisance and is subject to the revocation of the permit, issuance of fines and assessment of costs related to ensure compliance with this section.

Secs. 12-231--12-275. Reserved.

ARTICLE III. SHORELAND MANAGEMENT

DIVISION 1. GENERALLY

Sec. 12-276. Statutory authorization.²⁴⁵

This article is adopted pursuant to the authorization and policies contained in M.S.A. ch. 105, Mn Rules, §§ 6120.2500-6120.3900, and the planning and zoning enabling legislation in M.S.A. ch. 462.

²⁴⁵ Code 1982, § 303.1.1

LAND USE

Sec. 12-277. Policy.²⁴⁶

The uncontrolled use of shorelands of the City affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The state legislature has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the City.

Sec. 12-278. Jurisdiction.²⁴⁷

The provisions of this article shall apply to the shorelands of the public water bodies as classified in Section 12-361. Pursuant to Mn Rules, §§ 6120.2500--6120.3900, no lake, pond, or flowage less than ten acres in size in municipalities or 25 acres in size in unincorporated areas need be regulated in a local government's shoreland regulations. A body of water created by a private user where there was no previous shoreland may, at the discretion of the Council, be exempt from this article.

Sec. 12-279. Compliance.²⁴⁸

The use of any shoreland of public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and waste treatment systems, the grading and filling of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this article and other applicable regulations.

Sec. 12-280. Enforcement.²⁴⁹

The Zoning Administrator is responsible for the administration and enforcement of this article. Any violation of the provisions of this article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law. Violations of this article can occur regardless of whether or not a permit is required for a regulated activity pursuant to Section 12-326.

Sec. 12-281. Interpretation.²⁵⁰

In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the Council and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

Sec. 12-282. Abrogation and greater restrictions.²⁵¹

It is not intended by this article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article imposes greater restrictions, the provisions of this article shall prevail. Where the conditions imposed by any provision of this article are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution or regulation of any kind, the regulations which are most restrictive or which impose higher standards or requirements shall prevail.

Sec. 12-283. Definitions.²⁵²

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

²⁴⁶ Code 1982, § 303.1.2

²⁴⁷ Code 1982, § 303.2.1

²⁴⁸ Code 1982, § 303.2.2

²⁴⁹ Code 1982, § 303.2.3

²⁵⁰ Code 1982, § 303.2.4

²⁵¹ Code 1982, § 303.2.6

²⁵² Code 1982, § 303.2.7; Res. No. 1997-16, § 17, 6-17-97, **Cross reference(s)**--Definitions generally, § 1-2.

LAND USE
AFTON CODE

Bluff means a topographic feature such as a hill, cliff, or embankment having the following characteristics:

- A. Is a slope of 18 percent or greater as measured over horizontal distances of 50 feet or more.
- B. The slope drains toward the water body.
- C. Part or all of the feature is located in the shoreland area.

Bluff impact zone means a bluff and land located within 40 feet from the top of a bluff.

Bluffline means a line along the top of a slope connecting the points at which the slope, proceeding away from the water, becomes less than 18 percent and it only includes slopes greater than 18 percent visible from the waterbody. The location of the bluffline for any particular property shall be certified by the Zoning Administrator who may require certification by a registered land surveyor. All setbacks required shall be applicable to each bluffline.

Boathouse means a structure designed and used solely for the storage of boats or boating equipment.

Building line means a line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.

Commissioner means the commissioner of the department of natural resources.

Conditional use means a land use or development as defined by this article which may be allowed as provided by this article.

Deck means a horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending more than three feet aboveground.

Duplex means a dwelling structure on a lot having two units, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living and sanitation facilities, and meeting the density requirements.

Dwelling site means a designated location for residential use by one or more persons using temporary or moveable shelter, including camping and recreational vehicle sites.

Dwelling unit means any structure or portion of a structure, or other shelter designed as short or long-term living quarters for one or more persons, including rental or timeshare accommodations such as motel, hotel, bed and breakfast and resort rooms and cabins.

Earthen tone shall mean shades of brown or green which blend with the surrounding vegetation so as to be visually inconspicuous from the water during summer months.

Extractive use means the use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other nonmetallic minerals, and peat not regulated under M.S.A. §§ 93.44 to 93.51.

Forest land conversion means the clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.

Forest management means the primary use of the land is for commercial timber production.

Guest cottage is not permitted in any zoning district.

Hardship means the same as that term is defined in M.S.A. ch. 462.

Industrial uses means the use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities or other wholesale items.

LAND USE

Intensive vegetation clearing means the complete removal of trees or shrubs in a contiguous patch, strip, row or block.

Lot means a parcel of land designated by plat, metes and bounds, registered land survey, auditors plat, or other accepted means and separated from other parcels or portions by such description for the purpose of sale, lease or separation.

Lot coverage means that portion of a lot covered by any structures, driveway, parking facility or any impervious surface.

Lot width means 300 feet of frontage on an improved public road and at the ordinary high water mark.

Nonconformity means any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

Ordinary high water level means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Planned unit development is not permitted in any zoning district.

Protected water means any water as defined in M.S.A. § 645.44, subd. 8a, and M.S.A. § 1036.005, subd. 18.

Public water means any waters as defined in M.S.A. § 645.44, subd. 8a, M.S.A. § 1036.005, subd. 18.

Scenic easement, also referred to as a natural protection easement, means an easement dedicated by a developer restricting the use of lands with steep slopes, floodprone areas as well as other fragile areas. The purpose of the scenic easement is to protect environmentally sensitive lands.

- A. Scenic easements shall be required on slopes of 18 percent and greater, wetlands, drainageways, and other lands and soils judged to be fragile by the soil conservation service. Such easements shall be required as a condition of subdivision approval, and shall prohibit the following activities:
 1. Dumping.
 2. Burning.
 3. Grading.
 4. Grazing of domesticated farm animals.
 5. Vegetative cutting.
 6. Motorized vehicles.
 7. Construction of any structure, including driveways.
- B. Such scenic easements shall be recorded against the affected lots in the subdivision.
- C. The City shall have the right to reasonable access to easement areas to verify compliance with the restrictions, and to cross adjacent lands in common ownership with the easement area to obtain such access.
- D. A scenic easement prohibits the owner from engaging in harmful activities in the area subject to the easement, but does not grant the general public any right of access to the land.

Semipublic use means the use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

Sensitive resource management means the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.

LAND USE

AFTON CODE

Setback means the minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top of a bluff, road, highway, property line, or other facility.

Sewage treatment system means a septic tank and soil absorption system as described in Section 12-413.

Sewer system means pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

Shore impact zone means land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.

Shoreland means land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the commissioner.

Significant historic site means any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the state register of historic sites, or is determined to be an unplatted cemetery that falls under the provisions of M.S.A. § 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the state archaeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

Special protection district means properly managed development in areas generally unsuitable for development or uses due to flooding, erosion, limiting soil conditions, steep slopes or other major physical constraints. It also means management and preservation of areas with special historical, natural or biological characteristics.

Conditional Use Permit means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the zoning ordinance, article II of this chapter, exist, the use or development conforms to the comprehensive and use plan of the community, and the use is compatible with the existing neighborhood.

Structure means any building or appurtenance, including decks, swimming pools, tennis courts, or anything constructed or erected the use of which requires location on the ground or attached to something having location on the ground.

Subdivision means land that is divided for the purpose of sale, rent or lease.

Variance means the same as that term is defined or described in M.S.A. ch. 462.

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

- A. At least periodically, the land supports predominantly wetland vegetation. Wetland vegetation is listed in "National List of Plant Species that Occur in Wetlands: North Central (Region 3)," Fish and Wildlife Service, May, 1988, or later revisions.
- B. The substrata is predominantly undrained hydric soil. Hydric soils are those which have been exposed to water for long enough periods of time to experience oxygen depletion. Hydric soils are listed in "Hydric Soils of the United States," Soil Conservation Service, October, 1985, or later revisions.
- C. Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

LAND USE

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

Secs. 12-284--12-325. Reserved.

DIVISION 2. ADMINISTRATION²⁵³

Sec. 12-326. Permits required.²⁵⁴

- A. A permit is required for the construction of buildings or building additions (and including such related activities as construction of decks and signs), the installation and/or alteration of sewage treatment systems, and those grading and filling activities not exempted by Section 12-407. Application for a permit shall be made to the Zoning Administrator on the forms provided. The application shall include the necessary information so that the Zoning Administrator can determine the site's suitability for the intended use and that a compliant sewage treatment system will be provided.
- B. A permit authorizing an addition to an existing structure shall stipulate that an identified nonconforming sewage treatment system, as defined by Section 12-413, shall be reconstructed or replaced in accordance with the provisions of this article.

Sec. 12-327. Certificate of zoning compliance.²⁵⁵

The Zoning Administrator shall issue a certificate of zoning compliance for each activity requiring a permit as specified in Section 12-326. This certificate will specify that the use of land conforms to the requirements of this article. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this article and shall be punishable as provided in Section 12-280.

Sec. 12-328. Variances.²⁵⁶

- A. Variances may only be granted in accordance with M.S.A. ch. 462. A variance may not circumvent the general purposes and intent of this article. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. In considering a variance request, the Board of Adjustment must also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.
- B. The Planning Commission shall hear requests for variances in accordance with the rules that it has adopted for the conduct of business and shall make recommendations to the City Council which acts as the Board of Adjustment. When a variance is approved after the department of natural resources has formally recommended denial in the hearing record, the notification of the approved variance required in Section 12-329 shall also include the Board of Adjustment's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.
- C. For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system in compliance with the City's sewage ordinance, Article IX of this chapter.

Sec. 12-329. Notifications to the department of natural resources.²⁵⁷

²⁵³ **Cross references**—Administration, ch.2.

²⁵⁴ Code 1982, § 303.3.12

²⁵⁵ Code 1982, § 303.3.2

²⁵⁶ Code 1982, § 303.3.33

²⁵⁷ Code 1982, § 303.3.42

LAND USE

AFTON CODE

- A. Copies of all notices of any public hearings to consider variances, amendments, or special uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.
- B. A copy of approved amendments and subdivision/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action.

Secs. 12-330--12-360. Reserved.

DIVISION 3. CLASSIFICATION SYSTEMS

Sec. 12-361. Basis of classification.²⁵⁸

The public waters of the City have been classified below consistent with the criteria found in Mn Rules, § 6120.3300, and the Protected Waters Inventory Map for Washington County, Minnesota.

- A. *Shoreland areas.* The shoreland area for the waterbodies listed in Subsections (B) and (C) of this section shall be defined in Section 12-283 and as shown on the official zoning map.
- B. *Lakes.*
 - 1. *Natural Environment Lakes* *Protected Waters Inventory I.D.#*

Lake Edith	4P
Fahlstrom Pond	5W
Belwin Lake	7W
Metcalf Lake	464W
- C. *Rivers and streams.*
 - 1. *Tributary streams*²⁵⁹

Valley Branch	Sections 9, 10, 14, 15
Trout Brook	Sections 30, 31, 32, 33, 34
Unnamed to St. Croix River	Sections 28, 21, 22, 23
 - 2. *Trout streams*

South Fork of the Valley Branch	Sections 14, 15, 16, 17, 18
---------------------------------	-----------------------------
 - 3. All other rivers and streams in the City having a total drainage area of greater than two square miles are assigned a tributary streams classification.

Sec. 12-362. Criteria for designation.²⁶⁰

The land use districts in Section 12-363, and the delineation of a land use district's boundaries on the official zoning map, must be consistent with the goals, policies, and objectives of the comprehensive land use plan and the following criteria, considerations, and objectives:

- A. General considerations and criteria for all land uses:
 - 1. Preservation of natural areas;
 - 2. Present ownership and development of shoreland areas;
 - 3. Shoreland soil types and their engineering capabilities;
 - 4. Topographic characteristics;
 - 5. Vegetative cover;

²⁵⁸ Code 1982, § 303.4.13

²⁵⁹ All protected watercourses in the city shown on the Protected Waters Inventory Map for Washington County, a copy of which is hereby adopted by reference, not given a classification in Subsections a and b of this Subsection shall be considered "tributary."

LAND USE

6. In-water physical characteristics, values, and constraints;
7. Recreational use of the surface water;
8. Road accessibility;
9. Socioeconomic development needs and plans as they involve water and related land resources;
10. The necessity to preserve and restore certain areas having significant historical or ecological value.

B. General considerations and criteria for all water uses:

1. Preservation of wildlife habitat;
2. Preservation of aquatic habitat;
3. Prevention of shoreline erosion;
4. Prevention of the degradation of water quality;
5. Protection of the environment of outdoor educational facilities.

C. In order to achieve the above-listed objectives and in consideration of the limited size of the water bodies:

1. No motorized vehicles or craft shall be permitted with the exception of electric motors.
2. No motorized vehicles or craft used for recreational purposes shall be permitted within 50 feet of the high water mark of any lake or stream.
3. No aquatic chemicals shall be used without notice to riparian lot owners and the City.
4. No structure shall remain on the water during winter months for longer than 12 hours.
5. No lawn chemicals, fertilizers or pesticides shall be applied within 200 feet of the high water mark of any protected water,, pursuant to Chapter 25, Article 1, Section 25-1 to 25-7.

Sec. 12-363. Land use district descriptions.²⁶¹

The land use districts provided below, and the allowable land uses therein for the given classifications of water bodies, shall be properly delineated on the official zoning map for the shorelands of this community. These land use districts are in conformance with the criteria specified in MN Rules, § 6120.3200, subd. 3:

- P = Permitted use
- C = Conditional Use Permit
- A = Administrative Permit
- N = Not permitted

A. *Land use districts for lakes:*

1. Special protection district uses:	<i>Natural Environment Lakes</i>
a. Forest management	N
b. Sensitive resource management	P
c. Agricultural: Cropland and pasture	P
d. Agricultural feedlots	N
e. Parks and historic sites	C
f. Extractive use	N
g. Single residential	P
h. Mining of metallic minerals and peat	N
i. PUD	N
j. Semipublic	C
k. Industrial use	N
l. Duplex	C

B. *Land use districts for rivers and streams:*

1. Special protection district uses:	<i>Tributary</i>	<i>Trout Stream</i>
a. Forest management	N	N
b. Sensitive resource management	P	P
c. Agricultural: Cropland and pasture	P	P
d. Agricultural feedlots	N	N
e. Parks and historic sites	C	C
f. Extractive use	N	N
g. Single residential	A	A
h. Mining of metallic and peat	N	N

²⁶¹ Code 1982, § 303.4.2, Ord. 97-43, 11/13/01

LAND USE

AFTON CODE

- | | | |
|-------------------|---|---|
| i. Semipublic | C | C |
| j. Duplex | C | C |
| k. Industrial use | N | N |
| l. PUD | N | N |
2. One-half the distance from the water's edge of any trout stream to the closest point of any dwelling but not less than 20 feet nor more than 50 feet either side of the centerline, vegetative cutting of grass and shrubs shall not be permitted in order to maintain important shade and cover as well as to minimize sedimentation of the trout creek. Parcels currently nonconforming will be subject to Section 12-57(A), (B) and (G).
 3. Any discharge from development affecting the creek shall not exceed the discharge rate prior to development, nor shall it increase the sedimentation in the creek.

Sec. 12-364. Use, upgrading of inconsistent land use districts.²⁶²

When an interpretation question arises about whether a specific land use fits within a given "use" category, the interpretation shall be made by the City Council after a public hearing and a recommendation by the Planning Commission. When a question arises as to whether a land use district's boundaries are properly delineated on the official zoning map, this interpretation shall be made by the City Council after a public hearing and a recommendation by the Planning Commission.

Secs. 12-365--12-400. Reserved.

DIVISION 4. ZONING AND WATER SUPPLY SANITARY REQUIREMENTS²⁶³

Sec. 12-401. Lot area and width standards.²⁶⁴

The lot area and lot width standards for single and duplex residential lots created after the date of enactment of this article for the lake and river/stream classifications are the following:

A. Unsewered lakes.

1. *Natural environment lakes:*

	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	5 acres	300 feet	5 acres	300 feet
Duplex (CUP)	10 acres	400 feet	100 acres	400 feet

B. River/stream lot width standards:

1. <i>Tributary</i>		<i>Acres</i>	<i>Feet</i>
a. Single		5	300
b. Duplex	CUP	10	400
2. Trout stream			
a. Single		5	300
b. Duplex	CUP	10	400

C. Additional special provisions:

²⁶² Code 1982, § 303.4.23

²⁶³ **Cross references**—Zoning, § 12-51 et seq.; sewage, § 12-1901 et seq.

²⁶⁴ Code 1982, § 303.5.13

LAND USE

1. Only land above the ordinary high water level of public waters can be used to meet lot area standards, and lot width standards must be met at both the ordinary high water level and at the building setback line.
2. Subdivisions of duplexes, (permitted only by Conditional Use Permit) on natural environment lakes and tributary and trout streams must also meet the following standards:
 - a. Each building must be set back at least 200 feet from the ordinary high water level;
 - b. Each building must have common sewage treatment and water systems in one location and serve both dwelling units in the building;
 - c. Watercraft docking facilities for each lot must be centralized in one location and serve both dwelling units in the building; and
 - d. No more than 25 percent of a lake's shoreline in the proposed development can be in duplex developments.
3. Lots intended as controlled accesses to public waters shall not be permitted.

Sec. 12-402. Placement of structures on lots.²⁶⁵

When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. On an undeveloped bluffland or shoreland lot which has two adjacent lots, with principal dwelling structures on both such adjacent lots within 200 feet of the common lot line, any new structure shall be setback from the ordinary high water mark the average setback of such adjacent structures plus 40 feet or the minimum standard setback, whichever is less.

- A. Structure and on-site sewage system setbacks (in feet) from ordinary high water level*.

Setbacks

Classes of Public Waters	Structures Unsewered (feet)	Sewage Treatment System (feet)
<i>Lakes:</i>		
Natural Environment	200	150
<i>Recreational Rivers:</i>		
Tributary	200	150
Trout Streams	200	150

- B. The following additional structure setbacks apply, regardless of the classification of the water body:

<i>Setback from:</i>	<i>Setback (in feet)</i>
1. Top of bluff	40
2. Unplatted cemetery	150
3. All other setbacks shall meet the zoning ordinance, article II of this chapter.	

- C. Development on a lot, any portion of which is within 75 feet of the ordinary high water mark of any unclassified body of water, shall be subject to a building and septic system setback of 75 feet from such ordinary high water mark. All other lot requirements shall be subject to the regulations of the zoning ordinance, article II of this chapter, for the basic zoning district in which the lot is located.
- D. Maximum site coverage by any structure and parking area is ten percent or one-half acre, whichever is greater.
- E. Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

Sec. 12-403. Design criteria for structures.²⁶⁶

²⁶⁵ Code 1982, § 303.5.21

²⁶⁶ Code 1982, § 303.5.22

LAND USE

AFTON CODE

- A. *High water elevations.* Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or floodproofed must be determined as follows:
1. For lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher;
 2. For rivers and streams, by placing the lowest floor at least three feet above the flood of record, if data are available. If data are not available, by placing the lowest floor at least three feet above the ordinary high water level, or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three approaches, technical evaluations must be done by a qualified engineer or hydrologist consistent with Mn Rules, §§ 6120.5000 to 6120.6200 governing the management of floodplain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and other facilities.
- B. *Stairways, lifts, and landings.* Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:
1. Stairways and lifts must not exceed four feet in width on residential lots;
 2. Landings for stairways and lifts on residential lots must not exceed 32 square feet in area;
 3. Canopies or roofs are not allowed on stairways, lifts, or landings;
 4. Stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion, and must be approved by the soil and water conservation district;
 5. Stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots as viewed from the surface of the public water assuming summer, leaf-on conditions and be of an earthen tone;
 6. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of Subsections (1) to (5) of this subsection are complied with in addition to the requirements of M.S.A. ch. 1340.
 7. Stairways, lifts and landings are not permitted on scenic easements.
- C. *Significant historic sites.* No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.
- D. *Steep slopes.* The Zoning Administrator must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.

Sec. 12-404. Height of structures.²⁶⁷

All structures in special protection district must not exceed 35 feet in height.

Sec. 12-405. Shoreland alterations.²⁶⁸

Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat.

LAND USE

Sec. 12-406. Vegetation alterations.²⁶⁹

- A. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of driveways are exempt from the vegetation alteration standards that follow.
- B. Removal or alteration of vegetation, except for agricultural uses as regulated in Section 12-477 is subject to the following standards:
 - 1. Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed in order that structures, vehicles and other facilities are screened as viewed from the water assuming summer leaf-on conditions.
 - 2. Along rivers and streams, existing shading of water surface shall be preserved.
 - 3. In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placements of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas, provided that:
 - a. The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer leaf-on conditions, is not substantially reduced;
 - b. The cutting, including topping, involves trees less than six inches in diameter at breast height;
 - c. The essential character, quality, and density of existing growths is preserved and continuous canopy cover is maintained;
 - d. Along rivers, existing shading of water surfaces is preserved;
 - e. The above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards; and
 - f. A permit is obtained from the Zoning Administrator.

Sec. 12-407. Topographic alterations; grading and filling²⁷⁰.

- A. Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.
- B. Public roads and parking areas are regulated by Section 12-408.
- C. Notwithstanding Subsections (A) and (B) of this section, a grading and filling permit will be required in order to meet the following:
 - 1. Within this article, land reclamation is the reclaiming of land by depositing or moving material so as to alter the grade. Land reclamation shall be permitted only by Conditional Use Permit in all zoning districts. However, no Conditional Use Permit for land reclamation shall be permitted on slopes of 18 percent or greater nor in any wetland. Depositing a total of more than 50 cubic yards of material per acre, either by hauling in or regrading the area shall constitute land reclamation. Land reclamation in floodplains shall be in accordance with the floodplain ordinance, article V of this chapter. The permit shall include as a condition thereof a finished grading plan that will not adversely affect the adjacent land and as conditions thereof shall regulate the type of material permitted, program for rodent control, plan for fire control, and general maintenance of the site, controls of vehicular ingress and egress, drainage and control of material disbursed from wind or hauling of material to or from the site, and erosion control and stabilization plans for the deposited material or excavated area. All plans must be approved by the soil and water conservation service.
 - 2. No person, county, municipality or other political subdivision shall appropriate or use any public water, surface or underground, without first obtaining a use of public waters permit and written permission of the commissioner of the division of waters, soils and minerals of the state department of natural resources and all other state, county, local permits.

²⁶⁹ Code 1982, § 303.5.31

²⁷⁰ Code 1982, § 303.5.32, **Cross reference(s)**--Mining, § 12-2301 et seq.

LAND USE

AFTON CODE

3. For purposes of these regulations, public waters shall be defined in M.S.A. § 645.44, subd. 8a, M.S.A. § 1036.005, subd. 18.
 4. Public waters shall include all lakes, ponds, swamps, streams, drainageways, floodplains, floodways, natural water courses, underground water resources and similar features involving directly or indirectly the use of water within the City.
 5. No public water area shall be filled, partially filled, dredged, altered by grading, mining or otherwise utilized or disturbed in any manner without first securing a public waters use permit from the state department of natural resources and the U.S. Army Corps of Engineers, and a grading permit from the City. Such grading permits shall be reviewed and approved by the department of natural resources, the City Engineer, the watershed district, the Planning Commission and the City Council.
- D. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:
1. No grading or filling of any wetland is permitted;
 2. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;
 3. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible;
 4. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;
 5. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service;
 6. Fill or excavated material must not be placed in a manner that creates an unstable slope;
 7. Fill or excavated material shall not be placed on steep slopes;
 8. Fill or excavated material shall not be placed in bluff impact zones;
 9. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under M.S.A. § 1036.245.
 10. Alterations of topography shall only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties, and do not cause the potential for erosion;
 11. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet.
 12. Scenic easements on slopes greater than 18 percent shall be required as per the City subdivision ordinance, article VI of this chapter.
- E. Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the commissioner has approved the proposed connection to public waters.

Sec. 12-408. Placement and design of roads, driveways, and parking areas.²⁷¹

- A. All driveways, parking areas and public roads must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, and plans must be approved by the soil and water conservation district.
- B. Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones. No parking facilities other than residential parking shall be permitted.

Sec. 12-409. Stormwater management.²⁷²

LAND USE

Unless otherwise exempted by this ordinance, a Stormwater Pollution Prevention Plan (SWPP) and an Erosion and Sediment Control Plan (ESCP) shall be required as part of any building permit or land disturbing activity that meets the criteria Chapter 13 of this ordinance. All such plans shall at achieve at least the minimum standards of Chapter 13.

The following general and specific standards shall apply:

- ~~1. Existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.~~
- ~~2. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.~~
- ~~3. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds must be used.~~

~~B. Specific standards:~~

- ~~1. Impervious surface coverage of lots must not exceed ten percent of the lot area or one half acre, whichever is greater.~~
- ~~2. When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts and all plans must be approved by that agency.~~
- ~~3. New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.~~

Sec. 12-410. Agricultural use standards.²⁷³

General cultivation farming, grazing, nurseries, horticulture, truck farming, and wild crop harvesting are permitted provided they do not occur on slopes greater than 12 percent and do not intrude on the bluff impact zones and provided the shore and impact zones are maintained in a permanent vegetative condition. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level.

Sec. 12-411. Special uses.²⁷⁴

Special uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of special uses established community-wide. The following additional evaluation criteria and conditions apply within shoreland areas:

- A. *Evaluation criteria.* A thorough evaluation of the waterbody and the topographic, vegetation, and soils conditions on the site must be made to ensure:
 1. The prevention of soil erosion or other possible pollution of public waters as well as the runoff of landscape chemicals including fertilizers, herbicides and pesticides both during and after construction;
 2. The visibility of structures and other facilities as viewed from public waters is limited;
 3. The site is adequate for water supply and onsite sewage treatment; and
 4. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercrafts.
- B. *Conditions attached to Conditional Use Permits.* The Planning Commission, upon consideration of the criteria listed above and the purposes of this article, shall recommend to the City Council such conditions to the issuance of the Conditional Use Permits as it deems necessary to fulfill the purposes of this article. Such conditions may include, but are not limited to, the following:
 1. Increased setbacks from the ordinary high water level;

²⁷⁷ Code 1982, § 303.6.0

LAND USE

2. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and
3. Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

Sec. 12-412. Water supply.²⁷⁵

Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the state department of health and the state pollution control agency.

Sec. 12-413. Sewage treatment.²⁷⁶

- A. *Sewage treatment.* Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:
 1. Publicly-owned sewer systems must be used where available.
 2. All private sewage treatment systems must meet or exceed the state pollution control agency's standards for individual sewage treatment systems contained in the document titled, Individual Sewage Treatment Systems Standards, Chapter 7080, a copy of which is hereby adopted by reference and declared to be a part of this article and must meet the City septic system requirements.
 3. On-site sewage treatment systems must be set back from the ordinary high water level in accordance with the setbacks contained in Section 12-402.
 4. All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in Subsections (1)--(4) of this section. It shall be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations. The evaluation criteria are:
 - a. Depth to the highest known or calculated ground water table or bedrock;
 - b. Soil conditions, properties, and permeability;
 - c. Slope; including the ability of the septic system to meet the required setbacks;
 - d. The existence of lowlands, local surface depressions, and rock outcrops.
 5. Nonconforming sewage treatment systems shall be regulated and upgraded in accordance with Section 12-479.
- B. *Nonconforming sewage treatment systems.* These systems must meet the following requirements:
 1. A sewage treatment system not meeting the requirements of this section must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property or when the property is transferred. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level. The City sanitarian is required to submit a report to the Zoning Administrator.
 2. The City shall identify nonconforming or illegal sewage treatment systems located on properties identified in Section 12-361(B) and (C) and shall require repair, replacement or reconstruction when appropriate. The City shall require that nonconforming systems be pumped at a minimum of once every two years and a well water test be made to determine the level of nitrates and coliforms present. The pumping shall be done by a licensed pumper who shall certify as to the observed conditions of the system and the results placed on file at city hall. The well testing results shall be verified by a laboratory approved by the Zoning Administrator or by the county public health department.

Secs. 12-414--12-475. Reserved.

DIVISION 5. NONCONFORMITIES

Sec. 12-476. Non-conforming uses.²⁷⁷

All legally established non-conformities as of the date of adoption of the ordinance from which this article was derived may continue, but they will be managed according to applicable state statutes and other regulations of this community

²⁷⁵ Code 1982, § 303.5.8

²⁷⁶ Code 1982, §§ 303.5.82, 303.6.3

LAND USE

for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the standards in this division will also apply in shoreland areas.

Sec. 12-477. Construction on nonconforming lots of record.²⁷⁸

- A. Lots of record in the office of the county recorder on August 19, 1975, that do not meet the requirements of Section 12-401 may be allowed as building sites provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, sewage treatment and setback requirements of this article are met and the lot meets the requirements of the zoning ordinance, article II of this chapter, regarding nonconformity.
- B. A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for such lot. In evaluating the variance, the Board of Adjustment shall consider, along with all criteria listed in Section 12-328, sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
- C. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Section 12-401 the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Section 12-401 and the zoning ordinance, article II of this chapter.

Sec. 12-478. Additions/expansions to nonconforming structures.²⁷⁹

- A. All structures in existence prior to the adoption of the ordinance from which this article was derived which do not meet the structure setbacks and other dimensional standards of this article shall be considered substandard structures.
- B. Any extension, enlargement, or alteration of an existing substandard structure or sanitary facility shall meet the setback standards of this article.
- C. Exceptions to the setback standards for substandard structures may include the following:
 1. An extension, enlargement, or alteration of an existing substandard structure or sanitary facility may be permitted on the side of the structure or facility facing away from the shoreline or ordinary high water level.
 2. An improvement to an existing structure or facility may be allowed to extend laterally (parallel to the shoreline or ordinary high water level) when the improvement is within 60% of the required setback and in compliance with all of the dimensional standards and side yard setbacks of the zoning ordinance, article II of this chapter.
 3. Exterior decks attached to the structure which do not extend any roof or foundation, may be permitted to extend laterally (parallel to the shoreline or ordinary high water level) at the same setback as the substandard structure.
- D. If a substandard structure needs replacing due to destruction, deterioration, or obsolescence, such replacement shall comply with the dimensional standards of this article.

Secs. 12-479--12-500. Reserved.

DIVISION 6. SUBDIVISION REQUIREMENTS²⁸⁰

²⁷⁸ Code 1982, § 303.6.1

²⁷⁹ Ord. 97-43, 11/13/01

²⁸⁰ **Cross reference**—Subdivisions, § 12-1251 et seq.

LAND USE
AFTON CODE

Sec. 12-501. Land suitability.²⁸¹

Each lot created through subdivision, must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the local unit of government shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.

Sec. 12-502. Consistency with other controls.²⁸²

- A. Subdivisions must conform to all official controls of the City. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by publicly-owned sewer and water systems, a subdivision will not be approved unless domestic water supply is available and a sewage treatment system consistent with sections 12-402 and 12-413 and an approved septic system can be provided for every lot.
- B. Each lot shall meet the minimum lot size and dimensional requirements of Section 12-401, including at least a minimum contiguous lawn area, that is free of limiting factors as identified in the City ordinance sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks shall not be approved.

Sec. 12-503. Information requirements.²⁸³

Sufficient information must be submitted by the applicant for the community to make a determination of land suitability as well as complying with the subdivision ordinance, article VI of this chapter. The information shall include at least the following:

- A. Topographic contours at ten-foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics;
- B. The surface water features required in M.S.A. § 505.02, subd. 1, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;
- C. Adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;
- D. Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling stormwater runoff and erosion and runoff of landscape chemicals including fertilizers, herbicides and pesticides both during and after construction activities;
- E. Location of 100-year floodplain areas and floodway districts from existing adopted maps or data;
- F. A line or contour representing the ordinary high water level, the "toe" and the "top" of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream;
- G. All slopes of 18 percent or greater shall be identified; and
- H. All slopes of 12 percent to 18 percent shall be identified.

²⁸¹ Code 1982, § 303.7.11

²⁸² Code 1982, § 303.7.12

LAND USE

Sec. 12-504. Dedications.²⁸⁴

When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage or ponding areas for management of stormwater and significant wetlands.

Sec. 12-505. Platting.²⁸⁵

All subdivisions as a plat in accordance with M.S.A. ch. 505 and this article: No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as part of a formal subdivision.

Sec. 12-506. Controlled access or recreational lots.²⁸⁶

Lots intended as controlled accesses to public waters or for recreational use areas for use by nonriparian lots within a subdivision shall not be permitted.

Secs. 12-507--12-575. Reserved.

ARTICLE IV.

LOWER ST. CROIX RIVER BLUFFLAND AND SHORELAND MANAGEMENT²⁸⁷

DIVISION 1. GENERALLY

Sec. 12-576. Short title.

This article shall be known, cited and referred to as the Lower St. Croix River Bluffland and Shoreland Management Ordinance; except as referred to herein, where it shall be known as, "This article."

Sec. 12-577. Intent and purpose.²⁸⁸

This article is adopted for the purpose of:

- A. Designating suitable land use districts along the bluffland and shoreland of the Lower St. Croix River.
- B. Regulating the area of a lot, and the length of bluffland and water frontage suitable for building sites.
- C. Regulating the setback of structures and sanitary waste treatment facilities from blufflines to protect the existing and/or natural scenic values, vegetation, soils, water, and bedrock from disruption by manmade structures or facilities.
- D. Regulating the setback of structures and sanitary waste treatment facilities from shorelines to protect the natural scenic value, floodplain, and water quality.
- E. Regulating alterations of the natural vegetation and topography.
- F. Conserving and protecting the natural scenic values and resources of the river valley and maintaining a high standard of environmental quality to comply with state department of natural resources standards and criteria for the Lower St. Croix National Scenic Riverway²⁸⁹

²⁸⁴ Code 1982, § 303.7.14

²⁸⁵ Code 1982, § 303.7.15

²⁸⁶ Code 1982, § 303.7.16

²⁸⁷ **Cross reference**—Subdivision requirements for the Lower St. Croix River shoreland, § 12-1496 et seq.

²⁸⁸ Res. No. 1997-16, § 18, 6-17-97

²⁸⁹ Mn Rules, §§ 6105.0351--6105.0550

LAND USE
AFTON CODE

Sec. 12-578. Existing codes.²⁹⁰

- A. The provisions of this article are in addition to and not in replacement of the provisions of the zoning ordinance, article II of this chapter. Any provisions of the zoning ordinance, article II of this chapter, relating to the Lower St. Croix Riverway shall remain in full force and effect except as they may be contrary to the provisions of this article.
- B. In the village historic site (VHS) district of this article designated in Section 12-636, existing zoning districts in effect and uses permitted on May 1, 1974, by article II of this chapter may again be permitted by the City Council by Conditional Use Permit, subject to the provisions of Mn Rules, § 6105.0510, subp. 2 and approval in writing by the commissioner of natural resources, if they meet the following standards:
1. The proposed use is consistent with and complementary to the existing, adjacent, urban land uses and municipal plans.
 2. The dimensional requirements of Section 12-637.
 3. The sideyard setbacks and frontage requirements of the zoning ordinance, article II of this chapter.
 4. A parking layout and site plan which provides on-site, off-street parking spaces for all employees of the project, an exclusive area for loading docks where required by local ordinance, and off-street customer parking spaces as required by local ordinance.
 5. An on-site grading and surface water run-off plan for the site which minimizes soil erosion and degradation of surface water quality.
 6. In sewerred areas, public sewer will service the proposed project.
 7. A landscaping plan for the site is illustrated which minimizes the visual impact of the proposed project as viewed from the river and which visually screens all parking areas from the river. The applicant shall provide the City with a performance bond for the cost of all landscaping to insure compliance with the landscaping plan.
 8. A public hearing as per Section 12-831 and forwarding of the final action of the local community to the commissioner of natural resources within ten days of the final action.
 9. The project meets all other existing local zoning and subdivision requirements.
 10. The project requires no alteration or fill of shoreline, bluffland, or floodway, except for temporary docking and launching of watercraft.
 11. No lighted or flashing signs shall face riverward.
 12. Detailed plans and specifications as presented at the public hearing are sufficient to obtain all local access, building, zoning, and sewer permits.
- C. In the village historic site (VHS) district, the following are considered Conditionally Permitted Uses:
1. Seasonal business
 2. Cemeteries
 3. Churches
 4. Student housing
 5. Institutional and medical housing
 6. Information centers
 7. Medical uses
 8. Multiple family dwellings with central sewer
 9. Day and school nurseries
 10. Offices
 11. Off-street loading
 12. Parks
 13. Photo studios
 14. Planned unit developments
 15. Recreation areas--Public and semi-public
 16. Retail shopping
 17. Historic or scenic structures
 18. Taverns or bars
 19. Townhouses with central sewer

²⁹⁰ Ord 1997-19, 4/20/99, MS added

LAND USE

20. Utility substations
21. Commercial waterfront uses
22. Marinas
23. Hotels²⁹¹
24. Cafes and restaurants
25. Supper clubs
26. Theaters
27. Nursery and garden supplies (exterior or enclosed sales)²⁹²

D. The following are permitted in the Marine Services District as:

1. Conditionally Permitted Uses – Boat, boat trailer and marine storage and repair, enclosed or screened; single-family residential; and utility substation; and
2. Accessory Uses – Boat, boat trailer and marine sales; off-street loading; and storage, enclosed or screened.

Sec. 12-579. Definitions.²⁹³

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

Appurtenance means a structure subordinate to and serving the principal structure on the same lot and customarily incidental thereto such as garages, decks, essential services, signs, docks, and stairways and lifts, except that appurtenance does not include private water supply and sewage and waste disposal systems below the ground.

Bluffline means a line along the top of a slope connecting the points at which the slope, proceeding away from the river or adjoining watershed channel, becomes less than 12 percent and it only includes slopes greater than 12 percent visible from the river or any watercourse tributary to the river. The location of the bluffline for any particular property shall be certified by a registered land surveyor or the Zoning Administrator. More than one bluffline may be encountered proceeding away from the river or adjoining watershed channel. All setbacks required herein shall be applicable to each bluffline.

Harbor means a portion of a body of water along or landward of the natural shoreline deep enough for recreational watercraft navigation, and so situated with respect to shoreline features as to provide protection from winds, waves, ice, and currents. Natural harbors consist of bays and estuaries, while artificial harbors are constructed by dredging.

Marina and marine services means an area of concentrated small craft mooring, where ancillary facilities may be provided for some or all of such services as fueling, sewage pumpout, boat launching, boat repair, and boat storage; except that marina does not mean temporary docks associated with riparian residential development if the mooring area is of a size not to exceed the resource limitations of the site and the needs of the residents of the development.²⁹⁴

Nonconforming use means any use of land established before the effective date of the ordinance from which this article was derived which does not conform to the use restrictions of a particular zoning district. This should not be confused with substandard dimensions of a conforming use.

Ordinary high water mark means a mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. In areas where the ordinary high water mark is not evident, setbacks shall be measured from the stream bank of the following water bodies that have permanent flow or open water; the main channel, adjoining side channels, backwaters, and sloughs.

Riverway boundary means a legally described line delineating the landward extent of the St. Croix Riverway.

²⁹¹ Code 1982, § 302.103

²⁹² Ord 1997-21, 12/15/98

²⁹³ Code 1982, § 302.01; Res. No. 1997-16, § 18, 6-17-97, **Cross reference(s)**--Definitions generally, § 1-2.

²⁹⁴ Ord 1997-15, 1/19/1999

LAND USE
AFTON CODE

St. Croix Riverway means all lands and public waters within the riverway boundary subject to the standards and criteria for the Lower St. Croix National Scenic Riverway in the state.

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

Screening means the presence of vegetation or topography which makes any structure on any property visually inconspicuous in summer months as viewed from the river.

Slope means all lands between the ordinary high water mark and the riverway boundary having an angle of ascent or descent of more than 12 percent from the horizontal.

Structure means any building or appurtenance thereto, except transmission services.

Substandard structure means any structure established before the effective date of the ordinance from which this article was derived which is permitted within a particular zoning district but does not meet the structure setbacks or other dimensional standards of this article.

Variance means any modification or variation of the dimensional standards of this article where it is determined that, because of practical difficulties, strict enforcement of this article is impractical.²⁹⁵

Visually inconspicuous means difficult to see or not readily noticeable in summer months as viewed from the river.

Watercourse means a channel in which a flow of water occurs either continuously or intermittently. The term applies to either natural or artificially constructed channels.

Sec. 12-580. Substandard structures.

- A. All structures in existence prior to the adoption of the ordinance from which this article was derived which do not meet the structure setbacks and other dimensional standards of this article shall be considered substandard structures.
- B. Any extension, enlargement, or alteration of an existing substandard structure or sanitary facility shall meet the setback standards of this article.
- C. Exceptions to the setback standards for substandard structures may include the following:
 1. An extension, enlargement, or alteration of an existing substandard structure or sanitary facility may be permitted on the side of the structure or facility facing away from the river and/or bluffline.
 2. An improvement to an existing structure or facility may be allowed to extend laterally (parallel to the river or bluff) when the improvement is in compliance with the dimensional standards of this article and the side yard standards of the zoning ordinance, article II of this chapter.
 3. Exterior decks attached to the structure which do not extend any roof or foundation, may be permitted to extend laterally (parallel to the river or bluffline) at the same setback as the substandard structure if such deck is visually inconspicuous in summer months as viewed from the river, and provided the deck has no roof or building foundation.
 4. Substandard structures which do not meet the bluffland and/or shoreland setbacks shall not be raised in elevation or roofline, except in floodplain areas and then only to protect the structure.
- D. If a substandard structure needs replacing due to destruction, deterioration, or obsolescence, such replacement shall comply with the dimensional standards of this article.

²⁹⁵ Ord 02-2014/ 5/20/2014

LAND USE

Sec. 12-581. Substandard lots.²⁹⁶

- A. A lot or parcel of land for which a deed has been recorded in the office of the county recorder on or prior to May 1, 1974, shall be deemed a buildable lot provided:
 - 1. It has frontage on a maintained public right-of-way, maintained by the community or other unit of government, or frontage on a private road which was established prior to May 1, 1974;
 - 2. It is of record in the office of the county recorder prior to May 1, 1974;
 - 3. It can be demonstrated that a proper and adequate sewage disposal system can be installed;
 - 4. The proposed structure can meet the side yard setbacks of the zoning ordinance, article II of this chapter;
 - 5. The preexisting single lot or parcel area dimensions in the rural district shall meet or exceed 60 percent of all of the requirements for a new lot; or in the VHS district, the preexisting single parcel shall meet or exceed 22,500 square feet in area and shall meet or exceed all other dimensional requirements for a new lot in the VHS district.

- B. If in a group of contiguous platted lots under a single ownership, any individual lot does not meet the minimum requirements of this article, such lot cannot be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots under the same ownership so that the combination of lots will:
 - 1. In the rural district equal one or more parcels of land each meeting the full requirements of this ordinance;
or
 - 2. In the village historic site (VHS) district, equal a platted area of 22,500 square feet (three old village platted lots) or more, and all other new lot requirements as listed in Section 12-637.

Sec. 12-582. Color of structures.²⁹⁷

- A. The exterior color of new or renovated structures, including roofs, in the rural district, shall be of earth or summer vegetation tones, unless completely screened from the river by topography.

- B. The exterior color of new or renovated structures in the village historic site (VHS) district shall be consistent with the architectural standards for an historic village center as expressed in the City comprehensive plan and ordinances, provided the structure is screened by vegetation or topography, making it inconspicuous as viewed from the river during the summer months.

Sec. 12-583. Marinas.²⁹⁸

- A. New and or expanded marinas may only be allowed downstream from the northern city limits of Stillwater in urban districts.

- B. New marinas shall meet the design standards of natural resources regulations including Mn Rules, § 6105.0410, subp. z.

- C. No construction or development associated with a marina shall begin until all of the following authorizations have been obtained by the applicant.
 - 1. Marinas shall be a Conditionally Permitted Use in this article.
 - 2. For uses and structures above the ordinary high water mark associated with a marina, a public hearing shall be held by the Council to consider a marina as a Conditionally Permitted Use in accordance with Department of Natural Resources regulations including Mn Rules, § 6105.0530. The Council may approve or deny the marina on such standards of the Department of Natural Resources. If the Council approves the marina, final issuance of the local permit shall be conditioned upon granting of all state and federal permits required in department of natural resources regulations including Mn Rules, § 6105.0410.

²⁹⁶ Code 1982, § 602.02; Res. No. 1997-16, § 18, 6-17-97

²⁹⁷ Code 1982, § 604.02

²⁹⁸ Res. No. 1997-16, § 18, 6-17-97; Ord 1997-15, 1/19/99; Ord 02-2012, 2/21/2012

LAND USE
AFTON CODE

Sec. 12-584. Alterations in public waters.²⁹⁹

Changing the course, current, or cross section of public waters shall require state and federal permits as specified in Mn Rules, § 6105.0420 before any local permits may be issued.

Sec. 12-585. Transmission services.³⁰⁰

A permit from the commissioner is required pursuant to M.S.A. §§ 84.415 or 103G.245 before transmission services may cross state-owned lands or public waters and shall be in accordance with the natural resources regulations including Mn Rules, § 6105.0430.

Sec. 12-586. Public roads.³⁰¹

A permit from the commissioner of natural resources is required before construction, reconstruction, removal, or abandonment of any road or railroad crossing of public waters within the riverway. Such permit shall be in accordance with the natural resources regulations including MN Rules, § 6105.0440.

Sec. 12-587. Requirements for sewage disposal.³⁰²

- A. Any premises intended for human occupancy must be provided with an adequate method of sewage disposal. Public or municipal collection and treatment facilities must be used where available and where feasible. Where public or municipal facilities are not available, all on-site individual sewer disposal systems shall conform to the minimum standards as set forth in Article IX, Section 12-637. A septic tank/drainfield system shall be the only acceptable system for installation unless it can be demonstrated that this system is not feasible on the particular lot in question and it can be demonstrated that the system being proposed as an alternate will not cause a pollution problem.
- B. No person shall install, alter, repair, or extend any individual sewer disposal system without first obtaining a permit therefore³⁰³ from the Zoning Administrator for the specific installation, alteration, repair, or extension.

Sec. 12-588. Conflicting provisions.³⁰⁴

In the event of conflicting provisions in the text of this article, and/or other articles, the more restrictive provision shall apply. The Zoning Administrator shall determine which is more restrictive, and appeals from such determination may be made in the manner provided herein.

Sec. 12-589. Measurement of distances.³⁰⁵

Unless otherwise specified, all distances set forth in this article shall be measured horizontally.

Secs. 12-590--12-635. Reserved.

DIVISION 2. DISTRICTS

Sec. 12-636. Designation of districts.

- A. For the purpose of protecting the natural resources and natural scenic values of the land within the boundaries of the Lower St. Croix Riverway and because there is a difference in development patterns, rural and village historic site (VHS) districts shall be established.

²⁹⁹ Res. No. 1997-16, § 18, 6-17-97

³⁰⁰ Res. No. 1997-16, § 18, 6-17-97

³⁰¹ Res. No. 1997-16, § 18, 6-17-97

³⁰² Code 1982, § 603.02, **Cross reference(s)**--Sewage, § 12-1901 et seq.

³⁰³ Amendment 02-2009, 4/21/2009

³⁰⁴ Code 1982, § 301.01

³⁰⁵ Code 1982, § 301.03

LAND USE

- B. The boundaries of the Lower St. Croix Riverway and the urban and rural zoning districts within the Riverway include all of the land riverward of the legally described boundary line in the official copy of the Lower St. Croix National Scenic Riverway Master Plan and as shown on the map designated as the City of Afton, Lower St. Croix Riverway zoning district map.
- C. The boundaries of the Lower St. Croix Riverway zoning district map designated as the City of Afton, Lower St. Croix Riverway District zoning map published herewith is made a part of this article and is on file with the Zoning Administrator.

Sec. 12-637. Minimum district dimensional requirements.³⁰⁶

- A. The following chart sets forth the minimum area, setbacks, and other requirements of each district:

	Rural	VHS
Minimum lot size above ordinary high-water mark	5 acres	1 acre
Lot width at building setback line	200 feet	150 feet
Lot width at waterline	200 feet	150 feet
Building setback from ordinary high-water mark	200 feet	100 feet
Building setback from bluffline	100 feet	40 feet
On-site sewage treatment system setback from ordinary high-water mark	200 feet	100 feet
On-site sewage treatment system setback from bluffline	40 feet	40 feet
Maximum structure height	35 feet	35 feet
Maximum total lot area covered by impervious surface	10% (1-1/2 acres)	10% of 4,350 s.f., whichever is greater ³⁰⁷
On slopes less than 12 percent, the controlled vegetative cutting areas setback are from:		
Ordinary high water mark	200 feet	100 feet
Blufflines	40 feet	40 feet

- B. No structures shall be placed or grading done on any slopes greater than 12 percent (12 feet vertical rise in 100 feet horizontal distance).
- C. No structures shall be placed in any floodway. Structures proposed within a floodplain shall be consistent with city floodplain ordinance, article V of this chapter, and state floodplain ordinances.
- D. Exceptions to the minimal dimensional requirements include the following:
 - 1. In rural districts, structure setbacks from a bluffline may be reduced up to a minimum of 40 feet when can be demonstrated that no change in the natural appearance of the shoreline, slope, and bluffline will occur and the structure will be visually inconspicuous in summer months as viewed from the river. In reviewing the proposed building site, the City Council, after input from the Zoning Administrator, and in cooperation with an agent of the commissioner of natural resources, and upon recommendation from the Planning Commission after public hearing, may determine that the structure setback can be varied to within the 40 to 100 foot range from a bluffline if the natural appearance of the shoreline, slope, and bluffline is preserved, and the applicant shall agree to donate a scenic easement to the state and maintain the scenic easement in an undisturbed condition and appearance. Such scenic easement shall specify that on all land lying from the proposed building line closest to the river, or property line closest to the river, or such lesser area subject to the easement as may be accepted by the commissioner, no destruction, cutting, trimming, or removal of trees, shrubs, bushes, or plants, and no topographic changes of the

³⁰⁶ Code 1982, § 302.104, Ord. 97-46, 1/15/02, Ord. 46-2004, 8/17/04

³⁰⁷ Ordinance 02-2008, 1/9/2008

LAND USE

AFTON CODE

- natural landscape by excavation, drainage, filling, dumping or any other means shall occur without a written authorization from the commissioner of natural resources.
2. Permitted public facilities which by their nature require a location on or adjacent to the public waters and which also require approval of the commissioner of natural resources.
 3. Temporary or seasonal docks which extend into the water a minimum distance necessary for the launching or mooring of watercraft.
 4. Signs which are necessary for public health and safety or which designate areas available or not available for public use.
 5. Visually inconspicuous stairways and lifts enabling access to the river from steep slopes.
 6. On blufflines or shorelines with substandard adjacent structures on both sides of a vacant, substandard lot, any new structure on the vacant lot shall be setback the average setback of the adjacent structures plus 40 feet or the minimum standard setback, whichever is less.
 7. The maximum height limitations for churches and other places of worship shall be as follows:
 - a. A maximum height of thirty-five (35) feet for the occupied area of the structure;
 - b. A maximum height of fifty (50) feet for the structural elements;
 - c. A maximum height of sixty (60) feet for the following non-structural elements: spires or steeples, belfries or bell towers, cupolas, crosses or other religious symbols or decorative elements;

Secs. 12-638--12-700. Reserved.

DIVISION 3. USES

Sec. 12-701. Purpose.

The purpose of establishing standards and criteria for uses in the St. Croix Riverway shall be to protect and preserve existing natural, scenic, and recreational values, to maintain proper relationships between various land use types, and to prohibit new residential, commercial, or industrial uses that are inconsistent with the National Wild and Scenic Rivers Act, and the federal and state Lower St. Croix River Acts.

Sec. 12-702. Permitted uses.

All structures associated with the following uses are permitted in the St. Croix Riverway, subject to the dimensional requirements of this article:

- A. Conservancy.
- B. Agriculture.
- C. Single-family residential.

Sec. 12-703. Site preservation.

The following standards and criteria are provided to preserve vegetative and topographical screening, and to retard surface run-off, soil erosion, and nutrient loss.

Sec. 12-704. Vegetative cutting.

- A. On land within 200 feet of the ordinary high water mark in rural districts, 100 feet of the ordinary high water mark in urban districts, and 40 feet landward of blufflines and on slopes greater than 12 percent in all districts, there shall be no vegetative cutting of live trees or shrubs without a vegetative cutting permit from the City Zoning Administrator. A permit may be issued only if:
 1. The cutting, including topping, involves trees less than six inches in diameter at breast height;
 2. The cutting, including topping, involves vegetation which is not screening any structure from view from the river;
 3. The essential character, quality, and density of existing growths is preserved and continuous canopy cover is maintained;
 4. Diseased trees are to be removed, and their removal is in the public interest; or

LAND USE

5. The cutting is necessary for the maintenance of transportation or utility rights-of-way.
- B. A vegetative cutting permit is not required for the following provided the existing quality, character, density, and canopy is maintained as viewed from the river:
 1. Clearing for a validly permitted structure, septic system, roadway, and parking areas.
 2. Maintenance trimming or pruning on a particular parcel or in transportation or utility rights-of-way.

Sec. 12-705. Grading and filling.

- A. Grading, filling, excavating, or otherwise changing the topography landward of the ordinary high water mark shall not be conducted without a grading permit from the City Zoning Administrator. A grading permit may be issued only if:
 1. Slopes greater than 12 percent (12 feet vertical rise in 100 horizontal feet) are preserved to the greatest extent possible;
 2. Earthmoving, erosion, vegetative cutting, draining or filling of wetlands, and the destruction of natural amenities is minimized;
 3. The smallest amount of ground is exposed for as short a time as feasible;
 4. During construction, temporary ground cover, such as mulch is used and permanent ground cover, such as sod, is planted upon completion;
 5. Methods to prevent erosion and trap sediment are employed; and
 6. Fill is stabilized to accepted engineering standards.
- B. A separate grading and filling permit is not required for grading, filling, or excavating the minimum area necessary for a structure, sewage disposal system, and private road and parking area undertaken pursuant to a validly issued building permit.

Sec. 12-706. Conditionally Permitted Uses.³⁰⁸

- A. *Determination.* Conditionally Permitted Uses are uses which normally are not permitted in the urban or rural districts of the St. Croix Riverway unless it is determined by the City Council, after a public hearing before the Planning Commission, that the proposed use shall:
 1. Preserve the scenic and recreational resources of the St. Croix Riverway, especially in regard to the view from and use of the river.
 2. Maintain safe and healthful conditions.
 3. Limit erosion potential of the site based on degree and direction of slope, soil type and vegetative cover.
- B. *Urban district Conditionally Permitted Uses.* "Urban districts" shall mean village historic site (VHS) district special uses. In the VHS district, the Conditionally Permitted Uses listed in Section 12-578(C) may be permitted as special uses, in accordance with Section 12-578(B).
- C. *Rural district Conditionally Permitted Uses.* In rural districts of this article, the following uses may be permitted as Conditional Uses:
 1. Governmental resource management and interpretative activities.
 2. Governmental highway waysides, rest areas, information areas and scenic overlooks.
 3. Marine services in the Riverway District.

Sec. 12-707. Prohibited uses.

In all districts within the St. Croix Riverway, the following new uses or expansion of existing uses shall be prohibited:

- A. Sand and gravel operations.

³⁰⁸ Res. No. 1997-16, § 18, 6-17-97, (Ord 1997-15, 1/19/99)

LAND USE
AFTON CODE

- B. Junkyards.
- C. Mobile home parks.
- D. Downhill ski areas.
- E. Downstream from Stillwater in rural districts.
- F. All uses not authorized in the local zoning ordinances.

(Ord 02-2012, § 12-707, 2/21/2012)

Sec. 12-708. Nonconforming uses.

Uses which are prohibited by this article but which are in existence prior to the effective date of the ordinance from which this article was derived shall be nonconforming uses and may continue as lawful, nonconforming uses. Such uses shall not be intensified, enlarged, or expanded beyond the permitted or delineated boundaries of the use, activity, or reclamation plan as stipulated in the most current permit issued prior to the adoption of the ordinance from which this article was derived.

Secs. 12-709--12-830. Reserved.

DIVISION 4. ADMINISTRATION

Sec. 12-831. Administrative procedure.³⁰⁹

- A. In addition to the applicable administrative procedures set forth in the zoning ordinance, article II of this chapter, the following procedures shall be implemented with respect to land, subject to this article:
 - 1. A public hearing shall be held by the Planning Commission for all zoning district amendments, Conditional Use Permits, subdivision, and variances.
 - 2. No less than 20 days prior to the public hearing, the City Zoning Administrator shall send notice and copies of the applicants information as specified in Section 12-836 to the following agencies for review and comment:
 - a. Department of natural resources.
 - b. The Planning Commission.
 - c. Minnesota/Wisconsin Boundary Area Commission.
- B. The applicant for any permit requiring a public hearing shall submit to the Council at least 30 days prior to such hearing, an abstractors certificate showing the names and addresses of all property owners within 500 feet of the affected, in incorporated areas, or one-half mile in unincorporated areas, the affected board of town supervisors, and the City Council of any city within two miles of the affected property.
- C. Notice of the purpose, time, and place of any such public hearing shall be mailed to all property owners and the elected officials listed in Subsection (B) of this section by the local authority at least ten days prior to the date of the hearing.
- D. Notice of the purpose, time, and place of any such public hearing shall be published in the official newspaper of the affected communities at least ten days prior to the date of the hearing.

Sec. 12-832. Certification by the commissioner.³¹⁰

Before any zoning district or ordinance amendment or variance becomes final, the Council shall forward the decision to the commissioner. The commissioner of natural resources shall certify in writing that the proposed action complies

³⁰⁹ Res. No. 1997-16, § 18, 6-17-97

³¹⁰ Res 1997-16, § 18, 6/17/1997

LAND USE

with the intent of the Wild and Scenic Rivers Acts and the master plan for the Lower St. Croix River in the manner specified in department of natural resources regulations, including Mn Rules, § 6105.0540.

Sec. 12-833. Forwarding of a final decision.

The local Board of Adjustment and appeals shall forward decisions within ten days of final action on all conditional use permits and subdivisions to the commissioner of natural resources.

Sec. 12-834. Permit process.

The permit process for urban and rural districts shall be as follows:

Permits	Urban District	Rural District
Building permits	LP	LP
Septic permits	LP	LP
Grading permits	LP	LP
Tree cutting permits	LP	LP
Conditional Use Permits ³¹¹	PH-FD	PH-FD
Amendments to ordinance	PH-CC	PH-CC
Amendments to district boundary	PH-CC	PH-CC
Plats and cluster developments	PH-WA-FD	PH-WA-FD
Variances	PH-CC	PH-CC

- LP - Permit issued by the local authority in accordance with this article and all other local permits.
- CC - Certification by the commissioner of natural resources prior to final local approval.
- PH - Public hearing necessary by the local authority giving 20 days notice of meeting to the commissioner of natural resources and other agencies listed in Section 12-831(A)(2).
- FD - Local authority forwards any decisions to the commissioner of natural resources within ten days after taking final action.
- WA - The commissioner of natural resources shall submit, after notice of public hearing and before the local authority gives preliminary approval, a written review and approval of the project.

Sec. 12-835. Variances.³¹²

- A. Variances shall only be granted where there are practical difficulties which make the strict enforcement of this article impractical, and only when such variances are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the Comprehensive Plan. “Practical difficulties” as used in connection with the granting of a variance includes a three-factor test, all three of which must be met in order for a variance to be granted.
 - a. Reasonableness: The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.
 - b. Uniqueness: The plight of the landowners is due to circumstances unique to the property not created by the landowner.
 - c. Essential Character: The variance, if granted, will not alter the essential character of the locality.
- B. Economic considerations alone shall not constitute a practical difficulty if a reasonable use of the property and associated structures exists under the conditions allowed by this article. In addition, no variance shall be granted that would permit any use that is prohibited in this article in which the subject property is located. Conditions may be imposed in the granting of a variance to insure compliance and to protect adjacent properties and the public interest, especially in regard to the view from the river.

³¹¹ Ord 1997-15, 1/19/1999

³¹² Ord 02-2014, 5/20/2014

LAND USE

AFTON CODE

- C. The formal public hearing for a variance shall be held by the Planning Commission as set forth in the zoning ordinance, article II of this chapter.

Sec. 12-836. Requirements for public hearing.

The applicant shall submit sufficient copies of the following information and additional information if requested to the local authority 30 days prior to the public hearing on the application for a special use, variance, or subdivision:

- A. Plat of survey showing the property location, boundaries, dimensions, elevations, blufflines, utility and roadway corridors, the ordinary high water mark, floodway, and floodplain.
- B. The most recent aerial photo of the property with property lines drawn in.
- C. Location of existing and proposed structures including height and setback dimensions.
- D. Location of existing and proposed alterations of vegetation and topography.
- E. Adjoining water-oriented uses.
- F. Suitability of the area for on-site waste disposal. Type, size, and location of the system shall be indicated. If a public or municipal wastewater collection and treatment system is to be utilized, the applicant must submit a written agreement from the municipality or sanitary authority indicating that the system has the capacity to handle the development.
- G. Water supply system.
- H. An estimate of permanent and transient residents.

Sec. 12-837. Factors considered.

When considering a proposal or zoning amendment within the St. Croix River District, the Council shall address the following items in making its decisions:

- A. Preserving the scenic and recreational resources of the St. Croix Riverway, especially in regard to the view from and use of the river.
- B. The maintenance of safe and healthful conditions.
- C. The prevention and control of water pollution, including sedimentation.
- D. The location of the site with respect to floodways, floodplains, slopes, and blufflines.
- E. The erosion potential of the site based on degree and direction of slope, soil type, and vegetative cover.
- F. Potential impact on game and fish habitat.
- G. Location of the site with respect to existing or future access roads.
- H. The amount of wastes to be generated and the adequacy of the proposed disposal systems.
- I. The anticipated demand for police, fire, medical, and school services and facilities.
- J. The compatibility of the proposed development with uses on adjacent land.

Secs. 12-838--12-900. Reserved.

ARTICLE V. FLOODPLAIN REGULATIONS

LAND USE

DIVISION 1. GENERALLY

Sec. 12-901. Statutory authorization.

The legislature of the State of Minnesota has, in Minnesota Statutes, Chapters 103F and 462 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the City Council of the City of Afton, Minnesota does ordain as follows:

Sec. 12-902. Findings of Fact.

- A. The flood hazard areas of the City of Afton are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures or flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. Methods Used to Analyze Flood Hazards. This article is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.
- C. National Flood Insurance Program Compliance. This Article is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 - 78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

Sec. 12-903. Statement of Purpose.

It is the purpose of this Article to promote the public health, safety, and general welfare and to minimize those losses described in Section 12-902(A) by provisions contained herein.

Sec. 12-904. Scope of application.

Lands to Which Ordinance Applies: This Article shall apply to all lands within the jurisdiction of the City of Afton shown on the Official Zoning Map and/or the attachments thereto as being located within the boundaries of the Floodway, Flood Fringe, or General Flood Plain Districts.

Sec. 12-905. Establishment of Official Zoning Map.

The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this Article. The attached material shall include the Flood Insurance Study, Washington County, Minnesota And Incorporated Areas and Flood Insurance Rate Map Panels therein numbered 27163C0354E, 27163C0355E, 27163C0358E, 27163C0361E, 27163C0362E, 27163C0365E, 27163C0366E, 27163C0367E, 27163C0368E, 27163C0369E, 27163C0430E, 27163C0431E, and 27163C0432E, all dated February 3, 2010 and prepared by the Federal Emergency Management Agency. The Official Zoning Map shall be on file in the Office of the Afton City Clerk and the Zoning Administrator.

Sec. 12-906. Regulatory Flood Protection Elevation.

The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

Sec. 12-907. Interpretation.

- A. In their interpretation and application, the provisions of this Article shall be held to be minimum requirements and shall be liberally construed in favor of the Governing Body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.
- B. The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Zoning Map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of

LAND USE
AFTON CODE

Adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile, the ground elevations that existed on the site at the time the Community adopted its initial floodplain ordinance or on the date of the first National Flood Insurance Program map showing the area within the 100-year floodplain if earlier, and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the Board of Adjustment and to submit technical evidence.

Sec. 12-908. Abrogation and Greater Restrictions.

It is not intended by this Article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article imposes greater restrictions, the provisions of this Article shall prevail. All other ordinances inconsistent with this Article are hereby repealed to the extent of the inconsistency only.

Sec. 12-909. Warning and Disclaimer of Liability.

This Article does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This Article shall not create liability on the part of the City of Afton or any officer or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

Sec. 12-910. Severability.

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

Sec. 12-911. Definitions.

Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Article its most reasonable application.

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

Accessory Use or Structure - a subordinate building or structure which is located on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

Basement - means any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

Conditional Use - means a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that:

- A. Certain conditions as detailed in the zoning ordinance exist.
- B. The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.

Equal Degree of Encroachment - a method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

Flood - a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

Flood Flow Line – means general direction the flow of the flood water

Flood Frequency - the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

LAND USE

Flood Fringe - that portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study for Washington County, Minnesota and Incorporated Areas.

Flood Plain - the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

Flood Proofing - a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.

Lowest Floor - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.

Manufactured Home - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."

Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

Principal Use or Structure - means the main use of land or main structure erected on the land for an activity which is an allowable use in the zoning district in which the land is located.

Reach - a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

Recreational Vehicle - a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this Article, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.

Regional Flood - a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.

Regulatory Flood Protection Elevation - shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, and other similar items.

Substantial Damage - means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

LAND USE

AFTON CODE

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
- B. Any alteration of an “historic structure,” provided that the alteration will not preclude the structure’s continued designation as an “historic structure.” For the purpose of this Article, “historic structure” shall be as defined in 44 Code of Federal Regulations, Part 59.1.

*Variance*³¹³ - means a modification of a specific permitted development standard required in an official control including this Article to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a practical difficulty as defined and elaborated upon in a community's respective planning and zoning enabling legislation.

Sec. 12-912. Nonconforming Uses.

- A. A structure or the use of a structure or premises which was lawful before the passage or amendment of this Article but which is not in conformity with the provisions of this Article may be continued subject to the following conditions. Historic structures, as defined in Section 12-911 of this Article, shall be subject to the provisions of Section 12-912.A.1 – Section 12-912.A.5 of this Article.
 1. No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity.
 2. Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 thru FP-4 flood proofing classifications) allowable in the State Building Code, except as further restricted in 12-912(3) and 12-913(6) below.
 3. The cost of all structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of the structure, then the structure must meet the standards of Division 2, Subdivision II and Subdivision III of this Article for new structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.
 4. If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this Article. The Assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses that have been discontinued for a period of 12 months.
 5. If any nonconforming use or structure is substantially damaged, as defined in Section 12-911 of this Article, it shall not be reconstructed except in conformity with the provisions of this Article. The applicable provisions for establishing new uses or new structures in Division 2, Subdivisions II-IV will apply depending upon whether the use or structure is in the Floodway, Flood Fringe or General Flood Plain District, respectively.
 6. If a substantial improvement occurs, as defined in Section 12-911 of this Article, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of Division 2, Subdivision II or III of this Article for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

Sec. 12-913. Manufactured homes, mobile homes, travel trailers, etc., prohibited.

Manufactured homes, manufactured home parks, mobile homes, mobile home parks, travel trailers and travel vehicles and travel trailer and travel vehicle parks and campgrounds shall not be permitted in any floodplain within the City.

Sec. 12-914. Penalties for Violation.

³¹³ Ord 02-2014, 5/20/2014

LAND USE

- A. Violation of the provisions of this Article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law.
- B. Nothing herein contained shall prevent the City of Afton from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:
1. In responding to a suspected Ordinance violation, the Zoning Administrator and Local Government may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The Community must act in good faith to enforce these official controls and to correct Ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.
 2. When an Ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources' and Federal Emergency Management Agency Regional Office along with the Community's plan of action to correct the violation to the degree possible.
 3. The Zoning Administrator shall notify the suspected party of the requirements of this Article and all other official controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the Community. If the construction or development is already completed, then the Zoning Administrator may either: (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls; or (2) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30-days.
 4. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Article and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this Article.

Sec. 12-915. Annexations.

The Flood Insurance Rate Map panels adopted by reference into Section 12-905 above may include floodplain areas that lie outside of the corporate boundaries of the City of Afton at the time of adoption of this Article. If any of these floodplain land areas are annexed into the City of Afton after the date of adoption of this Article, the newly annexed floodplain lands shall be subject to the provisions of this Article immediately upon the date of annexation into the City of Afton.

Sec. 12-916. Amendments.

The floodplain designation on the Official Zoning Map shall not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources if he determines that, through other measures, lands are adequately protected for the intended use.

All amendments to this Article, including amendments to the Official Zoning Map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to this Article and said notice shall include a draft of the Ordinance amendment or technical study under consideration.

LAND USE
AFTON CODE

DIVISION 2. FLOODPLAIN DISTRICT

Subdivision I. Generally

Sec. 12-917. Establishment of Districts.

- A. Floodway District. The Floodway District shall include: 1) those areas designated as floodway on the Flood Insurance Rate Map adopted in Section 12-905; and 2) those areas designated as Zone AE on the Flood Insurance Rate Map adopted in Section 12-905 that lie below the ordinary high water level of the St. Croix River as defined in Minnesota Statute, Section 103G.005, subd. 14, except as further modified in Section 12-917 of this Article.
- B. Flood Fringe District. The Flood Fringe District shall include: 1) those areas that are designated as Zone AE on the Flood Insurance Rate Map adopted in Section 12-905 that lie outside of a delineated floodway; and 2) those areas designated as Zone AE on the Flood Insurance Rate Map as adopted in Section 12-905 that lie above the ordinary high water level of the St. Croix River as defined in Minnesota Statute 103G.005, subd. 14 and that lie below the 100-year flood elevation, except as further modified in Section 12-917 of this Article.
- C. General Flood Plain District. The General Flood Plain District shall include those areas on the Flood Insurance Rate Map adopted in Section 12-905 shown as Zone A, Zone AE without a delineated floodway and Zone AE areas that are adjacent to the mouth of Valley Branch Creek generally defined as downstream of St. Croix Trail South to the point where the channel of Valley Branch Creek enters the main channel of the St. Croix River.

Sec. 12-918. Compliance.

No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this Article and other applicable regulations which apply to uses within the jurisdiction of this Article. Within the Floodway, Flood Fringe and General Flood Plain Districts, all uses not listed as permitted uses or conditional uses in Division 1, Subdivision II - III that follow, respectively, shall be prohibited. In addition, a caution is provided here that:

- A. New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are not permitted in any floodplain within the City.³¹⁴
- B. Modifications, additions, structural alterations, normal maintenance and repair, or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this Article and specifically Section 12-912.
- C. As-built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this Article and specifically as stated in Division 5 of this Article.

Sec. 12-919 - 12-1000. Reserved.

Subdivision II. Floodway District (FW).

Sec. 12-1001. Permitted Uses.

- A. General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- B. Industrial-commercial loading areas and parking areas.

³¹⁴ Code 1982, § 306.901, Cross reference(s) – Building and building regulations, § 12-1771 et seq.

LAND USE

- C. Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.
- D. Residential lawns, gardens, parking areas, and play areas.

Sec. 12-1002. Standards for Floodway Permitted Uses.

- A. The use shall have a low flood damage potential.
- B. The use shall be permissible in the underlying zoning district if one exists.
- C. The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

Sec. 12-1003. Conditional Uses.

- A. Structures accessory to the uses listed in Section 12-1001 above and the uses listed in 2-7 below.
- B. Extraction and storage of sand, gravel, and other materials.
- C. Marinas, boat rentals, docks, piers, wharves, and water control structures.
- D. Railroads, streets, bridges, utility transmission lines, and pipelines.
- E. Storage yards for equipment, machinery, or materials.
- F. Placement of fill or construction of fences.
- G. Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.

Sec. 12-1004. Standards for Floodway Conditional Uses.

- A. All Uses. No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials or equipment, or other uses may be allowed as a conditional use that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected.
- B. All floodway conditional uses shall be subject to the procedures and standards contained in Section 12-1021 of this Article.
- C. The conditional use shall be permissible in the underlying zoning district if one exists.
- D. Fill:
 - 1. Fill, dredge spoil, and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.
 - 2. Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.
 - 3. As an alternative, and consistent with Subsection (B) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Governing Body has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The conditional use permit must be title registered with the property in the Office of the County Recorder.

LAND USE
AFTON CODE

E. Accessory Structures:

1. Accessory structures shall not be designed for human habitation.
2. Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:
 - a. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and,
 - b. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
3. Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size at its largest projection, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards:
 - a. The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;
 - b. Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly flood proofed; and
 - c. To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

F. Storage of Materials and Equipment:

1. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
2. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.

G. Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statute, Chapter 103G. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.

H. A levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

Subdivision III. Flood Fringe District (FF).

Sec. 12-1005. Permitted Uses.

Permitted uses shall be those uses of land or structures listed as permitted uses in the underlying zoning use district(s). If no pre-existing, underlying zoning use districts exist, then any residential or non residential structure or use of a structure or land shall be a permitted use in the Flood Fringe District provided such use does not constitute a public nuisance. All permitted uses shall comply with the standards for Flood Fringe District "Permitted Uses" listed in Section 12-1006 and the "Standards for all Flood Fringe Uses" listed in Section 12-1009.

Sec. 12-1006. Standards for Flood Fringe Permitted Uses.

- A. All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the regulatory flood protection elevation and the fill shall

LAND USE

extend in all directions at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.

- B. As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet at its largest projection may be internally flood proofed in accordance with Section 12-1004(5) (C).
- C. The cumulative placement of fill where at any one time in excess of one-thousand (1,000) cubic yards of fill is located on the parcel shall be allowable only as a conditional use, unless said fill is specifically intended to elevate a structure in accordance with Section 12-1006 of this Article.
- D. The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.
- E. The provisions of Section 12-1009 of this Article shall apply.

Sec. 12-1007. Conditional Uses.

Any structure that is not elevated on fill or flood proofed in accordance with Section 12-1006(A) and (B) and or any use of land that does not comply with the standards in Section 12-1006 (C) and (D) shall only be allowable as a conditional use. An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in Sections 12-1008 through 12-1009 and 12-1021 of this Article.

Sec. 12-1008. Standards for Flood Fringe Conditional Uses.

- A. Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) it is designed to internally flood and is constructed with flood resistant materials; and 3) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:
 - 1. Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
 - 2. Specific Standards for Above-grade, Enclosed Areas - Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:
 - a. A minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one-foot above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention; and
 - b. That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.
- B. Basements, as defined by Section 12-911 of this Article, shall be subject to the following:
 - 1. Residential basement construction shall not be allowed below the regulatory flood protection elevation.
 - 2. Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry flood proofed in accordance with Section 12-1008 (C) of this Article.

LAND USE

AFTON CODE

- C. All areas of non residential structures including basements to be placed below the regulatory flood protection elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted.
- D. When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the Governing Body. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.
- E. Storage of Materials and Equipment:
 - 1. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
 - 2. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.
- F. The provisions of Section 12-1009 of this Article shall also apply.

Sec. 12-1009. Standards for All Flood Fringe Uses.

- A. All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the regulatory flood protection elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.
- B. Commercial Uses - accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four (4) upon occurrence of the regional flood.
- C. Manufacturing and Industrial Uses - measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in Section 12-1009(B) above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.
- D. Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- E. Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.

LAND USE

Subdivision IV. General Flood Plain District.

Sec. 12-1010. Permissible Uses.

- A. The uses listed in Section 12-1001 of this Article shall be permitted uses.
- B. All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to Section 12-1011 below. Division 2, Subdivision II shall apply if the proposed use is in the Floodway District and Division 2, Subdivision III shall apply if the proposed use is in the Flood Fringe District.

Sec. 12-1011. Procedures for Floodway and Flood Fringe Determinations Within the General Flood Plain District.

- A. Upon receipt of an application for a permit or other approval within the General Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the Floodway or Flood Fringe District.
 1. A typical valley cross-section(s) showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.
 2. Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.
 3. Photographs showing existing land uses, vegetation upstream and downstream, and soil types.
 4. Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.
- B. The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the Floodway or Flood Fringe District and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
 1. Estimate the peak discharge of the regional flood.
 2. Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
 3. Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A stage increase less than .5' shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
- C. The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Governing Body. The Governing Body must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application. The Governing Body, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the Floodway and Flood Fringe District Boundaries have been determined, the Governing Body shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of Division 2, Subdivisions II and III of this Article.

DIVISION 3. SUBDIVIDING PROPERTY.

Sec. 12-1012. Land Suitability Review Criteria.

LAND USE
AFTON CODE

No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Article and have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation. For all subdivisions in the flood plain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

Sec. 12-1013. Requirements for Floodway/Flood Fringe Determinations in the General Flood Plain District.

In the General Flood Plain District, applicants shall provide the information required in Section 12-1011 of this Article to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.

Sec. 12-1014. Removal of Special Flood Hazard Area Designation.

The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

DIVISION 4. PUBLIC SERVICES.

Sec. 12-1015. Public Utilities.

All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood proofed in accordance with the State Building Code or elevated to above the regulatory flood protection elevation.

Sec. 12-1016. Public Transportation Facilities.

Railroad tracks, roads, and bridges to be located within the flood plain shall comply with Division 2, Subdivisions II and III of this Article. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

Sec. 12-1017. On-site Sewage Treatment and Water Supply Systems.

Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.

DIVISION 5. ADMINISTRATION.

Sec. 12-1018. Zoning Administrator.

A Zoning Administrator or other official designated by the Governing Body shall administer and enforce this Article. If the Zoning Administrator finds a violation of the provisions of this Article the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in Section 12-914 of this Article.

LAND USE

Sec. 12-1019. Permits, Certification Requirements and Record Keeping.

- A. **Permit Required.** A Permit issued by the Zoning Administrator in conformity with the provisions of this Article shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system; prior to the change or extension of a nonconforming use; prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.
- B. **Application for Permit.** Application for a permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.
- C. **State and Federal Permits.** Prior to granting a permit or processing an application for a conditional use permit or variance, the Zoning Administrator shall determine that the applicant has obtained all necessary state and federal permits.
- D. **Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use.** It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a certificate of zoning compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Article.
- E. **Construction and Use to be as Provided on Applications, Plans, Permits, Variances and Certificates of Zoning Compliance.** Permits, conditional use permits, or certificates of zoning compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Article, and punishable as provided by Section 12-914 of this Article.
- F. **Certification.** The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Article. Flood proofing measures shall be certified by a registered professional engineer or registered architect.
- G. **Record of First Floor Elevation.** The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures or alterations and additions to structures are flood proofed.
- H. **Notifications for Watercourse Alterations.** The Zoning Administrator shall notify, in riverine situations, adjacent communities and the Commissioner of the Department of Natural Resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
- I. **Notification to FEMA When Physical Changes Increase or Decrease the 100-year Flood Elevation.** As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

Sec. 12-1020. Appeals and Variances/Duties of the Board of Adjustment.³¹⁵

³¹⁵ Ord 02-2014, 5/20/2014

LAND USE

AFTON CODE

- A. Rules. The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by State law.
- B. Administrative Review. The Board of Adjustment shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this Article.
- C. Variances.³¹⁶ The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this Article as will not be contrary to the public interest and only for practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this Article, any other zoning regulations in the Community, and in the respective enabling legislation that justified the granting of the variance. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:
1. Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 2. Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in practical difficulties for the applicant, as defined and elaborated upon in a community's respective planning and zoning enabling legislation, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- E. Hearings. Upon filing with the Board of Adjustment of an appeal from a decision of the Zoning Administrator, or an application for a variance, the Board of Adjustment shall fix a reasonable time for a hearing and give due notice to the parties in interest as specified by law. The Board of Adjustment shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variances sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.
- F. Decisions. The Board of Adjustment shall arrive at a decision on such appeal or variance within 60 days. In passing upon an appeal, the Board of Adjustment may, so long as such action is in conformity with the provisions of this Article, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Administrator or other public official. It shall make its decision in writing setting forth the findings of fact and the reasons for its decisions. In granting a variance the Board of Adjustment may prescribe appropriate conditions and safeguards such as those specified in Section 12-1021, which are in conformity with the purposes of this Article. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Article punishable under Section 12-914. A copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
- G. Appeals. Appeals from any decision of the Board of Adjustment may be made, and as specified in this community's official controls and also by Minnesota Statutes.
- H. Flood Insurance Notice and Record Keeping. The Zoning Administrator shall notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and 2) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

LAND USE

Sec. 12-1021. Conditional Uses-Standards and Elevation Procedures.

The Afton City Council shall hear and decide applications for conditional uses permissible under this Article. Applications shall be submitted to the Zoning Administrator who shall forward the application to the Planning Commission for consideration.

- A. Hearings. Upon filing with the City of Afton an application for a conditional use permit, the Zoning Administrator shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed conditional use sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.
- B. Decisions. The City Council shall arrive at a decision on a conditional use within 60 days after the public hearing. In granting a conditional use permit the City Council shall prescribe appropriate conditions and safeguards, in addition to those specified in Section 12-1021(C)(6), which are in conformity with the purposes of this Article. Violations of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this Article punishable under Section 12.914. A copy of all decisions granting conditional use permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
- C. Procedures to be followed by the City Council in Passing on Conditional Use Permit Applications within all Flood Plain Districts.
 1. Require the applicant to furnish such of the following information and additional information as deemed necessary by the City Council for determining the suitability of the particular site for the proposed use:
 - a. Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the stream channel; and
 - b. Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
 2. Transmit one copy of the information described in Subsection (A) to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.
 3. Based upon the technical evaluation of the designated engineer or expert, the City Council shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.
 4. Factors Upon Which the Decision of the City Council Shall Be Based. In passing upon conditional use applications, the City Council shall consider all relevant factors specified in other sections of this Article, and:
 - a. The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - b. The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.
 - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - e. The importance of the services provided by the proposed facility to the community.
 - f. The requirements of the facility for a waterfront location.
 - g. The availability of alternative locations not subject to flooding for the proposed use.
 - h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - i. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
 - j. The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - k. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - l. Such other factors which are relevant to the purposes of this Article.

LAND USE

AFTON CODE

5. Time for Acting on Application. The City Council shall act on an application in the manner described above within 60 days from receiving the application, except that where additional information is required pursuant to Section 12-1021(C) of this Article. The City Council shall render a written decision within 60 days from the receipt of such additional information.
6. Conditions Attached to Conditional Use Permits. Upon consideration of the factors listed above and the purpose of this Article, the City Council shall attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this Article. Such conditions may include, but are not limited to, the following:
 - a. Modification of waste treatment and water supply facilities.
 - b. Limitations on period of use, occupancy, and operation.
 - c. Imposition of operational controls, sureties, and deed restrictions.
 - d. Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
 - e. Flood proofing measures, in accordance with the State Building Code and this Article. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

Sec. 12-1022 – 12-1250. Reserved.

ARTICLE VI. SUBDIVISIONS³¹⁷

DIVISION 1. GENERALLY

Sec. 12-1251. Purpose of article.³¹⁸

The City of Afton is in Washington County, on the eastern edge of the St. Paul-Minneapolis area. The southwestern portion of the City is largely agricultural and the remainder is largely rural residential. In its comprehensive development plan the City's goals are stated as retention of the rural and residential nature of the City and preservation of the natural environment. To these ends ordinances have been passed which encourage low density housing, the continued farming of productive agricultural land and the avoidance of any developments which might necessitate central sewer and water systems and other urban services. Like its other ordinances, the City's subdivision regulations reflect the City's goals and serve as means for achieving them.

Sec. 12-1252. Basis of need.³¹⁹

- A. In the past land has been bought and sold using metes and bounds descriptions, but now with smaller parcels being bought and sold the practice of describing them by metes and bounds is no longer practical.
- B. Many metes and bounds descriptions, past and present, written by unqualified people do not properly describe conveyance of land. Overlaps and gaps have been created by these poor descriptions and can only be corrected by the courts. Descriptions based on a good boundary survey can be checked, therefore the record plat is a highly desirable instrument. The underlying description of the property to be platted can be adjusted or corrected, based on a boundary survey. The recorded plat then becomes a legal document denoting lots and blocks as the subdivision of the described tract of land. Clean, simple and accurate conveyances can then be made and described as Lot, Block-Plat Name.
- C. The present platting system was established to provide a simple system for keeping records of the division and ownership of land. State statutes give the registered land surveyor exclusive rights to prepare plats. The statutes also set minimum standards that the surveyor must meet, and regulate the plat itself, as to information

³¹⁷ **Cross references**—Subdivision requirements for shoreland management, § 12-501 et seq.; floodplain regulations, § 12-901 et seq.; subdivision requirements for floodplain district, § 12-1201 et seq.; utilities, ch. 24.

State law reference—Authority to regulate the subdivision of land, M.S.A. § 462.358.

³¹⁸ Code 1982, § 305.100

LAND USE

required, size, number and kind. The reader is referred to M.S.A. chapter 505 and the standard procedures for platting in the county.

Sec. 12-1253. Basic procedures.³²⁰

- A. Prior to the preparation of a plat, the subdividers or owners shall meet with local officials, with the planning staff and City Engineer in order to be made fully aware of all applicable ordinances, regulations, and plans in the area to be subdivided. At this time the subdivider should submit a general sketch plan of the proposed subdivision to the Planning Commission and the relevant subcommittees. The sketch plan can be presented in such form as to show that consideration has been given to the neighboring subdivisions, adjacent land and to the topography of the site. The subdivider is urged to avail himself of the advice and assistance of the City Administrator, planning consultant, and other advisors in order to save time and effort and facilitate the approval of the plat.
- B. Upon agreement in concept of the sketch plan by the Planning Commission, the subdivider may prepare a preliminary plat for the area to be subdivided.
- C. The preliminary plat is a very detailed drawing showing the proposed development and necessary information. It contains more details than is required on the sketch plan and serves as the basis for the public hearing. It also serves as the master plan for a development where subdividing a piece of land is carried out step-by-step, by a series of plats, where the first plat which is approved and recorded may be only part of the total plan and may later be followed by other plats, all in conformity with the overall plan.
- D. After the preliminary plat is approved, the subdivider will have his surveyor prepare a final plat covering all or part of the land to be subdivided. The final plat is a legal document designed primarily to record in the county offices the exact boundaries and location of parcels of land. Before the City will approve the plat, it will usually require the subdivider to agree to do certain things, such as pave streets. The City will make sure that all such matters are agreed to by the subdivider, and are covered as necessary by written contract, and by bond, before the plat is approved.

Sec. 12-1254. Purpose.³²¹

- A. The process of dividing raw land into home sites, or separate parcels for other uses, is one of the most important factors in the growth of any community. Few activities have a more lasting effect upon its appearance and environment. Once the land has been subdivided into lots and the streets, homes, and other structures have been constructed, the basic character of this permanent addition to the community has become firmly established. It is then virtually impossible to alter its basic character without substantial expense. In most subdivisions, roads and streets must be maintained in order that various public services may be provided.
- B. The welfare of the entire community is thereby affected in many important respects. It is, therefore, to the interest of the general public, the developer, and the future owners that subdivisions be conceived, designed, and developed in accordance with sound rules and proper standards.
- C. All subdivisions of land hereafter submitted for approval shall fully comply, in all respects, with the regulations set forth herein. It is the purpose of these regulations to:
 - 1. Encourage well planned, efficient, and attractive subdivisions by establishing adequate standards for design and construction.
 - 2. Provide for the health and safety of residents by requiring properly designed streets and adequate sewage and water service.
 - 3. Place the cost of improvements against those benefitting from their construction.
 - 4. Secure the rights of the public with respect to public lands and waters.
 - 5. Set the minimum requirements necessary to protect the public health, safety, comfort, convenience, and general welfare.

³²⁰ Code 1982, § 305.102; Res. No. 1997-16, § 20, 6-17-97

³²¹ Code 1982, § 305.201

LAND USE
AFTON CODE

Sec. 12-1255. Scope.³²²

The rules and regulations governing plats and subdivision of land contained herein shall apply within the City and other land as permitted by state statutes. Upon overlapping jurisdiction within the prescribed area, the extent of jurisdiction shall be determined and agreed upon between the City and the other municipality or municipalities concerned. Except in the case of resubdivision, this article shall not apply to any lot or lots forming a part of a subdivision recorded in the office of the county recorder prior to the 1972 effective date of the county first subdivision ordinance, nor is it intended by this article to repeal, annul or in any way impair or interfere with existing provisions of other laws or ordinances except those specifically repealed by, or in conflict with this article, or with private restrictions placed upon property by deed, covenant, or other private agreement, or with restrictive covenants governing the land. Where this article imposes a greater restriction upon the land than is imposed or required by such existing provisions of law, ordinance, contract or deed, the provisions of this article shall control.

Sec. 12-1256. Definitions.³²³

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

A "person" includes a corporation, a partnership and an incorporated association of persons such as a club; "shall" is always mandatory; a "building" includes a "structure;" a "building" or "structure" includes any part thereof; "used" or "occupied" as applied to any land or building shall be construed to include the word "intended, arranged, or designed to be used or occupied."

Alley means any dedicated public right-of-way providing a secondary means of access to abutting property.

Applicant means the owner of land proposed to be subdivided or his representative. Written consent for subdivision shall be required from the legal owner of the property before the sketch plan is submitted.

Arterial, minor, means a road intended to move through and from adjacent subregions and activity centers with subregions.

Block means the enclosed area within the perimeter of roads, property lines or boundaries of the subdivision.

Boulevard means the portion of the street right-of-way between the curb line and the property line.

Butt lot means a lot at the end of a block and located between two corner lots.

City attorney means the attorney employed by the City.

City Engineer means the registered engineer employed by the City.

Cluster development means a subdivision development planned and constructed so as to group housing units into relatively tight patterns while providing a unified network of open space and wooded areas, and meeting overall density regulations of this article and the zoning ordinance, article II of this chapter. Cluster developments are not permitted under this article.

Collector street means a street which carries traffic from minor streets to thoroughfares or from thoroughfare to thoroughfare. It includes the principal entrance streets of a residential development and for circulation within such a development.

Community means the City of Afton.

Comprehensive development plan means a comprehensive plan prepared by the City including a compilation of policy statements, goals, standards and maps indicating the general locations recommended for the various functions

³²² Code 1982, § 305.301

³²³ Code 1982, §§ 305.401, 305.402; Res. No. 1997-16, § 20, 6-17-97, **Cross reference(s)**—Definitions generally, § 1-2.

LAND USE

and classes of land use, places and structures, and for the general physical development of the City and includes any unit of part of such plan or parts thereof.

Contour map means a map which irregularities of land surface are shown by lines connecting points of equal elevations. Contour interval is the vertical height between contour lines.

Copy means a print or reproduction made from a tracing.

County means Washington County, Minnesota.

County board means the Washington County Board of Commissioners.

Cul-de-sac means a street or portion of a street with one vehicular entrance/outlet leading directly to a through street, and having one turnaround at a single termination.

Developer means the owner of land proposed to be subdivided or his representative. Written consent for subdivision shall be required of the legal owner of the land.

Development means the act of subdividing land, installing site improvements and/or building structures.

Development agreement means the contract between the subdivider and the City which requires the subdivider to furnish and construct at his sole cost any streets or other improvements according to approved plans and specifications, and to comply with all conditions of the plat approval. The City shall require the development agreement to be recorded.

Double frontage lots means lots which have a front line abutting on one street and a back or rear line abutting on another street.

Drainage course means a watercourse or indenture for the drainage of surface water.

Easement means a grant by an owner of land for a specific use by persons other than the owner.

Escrow means a deposit of cash with the City to guarantee the subdivider's contractual obligations to the City. Such escrow funds may be deposited by the City treasurer into regular city accounts but shall be accounted for separately for the purposes specified in the development agreement.

Final plat means the map or plan or record of a subdivision and any accompanying material as described in these regulations. The legal document which must be recorded and must conform to all Minnesota state laws.

Governing body means the City Council.

Grade means the slope of a road, street, or other public way, specified in percentage (%) terms.

Individual sewage disposal system means a sewage treatment system or part thereof, serving a dwelling or other establishment, consisting of one or more septic tanks and a soil treatment system.

Local road or street means a road intended to provide access to other roads from individual properties.

Lot, corner, means a lot situated at the intersection of two streets, the interior angle of such intersection not exceeding 135 degrees.

Major subdivision means all subdivisions not classified as minor subdivisions, including but not limited to subdivisions of four or more lots, or any size subdivision requiring any new street or extension of the local government facilities, or the creation of any public improvements. Major subdivisions must be platted in accordance with this article.

Marginal access street (service road) means a minor street parallel to and adjacent to high volume arterial streets and highways, which provide access to abutting properties and protection of through traffic.

LAND USE

AFTON CODE

Metes and bounds means a method of describing land by measure of length (metes) of the boundary lines (bounds). Most common method is to recite direction and length of each line as one would walk around the perimeter. In general, the "metes" and "bounds" can be recited by reference to record, natural or artificial monuments at the corners; and record, natural or cultural boundary lines.

Minimum subdivision design standards means the guides, principles, and specifications for the preparation of subdivision plans indicating among other things, the minimum and maximum dimensions of the various elements set forth in the plan.

Minor subdivision means any subdivision containing not more than three lots fronting on an existing street, not involving any new street or road, or the extension of municipal facilities, or the creation of any public improvements, and not adversely affecting the remainder of the parcel or adjoining property, and not in conflict with any provisions or portion of the master plan, official map, the zoning ordinance, article II of this chapter, or these regulations.

Natural waterway means a natural passageway in the surface of the earth so situated and having such a topographical nature that surface water flows through it from other areas before reaching a final ponding area. The term also includes all drainage structures that have been constructed or placed for the purpose of conducting water from one place to another.

Nonresidential subdivision means a subdivision whose intended use is other than residential, such as commercial or industrial. Such subdivision shall comply with the applicable provisions of these regulations.

Outlot means a lot remnant or any parcel of land included in a plat, which may be used as open space. Such outlot may be a large tract that could be subdivided in the future or may be too small to comply with the minimum size requirements of zoning and subdivision ordinances or otherwise unsuitable for development and therefore not usable as a building site. When an outlot is created, the City shall require a development agreement. Outlots are not permitted in subdivisions having cul-de-sac streets.³²⁴

Owner means an individual, firm, association, syndicate, co-partnership, corporation, trust, or any other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under these regulations.

Pedestrian way means a public right-of-way across or within a block, to be used by pedestrians.

Person means any individual, firm, association, syndicate or partnership, corporation, trust or any other legal entity.

Planner means the planner employed by the community unless otherwise stated.

Planning Commission means the Afton City Planning Commission.

Plat means a map or drawing which graphically delineates the boundary of land parcels for the purpose of identification and record of title. The plat is a recorded legal document and must conform to all state laws.

Preliminary plat means the preliminary drawing or drawings, described in these regulations, indicating the proposed manner or layout of the subdivision to be submitted to the City Council for approval. Preliminary plat shall contain data required as outlined in Section 12-1328.

Protective covenants means contracts entered into between private parties and constituting a restriction on the use of all private property within a subdivision for the benefit of the property owners and to provide mutual protection against undesirable aspects of development which would tend to impair stability of values.

Reserve strips means a narrow strip of land placed between lot lines and streets to control access.

Re-subdivision means a change in a map of an approved or recorded subdivision plat if such change affects any street layout on such map or area reserved thereon for public use, or any lot line, or if it affects any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

³²⁴ Section 12-1379

LAND USE

Right-of-way means the land covered by a public road or land dedicated for public use or for certain private use such as land over which a power line passes.

Road, dead-end, means a road or a portion of a street with only one vehicular-traffic outlet.

Rural design street means a street utilizing road side ditches, swales, or other methods to handle stormwater runoff. The construction of this type of road shall be chosen based on the area to be developed, existing and proposed topography, drainage considerations, traffic projections and other features at the recommendation of the City Engineer.

Simple subdivision. See Section 12-1261.

Sketch plan means a sketch preparatory to the application for a plat or a minor lot subdivision to enable the subdivider to save time and expense in reaching general agreement with the City as to the form of the plat and the objectives of these regulations. The plan must comply with the comprehensive plan and these regulations.

Street means a way for vehicular traffic, whether designated as street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land, place, drive, court, or otherwise designated.

Street width means the shortest distance between the lines delineating the right-of-way of a street.

Subdivider means the owner, agent or person having control of such land as the term is used in this article.

Subdivision identification sign/monument means a permanent structure identifying the existence of a subdivision, usually placed at an entrance/exit to the subdivision. Such subdivision identification signs are prohibited.

Survey, land, means the process of determining boundaries and areas of tracts of land by a registered surveyor. The term cadastral survey is sometimes used to designate a land survey, but in this country its use should be restricted to the surveys of public lands of the United States; also called property survey, boundary survey.

Surveyor means a land surveyor registered under state laws.

Thoroughfare means a street primarily designated to carry large volumes of traffic and provide for vehicular movement between and among large areas; usually designated as a trunk highway or county road.

Urban design street means a street which has concrete curb and gutter to direct stormwater runoff to a storm sewer conveyance system. The construction of this type of road shall be chosen based on the area to be developed, existing topography, drainage considerations, traffic projects, and other features at the recommendation of the City Engineer.

Vicinity map means a map drawn to comparatively small scale which definitely shows the area proposed to be platted in relation to known geographical features, i.e., town centers, lakes, roads.

Zoning ordinance means a zoning ordinance or resolution controlling the use of land as adopted by the City Council being article II of this chapter.

Sec. 12-1257. Protection of natural features.³²⁵

- A. The City Council reserves the right to decline approval of a subdivision if due regard is not shown for the preservation of all natural features such as large trees, watercourses, scenic points, historical spots and similar city assets which, if preserved, will add attractiveness and stability to the proposed development of the property.
- B. Subdivision review shall be coordinated with the requirements and procedures for environmental assessment and impact statements contained in the zoning ordinance, article II of this chapter. Any mandatory environmental assessment worksheet or impact statement as required by the state environmental quality board regulations shall be submitted as part of the application for preliminary plat approval.

³²⁵ Code 1982, § 305.1001

LAND USE
AFTON CODE

Sec. 12-1258. Solar access planning.³²⁶

All new subdivisions should be designed to accommodate extensive use of passive and active solar energy systems with special attention given to street, lot and building orientation.

Sec. 12-1259. Public sites and open spaces.³²⁷

- A. *Public sites to be reserved.* Where a proposed drainageway, park, playground, school site or other public site, as shown on the comprehensive development plan is embraced in part or in whole by the boundary of a proposed subdivision and such public sites are not dedicated, such sites shall be reserved and no action taken towards approval of a plan or plat for a period not to exceed 90 days to allow the proper governmental agency the opportunity to consider and take actions towards acquisition of such public ground or park by purchase or other methods.
- B. *Scenic easements.* Scenic easements shall be required on slopes of 18 percent and greater, wetlands, drainageways, and other lands and soils judged to be fragile by the soil conservation service.
- C. *Park fees.* A park fee shall be paid by the builder of each dwelling unit as provided in Section 12-1270.

Sec. 12-1260. Minor subdivision.³²⁸

- A. In the case of a subdivision resulting in three or fewer parcels, each having the required frontage on an improved public road, the City Council may, upon recommendation of the Planning Commission, exempt the subdivider from platting; however, each newly created parcel shall meet all requirements of the zoning ordinance, article II of this chapter.
- B. In the case of a request to subdivide a lot which is part of a recorded plat, or where the subdivision is to permit the adding of a parcel of land to an abutting lot, and the newly created property lines will not cause any resulting lot to be in violation of these regulations or the zoning ordinance, article II of this chapter, the division may be approved by the City Council after review by the Planning Commission.
- C. Submission of a certified survey by a registered land surveyor showing the original lot and the proposed subdivision shall be required. The survey shall show topographic data at ten-foot contour intervals, driveway access points, drainage plans, soil tests for the installation of an on-site septic system, verification of 2.5 acres of buildable land, and proposed location of dwelling unit and names and addresses of all property owners within 500 feet of the proposed subdivision.
- D. The City Council reserves the right to require the dedication of utility easements, scenic easements and right-of-way for existing streets or roads prior to approval of the minor subdivision.
- E. Any parcel created by a minor subdivision shall not be eligible for further minor subdivision without platting.
- F. The division of land where all resulting parcels exceed 20 acres and 500 feet in width shall not constitute subdivision under this article. Parcels exempt from subdivision approval are still subject to all other zoning and building requirements.
- G. Before an Administrative Permit is issued on any lot resulting from a minor subdivision, the applicant shall include on the site plan the proposed route for the underground utility lines for electricity, telephone, cable, and gas where available, and shall submit with the application a certification from each utility company involved that the lines can safely be placed along the proposed route.
- H. The Planning Commission shall hold at least one public hearing, affording an opportunity for all parties interested to be heard, and shall give not less than ten days nor more than 30 days notice of the time and place of such hearing, published in the designated legal newspaper for the City. Such notice shall also contain a

³²⁶ Code 1982, § 305.1002

³²⁷ Code 1982, § 305.1003

LAND USE

description of the land and any requested variances. The notice should specify that any variances identified during the minor subdivision process will be considered at the hearing. At least ten days before the hearing, the City Administrator shall mail an identical notice to the owner and to each of the property owners of record for property within 500 feet of the outside boundaries of the land in question.

Sec. 12-1261. Simple subdivision.³²⁹

- A. A simple subdivision is the resubdivision and transfer of property for the purpose of combining it with an adjoining property which does not result in a new buildable lot. Such transfer must occur between two parcels which meet all the requirements of article II of this chapter without the need for a variance before and after the simple subdivision. The creation or alteration of a private easement shall be considered a simple subdivision.
- B. Application.
 - 1. No less than 14 days before the next City Council meeting, the applicant shall complete an application on the City form.
 - 2. The applicant shall provide a title opinion or registered property abstract as proof of ownership. The City may request the City attorney to determine parties with interest in the properties.
 - 3. The applicant shall provide a survey by a registered land surveyor of the lots or tracts to be subdivided. The survey shall, at the discretion of the Zoning Administrator, show the location of all proposed lot lines, existing lot lines, existing and proposed structures within 50 feet of any lot line, road rights-of-way and any additional information as found necessary.
 - 4. The applicant shall pay a fee, that shall be established from time to time by resolution of the City Council, plus any out-of-pocket costs incurred by the City for review of the application.
- C. Council action. Following review by the City staff, the Zoning Administrator shall cause the application to be placed upon the agenda of the City Council for the next regular meeting. The Zoning Administrator shall transmit to the City Council all the materials related to the application, with a staff recommendation.
- D. No building permit or certificate of occupancy shall be issued for the construction of a structure on lots or tracts in violation of this section.

Sec. 12-1262. Land division.³³⁰

- A. In any case where the division of land into two or more lots or parcels for the purpose of transfer of ownership or building improvement is not specifically provided for in the provision of these regulations, a description of such land division shall be filed with the City Administrator. No building permit shall be issued for any construction, enlargement, alteration, or repair, demolition or moving of any building or structure on any lot or parcel resulting from such division, until such division has been approved by the City Council. Prior to the consideration of such division by the City Council, they shall require that a certified survey be submitted.
- B. In cases where adjoining contiguous property owners wish to exchange or otherwise divide land with the intent of enlarging one of the parcels and as a result of such division neither parcel will be more nonconforming in accordance with the zoning ordinance, article II of this chapter, approval must be obtained from the City Council upon recommendation of the Planning Commission after review of the minor lot subdivision application.
- C. Some of the requirements for minor subdivision approval may be waived. However, the newly acquired land must be combined on the deed for recording purposes as the remainder of the owner's property.
- D. The applicant of a subdivision³³¹ containing not more than three lots requiring the construction of a public road thus defined as a major subdivision, may request preliminary and final plat at the same time. The risk of additional costs that may occur due to required changes of a plat already prepared for final plat are borne by the applicant.

³²⁹ Res. No. 1997-16, § 20, 6-17-97

³³⁰ Code 1982, § 305.1006; Res. No. 1997-16, § 20, 6-17-97, Ordinance 14-2004, 10/19/04

³³¹ Amendment 02-2009, 4/21/2009

LAND USE
AFTON CODE

Sec. 12-1263. Registered land surveys.³³²

All registered land surveys shall be filed subject to the same procedure as required for the filing of a plat for platting purposes. The standards and requirements set forth in these regulations shall apply to all registered land surveys.

Sec. 12-1264. Metes and bounds.³³³

- A. Conveyance by metes and bounds shall only be permitted upon minor subdivision approval, or for parcels at least 20 acres in area and not less than 500 feet in width.
- B. When a conveyance is made by metes and bounds, no building permit shall be issued until a survey is submitted and the parcel is recorded with the county recorder's office. A survey is not required for parcels in excess of 20 acres.

Sec. 12-1265. Unapproved subdivisions.³³⁴

- A. No conveyance of land to which these regulations are applicable shall be filed or recorded, if the land is described in the conveyance by metes and bounds or by reference to an unapproved registered land survey made after April 21, 1961, or to an unapproved plat. The foregoing provision does not apply to a conveyance if the land described:
 - 1. Was a separate parcel of record April 1, 1945, or the date of adoption of subdivision regulations under Laws 1945, chapter 287, whichever is the later, or of the adoption of subdivision regulations pursuant to a home rule charter,
 - 2. Was the subject of a written agreement to convey entered into prior to such time,
 - 3. Was a separate parcel not less than 21/2 acres in area and 150 feet in width on January 1, 1966,
 - 4. Was a separate parcel of not less than five acres in area and 300 feet in width on July 1, 1980,
 - 5. Is a single parcel of commercial or industrial land of not less than five acres and having a width of not less than 300 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than five acres in area or 300 feet in width, or
 - 6. Is a single parcel of residential or agricultural land of not less than 20 acres and having a width of not less than 500 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than 20 acres in area or 500 feet in width.
- B. In any case in which compliance with the foregoing restrictions will create an unnecessary hardship and failure to comply does not interfere with the purpose of the subdivision regulations, the platting authority may waive such compliance.
- C. Any owner or agent of the owner of land who conveys a lot or parcel in violation of the provisions of this article shall pay to the City a penalty (no criminal sanction) of not less than \$100.00 for each lot or parcel so conveyed. The City may enjoin such conveyance or may recover such penalty by a civil action in any court of competent jurisdiction.

Sec. 12-1266. Variances.³³⁵

- A. The City Council may grant a variance in any particular case where the subdivider can show that by reason of the unfavorable topography or other physical conditions the strict compliance to these regulations could cause practical difficulties. "Practical difficulties" as used in connection with the granting of a variance includes a three-factor test, all three of which must be met in order for a variance to be granted.
 - 1. Reasonableness: The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.

³³² Code 1982, § 305.1007

³³³ Code 1982, § 305.1008

LAND USE

2. Uniqueness: The plight of the landowners is due to circumstances unique to the property not created by the landowner.
 3. Essential Character: The variance, if granted, will not alter the essential character of the locality.
- B. Economic considerations alone shall not constitute a practical difficulty if reasonable use for the property exists under the terms of this article.
- C. Applications for any such variance shall be made in writing by the subdivider at the time when the plat is filed for consideration. Such application shall state fully all facts relied upon by the subdivider, and shall be supplemented with maps, plans or other additional data which may aid the Planning Commission and the City Council in the analysis of the proposed project. Such variances shall be considered at the next regular meeting held by the Planning Commission. The plans for such development shall include any covenants, restrictions, or other legal provisions necessary to guarantee the full achievement of the proposed plat. Any variance or modifications thus granted shall be recorded and entered in the minutes setting forth the reasons for granting the variance.

Sec. 12-1267. Security interest.³³⁶

Creation of a security interest in a portion of a parcel less than the entire parcel does not entitle the property to subdivision even upon foreclosure of the security interest, unless otherwise approved by the City Council and the parcel is in conformance with this article and the zoning ordinance, article II of this chapter.

Sec. 12-1268. Building permits.³³⁷

No building permit shall be issued for any construction, enlargement, alteration, or repair, demolition or moving of any building or structure on any lot or parcel until all the requirements of this article have been fully met.

Sec. 12-1269. Violation and penalties.³³⁸

Any person who violated any of the provisions of this article, or who sells, or offers for sale any lot, block or tract of land herewith regulated before all the requirements of this article have been complied with shall be guilty of a misdemeanor, and upon conviction thereof be subject to fine and/or imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.

Sec. 12-1270. Park and open space dedication.³³⁹

- A. Purpose. The City Council recognizes that it is essential to the health, safety, and the welfare of the residents of this City to provide for the preservation of land for parks, playgrounds, public open space, and trails. The City Council also finds that it is appropriate that each subdivision within the City contribute toward the City's parks, playgrounds, open spaces, and trails in proportion to the burden it will place upon the City's park and open space system. Therefore, this park and open space dedication requirement is established to require new developments at the time of subdivision to contribute toward the City's park and open space system in rough proportion to the relative burden they will place upon that system, and:
1. To develop a limited number of major public green spaces which shall retain the natural and scenic features of the land and serve as a wilderness environment for City residents to enjoy; and
 2. To create multiple use, non-motorized trails along roads or as a link between various points of interest and public facilities where such trails would enhance the recreational opportunities for residents and provide a safe alternative means of travel within the City; and
 3. If future development creates a need for a neighborhood park, land may be acquired for that purpose pursuant to this article.
- B. Requirements. Subdividers, as a prerequisite to approval of a subdivision, shall dedicate to the City for park or playground purposes or for public open space or trail systems a reasonable portion of the land being

³³⁶ Code 1982, § 305.1011

³³⁷ Code 1982, § 305.1100, **Cross reference(s)**--Building permits, inspections and fees, § 12-1804.

³³⁸ Code 1982, § 305.1102

³³⁹ Ord. 47-2004, 8/17/04

LAND USE

AFTON CODE

subdivided or in lieu thereof a cash equivalent. The form of dedication, land or cash, (or any combination) shall be decided by the City and dedicated or paid prior to City signing the final plat, or prior to final City Council approval of minor subdivisions.

1. Reasonable portion of land shall be that portion of land which could be purchased with the amount of park dedication fee payment owed by the subject subdivision on a per dwelling unit basis.
 2. Land to be dedicated shall be reasonably adaptable to use for active park and recreation purposes, shall be at a location convenient to the people to be served, and shall be consistent with the general locations as indicated in the official parks map and/or comprehensive parks plan. Factors used in evaluating the adequacy of proposed park and recreation areas shall include size, shape, topography, geology, hydrology, tree cover, access and location.
 3. Where a proposed park, playground, recreational area, or open space that has been indicated in the official park map and/or comprehensive park plan is located in whole, or in part, within a proposed subdivision the site must be dedicated to the City. If the subdivider chooses not to dedicate an area in excess of the land required hereunder for such proposed public site, the City shall not be required to act to approve or disapprove the preliminary plat of the subdivision for a period of sixty (60) days after the subdivider meets all the provisions of the Subdivision Ordinance in order to permit the Council to consider the proposed plat and to consider taking steps to acquire, through purchase or condemnation, all or part of the public site proposed under the official park map in the comprehensive parks plan.
 4. Land area conveyed or dedicated hereunder may not be included by a subdivider as an allowance for purposes of calculating the density requirements of the subdivision as set out in the City Zoning Ordinance and shall be in addition to and not in lieu of scenic easement, conservation easements, and open space requirements pursuant to the City Zoning Ordinance.
 5. The City may determine that land not distinguished in its official parks map and/or comprehensive parks plan is needed as a neighborhood park. Should this determination be made, an amendment to the official parks map and/or comprehensive parks plan shall be made identifying the neighborhood park. Should the City determine that land in excess of what can be obtained via Section 12-1270 (B) (1) is required, the remaining area shall be purchased from the applicant by the City via its park and trail fund at a fair market value.
 6. When a cash park dedication fee is paid in lieu of a dedication of land, the subdivider shall pay a per dwelling unit fee as described in Section 12-1270 C.3 and D.
 7. The City shall maintain a separate fund into which all cash park dedication fees received from owners or subdividers in lieu of conveyance or dedication of land for park or playground, public open space or trail purposes shall be deposited and shall make, from time to time, appropriations from such fund for acquisition of land for park and playground purposes, for developing existing park and playground sites, for public open space and trails, or for debt retirement in connection with land previously acquired for parks and playgrounds, which will benefit the residents of the City.
- C. Administrative Procedure. When an application for subdivision is submitted, the City Administrator and City Planner shall evaluate its location with that of the official parks map and the comprehensive parks plan to determine whether land is to be recommended for dedication.
1. Should the subject site be located within an area designated for future parkland, open space, or trail corridor, as designated in the official parks map and comprehensive parks plan, the City Administrator and City Planner shall submit the proposed subdivision to the Park Committee for its review and recommendation.
 2. The Park Committee shall make a determination as to what portion or portions of the site may be dedicated to the City for parkland, open space, or trail use as described in the official park map in the City's Comprehensive Park plan. The subdivider shall be made aware of this recommendation which will be forwarded to the Planning Commission for their review and recommendation to the City Council.
 3. Should the subject site be outside of any future proposed parkland, open space, trail or wildlife corridors, or wildlife habitat areas as defined in the official park map and the comprehensive park plan, the City Administrator shall inform the subdivider and the process will continue with the recommendation for a cash park dedication fee in lieu of land dedication in a per dwelling unit amount as defined in Section 12-1270 D.
 4. Though the subject site may not be located in an area identified for future parkland, open space, trail or wildlife corridor, or wildlife habitat area in the official park map and comprehensive park plan, the Planning Commission may recommend and the City Council may require that a reasonable portion of the land be dedicated to the City, at which time the subdivision will be sent to the Parks Committee for

LAND USE

their review and recommendation as to the sites location. Reasonable portion of the land shall be defined as that portion of land in which could be purchased with the amount of park dedication fee payment owed by the subject subdivision per dwelling unit being proposed.

- D. Cash Park Dedication Fee. The cash park dedication fee in lieu of land dedication shall be equivalent to 7.5 percent of the predevelopment value of the land to be subdivided, subject to a minimum fee of \$5,000 per dwelling unit and a maximum fee of \$10,000 per dwelling unit, such fee to be reviewed on an annual basis, with adjustments based on the CPI-U and adopted with the City's fee schedule. The cash park dedication fee shall be calculated based on the impact of new dwelling units and the demand they will place on the City's park system.³⁴⁰
- E. Payment of cash park dedication fees. Cash park dedication fees are to be established at the time of preliminary plat approval or in the case of minor subdivisions are to be established and paid prior to final Council approval. The Council may approve payment at a later time under terms agreed upon in the development agreement. Delayed payment may include interest at a rate set by the City.
- F. Deposit of cash park dedication fees. Cash park dedication fees shall be deposited by the City directly in the City's restricted Park, Open Space & Natural Resources Fund and shall be used only for purposes authorized by state law. Cash payments may not be used for ongoing "operation or maintenance," in accordance with Minnesota Stat. Sec. 462.35 and 471.1941.³⁴¹
- G. Land Dedication. When land is dedicated and deeded to the City for park purposes, it shall be the responsibility of the City to maintain such dedicated property.
- H. Land dedication to the City shall be in the form of lots with approved lot and block number.
- I. Right to Challenge. If the applicant or developer does not believe that the estimates contained in this section fairly and accurately represent the effect of the subdivision on the park or trail system of the City, the applicant or developer may request that the City prepare an in-depth study of the effect of the subdivision on the park and trail system and an estimate of that effect in money and/or land. All costs of such study shall be borne by the developer or applicant. If the developer or applicant request the preparation of such a study, the request must be made at the time the development application is submitted. No application for development that is submitted shall be deemed complete until the requested study has been completed and a determination is made as to the appropriate amount of land or money necessary to offset the effect of the subdivision.
- J. Cash Park Dedication Fee. The cash contribution shall be reviewed semi-annually and adopted with the fee schedule. The cash contribution shall be calculated based on the impact of new dwelling units and the demand it will have on the City's park system.
- K. Payment of cash contributions. Cash contributions are to be established at the time of preliminary plat approval or in the case of minor subdivisions are to be established and paid prior to final Council approval. The Council may approve payment at a later time under terms agreed upon in the development agreement. Delayed payment may include interest at a rate set by the City.
- L. Deposit of cash contributions. Cash contributions shall be deposited by the City directly in the City's restricted Park, Open Space & Natural Resources Fund and shall be used only for purposes authorized by state law. Cash payments may not be used for ongoing "operation or maintenance," in accordance with Minnesota Stat. Sec. 462.35 and 471.1941.³⁴²
- M. Land Dedication. When land is dedicated and deeded to the City for park purposes, it shall be the responsibility of the City to maintain such dedicated property.
- N. Land dedication to the City shall be in the form of lots with approved lot and block number.

³⁴⁰ Ord 04-2012, § 12-1270, 10/16/2012

³⁴¹ Amended 9/20/05, Ordinance 13-2005

³⁴² Amended 9/20/05, Ordinance 13-2005

LAND USE
AFTON CODE

- O. Right to Challenge. If the applicant or developer does not believe that the estimates contained in this section fairly and accurately represent the effect of the subdivision on the park or trail system of the City, the applicant or developer may request that the City prepare an in-depth study of the effect of the subdivision on the park and trail system and an estimate of that effect in money and/or land. All costs of such study shall be borne by the developer or applicant. If the developer or applicant request the preparation of such a study, the request must be made at the time the development application is submitted. No application for development that is submitted shall be deemed complete until the requested study has been completed and a determination is made as to the appropriate amount of land or money necessary to offset the effect of the subdivision.

Sec. 12-1271. Conflicting provisions.³⁴³

In the event of conflicting provisions in the text of this article or between this article and other City ordinances, the more restrictive shall apply.

Secs. 12-1272.--12-1325. Reserved.

DIVISION 2. PLATTING PROCEDURE

Sec. 12-1326. Sketch plan.³⁴⁴

- A. Written consent for subdivision from the legal owner of the property to be subdivided is required before the sketch plan is submitted. In order to ensure that applicants are informed of the procedural requirements and standards of this article, the requirements or limitations imposed by City ordinances and the comprehensive plan, applicants should meet with the planning staff and prepare a sketch plan prior to preparing a preliminary plat. Prospective subdividers shall deposit with the City funds to cover anticipated costs in an amount determined by the City Administrator. The prospective subdivider shall also furnish a list of property owners within 500 feet of the property to be developed.
- B. The applicant shall provide 25 copies of the sketch plan plus at least one 11 x 17 reduction of same no less than 21 days before the meeting of the Planning Commission at which the sketch plan will be considered. The Administrator shall refer the sketch plan to the following parties for review: the City Attorney; the City Planner; the City Engineer; the MN/DOT District Engineer and/or County Highway Engineer; the Washington Soil and Water Conservation District; the Watershed District or WMO; the natural gas, electric and cable communications utilities; the Fire District and the School District. The sketch plan shall be drawn to scale and contain as a minimum the following information:³⁴⁵
1. Tract boundaries and dimensions.
 2. Significant topographic and physical features.
 3. Proposed general street and lot layout recognizing all applicable ordinance requirements of the City and indicating a minimum of 2 ½ contiguous buildable acres per lot.
 4. General location of proposed public and private open space areas.
 5. General drainage plan, including proposed ponding areas, ditches, and culverts.
 6. Location of proposed septic drainfield and culverts which shall be located on a slope 13 percent or less.
 7. Building pad location.
- C. Upon receipt of the sketch plan, the City Administrator shall refer:
1. The sketch plan for subdivision first to the Natural Resources & Groundwater Commission. Upon review by the Natural Resources & Groundwater Commission, the subdivision sketch plan, with its recommendations, will be sent on to Parks, Recreation & Open Spaces Commission. The Natural Resources & Groundwater Commission shall also send its recommendations to the City Council. The Parks, Recreation & Open Spaces Commission will review the subdivision sketch plan and send its

³⁴³ Code 1982, § 304.401(04)

³⁴⁴ Code 1982, § 305.501; Res. No. 1997-16, § 20, 6-17-97, Ord. No. 1997-5, 3-17-98

³⁴⁵ Ord 1997-22, 6/15/99

LAND USE

- recommendations to the Planning Commission. The Park, Recreation & Open Spaces Commission shall also send its recommendations to the City Council.
2. Upon receipt of the sketch plan and after review by the Commissions, reviewing authorities and designated consultants, the City Administrator will place the sketch plan upon the agenda of the Planning Commission. The sketch plan will be considered as the basis for discussion between the subdivider and the Planning Commission. Submission of such sketch plan shall not constitute formal filing of a Preliminary Plat. The Planning Commission will, on the basis of such sketch plan, advise the subdivider of the extent to which the proposed subdivision conforms to these regulations and the zoning ordinance and will discuss possible modifications.
- D. Agreement in concept with the sketch plan does not constitute approval of the subdivision. Acceptance of the sketch plan indicates to the subdivider that he may proceed toward fulfilling the necessary steps for approval of the plat in accordance with the provisions of this article.
 - E. A sketch plan and preliminary plat are required where land has the potential to be developed in stages.³⁴⁶
 - F. The Planning Commission shall hold at least one public hearing, affording an opportunity for all parties interested to be heard, and shall give not less than ten days nor more than 30 days notice of the time and place of such hearing, published in the designated legal newspaper for the City. Such notice shall also contain a description of the land and any requested variances. This notice should specify that any variances identified during the sketch plan process will be considered at the hearing. At least ten days before the hearing, the City Administrator shall mail an identical notice to the owner and to each of the property owners of record for property within 500 feet of the outside boundaries of the land in question.

Sec. 12-1327. Preparing and submitting the preliminary plat.³⁴⁷

- A. When the subdivider feels he is ready to prepare the preliminary plat, he shall have his surveyor and/or planner draw one which is in conformity with the requirements of this article. (See Section 12-1328.)
- B. The subdivider shall fill out an application for consideration of planning request or other applicable forms as may be required and shall pay the fee and make a deposit equal to anticipated expenses to be incurred by the City in review of the preliminary plat. The City Administrator shall place the application of the subdivider on the agenda of all applicable committees and the Planning Commission, and shall set the date for the public hearing.
- C. The subdivider shall furnish the City Administrator with 25 copies of the preliminary plat and one 11 x 17 reduction of the plat; shall furnish the County Surveyor's Office with 7 copies, at least 21 days before the scheduled Planning Commission meeting at which the preliminary plat will be considered.
- D. The subdivider shall furnish copies to the appropriate watershed and water management districts.
- E. If the owner and developer are not the same, the consent of the owner shall be filed and the fee owner shall also sign the application.
- F. Fees for subdivision will be set by the resolution of the City Council from time to time.

Sec. 12-1328. Data required for preliminary plat.³⁴⁸

- A. Identification and description:
 1. Proposed name of subdivision, which name shall not duplicate or be similar in pronunciation to the name of any plat already recorded in the county.
 2. Legal description of property.
 3. Name and address of the record owner, any agent having control of the land, including contract purchasers, subdivider, land surveyor, engineer and designer of the plan.

³⁴⁶ Section 12-1330(b)

³⁴⁷ Code 1982, § 305.502; Res. No. 1997-16, § 20, 6-17-97, Ord. 1997-5, 3-17-98

³⁴⁸ Code 1982, § 305.601; Res. No. 1997-16, § 20, 6-17-97, Ord. No. 1997-5, 3-17-98

LAND USE
AFTON CODE

4. Map indicating graphic scale not less than one inch to 100 feet.
5. North point and vicinity map of area showing well-known geographical points for orientation within a one-half mile radius.
6. List of adjoining property owners within 500 feet of the proposed plat.
7. Date of preparation.

B. Existing conditions:

1. Boundary lines shall be shown clearly and to such a degree of accuracy no major changes are necessary in preparing the plat.
2. Existing zoning classifications for land in and abutting the subdivision.
3. Approximate total acreage.
4. Location, right-of-way width, and names of existing or platted streets or other public ways³⁴⁹, parks and other public lands, permanent buildings and structures, street, drainage and utility easements, section, corporate and school district lines within the plan and to a minimum distance of 500 feet beyond shall also be indicated.
5. Location and size of existing sewers, water mains, pipelines, power lines, culverts, wells, septic systems, or other underground facilities within the preliminary plat area and to a distance of 100 feet beyond. Such data as grades and locations of catch basins, manholes, hydrants, and street pavement width and type shall also be shown.
6. Boundary lines of adjoining unsubdivided or subdivided land, within 100 feet, identified by name and ownership, but including all contiguous land owned or controlled by the subdivider.
7. Topographic data, including contours at vertical intervals of not more than two feet except where the horizontal contour interval is 100 feet or more, a one-foot vertical interval shall be shown. Watercourses, marshes, wooded areas, rock outcrops, and other significant features shall also be shown. The plat shall be superimposed on an aerial map so that it can be clearly indicated how the plat relates to surrounding land. National Geodetic Vertical Datum 1929 Adjustment shall be used for all topographic mapping.
8. A copy of all proposed private restrictions shall be submitted.
9. In areas where public sewer is not available, four soil borings on each lot defining an area 100 feet by 100 feet suitable for an on-site septic system shall be required. The results shall be submitted to the City Building Official. If it appears soil may not be suitable on any lot for the installation of an on-site system, additional borings and percolation tests will be required.
10. Soil types and location of limits of each soil type as shown in the soil survey of the county.
11. Slopes in excess of 12 percent and slopes in excess of 18 percent shall be delineated.
12. If severe soil limitations for the intended use are noted in the soil handbook on file in the county planning department and the county soil and water conservation district office, a plan or statement indicating the soil conservation practice or practices to be used to overcome said limitation shall be made part of the permit application.
13. On all lakes, ponds, and wetlands, all water surface elevations, natural ordinary high elevation, and present and proposed 100-year flood elevations shall be denoted.
14. The City Administrator and designees shall be permitted to inspect the land during review of the preliminary plat to insure that there are no adverse conditions or harmful conditions upon the land. If any such conditions are found, the City Administrator shall notify the proper authorities and approved remedial action shall be taken as a condition of preliminary plat approval.

C. Design features. Subdivision design features to be shown on preliminary plat.³⁵⁰

1. Layout of proposed streets, showing right-of-way widths and proposed names of streets.
2. Locations and width of proposed alleys, pedestrian ways and utility easements.
3. Lot and block numbers and preliminary dimensions of lots and blocks and area of each lot.
4. Location of house and detached accessory building on each lot. Required front, side, and rear building set back lines. Driveway access shall be indicated on the preliminary plat in the graph that shows the size of each lot, contiguous buildable acres, etc. Where any lot on the plat has the possibility of accessing a driveway on more than one street, the interior street shall be the street on which the driveway access is made, and a covenant shall be recorded on such lots, at the time the plat is filed, restricting driveway access to the interior street.

³⁴⁹ Amendment 02-2009, 4/21/2009

³⁵⁰ See minimum design standards, Section 12-1376 et seq.

LAND USE

5. Gradients of proposed street, plans and profiles showing locations and typical cross-sections of street pavement including curbs, gutters, sidewalks, drainage easements, servitude right-of-ways, manholes and catch basins.
6. Areas, other than street, alleys, pedestrian ways and utility easements, intended to be dedicated or reserved for public use, including the size of each area in acres.
7. Grading and drainage plan for entire subdivision. Details must include proposed ponding areas, ditches, culverts or storm sewer. Drainage calculations are also required. Arrows indicating the direction of the drainage shall be provided. If any fill or excavation is proposed in a wetland or lake, approval must be obtained from the State Department of Natural Resources and U.S. Army Corps of Engineers.
8. Erosion and sediment control plan.
9. Location of soil tests showing that two septic systems may be installed on each lot in compliance with City specifications on slopes of 13 percent or less.
10. Where the subdivider owns property adjacent to that which is being proposed for the subdivision, the subdivider shall submit a sketch plan of the remainder of the property showing the possible relationships between the proposed subdivision and future subdivision. In any event, all subdivisions must be shown to relate well with existing or potential adjacent subdivisions and land use.
11. Surface water drainage patterns and courses on the subdivided property together with a statement or plan indicating the effect on such patterns and courses that would result from the subdivision and development of such property and the soil conservation practices and drainage control devices to be used to overcome or prevent any drainage problems resulting to the subject property or adjacent property from such subdivision.
12. Such other information as may be requested by the City Engineer, City planning staff, City Planning Commission, or City Council.

Sec. 12-1329. Review of the preliminary plat.³⁵¹

- A. The applicant shall provide 25 copies of the plat plus at least one 11 X 17 reduction of same no less than 21 days before the meeting of the Planning Commission at which the plat will be considered. The City Administrator shall refer the plat to the following parties for review: the City Attorney; the City Planner; the City Engineer; the MN/DOT District Engineer and/or County Highway Engineer; the Washington Soil and Water Conservation District; the Watershed District or WMO; the natural gas, electric and cable communications utilities; the Fire District and the School District.
- B. Any plat proposed in a shoreland district or St. Croix River Bluffland and Shoreland Management District must have approval of the Minnesota Department of Natural Resources. If a watershed district exists in the area of the proposed platted property, approval must be obtained from the watershed district.
- C. A preliminary plat of all of a potential subdivision shall be required even though that subdivision is to be developed in stages.
- D. The reviewing authorities, staff and consultants shall, within **14 days** of receipt of the Preliminary Plat, submit reports to the City Administrator expressing their recommendation for approval, disapproval or revisions. If no report is received within 14 days, it will be assumed by the Planning Commission that there are no objections to the plat as submitted.
- E. Within 30 days after the preliminary plat and all other required information are filed with the City and application fees and deposits are paid to the City, the Planning Commission shall hold a public hearing on the subdivision and the City Council shall act on the application. Notice of the purpose, time and place of such a public hearing shall be published in the official newspaper at least ten days prior to the day of the hearing. Property owners within 500 feet of the subdivision shall be notified of the public hearing.
- F. The Planning Commission may recommend, and the City Council may require modifications, changes and revisions of the preliminary plat as it deems necessary to protect the health, safety, morals, comfort, convenience and general welfare of the City.
- G. The report of the Planning Commission shall be submitted to the Council not later than 7 days after the public hearing on the plan. If the Planning Commission fails to make a report, the Council shall proceed without

³⁵¹ Code 1982, § 305.503; Res. No. 1997-16, § 20, 6-17-97, Ord. No. 1997-5, 3-17-98, Ord. No. 1997-13, 9/22/98

LAND USE
AFTON CODE

such report. Failure to receive a report from the Planning Commission as herein provided shall not invalidate the proceedings or actions of the Council.

- H. If the preliminary plat is not approved by the City Council, the reasons for such action shall be recorded in the proceedings and transmitted to the applicant. A subdivision preliminary plat request application shall be preliminarily approved or disapproved within 60 days following delivery of an application completed in compliance with this article by the applicant to the City, unless an extension of the review period has been agreed to by the applicant.
- I. Should the subdivider desire to amend the plat after preliminary approval but before final approval he may submit an amended plat which shall follow the same procedure as a new plat, except for the public hearing and fee unless the amendment is, in the opinion of the City Council, of such scope as to constitute a new plat. If so, the plat shall be refiled.

Sec. 12-1330. Preparing and submitting the final plat.³⁵²

- A. After the approval of the preliminary plat, the final plat may be prepared. The final plat shall incorporate any changes, modifications and/or revisions required by the City Council.
- B. In the case of a subdivision to be developed in stages, the subdivider may be granted permission to prepare a final plat for only the portion of the approved plat which he proposes to develop at this time, provided such portion conforms with all the requirements of the City. The subdivider may be required, as a condition of approval, to submit an estimated time schedule for further staging of the platting and recording.
- C. All plats shall comply with the provisions of state statutes, the standard procedures for platting in the county, and the requirements of this regulation.
- D. The subdivider shall submit the five copies of the final plat to the City Clerk and county surveyor's office not later than 12 months after the date of approval of the preliminary plat. The approval of the preliminary plat will be considered void unless an extension is requested in writing by the subdivider and granted by the City Council.
- E. The subdivider shall submit, with the final plat, an opinion of title by the subdivider's attorney.

Sec. 12-1331. Data required for final plat.³⁵³

The final plat shall be prepared by a land surveyor who is registered in the state and shall comply with the provisions of state statutes, this article and the manual of standard procedures for platting in the county.

Sec. 12-1332. Review of the final plat.³⁵⁴

- A. After obtaining approval of the preliminary plat, the subdivider shall submit ten copies of the final plat along with plat checking fee to the county surveyor for review by the county surveyor.
- B. Prior to approval of the final plat by the City Council, the subdivider must have installed all required improvements or executed an agreement with the City for their installation and posted financial guarantees as required in Section 12-1471. Required improvements shall conform to approved engineering standards and be in compliance with these regulations and all other applicable city ordinances.
- C. Upon a request for final approval, the City Council shall certify final approval within 60 days if the applicant has complied with all conditions and requirements of applicable regulations and upon which preliminary approval is expressly conditional either through performance or the execution of appropriate agreements assuring performance. If the final plat is not approved, the reasons for such action shall be recorded in the official proceedings and transmitted to the subdivider.

³⁵² Code 1982, § 305.504

³⁵³ Code 1982, § 305.602

³⁵⁴ Code 1982, § 305.505

LAND USE

- D. The final plat must be approved by the county surveyor in accordance with the standard procedures for platting in the county.
- E. Upon receiving final plat approval by the City Council, the subdivider shall then record it with the county recorder within 120 days or the approved plat shall be considered void.
- F. Upon receiving approval of the final plat for a portion of the approved plat, the subdivider shall not be required to request a continuation of the recognition of the plat so as to avoid automatic expiration of preliminary approval unless final plat approval is not obtained within 24 months following preliminary approval.

Secs. 12-1333--12-1375. Reserved.

DIVISION 3. MINIMUM DESIGN STANDARDS

Sec. 12-1376. Conformity with comprehensive development plan.³⁵⁵

The proposed subdivision shall conform to the comprehensive development plan and policies as adopted by the City.

Sec. 12-1377. Land requirements.³⁵⁶

- A. Land shall be suited to the purpose for which it is to be subdivided. No plan shall be approved if the site is not suitable for purposes of the kind proposed by reason of potential flooding, topography, or adverse earth or rock formations.
- B. Land which poses hazards to life, health or property shall not be subdivided for residential purposes until all such hazards have been eliminated or unless adequate safeguards against such hazards are provided by the subdivision plan.
- C. Erosion and sedimentation control plans in accordance with the technical standards and specifications of the soil conservation service as provided by the county soil and water conservation district office, shall be required on slopes with grades of 12 percent or steeper.
- D. Proposed subdivision shall be coordinated with existing nearby municipalities or neighborhoods so that the community as a whole may develop harmoniously.

Sec. 12-1378. Street plan.³⁵⁷

- A. Proposed streets shall conform to the state road and county highway plans or preliminary plans as have been prepared, adopted and/or filed as prescribed by law. All streets within a subdivision shall be dedicated to the City and built to city standards.
- B. Streets shall be logically related to the topography in order to produce usable lots and reasonable grades.
- C. Access shall be given to all lots and portions of the tract in the subdivision, and to adjacent unsubdivided parcels unless the topography clearly indicates that such connection is not feasible. Access shall be defined as practical access. Reserved strips, and land-locked areas shall not be created.
- D. The arrangement of streets in new subdivisions shall make provisions for the appropriate continuation of the existing streets in adjoining areas.
- E. Where adjoining areas are not subdivided, but may be subdivided, the arrangement of streets in a new subdivision shall make provision for the proper projection of streets into adjoining areas by extending the new streets to the boundaries of the subdivision at appropriate locations. Streets must be constructed to the

³⁵⁵ Code 1982, § 305.701

³⁵⁶ Code 1982, § 305.702

³⁵⁷ Code 1982, § 305.703, **Cross reference(s)**--Streets and sidewalks, ch. 20.

LAND USE
AFTON CODE

boundary according to city specifications or it shall be documented that it is feasible to build them to the boundary. Dedication of road right-of-way shall be required to the boundary even though the street is not constructed. It shall be the responsibility of the adjoining property owner, when his land is subdivided, to build the road to city standards.

- F. Where the City does not have an adequate dedicated right-of-way for an existing road adjacent to the proposed subdivision, the developer shall dedicate the required right-of-way to the City for street and utility purposes.
- G. Minor streets shall be laid out to discourage their use by through traffic. Thoroughfares shall be reserved for through traffic by providing marginal access streets, interior streets for serving lots, or other means.
- H. Half or partial streets will not be permitted, except where essential to reasonable subdivision of a tract in conformance with the other requirements and standards of these regulations and where, in addition, satisfactory assurance for dedication of the remaining part of the street can be secured.
- I. Wherever a tract to be subdivided adjoins an existing half, or partial street, the part of the street within such tract shall be platted to provide the necessary road right-of-way.
- J. Dead-end streets shall be prohibited, except as stubs to permit future street extension into adjoining tracts, or when designed as cul-de-sac streets. A temporary turn-around or cul-de-sac shall be required by the City if a road will be a dead end until an adjoining tract is developed.
- K. Where a subdivision abuts or contains an existing or planned major thoroughfare or a railroad right-of-way, a street approximately parallel to land on each side of such thoroughfare and right-of-way may be required for adequate protection of residential properties and separation of through and local traffic. Such service streets shall be located at a distance from the major thoroughfare or railroad right-of-way suitable for the appropriate use of the intervening land, as for park purposes in residential districts, or for commercial and industrial purposes in appropriate districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.
- L. The street arrangements shall not be such as to cause hardship to owners of adjoining property in platting their own land and providing convenient access to it.

Sec. 12-1379. Cul-de-sac streets.³⁵⁸

- A. The City Council may permit cul-de-sac streets, after Planning Commission review, by reason of unfavorable land forms or the irregular shape of the land from which the subdivision is being made and a normal street pattern cannot be established. The City Council may also permit cul-de-sac streets to minimize the impacts of the subdivision or proposed street on existing neighborhoods. These impacts may include increased traffic volume or speed, privacy or security of existing neighborhoods and preservation of natural resources or features.
- B. A cul-de-sac street shall not exceed 1,320 feet in length and shall serve no more than nine lots. Every lot platted on a cul-de-sac street shall have frontage and access on the cul-de-sac street and shall be included in the nine lot limit. A variance may be granted on the length limitation only when it is clearly demonstrated that the length greater than 1,320 feet is necessary for reasons of unfavorable land topography. No variance shall be granted which would allow more than nine lots to be created on a cul-de-sac street.
- C. When future development of adjacent parcels will allow for extension of a temporary cul-de-sac street or conversion thereof to a through street, the City Council may require that right-of-way shall be dedicated to the plat boundary. No outlots shall be created.

Sec. 12-1380. Street design.³⁵⁹

³⁵⁸ Code 1982, § 305.704; Res. No. 1997-3, 1-14-97; Res. No. 1997-16, § 20, 6-17-97, **Cross reference(s)**--Streets and sidewalks, ch. 20.

LAND USE

- A. *Minimum widths.* Minimum right-of-way widths and pavement widths (face-to-face of curb) for each type of public street or road shall be as follows:

<i>Type of Street</i>	<i>Right-of-Way Width</i>	<i>Roadway Width Including Shoulders</i>
Minor arterial	120 feet minimum	As determined by traffic needs
Collector/commercial	80 feet minimum	44 feet
Industrial	80 feet minimum	44 feet
Local street (Urban)	60 feet minimum	32 feet, measured from face of curb to face of curb
Local street (Rural)	60 feet minimum	24 foot wide paved surface with a four-foot wide aggregate shoulder
Cul-de-sac	60 feet minimum turnaround radius	45 feet turnaround radius

The determination of the type of street necessary to serve a development shall be made by the City Council. The type of road to be constructed, whether it be rural or urban, shall be based on the existing and proposed topography, impact on adjoining properties, drainage consideration, environmental concerns, traffic projections and other aspects of the development. It is the City's intent to provide a roadway that both meets sound engineering principles and is consistent with the nature of the development to be served. Review by the Planning Commission and City Council will include findings of fact which detail the special considerations given to a particular development.

- B. *Dedication of additional width.* Where a subdivision abuts or contains an existing street of inadequate width, sufficient additional width shall be dedicated to meet the above standards.
- C. *Special conditions.* Additional right-of-way and roadway widths may be required to promote public safety and convenience when special conditions require it or to provide parking space in areas of intensive use.
- D. *Restriction of access.* Access of local streets onto state, county state aid highways, and county highways shall be discouraged at intervals of less than 500 feet.
- E. *Street jog.* Street jogs with centerline offsets of less than 150 feet shall not be allowed.
- F. *Deflection.* When connecting street lines deflect from each other at any one point by more than ten degrees, they shall be connected by a curve with a centerline radius of not less than 200 feet.
- G. *Grades.* Centerline gradients shall be at least 0.5 percent and grades shall not exceed eight percent.
- H. *Vertical curves.* The state department of transportation road design manual, section 2-45.07, shall govern vertical curves. The minimum length of a vertical curve shall be 100 feet.
- I. *Angle of intersection.* The angle formed by any intersection of streets shall be 90 degrees unless a different angle is approved by the City Engineer. In no case shall the angle be less than 75 degrees.
- J. *Size of intersection.* Intersections of more than four corners shall be prohibited.
- K. *Corner radii.* Roadways of street intersections shall be rounded by a radius of not less than 25 feet. Roadways on alley-street intersections shall be rounded by a radius of not less than six feet. Corners at the entrances of the turnaround portions of the cul-de-sacs shall be rounded by a radius of not less than 15 feet.
- L. *Curb and gutter.* Curb and gutter may be included as part of the required street surface improvement and shall be designed for installation along both sides of all roadways for urban design.
- M. *Elevation of new streets.* All new streets located in the floodplain shall be elevated to no lower than the regulatory flood protection elevation.

LAND USE
AFTON CODE

Sec. 12-1381. Private streets.³⁶⁰

Private streets are not permitted. See Section 12-1378(A) and Section 12-1256.

Sec. 12-1382. Alley design.³⁶¹

- A. Either a public or private alley shall be provided in a block where commercially zoned property abuts a major thoroughfare or a major street. Alleys in residential areas other than those zoned for multiple-family use shall not be permitted.
- B. All alley rights-of-way and pavement widths shall conform to the following minimum standards:

<i>Classification</i>	<i>Right-of-way Width</i>	<i>Pavement</i>
Industrial or commercial	24 feet	20 feet
Residential (two-way)	20 feet	20 feet
Residential (one-way)	20 feet	6 feet

- C. All centerline gradients shall be at least 0.5 percent and shall not exceed eight percent.

Sec. 12-1383. Drainage.³⁶²

- A. A complete and adequate drainage system design shall be required for the subdivision and may include a storm sewer system or a system of open ditches, culverts, pipes and catch basins, and ponding areas, or both systems and submitted to the City Engineer and the soil conservation for approval.
- B. The annual probability of increased rate of surface runoff due to new construction shall not exceed one percent.
 - 1. Annual probability shall not exceed one percent means that a 100-year storm of appropriate duration should be used for design but that storms of lesser magnitude (e.g., two-year or ten-year storms) should be examined as well.
 - 2. Surface runoff is the water leaving the property on or very near the surface (e.g., including the gravel subgrade of a parking lot).
 - 3. Surface runoff rate is the peak discharge as calculated by the S.C.S. T R 20 for a storm of critical duration.

Sec. 12-1384. Easements.³⁶³

- A. *Provided for utilities.* Easements of at least 20 feet wide, centered on rear and other lot lines as required, shall be provided for utilities where necessary as recommended by the City Engineer. Where underground utilities are being installed, a ten-foot wide front or side yard easement may be required.
- B. *Provided for drainage.* Easements shall be provided along each side of the centerline of any watercourse or drainage channel, whether or not shown on the comprehensive plan, to a sufficient width to provide proper maintenance and protection and to provide for stormwater runoff and installation and maintenance of storm sewers.
- C. *Dedication.* Utility and drainage easements shall be dedicated for the required use.
- D. *Trails.* Trail easements shall be provided as required by the City Council in compliance with the comprehensive plan.

³⁶⁰ Code 1982, § 305.706, **Cross reference(s)**--Streets and sidewalks, ch. 20.

³⁶¹ Code 1982, § 305.707

³⁶² Code 1982, § 305.710

³⁶³ Code 1982, § 305.711; Res. No. 1997-16, § 20, 6-17-97, Ord 1997-13, 9-22-98

LAND USE

- E. *Scenic easements.* Scenic easements shall be required on slopes of 18 percent and greater, wetlands, drainageways, and other lands and soils judged to be fragile by the soil conservation service. Scenic easements also shall be required on slopes greater than 12 percent if the land is unbuildable or heavily wooded and would be affected adversely by development. Such easements shall be required as a condition of subdivision approval, and shall prohibit the following activities: Dumping, burning, grading, grazing of domesticated farm animals, vegetative cutting in excess of prudent forestry practices as approved by the Forestry Division of the Minnesota Department of Natural Resources, motorized vehicles, construction of any structure including driveways. Such scenic easements shall be recorded against the affected lots in the subdivision.
1. The City shall have the right to reasonable access to easement areas to verify compliance with the restrictions, and to cross adjacent lands in common ownership with the easement area to obtain such access.
 2. A scenic easement prohibits the owner from engaging in harmful activities in the area subject to the easement, but does not grant the general public any right of access to the land.

Sec. 12-1385. Street names.³⁶⁴

Names of new streets shall not duplicate existing or platted street names unless a new street is a continuation of or in alignment with the existing or platted street, if it shall bear the same name of the existing or platted street so in alignment. Street names shall conform to the county uniform street naming and property numbering system as applicable.

Sec. 12-1386. Block design.³⁶⁵

- A. Block length and width or acreage within bounding streets shall be such as to accommodate the size of residential lots required in the area by the zoning ordinance, article II of this chapter, and to provide for convenient access, circulation control, and safety of street traffic.
- B. In residential areas, other than water frontage, blocks shall not be less than 600 feet nor more than 1,800 feet in length measured along the greatest dimension of the enclosed block areas, unless minor variances are necessitated by topography or conformance with an adjoining plat.
- C. In blocks over 900 feet long, ten foot wide pedestrian crosswalks may be required through the blocks in locations deemed necessary to public health, convenience and necessity. Suitable paving and fencing shall be provided.
- D. Blocks for commercial and industrial areas may vary from the elements of design contained in this section if the nature of the use requires other treatment. In such cases, off-street parking for employees and customers shall be provided along with safe and convenient limited access to the street system. Space for off-street loading shall also be provided with similar access. Extension of roads, railroad access right-of-way, and utilities shall be provided as necessary.
- E. Blocks shall be wide enough to allow two tiers of lots with a minimum depth as required by zoning ordinance, article II of this chapter, except adjoining a lake, stream, railroad or thoroughfare or where one tier of lots is necessary because of topographic conditions.

Sec. 12-1387. Lot requirements.³⁶⁶

- A. Side lot lines shall be substantially at right angles to straight street lines or radial to curved street lines or radial to lake or stream shores unless topographic conditions necessitate a different arrangement.
- B. Each lot shall front upon an improved public street.
- C. No lot shall have less area or width than is required by zoning regulations.

³⁶⁴ Code 1982, § 305.713, **Cross reference** – Streets and sidewalks, ch. 20.

³⁶⁵ Code 1982, § 305.714

³⁶⁶ Code 1982, § 305.715

LAND USE
AFTON CODE

- D. Lots designed for commercial or industrial purposes shall provide adequate off-the-street service, loading and parking facilities.
- E. Double frontage lots shall not be permitted.
- F. Lots abutting upon a watercourse, drainageway, channel or stream shall have an additional depth or width, as required to assure building sites that are not subject to flooding.
- G. Lots with lakeshore frontage shall be designed so that the lot lines extended shall maintain the closest approximation to riparian right.
- H. In the subdividing of any land, regard shall be shown for all natural features, such as tree growth, watercourses, historic spots, or similar conditions, which if preserved will add attractiveness and stability to the proposed development.
- I. All remnants of lots below minimum size remaining after subdividing of a larger tract must be added to adjacent lots.
- J. Where a proposed plat is adjacent to a major or minor arterial there shall be no direct vehicular access from individual lots to such streets and roads. In the platting of small tracts of land fronting on limited access highways or thoroughfares where there is no other alternative, a temporary entrance may be granted; as neighboring land becomes subdivided and more preferable access arrangements become possible, such temporary access permits shall become void. At the time such temporary access is granted, a development agreement shall be recorded against the lot or lots requiring the owner to bear the expense of relocating access in the event it becomes necessary. Driveway access collector streets must be a minimum of 300 feet apart and meet appropriate safety standards.
- K. No lot shall extend over a political subdivision boundary. No building shall extend over a school district line.
- L. In any area where lots are platted in excess of ten acres, a preliminary subdivision plan may be required showing a potential and feasible way in which the lot or lots may be resubdivided in future years for more intensive use of the land. The placement of buildings or structures upon such lots shall allow for potential resubdivision.
- M. Lot width on cul-de-sac lots shall be no less than 300 feet at the building setback line.

Secs. 12-1388--12-1425. Reserved.

DIVISION 4. ENGINEERING STANDARDS³⁶⁷

Sec. 12-1426. Streets.³⁶⁸

- A. *Street grading.* Streets shall be graded in accordance with a plan approved by the City Engineer. In the case of an urban street design the grading shall include the entire width of the right-of-way and shall provide a boulevard section, in addition to the minimum pavement width. The boulevard sections for urban roadways shall be graded to maintain the integrity of the abutting topography. The City Engineer shall review each plan with the developer to determine the best possible alternative for grading the boulevards. This may include construction of retaining walls or other construction to stabilize roadside banks and maintain existing trees or environmental aspects of a development. As recommended by the City Engineer, and approved by the City Council, the grades within the boulevard section for an urban roadway shall be two percent in the first four feet behind the curb. From this area, the boulevard grades shall match the existing topography at a grade not to exceed three percent.

³⁶⁷ **Cross reference**—Streets and sidewalks, ch. 20.

³⁶⁸ Code 1982, § 305.801, Ord 2004-5, 6/15/04

LAND USE

- B. *Street pavement.* The design of street pavement for all streets covered by this regulation shall be in accordance with the state highway department road design Manual No. 5-291 for flexible pavements. The designed thickness of the surfacing elements shall be in accordance with the flexible pavement design standard for road classifications as shown below. However, a minimum of six inches of class 5 aggregate base and three inches of bituminous surfacing is required. This bituminous surfacing shall consist of 1 1/2 inches of bituminous base course and 1 1/2 inches of bituminous wear course. More stringent design may be required by the City Engineer based on soil borings provided by the developer. The final bituminous wear course shall be placed no sooner than one year after the date that the bituminous base course is placed. Immediately prior to the placement of the bituminous wear course, any roadway settlements or other pavement damage shall be repaired by the developer.
- C. *Classification* *Pavement Design: Axle Load*
- | | |
|--------------------------------------|--------------------------|
| 1. Arterials, Collector Street needs | As determined by traffic |
| 2. Local Streets | 7 ton minimum |
- D. *Soil tests.* To determine subgrade soil classifications, soil samples shall be collected and analyzed by an independent, certified testing laboratory. Reports of the soil analysis shall be submitted to the engineer with the pavement plans. Soil samples shall be taken along the center line of the proposed road at intervals not exceeding 300 feet.
- E. *Curb and gutter.* Concrete curb and gutter can be constructed on both sides of urban design streets. Where applicable, curbless roads shall be designed to encourage stormwater infiltration. Where required, the construction of concrete curb and gutter shall be in accordance with state department of transportation 2531 and shall be either barrier or surmountable type curb as directed by the City Council. Bituminous curbs will not be allowed.
- F. *Boulevards.* All boulevards shall have four inches of top soil (black dirt) placed on them and then be seeded or sodded.
- G. *Sidewalks and pedestrian ways.* All required walks shall be concrete four inches thick placed on a four-inch gravel base. Grades shall be approved by the City Engineer. Sidewalks shall be placed in the public right-of-way.
- H. *Aggregate shoulders.* The aggregate shoulders constructed on rural design roadways shall consist of a four-foot wide section consisting of two inches of class 2 aggregate.

Sec. 12-1427. Utilities.³⁶⁹

- A. All utilities shall be installed by the subdivider to each lot in the subdivision.
- B. All utilities shall be placed underground. All groundwork shall be completed prior to street surfacing.

Sec. 12-1428. Sanitation, sewer and water rural areas.³⁷⁰

Where lots cannot be connected with a public sewerage system, provision must be made for sanitary sewerage facilities, consisting of an individual disposal device for each lot in accordance with the City sanitary sewer ordinance, Article IX of this chapter. This does not mean that the installation of individual disposal devices shall be at the expense of the subdivider.

- A. Any subdivision or lot not provided with off-site sewer facilities shall be subject to soil and percolation tests to determine whether the lot size proposed will meet minimum standards of health and sanitation due to limitations of soils as shown on existing soils maps. The lot area and topography must be such that it will accommodate two adequate disposal systems to serve the residence for the estimated unsewered years, as determined by the City Council. Such test shall be made at the expense of the subdivider, and a sketch map shall be submitted to identify the specific locations where tests were made.

³⁶⁹ Code 1982, § 305.802, **Cross reference(s)**--Utilities, ch. 24.

³⁷⁰ Code 1982, § 305.803, **Cross reference(s)**--Sewage, § 12-1951 et seq.

LAND USE
AFTON CODE

- B. Four soil borings showing an area of 10,000 square feet suitable for an on-site septic system shall be required for each proposed lot by a certified soil tester. Additional testing may be required for each proposed lot by a certified soil tester. Additional testing may be required if serious limitations for the installation of an on-site system are found.
- C. All on-site sewage disposal systems shall comply with the standards of the City sanitary sewer ordinance, Article IX of this chapter, the state department of health, and the state pollution control agency.

Sec. 12-1429. Stormwater drainage.³⁷¹

A drainage system design shall be required, and may include a storm sewer system or a system of open ditches, culverts, pipes, catch basins and ponding areas, or both systems. Such facilities and easements shall be installed as will adequately provide for the drainage of surface waters; drainage way easements or land dedication may be required when such easements or land is needed in the public interest for purposes of floodplain management, proper drainage, prevention of erosion, pedestrian access to water bodies, or other public purposes. If there is a watershed district, that board must approve all surface water drainage. The City Engineer shall review and approve the stormwater drainage system and all runoff calculations for any street improvement project.

Sec. 12-1430. Street signs.³⁷²

All street signs shall be provided and installed by the City at the expense of the subdivider.

Sec. 12-1431. Inspection.³⁷³

- A. All required improvements shall be inspected by the City Engineer during construction at the expense of the subdivider.

Secs. 12-1432--12-1470. Reserved.

DIVISION 5. IMPROVEMENTS

Sec. 12-1471. Required.³⁷⁴

Prior to final approval of a plat by the City Council, the subdivider shall have agreed, in the manner set forth below, to install at the subdivider's expense and in conformity with all applicable standards and ordinances, the following improvements on site:

- B. *Survey monuments.* All subdivision boundary corners, block and lot corners, road intersection corners and points of tangency and curvature shall be marked with survey monuments or triangulation stations in or adjacent to the property and shall be preserved in precise position unless a relocation is approved by the controlling agency. Delayed setting of monuments shall not be permitted.
- C. *Grading.* The full width of the right-of-way of each street and alley dedicated in the plat shall be graded for an urban design roadway. All graded rights-of-way, not including the street surface, and all graded or disturbed areas within a subdivision shall be seeded and stabilized in compliance with the recommendations of the county soil conservation district and the City Engineer within 30 days of the completion of grading or disturbance of individual areas.
- D. *Pavement.* All street and alleys shall be improved with concrete or bituminous surface.
- E. *Curb and gutter.* Along both sides of an urban design street, concrete curb and gutter shall be installed.

³⁷¹ Code 1982, § 305.805

³⁷² Code 1982, § 305.806, **Cross reference(s)**--Signs generally, § 12-210.

LAND USE

- F. *Drainage facilities.* Such facilities and easements shall be installed as will adequately provide for the drainage of surface waters; a storm sewer system may be required when such easements or land is needed in the public interest for purposes of floodplain management, proper drainage, prevention of erosion, pedestrian access to water bodies, or other public purpose. If there is a watershed district, that board must approve all surface water drainage. If SCS structures exist on the land to be subdivided or will be required, SCS must approve the plan for structures and restoration.
- G. *Miscellaneous facilities.* Tree planting, traffic control signs, oversized utility trunk lines, pedestrian ways, and other improvements may be required.
- H. *Erosion control.* Prior to the commencement of any grading or disturbance of any area within a subdivision, silt fences or other erosion control devices required and approved by the City Engineer shall be installed on site. Such devices shall include but not be limited to: staging, grading operations, side slopes, silt fences, mulching, culverts, ponding areas, netting, etc. Such erosion control devices shall remain in place and shall be maintained in working order until the disturbed areas are stabilized and roadways are approved, at which time they shall be removed at the expense of the developer.

Sec. 12-1472. Payment for installation.³⁷⁵

- A. The required improvements as listed elsewhere are to be furnished and installed at the sole expense of the subdivider.
- B. If the platting and development of the subject property shall necessitate the construction and improvement of public roads outside of the subdivided property, the City may require the owner to provide sufficient financial guarantees for the portion of the estimated cost of such construction or improvement as represents the benefit to the subdivided property using usual assessment apportionment practices.

Sec. 12-1473. Agreement providing for the installation.³⁷⁶

- A. Prior to the installation of any required improvements and prior to approval of the final plat, the subdivider shall enter into a contract in writing with the City requiring the subdivider to have such improvements constructed by the subdivider in accordance with the plans and specifications prepared by the City Engineer, which plans shall be in conformance with all applicable standards and ordinances. Such contract shall provide for the observation of construction by the City Engineer to ensure conformance to the plans and specifications, and shall require that the City be reimbursed for all costs incurred by the City for planning, engineering, and legal fees, and other expenses in connections with making such improvements; and shall contain such other provisions as may be required by the City Council.
 - 1. The subdivider shall, concurrently with the execution of the contract, make a cash escrow deposit, or in lieu thereof, provide an irrevocable letter of credit, the amount of which shall be equal to 150 percent of the City Engineer's estimate of the total cost of the improvements to be furnished under the contract, including the costs for legal, administrative, and engineering expenses, including inspection. The City shall be entitled to reimburse itself out of such cash deposit or irrevocable letter of credit for all expenses incurred by the City for the completion of the work, and upon completion of the work, any balance remaining in said deposit shall be refunded to the subdivider. The subdivider shall also agree to reimburse the City for any costs and expenses incurred in excess of the original cash deposit or irrevocable letter of credit, and shall replenish the deposit or letter of credit as necessary and requested by the City to secure the subdivider's obligations to the City.
 - 2. On request of the subdivider, the contract may provide for completion of part or all of the improvements covered thereby prior to acceptance of the plat. In such event, the amount of the deposit or letter of credit may be reduced in a sum equal to one-half of the estimated cost of covered improvements completed prior to acceptance of the plat. The time for completion of the work and the several parts thereof shall be determined by the City Council upon recommendation of the City Engineer. It shall be reasonable with relation to the work to be done, the seasons of the year, and proper correlations with construction activities in the plat and subdivision.

³⁷⁵ Code 1982, § 305.902

³⁷⁶ Code 1982, § 305.903

LAND USE

AFTON CODE

- B. No subdivider shall be permitted to start work on any other subdivision without special approval of the City Council if he has previously defaulted on work or commitments.

Sec. 12-1474. Financial guarantee.³⁷⁷

The financial guarantee shall be required as part of the division agreement for the following actions and similar construction activities:

- A. ~~Grading and~~ Erosion and Sediment Control Plan. The City Council may require the applicant to post a financial guarantee to ensure the orderly completion of the grading and erosion and sediment control plans by a specific date.
- B. Stormwater Pollution Prevention Plan. The City Council may require the applicant to post a financial guarantee to ensure the orderly completion of the stormwater pollution prevention plan and adequate function of any stormwater management facilities by a specific date.
- ~~B-C.~~ Septic system. When an existing nonconforming septic system is required to be upgraded according to Section 12-83(C), the new on-site sewage treatment system shall be installed prior to the issuance of a building permit unless a financial guarantee equal to 125 percent of the cost of installing such a system and is valid for one year is issued to the City.
- ~~C-D.~~ Driveway permit. To assure compliance with this article and the conditions of any driveway permit, the Zoning Administrator may require a financial guarantee from each applicant. The financial guarantee may be in the form of a performance bond, irrevocable letter of credit or escrow deposit as regulated in other sections of this article. The amount of the financial guarantee shall be equal to 125 percent of the estimated cost of the construction of the driveway, or an amount determined by the Zoning Administrator. A financial guarantee shall be released to the applicant upon satisfactory completion of the driveway installation according to this article and any conditions of the driveway permit.
- ~~D-E.~~ Escrow deposit. A cash escrow deposit may be made with the City Administrator. The City shall be entitled to reimburse itself out of such deposit for any cost or expense incurred by the City for completion of the work in case of default of the breach thereof.
- ~~E-F.~~ Letter of credit. The subdivider may deposit with the City, from a bank or other reputable institution or individual subject to the approval of the City Council, an irrevocable letter of credit which shall certify that:
1. The creditor does guarantee funds in the required amount.
 2. In the case of failure on the part of the subdivider to complete the specified improvements within the required time period, the creditor shall pay to the City immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
 3. This letter of credit may not be withdrawn, or reduced in amount, until released by the City Council.
- ~~F-G.~~ Release. Financial securities shall not be released until all permitted and remedial work is completed.
- ~~G-H.~~ Community indemnity. This security shall save the community free and harmless from all suits or claims for damages resulting from the negligent grading, removal, placement or storage of rock, sand, gravel, soil or other like material within the community.
- ~~H-I.~~ Maintaining the financial security. If at any time during the course of the work the amount falls below 50% of the required deposit, the applicant shall make another deposit in the amount necessary to restore the cash deposit to the required amount. If the applicant does not bring the financial security back up to the required amount within seven (7) days after notification by the community that the amount has fallen below 50% of the required amount the community may:
1. Withhold inspections - Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy.
 2. Revoke permits - Revoke any permit issued by the community to the applicant for the site in question or any other of the applicant's sites within the community's jurisdiction.
- ~~I-J.~~ Action against the financial security. The community may access financial security for remediation actions if any of the conditions listed below exist. The community shall use the security to finance remedial work undertaken by the community, or a private contractor under contract to the community, to reimburse the community for all direct costs incurred in the process of remedial work including, but not limited to, staff time and attorney's fees.
1. Abandonment - The applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.
 2. Failure to implement the SWPPP or ESC Plan - The applicant fails to conform to the grading plan

- and/or the SWPPP as approved by the Community.
3. Failure to perform - The techniques utilized under the SWPPP fail within one year of installation.
 4. Failure to reimburse community - The applicant fails to reimburse the community for corrective action taken.

~~J.K.~~ *Returning the financial security.* The security deposited with the community for faithful performance of the SWPPP or the ESC Plan and any related remedial work shall be released one full year after the completion of the installation of all stormwater pollution control measures as shown on the SWPPP or ESC Plan.

~~K.L.~~ *Emergency action.* If circumstances exist such that noncompliance with this ordinance poses an immediate danger to the public health, safety and welfare, as determined by the community, the community may take emergency preventative action. The community shall also take every reasonable action possible to contact and direct the applicant to take any necessary action. Any cost to the community may be recovered from the applicant's financial security.[SP6]

Sec. 12-1475. Construction plans and inspections.³⁷⁸

- A. Construction plans for the required improvements conforming in all respects with the standards and ordinances of the City shall be prepared at the subdivider's expense by the City Engineer. Such plans shall become part of the required contract. Two prints of the plans shall be furnished to the City to be filed as a public record.
- B. All required improvements on the site that are to be installed under the provisions of this regulation shall be inspected during the course of construction by the City Engineer at the subdivider's expense. Any tests necessary to determine conformance to all city specifications and requirements and the plans shall be prescribed and scheduled by the City Engineer and performed at the subdivider's expense. Acceptance by the City of the improvements and release of the subdivider's security shall occur one year after the City Engineer has certified completion of the project and compliance with the contract.
- C. The subdivider shall obtain at his own expense, an "as built" plan which shall be submitted to the City upon completion of improvements and before such improvements are accepted by the City. The City Engineer shall certify to the City that the improvements were constructed as specified in the plans, and that the improvements were constructed according to all applicable standards and ordinances.

Sec. 12-1476. Completion prior to approval of plat.³⁷⁹

Improvements within a subdivision which have been completed prior to application for approval of the plat or execution of the contract for installation of the required improvements shall be accepted as equivalent improvements in compliance with the requirements only if the City Engineer shall certify that he is satisfied that the existing improvements conform to applicable standards.

Secs. 12-1477--12-1479. Reserved.³⁸⁰

DIVISION 6. PROTECTIVE COVENANTS REQUIRED FOR ALL MAJOR SUBDIVISIONS³⁸¹

³⁷⁷ Code 1982, § 305.904; Res. No. 1997-16, § 20, 6-17-97

³⁷⁸ Code 1982, § 305.905

³⁷⁹ Code 1982, § 305.906

³⁸⁰ Ordinance 10-2005, 6/21/2005

³⁸¹ Ordinance 10-2005, 6/21/2005

Sec. 12-1480. Covenants required.

Protective development covenants shall be required of all Major Subdivisions within the corporate boundaries of the City of Afton.³⁸²

Sec. 12-1481. Covenant regulations.

All protective covenants shall contain regulations for the compliance of all aspects of Chapter 25, Article I. Furthermore, private penalties shall be established and enforced for any property owner unable to comply with any aspect of Chapter 25, Article I, Section 25-1 to 25-7.³⁸³

Secs. 12-1481 – 12-1495. Reserved.³⁸⁴

**DIVISION 7. REQUIREMENTS FOR THE LOWER ST. CROIX RIVER
SHORELAND MANAGEMENT**³⁸⁵

Sec. 12-1496. Land suitability.

No land shall be subdivided which is found by the Council to be unsuitable for reason of flooding, inadequate drainage, soil and rock formations with severe limitations for development, severe erosion potential, unfavorable topography, inadequate water supply or sewer disposal capabilities or any other feature likely to be harmful to the health, safety, or welfare of the future residents of the proposed subdivision or the community. The Council in applying the provisions of this section shall in writing cite the particular features upon which it bases its conclusions that the land is not suitable for the proposed use and afford the subdivider an opportunity to present evidence regarding such suitability at a public hearing. Thereafter the Council may affirm, modify, or withdraw its determination of unsuitability.

Sec. 12-1497. Planned cluster developments.

A pattern of subdivision development which places dwelling units into compact groupings may be allowed when the proposed clustering provides a better means of preserving agricultural land, open space, woods, scenic views, wetlands, and other features of the natural environment than traditional subdivision development. Except for minimum setbacks and height limits, altered dimensional standards may be allowed as exceptions to this article for planned cluster developments, provided:

- A. In rural districts of this article the number of dwelling units allowed shall not exceed the total number of dwelling units allowed if the development was based on the minimum lot size requirements for a single-family residential subdivision.
- B. In urban districts of this article and only where public sewer and water will be installed in the proposed cluster development, the number of dwelling units shall not exceed 50 percent more than the total number of dwelling units allowed if the development was based on the minimum lot size requirements for single-family residential subdivision.
- C. Open space shall be preserved. At least 50 percent of the length of shoreland or bluffland frontage as viewed from the river shall be kept in its natural state.
- D. Temporary docks, if allowed, shall be centralized and of a size not to exceed the needs of the residents of the development.

Secs. 12-1498--12-1525. Reserved.

³⁸² Ordinance 10-2005, 6/21/2005

³⁸³ Ordinance 10-2005, 6/21/2005

³⁸⁴ Ordinance 10-2005, 6/21/2005

³⁸⁵ **Cross reference**—Lower St. Croix River bluffland and shoreland management, § 12-576 et seq.

LAND USE
AFTON CODE

ARTICLE VII. HERITAGE PRESERVATION³⁸⁶

DIVISION 1. GENERALLY

Sec. 12-1526. Public policy and purpose.³⁸⁷

The City Council hereby declares as a matter of public policy that the preservation, protection, perpetuation and use of areas, places, buildings, structures and other objects having special historical interest or value is a public necessity, and is required in the interest of the health, safety, welfare and prosperity of the people. The purpose of this article is to:

- A. Safeguard the rural landscape and heritage of the City outside the VHS district by preserving sites and structures which reflect elements of the community's cultural, social, economic, political, visual, or architectural history.
- B. Protect and enhance the City's appeal to residents, visitors and tourists, and serve as a support and stimulus to business and commerce.
- C. Foster civic pride in the beauty and notable accomplishments of the past; and
- D. Promote the preservation and continued use of historic sites and structures for the education and general welfare of the people of the City.

Sec. 12-1527. Definitions.³⁸⁸

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

Certificate of approval means that documentation provided by the commission which evidences approval of activities proposed for a heritage preservation site.

Commission means the heritage preservation commission established in section 2-150 et seq.

Design review guidelines means those guidelines presented in this article and to be used in reviewing exterior alterations requiring a building permit for designated heritage preservation sites.

Heritage preservation site means any area, place, building, structures, lands, landscaping, districts, adjacent property or other objects which have been so designated pursuant to the provisions established by this article.

Secretary of the interior standards means those standards for preservation planning published by the Secretary of the Interior and published as the Standards for Rehabilitation by the U.S. Department of the Interior, National Park Service.

VHS district means the village historic site district defined in Section 12-142, and for which design review is provided through the Administrative Permit process.

Sec. 12-1528. Review of activities.³⁸⁹

The type of activities³⁹⁰ under this article to be reviewed are as follows:

³⁸⁶ **Cross references**—Heritage preservation commission, § 2-150 et seq.; buildings and building regulations, § 12-1771 et seq.

³⁸⁷ Code 1982, § 308.000(01)

³⁸⁸ Code 1982, § 308.000(2), **Cross reference(s)**--Definitions generally, § 1-2.

³⁸⁹ Code 1982, § 308.000(13)1

³⁹⁰ Amendment 02-2009, 4/21/2009

LAND USE

- A. Remodel, repair, or change in any manner that will alter the exterior appearance of an existing building or site including painting, signage, awnings, landscaping or permanent interior remodeling which affects the exterior appearance;
- B. New construction including the expansion or enlargement of an existing building or site;
- C. Moving of buildings;
- D. Demolition in whole or part; or
- E. Public improvement projects which directly or indirectly affect a heritage preservation site.

Sec. 12-1529. Enforcement.³⁹¹

- A. No activity as defined by this article shall occur on a heritage preservation site without having first received a certificate of approval issued by the commission. No application fee shall be returned to an applicant until the certificate of approval is provided. Activity initiated or completed without the consent of the commission and city as required shall be considered to be in violation of this article.
- B. Upon citing any violation of this article, the commission shall initiate actions necessary to resolve the violation, if a violation cannot be resolved with the cooperation of the affected parties, the commission shall initiate the following procedures:
 - 1. A written notice of violation will be provided to the owner or designated representative of the heritage preservation site. Such notice shall specify the nature of the violation and possible means for rectifying such violation.
 - 2. Such notice shall be issued by registered mail or hand delivered receipt requested to the owner or designated representative of the heritage preservation site. Upon receipt of the notice of violation, ten days will be allowed to rectify the violation to the satisfaction of the commission.
 - 3. If the violation is not rectified to the satisfaction of the commission as required, the City shall proceed to prosecute the matter as a misdemeanor punishable by fine, imprisonment or both in accordance with the laws of the state.

Secs. 12-1530--12-1620. Reserved.

DIVISION 2. DESIGN REVIEW GUIDELINES

Subdivision I. General Provisions

Sec. 12-1621. Purpose and intent.³⁹²

- A. The design review guidelines are the basis for the Zoning Administrator's and design review committee's conditional use review for properties within the VHS-R and VHS-C districts. They are also the basis for the heritage preservation commission's review of heritage preservation sites designated outside of the VHS-R and VHS-C districts.
- B. The preface to the guidelines is based on the U.S. secretary of the interior's standard for rehabilitation. The design guidelines further identify key visual and architectural characteristics of buildings in the district to ensure that they are preserved and enhanced in rehabilitation or new construction. They provide standards for considering the impact of exterior alterations on the individual building as well as on an entire district.
- C. The guidelines are intended to be flexible, and the conditional use review will be conducted on a case-by-case basis. With regard to alterations to existing buildings, the expense of certain restoration techniques, the availability and expense of historic materials, and economic hardship are among factors which should be

³⁹¹ Code 1982, § 308.000(13)3.

³⁹² Code 1982, § 309.000

LAND USE
AFTON CODE

considered by the Zoning Administrator, design review committee to the Planning Commission, and the heritage preservation commission.

Sec. 12-1622. General principles.³⁹³

The general objective of the design review guidelines is to maintain the architectural and visual qualities of existing historic buildings and streetscapes and to encourage architecturally compatible new design. The guidelines are based on the secretary of the interior's standards for rehabilitation as well as on an analysis of the specific characteristics of the City's historic buildings.

- A. All work should be of a character and quality that maintains the distinguishing features of the building and the environment. The removal or alteration of distinctive architectural features should be avoided as should alterations that have no historical basis and which seek to create an earlier appearance. The restoration of altered original features, if documentable, is encouraged.
- B. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- C. Deteriorated architectural features should be repaired rather than replaced whenever possible. In the event of replacement, new materials should match the original in composition and design including consideration of proportion, texture, detail, color, and overall appearance.
- D. New additions or alterations to structures should be constructed in such a manner that if such additions or alterations were to be removed in the future, the form and integrity of the original structure would be unimpaired.
- E. The impact of alterations or additions on individual buildings as well as on the surrounding streetscape will be considered; major alterations to buildings which occupy a corner lot or are otherwise prominently sited should be avoided.
- F. New construction should be compatible with the historic and architectural character of the district.

Secs. 12-1623--12-1665. Reserved.

Subdivision II. Restoration and Rehabilitation

Sec. 12-1666. Masonry walls and foundations.³⁹⁴

Although most buildings in the district are of wood frame construction, there are a few brick, stucco, and concrete block examples, and all rest on masonry foundations. Masonry must be cared for properly. Poor maintenance, cleaning or repair can result in extensive water damage and eventual structural failure.

- A. *Repair.* Deteriorated brick, stone, mortar, and other materials should be replaced with material used in the original construction or with materials that resemble the appearance of the original as closely as possible. The advice of a skilled mason should be sought for major repair projects.
- B. *Cleaning.* Masonry cleaning should be conducted only to halt deterioration and by means such as low pressure water, soft brushes, and/or appropriate chemical treatment. Sandblasting should not be used under any circumstances.
- C. *Repointing.* Original mortar joint size and profile should be retained and/or reduplicated in repointing. Mortar mixtures should duplicate the original in lime, sand, and cement proportion and should duplicate the original mortar in color and texture.

LAND USE

- D. *Stucco resurfacing.* Repairs to stucco surfaces should duplicate the original in color and texture, if evidence exists. Smooth or heavy dashed surfaces should be avoided unless they were used on the original surface.
- E. *Painting.* The original color and texture of masonry surfaces should be retained and unpainted stone and brick surfaces should not be painted. The removal of paint from painted masonry surfaces should only be attempted if unpainted surfaces are historically appropriate and if removal can be accomplished without damage to the masonry.
- F. *Resurfacing.* Stucco, artificial stone, brick veneer, or vinyl or aluminum products should not be applied over masonry surfaces.

Sec. 12-1667. Walls; wood sided.³⁹⁵

Wood building products, including siding, shingles, and a great variety of decorative trim were used extensively by the 19th and early 20th-century builders of the City. Wood contributes texture and detail to the historic streetscape, and is a durable, high-quality material with a long product life if properly maintained.

- A. *Repair.* Wooden siding should be maintained with paint or stain. Deteriorated wooden siding should be replaced with new material resembling the original in width, thickness and profile, and texture. New siding should be installed with the weather (exposed surface) identical to the original. Siding should be installed horizontally except in those instances where vertical or diagonal siding was used on the original exterior. Appropriate corner boards, frieze boards, and drip caps and other features should be included with replacement siding.
- B. *Vinyl and aluminum siding; other manufactured products.* Buildings originally clad in wooden siding should not be resurfaced with brick, stucco, artificial stone or brick veneer, hardboard, or vinyl or aluminum siding. The Zoning Administrator or commission may consider the following exceptions to the installation of vinyl, metal, or hardboard siding on a case-by-case basis:
 - 1. In cases where existing asphalt, asbestos, aluminum or vinyl siding is to be removed and where the underlying original siding and decorative features are found to be significantly deteriorated, the Zoning Administrator or commission should conduct a site visit during the removal process and advise on appropriate treatment.
 - 2. In the resurfacing of noncontributing buildings constructed after 1940.
 - 3. In the resurfacing of existing or construction of new garages, particularly when the garage is inconspicuously sited.

If vinyl, metal, or hardboard siding is used, it must be of a width appropriate to the style of the building, and all architectural details including window trim, wood cornices and ornament must remain uncovered. Replacement siding may cover only one layer of existing siding. Trim must be built up so that it projects from the new siding to the same extent as the original.

- C. *Shingles.* Buildings originally clad in horizontal wooden siding should not be resurfaced with shingles of wood or other material. Wooden shingles used for cladding material or decoration, such as in the gable ends, should be conserved and retained. If replacement is necessary, shingles should replicate the original in width, pattern, thickness, profile, texture, and weather (lap).
- D. *Decorative siding treatments.* Decorative siding treatments, such as paneled herringbone patterns used in the gable ends, should be retained in repair or resurfacing.
- E. *Painting.* Exterior wooden surfaces should be maintained with appropriate paint or stain.

Sec. 12-1668. Roofs and chimneys.³⁹⁶

The shape, texture, and color of the roof are important design features of any building. Gable and hipped roofs are most common for residential construction, while flat roofs are found on some commercial buildings. Many of the early

³⁹⁵ Code 1982, § 309.102(2)

³⁹⁶ Code 1982, § 309.102(3)

LAND USE

AFTON CODE

houses of the City were roofed in cedar shingles and later reroofed with asphalt shingles. Properly selected, modern asphalt roofing materials are compatible with the appearance of historic buildings.

- A. *Roofing materials.* New roofing material should be appropriate to the character of the building in composition, size, shape and texture. Dark brown, dark gray, and "weathered wood" are among usually acceptable colors. Rolled roofing may be used only on flat or slightly sloped roofs which are not visible from the public way.
- B. *Alterations to roof shape; front.* The original roof type, slope, and overhangs should be preserved. The roof shape at the front should not be altered except to restore it to the original documented appearance or to add architecturally compatible dormers. Documentation includes evidence of the former appearance of the building, or, in the case of pattern book houses, those of similar period and style. The shape of existing dormers should not be altered unless compatible with the original design.
- C. *Alterations to roof shape; rear.* Alterations to the roof shape at the sides or rear should be compatible with the architectural character of the building.
- D. *Skylights.* Wherever possible, skylights should not be installed on the front roof plane. They should be flat and as close to the roof plane as possible.
- E. *Rebuilt chimneys.* If rebuilding is necessary, original brick details such as decorative panels and coffers should be replicated. In the absence of evidence of the original appearance of the chimney, repair or rebuilding should be compatible with the building style or type.
- F. *Chimneys and stovepipes.* Wherever possible, new chimneys and stovepipes should not be installed on the front roof plane.

Sec. 12-1669. Windows.³⁹⁷

Many of the historic windows of the City have double-hung sash and a vertical orientation. Windows are important design elements and establish the visual rhythm, balance and general character of the facade. Any alteration, including removal of moldings or changes in window size or type, can have a significant and often detrimental effect on the appearance of the building as well as on the surrounding streetscape.

- A. *Size and shape.* Existing window openings should be retained. Window openings should not be enlarged or reduced significantly to fit new units. New window openings should not be introduced into principal elevations.
- B. *Sash.* The size and number of panes of glass in each sash should not be altered. New sash, if installed, should duplicate the existing or other appropriate historic models. Crank-out units are not appropriate replacements for double-hung sash, particularly where visible from the public way.
- C. *Trim.* Historic window casings should be retained wherever possible; if replacement is necessary the original profile should be replicated.
- D. *Storm windows.* If combination metal storms are installed, they should have a baked enamel finish. Storm windows should not have vertical or horizontal divisions which conflict with the divisions of the sash.

Sec. 12-1670. Entries.³⁹⁸

The entry, including the door, door surround, and sometimes sidelights and a transom, is usually the focal point of the facade. The size of the entry is directly related to the mass and scale of the building. As with windows, any alteration to size, shape, or trim details can have a detrimental effect on exterior appearance.

- A. *Size and shape.* All historic entry components should be retained. Entry openings should not be enlarged or reduced to fit a new door. New entry openings should not be introduced into principal elevations.

LAND USE

- B. *Trim.* Original or historic features of the entry, including hoods, columns, sidelights and transoms should be retained. If replacement is necessary, historic trim details should be replicated.
- C. *Doors.* Wherever possible, historic paneled doors (and hardware) should be repaired and weather-stripped rather than replaced. If replacement of original or historic doors is necessary, the replacement should duplicate and be compatible with the material, design, and hardware of the older door. Steel-covered hollow core doors should not be installed unless compatible with the appearance of the house. Historic trim should not be removed from the entry for the installation of steel doors.
- D. *Storm and screen doors.* Storm doors should be compatible with the inner door in shape and style.
- E. *Sliding glass doors.* Sliding glass doors should be confined to the rear of the building where not visible from the public way.

Sec. 12-1671. Porches and steps.³⁹⁹

Most of the 19th and early 20th-century houses of the City had unenclosed front porches. The porch usually stretched across the full width of the front facade, but in some cases only covered the entry. Since porches and steps are exposed to the weather and receive hard use, some buildings have had a succession of replacements which reflect different styles of architecture.

- A. *Conservation.* Porches, steps, and handrails which are appropriate to the building and its period of development should be conserved and retained.
- B. *Repair and replacement.* Historic porches, steps, or handrails which require complete rebuilding or partial replacement should be reconstructed using historical research to determine an appropriate design. Reconstructions should be compatible with the period and style of the building in material, design, and detail. Concrete should not be used to replace wooden porch floors or steps.
- C. *Railings.* The original spacing, section, and profile of balusters should be maintained in replacement or repair. Unless historical evidence indicates, reconstruction should include a bottom rail and balusters should not be nailed directly to the step or deck. Metal railings should not be used to replace wooden railings.
- D. *Posts and columns.* If replacement is necessary, porch posts and columns should be replaced with units that replicate the original material, size, and scale. Elaborate details such as turning, gouging, or stamping may be simplified if necessary. Wooden posts should not be replaced with metal posts or supports.
- E. *Enclosure.* Unenclosed front porches should not be permanently enclosed.
- F. *Decks.* Decks should be constructed only at the rear of the building or where most inconspicuous. Railings, steps, and other deck details should be compatible with the architectural character of the building.

Sec. 12-1672. Exterior trim and architectural features.⁴⁰⁰

Exterior trim includes the decorative and sometimes functional elements of the exterior which contribute to the proportion, texture, and detail of the building. A great variety of machine-made trim was added to even the simplest wooden houses and commercial buildings.

- A. *Conservation.* Exterior architectural features including finials, cornices, brackets, columns, balustrades, railings, and window and door moldings should be retained.
- B. *Documentation.* Original trim details and other architectural features should be photographed or otherwise recorded before they are removed for repair or replacement. Deteriorated trim which is removed should be saved for use in making duplicates.

³⁹⁹ Code 1982, § 309.102(6)

⁴⁰⁰ Code 1982, § 309.102(7)

LAND USE

AFTON CODE

- C. *Repair and replacement.* New material used to repair or replace deteriorated trim or other features should match the original as closely as possible. Deteriorated trim which is unsalvageable should be replaced with trim identical or similar to the original design. Simplified trim should approximate the old in design and placement.
- D. *New trim.* Details should not be added in an effort to make the building look older. However, in the case of some pattern book houses, the addition of certain trim details such as those typical at the gable and porch may be acceptable if supported by historic photos or pattern book sources.

Sec. 12-1673. Commercial buildings; rehabilitation and restoration.⁴⁰¹

The nonresidential buildings within the district are of simple construction and style. Each building is unique; some commercial buildings occupy former houses. Those with storefronts generally have a two-part horizontal division with glazed (or once-glazed) storefronts at the first story.

- A. *Conservation.* The original appearance of commercial buildings and storefronts, when present, should be conserved. Decorative features should be retained in repair and renovation projects. Storefronts should not obscure the basic architectural framework of the buildings which they occupy. Storefront design should not reproduce styles of a period earlier than the building they occupy.
- B. *Masonry surfaces.* Masonry and other original surfaces should be conserved. Brick should not be covered with stucco, shakes, or other veneer.
- C. *Windows.* Windows should not be filled in with wood, brick, or any other material. Window sizes and shapes should be maintained if removal of original units is necessary.
- D. *Roofs and parapets.* The original roofline, including cornice, parapet and other elements, should be maintained.
- E. *Signs.* Signs should be compatible with the character of the building and surrounding area. Signs should be appropriately sized and complement the building exterior. They should not conceal architectural details or features. Sign materials should be compatible with the materials of the building to which they are attached. No part of the historic facade should be damaged in the installation of the sign. Rooftop signs are inappropriate.
- F. *Awnings.* Awnings should be sized to fit the windows and storefronts behind them. They should not greatly obscure the architectural features behind them. Canvas is the most suitable material for most storefronts.

Secs. 12-1674--12-1710. Reserved.

Subdivision III. New Constructions and Additions

Sec. 12-1711. General guidelines.⁴⁰²

The objective of guidelines for new construction is to encourage a high standard of historically compatible new design. New buildings and structures should be compatible with the size, scale, massing, height, rhythm, setback, color, material, building elements, site design and character of surrounding structures as well as the broad context of the district or area. Other applicable zoning regulations should be consulted before planning new construction.

- A. *Site evaluation.* Whenever possible, existing historic buildings and landscape features should be retained and rehabilitated in plans for redevelopment.
- B. *General character.* New construction should reinforce the historic architectural and visual character of the district; specifically, it should refer to the traditional one- and two-story dwelling and commercial building module, and typical setbacks already established in the district.

LAND USE

- C. *Pedestrian circulation and parking.* New construction should be oriented toward streets which are inviting environments for pedestrians. Parking areas should be placed at the rear of buildings wherever possible, or screened with landscaping, low walls, or appropriately detailed fences.
- D. *Views and vistas.* Wherever possible, distinctive views of the river and bluffs provided from the public way should not be obstructed by new buildings or structures.

Sec. 12-1712. New construction.⁴⁰³

- A. *Siting and setback.* New construction should maintain the uniform setback of older residential and commercial buildings along the street.
- B. *Massing, height, and scale.* New construction should conform to the massing, volume, height, facade proportions and scale of buildings within view of the site, and also comply with existing zoning regulations. The gross volume of any new structure should be visually compatible with the buildings and elements within the surrounding area.
- C. *Materials and details.* Although the architectural character of the district is quite eclectic, materials and details should be compatible with adjacent buildings. Wood and masonry are preferable to vinyl, metal, or hardboard siding. Imitative materials such as artificial stone or brick veneer should not be used. The use of vinyl, metal, or hardboard siding will be considered by the Zoning Administrator or commission on a case-by-case basis.
- D. *Parking.* Parking areas should be located at the side or at the rear of the buildings and should be screened with landscaping, low walls, or appropriately detailed fences. A vegetation screening plan should accompany plans for parking development.
- E. *Building elements:*
 - 1. *Roofs.* In new construction, the skyline or roof profile should relate to the predominant roof shapes of the surrounding area. Roofing materials used on new buildings should be appropriate to the design of the building and the visibility of the roof. Roof hardware such as skylights, vents, and metal pipe chimneys should not be placed on the front roof plane.
 - 2. *Windows and entries.* Prominent first-floor display windows and distinctive entries facing the street are typical for existing historic commercial buildings. Similarly, vertically-oriented, double-hung sash is the predominant window type for the upper stories of residential buildings within the district. The location, proportion, size, rhythm and detailing of windows and entries should address these traditional forms.
 - 3. *Signs and lighting.* Signs, graphics, and lighting should be designed as part of the facade. Signs on commercial blocks housing several adjacent businesses should be designed to unify the facade, while providing identity for individual businesses. Type, style, sign color, and sign materials should complement the building exterior. Lighting should be compatible with the building exterior and signs. Internally lighted signs should not be used where they overpower the facade or setting.

Sec. 12-1713. Additions to principal buildings.⁴⁰⁴

- A. *Massing and scale.* New construction should conform to the massing, volume, height, facade proportions and scale of surrounding structures and also comply with existing zoning regulations. The gross volume of any new structure should be visually compatible with the buildings and elements within the surrounding area. New dwellings and commercial buildings should be compatible with the height of existing adjacent buildings.
- B. *Materials and details.* Materials and details should relate to those of existing nearby buildings. Wood and masonry are preferable to vinyl, metal, or hardboard siding. Imitative materials such as artificial stone or brick veneer should not be used. Materials will be reviewed to determine their appropriate use in relation to the overall design of the structure. The use of vinyl, metal, or hardboard siding will be considered by the Zoning Administrator or commission on a case-by-case basis.

⁴⁰³ Code 1982, § 309.103(2)

⁴⁰⁴ Code 1982, § 309.103(3)

LAND USE
AFTON CODE

C. *Building elements:*

1. *Roofs.* In new construction, the skyline or roof profile should relate to the predominant roof shape of nearby buildings. Highly visible secondary structure roofs should match the roof pitch of the main structure. The roofing materials used on new buildings should be appropriate to the design of the building and the visibility of the roof. Roof hardware such as skylights, vents, and metal pipe chimneys should be placed on the front roof plane.
2. *Windows and entries.* Vertically oriented, double-hung sash are the predominant historic window type in the City, although there are exceptions. The proportion, size, rhythm and detailing of windows and entries should be compatible with that of existing nearby buildings. The rhythm of solids to voids created by openings in the facade of the new structure should be visually compatible with surrounding structures.
3. *Porches and decks.* Porches are a standard feature of many historic houses in the City and whether enclosed or unenclosed they are an important part of the streetscape. The front entry of new construction in residential areas should be articulated with a design element such as a porch, portico, or landing which provides a transitional zone between the semipublic and public exterior zones and the private interior zone. This design element should be appropriately detailed and compatible with the size and scale of the building. Decks should be constructed at the rear of the building and should be integrated into the overall design. Decks should be appropriately detailed and should not be raised in a manner which makes them conspicuous.

Sec. 12-1714. Accessory buildings.⁴⁰⁵

Garages and other accessory buildings shall be compatible with the overall design and materials of the existing buildings on the lot. New garages should be located at the rear of the site wherever possible. Garages should not be attached to the front of the building.

Sec. 12-1715. Site considerations.⁴⁰⁶

- A. *Setback and siting.* The setback of new buildings should be compatible with the setback of existing adjacent buildings.
- B. *Parking.* Residential parking areas should be confined to the rear of existing or new buildings. Parking spaces should be screened from view from the public street by landscaping such as hedges, grade changes, or low fences.
- C. *Fences.* Fences which allow some visual penetration of front yard space are preferable to complete enclosure. Cyclone fences should not be used to enclose front yards in the front half of side yards.

Sec. 12-1716. Public improvements.⁴⁰⁷

New street and landscape improvements, lighting, street furniture and signs should be compatible with the character of the district. The historic urban pattern of grid-plan streets should be retained.

Sec. 12-1717. Signs.⁴⁰⁸

Sign materials and design should complement the materials and design of the building and adjacent buildings.

Secs. 12-1718--12-1770. Reserved.

⁴⁰⁵ Code 1982, § 309.103(4)

⁴⁰⁶ Code 1982, § 309.103(5)

LAND USE

ARTICLE VIII. BUILDINGS AND BUILDING REGULATIONS⁴⁰⁹

DIVISION 1. GENERALLY

Secs. 12-1771--12-1800. Reserved.

DIVISION 2. BUILDING CODE⁴¹⁰

Sec. 12-1801. Adopted.⁴¹¹

The Minnesota State Building Code, established pursuant to M.S.A. §§ 16B.59--16B.75, one copy of which is on file in the office of the City Administrator, is hereby adopted as the building code for the City. Such code is hereby incorporated in this article as completely as if set out in full.

Sec. 12-1802. Administration required.⁴¹²

As periodically adopted and amended by the State of Minnesota, the International Building Code will be administered as the Building Code for the City.

Sec. 12-1803. Application, administration and enforcement.⁴¹³

- A. The application, administration and enforcement of the building code adopted in Section 12-1801 shall be in accordance with Mn Rule, § 1300.2100.
- B. The building code department shall be the building code department of the City. The administrative authority shall be a state-certified building official.
- C. The appointing authority shall designate the building code administrative authority for the jurisdiction of the City.

Sec. 12-1804. Permits, inspections and fees.⁴¹⁴

- A. Permits, inspections and collection of fees shall be authorized in M.S.A. Stat. 16B.62, subdivision 1. The building permit fee schedule for the City shall be established by resolution of the City Council.
- B. In addition to the permit fee required by Subsection (A) of this section, the applicant shall pay a surcharge to be remitted to the state department of administration as prescribed by M.S.A. § 16B.70.
- C. In addition to the basic building permit fee, a park fee is hereby imposed on each new home building permit as stated in chapter 12, article VI, pertaining to subdivisions.

Sec. 12-1805. Violations and penalties.⁴¹⁵

⁴⁰⁹ **Cross references**—Building department, § 2-201 et seq.; building official, § 2-111 et seq.; building permits in the building code regarding zoning, § 12-81; floodplain regulations, § 12-901 et seq.; manufactured homes, mobile homes, travel trailers, etc., prohibited in floodplain district, § 12-912; heritage preservation, § 12-1526 et seq.; use of individual sewage treatment systems, § 12-2006 et seq.; individual sewage treatment systems, § 12-2076 et seq.; construction and materials for building sewers, § 12-2165; numbering buildings, § 20-61 et seq.; utilities, ch. 24.

⁴¹⁰ **State law reference**—Authority to regulate the construction of buildings, M.S.A. § 412.221, subd. 28; **State law reference**—State building code applicable throughout the state, M.S.A. § 16B.62.

⁴¹¹ Res. No. 1995-11, § 401.101, 11-21-95; Res. No. 1997-16, § 21, 6-17-97, **State law reference(s)**--Authority to adopt codes by reference, M.S.A. § 471.62.

⁴¹² Ord 1997-20, 4/20/99, Sec. 12-1802 Repealed and Replaced

⁴¹³ Res. No. 1995-11, § 401.201, 11-21-95

⁴¹⁴ Ord 1997-20, 4/20/99, Ord. 2004-25, 4/20/04, Res. No. 1995-11, § 401.301, 11-21-95, **Cross reference**--Building permits in subdivisions, § 12-1268.

⁴¹⁵ Res. No. 1995-11, § 401.401, 11-21-95, **State law reference**--Similar provisions, M.S.A. § 16B.69.

LAND USE
AFTON CODE

A violation of the building code adopted in Section 12-1801 is a misdemeanor and shall, upon conviction, be punished as provided in Section 1-13.

Secs. 12-1806--12-1850. Reserved.

DIVISION 3. FIRE PREVENTION AND LIFE SAFETY CODE⁴¹⁶

Sec. 12-1851. Adopted.⁴¹⁷

There is hereby adopted by the City for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code and standards known as the Uniform Fire Code, including Appendix Chapters I-A, I-B, II-A, II-B, II-C, II-D, III-A, III-B, III-C, IV-A, V-A, VI-A, VI-C, VI-D, and the Uniform Fire Code Standards published by the Western Fire Chiefs Association and the International Conference of Building Officials and the Minnesota Uniform Fire Code being particularly the 1982 Edition thereof and the whole thereof. One copy of these codes and standards must be and are now filed in the office of the clerk of the City and the same are hereby adopted and incorporated as fully as if set out at length herein. From the date on which the ordinance from which this division was derived shall take effect, the provision thereof shall be controlling within the limits of the City.

Sec. 12-1852. Establishment, duties of bureau of fire prevention.⁴¹⁸

- A. The Uniform Fire Code shall be enforced by the Bureau of Fire Prevention in the fire department of the Lower St. Croix Valley Fire Protection District which is hereby established and which shall be operated under the supervision of the chief of the fire department.
- B. The chief (or marshal) in charge of the Bureau of Fire Prevention shall be appointed by the Lower St. Croix Valley Fire Protection District on the basis of established procedures.
- C. The chief of the fire department may detail such members of the fire department as inspectors as shall from time to time be necessary. The chief of the fire department shall recommend to the Lower St. Croix Valley Fire Protection District the employment of technical inspectors, who, when such authorization is made, shall be selected through an examination to determine their fitness for the position. The examination shall be open to members and nonmembers of the fire department, and appointments made after examination shall be for an indefinite term with removal only for cause.

Sec. 12-1853. Definition.⁴¹⁹

Wherever the word "jurisdiction" is used in the Uniform Fire Code, it means the City of Afton.

Sec. 12-1854. New construction and renovation.⁴²⁰

All plans and specifications for new construction and renovation of commercial and public buildings, shall be submitted to and approved by the fire department, fire prevention bureau officer, prior to the start of construction.

Sec. 12-1855. Appeals.⁴²¹

Whenever the chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the codes adopted by this article do not apply or that the true intent and meaning of the codes have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the chief to city within 30 days from the date of the decision appealed.

⁴¹⁶ **State law references**—Authority to adopt ordinances to prevent, control or extinguish fires, M.S.A. § 412.221, subd. 17; fire prevention in cities, M.S.A. ch. 438.

⁴¹⁷ Code 1982, § 402.101, **State law reference**--Authority to adopt codes by reference, M.S.A. § 471.62.

⁴¹⁸ Code 1982, § 402.102

⁴¹⁹ Code 1982, § 402.103, **Cross reference**--Definitions generally, § 1-2.

⁴²⁰ Code 1982, § 402.104

⁴²¹ Code 1982, § 402.105

LAND USE

Sec. 12-1856. Open burning prohibited.⁴²²

It shall be unlawful for any person to start or allow to burn, any open fire on any property within the City without first having obtained a permit therefor⁴²³ from the Lower St. Croix Valley Fire Protection District, except for supervised recreational or cooking fires contained within approved fire rings, pits or barbecue grills.

Sec. 12-1857. Rules adopted by reference.⁴²⁴

Chapter 8, State of Minnesota Air Pollution Control Rules current edition as amended May 13, 1976, is hereby adopted by reference and is made a part of this division as if fully set forth herein. Three copies of such rules are on file with the City Clerk.

Secs. 12-1858--12-1900. Reserved.

ARTICLE IX. SEWAGE⁴²⁵

DIVISION 1. GENERALLY

Secs. 12-1901--12-1950. Reserved.

DIVISION 2. SEWER USE⁴²⁶

Subdivision I. Generally

Sec. 12-1951. Purpose.

This article is adopted for the purpose of:

- A. Protecting the health, safety, and welfare of the residents of the community, present and future and in accordance with the City's SDS, and where applicable, NPDES permit.
- B. Regulating the discharge of wastes into soil treatment units and associated collection systems which would have an adverse affect on the operation and maintenance of the wastewater treatment facilities.

Sec. 12-1952. Definitions.⁴²⁷

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

Active maintenance means a maintenance program for individual sewage treatment systems whereby the property owner has complete responsibility for effecting operation, maintenance and replacement (OM&R) in a manner acceptable to the City.

⁴²² Code 1982, § 402.106, **Cross reference**--Open fires in parks prohibited, § 16-7.

⁴²³ Amendment 02-2009, 4/21/2009

⁴²⁴ Code 1982, § 402.107

⁴²⁵ **Cross references**—Zoning and water supply sanitary requirements for shoreline management, § 12-401 et seq.; Lower St. Croix River management requirements for sewage disposal, § 12-587; floodplain management on-site sewage treatment and water supply systems, § 12-1143. **State law references**—Authority to establish and maintain sewers, M.S.A. § 412.221, subd. 6; authority to build and construct sewers and sewage disposal plants, M.S.A. § 444.075.

⁴²⁶ **Cross references**—Septic permits regarding zoning, § 12-83; sewers and subdivisions, § 12-1428.

⁴²⁷ **Cross reference**--Definitions generally, § 1-2; Ord 08-2010, 9/21/2010

LAND USE

AFTON CODE

Building drain means that part of the lower horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer which begins at least one foot outside the building line.

Community sewage treatment system means a sewage treatment system which collects sewage from two or more residences or other establishments, consisting of: Collector lines, pumps, sewage tanks, and soil treatment unit. Also known as a cluster system or collector system.

Easement means a legal transfer of rights, privileges or uses of private property.

Garbage means solid waste resulting from the domestic and commercial preparation, cooking, and dispensing of food and from the handling, storage, or sale of meat, fish, fowl, fruit, or vegetables and condemned food.

Industrial wastes means the solid, liquid, or gaseous waste resulting from industrial or manufacturing processes, trade or business, or from the development, recovery or processing of natural resources.

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

Natural outlet means any outlet into a watercourse, pond, ditch, lake, or other body of surface water or groundwater.

Normal domestic strength wastes means wastes which are characterized by a per capita discharge of 75 gallons per day at a loading of 200 mg per liter BOD, and 225 mg per liter total suspended solids.

Operation and maintenance means activities required to provide for the dependable and economical functioning of the treatment system, throughout the useful life of the treatment works, and at the level of performance for which the treatment works were constructed. Operation and maintenance includes replacement.

Other wastes means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, oil, tar, chemicals, offal, and all other substances except sewage or industrial waste.

Passive maintenance means a maintenance program for community sewage treatment systems whereby the community in which the treatment system is situated is responsible for conducting operation, maintenance and replacement in a manner acceptable to the City.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Public sewage treatment system means any sewage treatment system owned or operated by a unit or agency of government.

Sanitary sewer means a sewer which carries sewage and to which stormwater, surface water, and groundwater are not intentionally discharged.

Sanitary waste means the liquid and water carried wastes discharged from sanitary plumbing facilities.

Sewer means a pipe or conduit for carrying sewage, industrial wastes or other waste liquids.

Sewer system means pipelines or conduits, pumping stations, forcemains, and all other devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes or other wastes to a point of ultimate disposal.

Slug means any discharge of water, wastewater or industrial waste which in concentration of any given constituent, or in quantity of flow, exceeds for any period of duration longer than 15 minutes, more than five times the average 24 hour concentration or flow during normal operation.

State Disposal System (SDS) Permit means any permit including any terms, conditions and requirements thereof issued by the MPCA pursuant to M.S.A. § 115.07 for a disposal system as defined by M.S.A. § 115.01, subd. 8.

LAND USE

Suspended solids means solids that either float on the surface of or are in suspension in water, sewage, or other liquids and which are removable by laboratory filtering in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater.

Toxic pollutant means the concentration of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse affects as defined in standards pursuant to section 307(a) of the Clean Water Act.

Unpolluted water means clean water uncontaminated by industrial wastes, other wastes, or any substance which renders such water unclean or noxious or impure so as to be actually or potentially harmful or detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial or recreational uses; or to livestock, wild animals, birds, fish, or other aquatic life.

Wastewater facility means the structures, equipment, or processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.

Sec. 12-1953. Applicability.

This article shall apply and be in effect for the stated purposes within the "201" study areas in the City.

Sec. 12-1954. Enforcement.

- A. The City Clerk/Zoning Administrator shall be responsible for administration and enforcement of this article.
- B. The City Clerk/Zoning Administrator or his agent shall be qualified and certified by the MPCA as competent in the design, evaluation and inspection of individual on-site sewage treatment systems, and shall carry a current individual sewage treatment system certificate and a current class D operators certificate.

Sec. 12-1955. Appeals and variance requests.

- A. The City Council shall hear and decide appeals and review any order, decision or determination made by the clerk/Zoning Administrator regarding the enforcement of this article.
- B. The City Council shall hear and act upon all rate adjustment and variance requests.
- C. Any appeal of an administrative decision or determination may be filed by any person, department, bureau, town, city, county, or state which is aggrieved by the decisions.

Sec. 12-1956. Inspections.

Inspections as required to determine compliance with this article shall be performed by the City Administrator or his authorized agent under the following circumstances:

- A. Duly authorized employees of the City shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this article. Those employees shall have no authority to inquire into processes including metallurgical, chemical, oil refining, ceramic, paper, or other industries except as is necessary to determine the kind and source of the discharge to the public sewer.
- B. The owner or occupant of a property shall be responsible to provide access at reasonable times, to the City Administrator or his agent, for the purpose of performing inspections required under this article.
- C. While performing the necessary work on private property as referred to in Subsection (A) of this section, the authorized employees of the City shall observe all safety rules applicable to the premises.
- D. Fees for inspections, maintenance, or other services rendered under this article shall be as set by resolution of the City Council from time to time.
- E. The City may issue construction stop work orders until stormwater management measures meet

LAND USE

specifications and the applicant repairs any damage caused by stormwater runoff. An inspection by the community must follow before the construction project work can resume.

- F. The City can take any combination of the following actions in the event of a failure by the applicant to meet the terms of this ordinance:
- Withhold inspections or issuance of certificates or approvals
 - Revoke any permit issued by the City to the applicant
 - Conduct remedial or corrective action on the development site or adjacent site affected by the failure
 - Charge the applicant for all costs associated with correcting the failure or remediating damage from the failure; if payment is not made within thirty days, payment will be made from the applicant's financial securities
 - Bring other actions against the applicant to recover costs of remediation or meeting the terms of this ordinance.
 - Any person failing to comply with or violating any of these regulations, shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. Each day that a separate violation exists shall constitute a separate offense.

Sec. 12-1957. Violations and penalties.

- A. It is hereby declared unlawful for any person to violate any term or provision of this article. Violation thereof shall be a misdemeanor. Each day that a violation is allowed to continue shall constitute a separate offense.
- B. Upon a violation or a threatened violation of this article, the City Administrator, in addition to other remedies, may request 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 initiate such action.
- C. Any person found to be violating any provisions of this article 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 time period stated in such notice permanently cease all violation.
- D. Any person who shall continue any violation beyond the time limit provided for in the written notice shall be guilty of a misdemeanor and on conviction thereof shall be fined in the amount not exceeding \$700.00 for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.
- E. Any person violating any of the provisions of this article shall become liable to the City for any expense, loss or damage occasioned by the City by reason of such violation.
- F. Any taxpayer of the City may institute mandamus proceedings in district court to compel specific performance by the proper official or officials of any duty required by this article.

Secs. 12-1958--12-1980. Reserved.

Subdivision II. Use of Public Sewage Treatment Systems

Sec. 12-1981. Unlawful surface discharge.

It shall be unlawful to discharge to any natural outlet within the City or any area under the jurisdiction of the City any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article and the City's NPDES/SDS permit.

Sec. 12-1982. Unlawful connection to public sewage treatment system, permit.

It shall be unlawful for any person to connect a building sewer to any public sewage treatment system without first obtaining a permit from the City. The City shall permit new connections and flow increases only if there is additional available capacity in the particular public sewage treatment system being considered. No new construction will be permitted to connect for two years following start up of each public sewage treatment system.

Sec. 12-1983. Lawful connections to public sewers.

New connections will be allowed, with a city permit, according to the following conditions:

- A. Where an existing on-site septic system is failing and where the property in question has frontage on the public sewage treatment system, a new connection may be permitted if capacity is available in all components of the public sewage treatment system.
- B. New connections to the public sewage treatment systems will be permitted for new construction if capacity is available in the particular public sewage treatment system over what is needed to accommodate all the existing structures.
- C. New connections shall be constructed according to the specifications of the City's permit for such connection. The permit conditions for new building sewer connections to public sewage treatment systems shall be as follows:
 - 1. Applications for permits shall be made by the owner or authorized agent and shall state the location, name of owner, street number of the building to be connected, and how occupied. No person shall extend

LAND USE

LAND USE

- any private building or property for which the service connection permit has been given. The application shall contain an acknowledgment by applicants that the system, although owned by the City, was designed by a professional engineer to specifications established by the state and federal government, and was constructed primarily with state and federal funds as an accommodation to applicants who had failed septic systems and could not comply with septic standards in any other manner. Applicants shall also agree not to seek damages or indemnification from the City for loss or injury resulting from back-up or other functioning or nonfunctioning of the system, unless the City has failed or refused to comply with the maintenance standards contained in this article.
2. There shall be two classes of building sewer permits:
 - a. For residential and commercial service; and,
 - b. 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 judgment for the City. The industry, as a condition of permit authorization, must provide information describing its wastewater constituents, characteristics, and type of activity.
 3. 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.
 4. 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 such connection aforementioned.
 5. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the City to meet all requirements of this article.
 6. The size, slopes, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling of the trench, shall all conform to the requirements of the state building and plumbing code or other applicable rules and regulations of the City. In the absence of code provisions or in the amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials (ASTM) and Water Pollution Control Federation (WPCF) Manual of Practice No. 9, shall apply.
 7. 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 such building drain shall be lifted by an approved means and discharged to the building sewer. The property owner shall provide and maintain such lifting mechanism as required at no expense to the City.
- D. The fee for new connections shall be established by the City from time to time.

Sec. 12-1984. Unlawful discharge to public sewers.

No person shall discharge or cause to be discharged directly or indirectly any waste which, by volume or strength or nature, may harm the wastewater treatment facility or cause obstruction to the free flow in sewers or endanger life or cause a nuisance.

- A. No person shall discharge or cause to be discharged directly or indirectly any stormwater, groundwater, roof runoff, subsurface drainage, waste from on-site disposal systems, unpolluted cooling or processing water to any sanitary sewer except as permitted by the City.
- B. Stormwater and all other unpolluted water shall be discharged to a storm sewer if available or to the ground surface, except that unpolluted cooling or processing water may be discharged to a storm sewer or natural outlet upon approval and the issuance of a discharge permit by the MPCA.
- C. No person shall discharge or cause to be discharged directly or indirectly to any treatment system the following substances:
 1. Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way

AFTON CODE

- to the wastewater disposal system. Prohibited materials include, but are not limited to: gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.
2. Any water or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the wastewater treatment works.
 3. Any water or waste having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and people.
 4. Solid or viscous substances, either whole or ground, in quantities or of such size capable of causing obstruction to the flow in the sewers, or other interference with the proper continuation of the wastewater facilities such as, but not limited to, ashes, cinders, disposable diapers, glass grinding or polishing wastes, stone cuttings or polishing wastes, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails, sanitary napkins, paper dishes, cups, milk containers, and other paper products.
 5. Noxious or malodorous liquids, gases, or substances which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance or repairs.
 6. Water or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, including wastes which may adversely affect⁴²⁸ the permeability of soils, such as dairy products and blood.
- B. No person shall discharge or cause to be discharged directly or indirectly the following described substances to any public sewers unless in the opinion of the City such discharge will not harm the wastewater facilities, nor cause obstruction to free flow in sewers, nor otherwise endanger life, limb, or public property, nor constitute a nuisance. In forming its opinion as to the acceptability of the wastes, the City may give consideration to such factors as the materials or construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment facilities, the City's SDS permit, and other pertinent factors. The City may make such determination either on a general basis or as to discharges from individual users or specific discharges, and may prohibit certain discharges from individual users because of unusual concentrations or combinations which may occur. The substances prohibited are:
1. Any liquid or vapor having a temperature in excess of 150 degrees Fahrenheit (65 degrees Celsius).
 2. Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (0 and 65 degrees Celsius). Any garbage that has not been ground or comminuted to such degree that all particles will be carried freely in suspension under flows normally prevailing in the public sewers, with no particles greater than one-half inch in any dimension.
 3. Any water or wastes containing strong acid, iron pickling wastes, or concentrated plating solutions, whether neutralized or not.
 4. Any water or wastes containing phenols or other taste or odor producing substances which constitute a nuisance or hazard to the structures, equipment, or personnel of the sewage works, or which interfere with the treatment required to meet the requirements of the state or federal government, or any other public agency with proper authority to regulate the discharge from the sewage treatment plant.
 5. Any radioactive wastes or isotopes of such half-life or concentration that they are not in compliance with regulations issued by the appropriate authority having control over their use or may cause damage or hazards to the treatment works or personnel operating it.
 6. Any water or wastes having a pH in excess of 9.5.
 7. Materials which exert or cause:
 - a. Unusual concentrations of suspended solids, (such as, but not limited to, Fuller's earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride or sodium sulfate).
 - b. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).
 - c. Unusual BOD or chemical oxygen demand in such quantities as to constitute a significant load on the wastewater treatment facilities.
 - d. Unusual volume of flow or concentration of waste constituting a slug.

⁴²⁸ Amendment 02-2009, 4/21/2009

LAND USE

LAND USE

Sec. 12-1985. Pretreatment, control and refusal of extraordinary wastes.

- A. If any water or wastes are discharged, or are proposed to be discharged directly or indirectly to the public sewers, which water or wastes do not meet the standards set out in or promulgated under this section, or which in the judgment of the City may have a deleterious effect upon the treatment facilities, processes, equipment, or receiving waters or which otherwise create a hazard to life, or constitute a public nuisance, the City may take all or any of the following steps:
 1. Refuse to accept the discharges.
 2. Require control over the quantities and rates of discharge.
 3. Require pretreatment to an acceptable condition for the discharge to the public sewers.
 4. Require payment to cover the added cost of handling or treating the wastes.
- B. The design and installation of a plant or equipment for pretreatment or equalization of flows shall be subject to the review and approval of the City, and subject to the requirements of 40 CFR 403, entitled Pretreatment Standards, and the state pollution control agency.
 1. Grease, oil, and mud interceptors shall be provided when they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in Section 12-1984, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the City and shall be located as to be readily and easily accessible for cleaning and inspection.
 2. Where preliminary treatment, flow equalization, or interceptors are required for any water or waste, they shall be effectively operated and maintained continuously in satisfactory and effective condition by the owner at his expense and shall be available for inspection by the City at all reasonable times.
 3. When required by the City, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such structure and equipment, when required, shall be constructed at the owner's expense in accordance with plans approved by the City and shall be maintained by the owner so as to be safe and accessible at all times.
 4. All measurements, tests, and analyses of the characteristics of water and waste to which reference is made in this article shall be determined in accordance with 40 CFR 136 Guidelines Establishing Test Procedures for the Analysis of Pollutants; the latest edition of Standard Methods for the Examination of Water and Wastewater and shall be determined at the control structure provided, or upon suitable samples taken at such control structure. If no special structure has been required, the control structure shall be considered to be the nearest downstream manhole in the public sewer from the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effluent constituents and their effect upon the treatment works and to determine the existence of hazards to life, health and property. Sampling methods location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the City.
 5. The owner of any property serviced by a building sewer carrying industrial wastes shall, at the discretion of the City, be required to provide laboratory measurements, tests, and analyses of waters or wastes to illustrate compliance with this article and any special condition for discharge established by the City or regulatory agencies having jurisdiction over the discharge. The number, type, and frequency of sampling and laboratory analyses to be performed by the owner shall be as stipulated by the City. The industry must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with the federal, state, and local standards are being met. The owner shall bear the expense of all measurements, analyses and reporting required by the City. At such times as deemed necessary the City reserves the right to take measurements and samples for analysis by an outside laboratory.
 6. New connections to the sanitary sewer system shall be prohibited unless sufficient flow capacity is available in all downstream facilities.
 7. No statement contained in this section shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore by the industrial concern, providing that national categorical pretreatment standards and the City's NPDES and/or state disposal system permit limitations are not violated.

AFTON CODE

Secs. 12-1986--12-2005. Reserved.

Subdivision III. Use of Individual Sewage Treatment Systems⁴²⁹

Sec. 12-2006. Reserved.⁴³⁰

Secs. 12-2007--12-2040. Reserved.

Subdivision IV. Maintenance

Secs. 12-2041 – 12-2044. Reserved.⁴³¹

Secs. 12-2045 -- 12-2075. Reserved.⁴³²

DIVISION 3. SEWAGE TREATMENT⁴³³

Secs. 12-2076 -- 12-2200. Reserved.

DIVISION 4. WASTEWATER SERVICE CHARGE SYSTEM

Subdivision I. Charge Established.

The City of Afton hereby establishes a Wastewater Service Charge System whereby revenue collected from users of the wastewater treatment facilities will be used to offset all expenditures incurred for administration, annual operation and maintenance and equipment replacement.

Sec. 12-2201. User Categories.

Users of the “River Road 201” wastewater facilities of the City of Afton shall be classified into one of the following categories:

- A. Permanent User
- B. Seasonal User

Sec. 12-2202. Equivalent Residential Units.

Wastewater charges will be established based on Equivalent Residential Units (ERU). One ERU is defined as a unit of wastewater volume of 225 gallons per day with a theoretical waste strength of 200 mg/l of BOD and 225 mg/l of total suspended solids. The assignment of ERUs will be made by the City. Seasonal units will have a value of sixty percent (60%) of an equivalent year round unit.

- A. Equivalent Residential Units at a volume of 225 gallons per day Normal Domestic Strength Wastewater will be assigned by the City according to the following table:

Sewage Flows		
No. of Bedrooms	in gal. per day	ERUs
1-2	225	1.0
3	300	1.3
4	375	1.7

⁴²⁹ **Cross reference**—Buildings and building regulations, § 12-1771 et seq.

⁴³⁰ Ord 08-2010, § 12-2006, 9/21/2010

⁴³¹ Ord 08-2010, § 12-2041 through 12-2044, 9/21/2010

⁴³² Ord 1997-9, 1/13/98

⁴³³ Ord 1997-9, 1/13/98; Ord 08-2010, § Article IX, Division 3, 9/21/10

LAND USE

LAND USE

5	450	2.0
6	525	2.3
7	600	2.7

Non-residential users shall be assigned ERUs according to ESTIMATES OF COMMERCIAL, INDUSTRIAL, AND RECREATIONAL WASTEWATER FLOWS as printed in the On-Site Sewage Treatment Manual, which is printed annually by the University of Minnesota Agricultural Extension Service and the Minnesota Pollution Control Agency.

- B. Users may appeal the number of ERUs assigned to a particular connection by installing and maintaining, at their own expense, water meters of a type approved by the City. Such meters shall be equipped with remote registering recorders located at an accessible site on the owner's⁴³⁴ property.
- C. The City may, at its discretion require non-residential users to install water meters for the purpose of determining wastewater volume. The City may require residential connections to install water meters as part of a comprehensive program to install meters throughout the City's water system. When so required, such meters shall be of a type approved by the City and equipped with remote registering recorders, and located at an accessible site on the owner's property.

Sec. 12-2203. Annual User Charge Rates.

In accordance with Federal and State requirements, each user will be notified annually at the beginning of each calendar year of the User Charge Rates attributed to wastewater treatment services.

Sec. 12-2204. Records.

In accordance with Federal and State requirements, the City Administrator will be responsible for maintaining all records necessary to document with the Wastewater Service Charge System adopted.

Secs. 12-2205-12-2210. Reserved.

Subdivision II. Determination of Charges.

Sec. 12-2211. Recovery of Costs.

It is the intent of this Ordinance that the wastewater service charges shall cover the costs of operating and maintaining the wastewater systems, and that costs are recovered from all users in a proportionate manner. The City shall maintain a proper system of accounts suitable for determining the operation and maintenance and equipment replacement costs of the collection and treatment facilities. These costs shall be reviewed at regular annual intervals. The City shall determine whether or not sufficient revenue is being generated for the effective operation and maintenance and management of the wastewater system, and that user charges are being distributed proportionately to all users. Any inequities and/or shortages shall be corrected by adjusting the rates accordingly by resolution of the City.

Sec. 12-2212. Determination of User Charge.

All users shall be charged an annual wastewater service charge in accordance with the methodology described below:

$$Cs/ERU = \frac{Com + Cr}{No. of Eru's}$$

Where Cs = Wastewater Service Charge per year
 Com = Operation and Maintenance Charge per year
 Cr = Equipment Replacement Charge per year

Sec. 12-2213. Annual Fees and Payments.

⁴³⁴ Amendment 02-2009, 4/21/2009

AFTON CODE

All users of the wastewater treatment facilities shall be charged annually for sewer service based on the number of equivalent residential units assigned to each and based on whether the unit is seasonal or year round. Payment shall be rendered in full within 30 days of the billing date.

Sec. 12-2214. Septic Tank Effluent Pumping Surcharge.

An additional fee shall be charged to users of the community sewage treatment system who, for whatever reason, require septic tank pumping more frequently than once in two years. The surcharge for such frequent pumping shall be at the same rate, either per tank or per gallon, as established by contract for the routine pumping of each septic tank on the community sewage treatment system.

Sec. 12-2215. Fees for Unusual Wastes.

If a user discharges toxic pollutants or wastes of unusual strength or character to the treatment facilities which cause or increase the operation and maintenance costs, he/she shall be ordered either to install pretreatment facilities or pay for the extra costs of treating the wastes. This decision will be made by the City, at the time the user begins to discharge extra strength wastes.

Sec. 12-2216. Toxic or Incompatible Waste Clean-Up.

Any additional costs caused by discharges to the treatment works of toxics or other incompatible wastes, including the costs of restoring wastewater treatment services, clean-up and restoration of ground and surface water and environs, and sludge disposal, shall be borne by the discharger(s) of said wastes, at no expense to the City.

Sec. 12-2217. Establishment of Special Accounts.

The City hereby establishes a Wastewater Service Fund into which all revenue collected from users will be deposited for disbursements into the general operating fund and the replacement fund. For the purpose of community and cost accounting records, this fund is designated as an income account. Revenue sufficient to insure adequate replacement shall be held in the replacement fund separate from the operation and maintenance fund proportionately to each fund.

Secs. 12-2218 – 12-2225. Reserved.

Subdivision III. Administration.

Sec. 12-2226. Applicability.

This Ordinance shall apply and be in effect for the stated purposes within the “201” study areas in the City of Afton.

Sec. 12-2227. Enforcement.

- A. The City Administrator shall be responsible for administration and enforcement of this Ordinance.
- B. The City Administrator or his/her agent shall be qualified and certified by the MPCA as competent in the design, evaluation and inspection of individual on-site sewage treatment systems, and shall carry a current Individual Sewage Certificate and a current Class D Operations Certificate.

Sec. 12-2228. Appeals and Variances.

- A. The City shall hear and decide appeals and review any order, decision or determination made by the City Administrator regarding the enforcement of this Ordinance.
- B. The Board of Adjustment & Appeals shall hear and act upon all rate adjustment and variance requests.
- C. Any appeal of an administrative decision or determination may be filed by any person, department, bureau, town, city, county, or state which is aggrieved by a decision.

Secs. 12-2229 – 12-2235. Reserved.

Subdivision IV. Enforcement.

Sec. 12-2236. Violations and Penalties.

Any bill not paid four (4) weeks after date of billing shall be declared delinquent and a past-due notice shall be issued to the billed party. The past-due notice shall contain an additional charge to cover the costs of the rebilling. Additional delinquent notices including their respective charges shall be sent at eight (8) and twelve (12) weeks after the billing date. Should a bill still be delinquent after one hundred twenty (120) days, the City may elect to take the following actions.

- A. Whenever wastewater service charge bills become delinquent, the amount due shall be certified to the County Auditor for inclusion with the following year's tax statement.
- B. Lien. Whenever wastewater treatment bills become delinquent the same shall become and constitute a lien upon the real estate to which sewer service is supplied. Statements rendered for such charge shall be deemed notice to all parties, whether or not the person charged with the statement is the property served. The claim for lien shall be made in the⁴³⁵ form of a sworn statement setting forth:
 1. a description of the real estate, sufficient for the identification thereof, upon or for which the sewage service was supplied;
 2. the amount of money due for such sewage service; and
 3. the date or dates when such amount or amounts became delinquent. If all amounts shown due remain unpaid after recording as provided by state statutes, the City may foreclose the lien in the same manner and with the same effect as the foreclosing of mortgages on real estate.
- C. Civil Action. In the alternative of levying a lien, the City may, at its discretion, file suite in a civil action to collect such amounts as are delinquent and due against the occupant or user of the real estate and shall collect, as well, all attorney's fees incurred by the City in filing the civil action. Such attorney's fees shall be fixed by order of the court.

Sec. 12-2237. Interest on Unpaid Balances.

In addition to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the owner or user of the real estate being served by the treatment works shall be liable for interest upon all unpaid balances at the rate of twelve percent (12%) per annum.

Sec. 12-2238. Permit Revocation and Service Disconnection.

The City reserves the right to revoke discharge permits and to disconnect service to any user whenever wastewater treatment becomes delinquent.

Sec. 12-2239. Effective Date.

This Ordinance takes effect upon passage and publication.

Sec. 12-2240 – 12-2300. Reserved.

ARTICLE X. MINING⁴³⁶

DIVISION 1. GENERALLY

⁴³⁵ Amendment 02-2009, 4/21/2009

⁴³⁶ **Cross references** – Mining, § 12-214; grading and filling near shorelands, § 12-407; interference with public land, § 20-31 et seq.

Sec. 12-2301. Purpose.

For the health, welfare, safety, and optimum land development, it is necessary to regulate the removal of sand, gravel, rock, soil and other natural deposits in the county. Other purposes include the following:

- A. To provide for the economical availability of sand, gravel, rock, soil, and other materials vital to the continued growth of the community.
- B. To establish reasonable and uniform limitations, safeguards, and controls in the community, for the future production of sand, gravel, rock, soil, and other natural resources.
- C. To control noise, dust, hazards, effect on adjacent property, and other factors related to the active mining or excavating operation.
- D. To provide for control of the extent of excavation compatible with the surroundings; and for the restoration of the mining area after termination of the removal operation to make the site compatible with the surroundings.
- E. To control pollution by erosion or sedimentation.

Sec. 12-2302. Definitions.⁴³⁷

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

Annual Mining Permit: The annual mining permit issued pursuant to this article by the City. Such annual mining permit shall be in addition to the Conditional Use Permit for the land covering the expected life of the mine as required in the zoning ordinance, article II of this chapter.

Mining shall include the excavation, removal or storage of sand, gravel, rock, soil, clay and other natural deposits within the City. Mining shall not include the excavation, removal or storage of rock, sand, dirt, gravel, clay or other material for the purpose of the foundation, cellar or basement of some pending structure, for which a permit has been issued and which is to be erected immediately following the excavation, removal or storage. Mining shall not include the removal or moving of materials for construction of roads, sewer lines, storm sewers, water mains, surface water drainage, agriculture or conservation purposes and sod removal. Nor shall mining include the moving of dirt for landscaping purposes on a lot used or to be used for residential purposes.

Sec. 12-2303. Nuisance abatement.⁴³⁸

- A. Where unsafe conditions or conditions in violation of this article or the permit exist, said conditions are hereby declared to be a nuisance, and the Council may give notice to the operator or owner to abate the same.
- B. If after a reasonable time for repair of the condition, it still exists, the Council may abate the nuisance and the costs of such work may be taxed against the property and become a lien thereon.

Sec. 12-2304. Existing codes.⁴³⁹

The provisions of the model mining regulation code adopted in this article are in addition to and not in replacement of the provisions of the zoning ordinance being article II of this chapter. Any provisions of the zoning ordinance relating to mining shall remain in full force and effect except as they may be contrary to the provisions of the model mining regulation code.

Sec. 12-2305. Violation, penalties.

⁴³⁷ **Cross reference**--Definitions generally, § 1-2.

⁴³⁸ **Cross reference**--Nuisances generally, § 10-26 et seq.

⁴³⁹ Code 1982, § 601.103

LAND USE

LAND USE

Any person who violates any of the provisions of these regulations shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to punishment in accordance with Section 1-13.

Secs. 12-2306--12-2320. Reserved.

DIVISION 2. PERMIT

Sec. 12-2321. Required.

- A. It shall be unlawful for any person, partnership, company, or corporation to engage in mining within the City or for an owner to allow a person to mine on his property, without first having obtained an annual mining permit from the Council. Prior to commencing mining operations or following one year of inactivity of any existing mining operations, a new or amended annual mining permit shall be obtained from the Council. It is recognized that mining is a land use permitted in the City in those areas zoned as industrial districts, but then only by Conditional Use Permit. It is also understood that the annual mining permit as provided in this article is in addition to the Conditional Use Permit required for the land covering the expected use of the mine and as provided in article II of this chapter.
- B. Persons conducting operations governed by this article and for which this article requires a permit may continue such operations, but within 60 days of the effective date of the ordinance from which this article derives shall make application for a permit, and failure to do so shall be a violation of this article; however, on request and for cause, the Council may extend the time for the initial application to 90 days. If application is not made within the required time, all mining operations shall be terminated.
- C. The annual permit shall be issued only after a public hearing following ten days posted and published notice and notification of adjoining landowners and after final approval by the Council. Any issued permit shall be posted by the applicant at the excavation site.
- D. A permit, when issued, shall be valid for one year unless terminated pursuant to Section 12-2322.

Sec. 12-2322. Termination.

- A. The Council may terminate a mining permit for violation of this article or a condition of the permit, or for other cause.
- B. To terminate a permit, the Council shall give notice of the violation or other cause for the termination along with an order that the condition be remedied. If the condition has not been repaired within a reasonable time, and not less than two weeks, the Council shall hold a hearing to determine whether the permit should be terminated.
- C. No mining shall take place after the permit is terminated pursuant to this section.

Sec. 12-2323. Application.

- A. The application for the permit required in Section 12-2321 shall be filed with the clerk for presentation to the Council. The currently required fee shall accompany each application. Application for renewal permit must be made 45 days prior to the termination of the previous permit. The application shall be made in the name of the operator of the mine and the owner of the land to be mined.
- B. The application shall contain:
 1. The name and address of the operator and owner of the land.
 2. The correct legal description of the property where the mining shall occur.
 3. Names of adjacent landowners including all those within a one-half mile radius.
 4. A map of the property where the mining is to occur that clearly indicates the property lines and the limits of the proposed excavation. Topographic data, including contours at vertical intervals of not more than five feet except where the horizontal contour interval is 100 feet or more, a two-foot vertical interval

AFTON CODE

- shall be shown on this map. Watercourses, marshes, wooded areas, rock outcrops, power transmission poles and lines, and other significant features shall also be shown. U.S.G.S. datum shall be used for all topographic mapping where feasible.
5. The purpose of the removal, storage or excavation.
 6. The estimated time required to complete the removal, storage, or excavation.
 7. The plan of operation, including soil processing (any operation other than direct mining and removal), soil stockpiling nature of the processing and equipment, location of the plant, source of water, disposal of water, and reuse of water.
 8. The travel routes to and from the site.
 9. The plans for drainage, water and wind erosion control, sedimentation and dust control; these plans shall be in conformity with the recommendations of the county soil and water conservation district office.
 10. A map or plat of the proposed pit or excavation showing the confines or limits thereof together with the proposed finished elevations based on 1929 sea level datum readings. Where the finished elevations prohibit natural drainage out of the site, certified soil borings shall be included through the proposed excavation.
 11. A comprehensive plan showing that suitable provision will be made for the restoration and reuse of the excavated area so that it will not become a health or safety hazard or a nuisance, such plan to include anticipated final elevations, slope and a plan for the return of subsoil and topsoil, sufficient to support the interim and long term uses. Where the Council deems it practical and necessary, such plan shall include adjoining related areas where excavations have previously been made and remain under the control of the owner of the land on which the excavating is to be done or under the control of the person other than the owner to whom the permit is to be issued.
 12. The applicant shall illustrate a staged activity or mining plan and shall illustrate how each stage or section will be restored or reused prior to beginning excavation or mining of the next stage of mining operations.

Sec. 12-2324. Operating and land rehabilitation practices.

The applicant shall abide by one of the two following operating and land rehabilitation practices:

- A. Excavations resulting in the accumulation of substantial water areas after rehabilitation must meet the following requirements:
 1. The water depth must not be less than three feet measured from the low water mark.
 2. All banks shall be sloped to the water line at a slope which shall not be steeper than four feet horizontal to one foot vertical.
 3. All banks shall be sodded, seeded with erosion retardant seed mixtures and mulches or surfaced with soil of a quality at least equal to the topsoil of land areas immediately surrounding and to a depth of at least six inches.
 4. Such topsoil as required by Subsection (A)(3) of this section shall be planted with trees, shrubs, legumes or grasses upon the parts of such area where revegetation is possible; and as recommended by the soil conservation plan.
 5. Slopes on boundary areas shall not be steeper than four feet horizontal to one foot vertical. No slope shall begin closer than 50 feet to any property line.
 6. Maximum depth of the excavation may be requested by the Council.
- B. Excavations not resulting in water areas after rehabilitation but which must be graded or backfilled, shall meet the following requirements:
 1. Such grading or backfilling shall be made with nonnoxious, nonflammable, noncombustible solids which will not cause leaching problems into groundwater systems.
 2. The graded or backfilled area shall not collect or permit stagnant water to remain therein.
 3. The peaks and depressions of the area shall be reduced to a gently rolling topography of less than a five to one slope in substantial conformity to the land area immediately surrounding and which will minimize erosion due to rainfall.
 4. Such graded or backfilled area shall be sodded, seeded with erosion retardant seed mixtures and mulches or surfaced with soil of a quality at least equal to the topsoil of land areas immediately surrounding, and to a depth of at least 12 inches.

LAND USE

LAND USE

5. Such topsoil as required by Subsection (B)(4) shall be planted with trees, shrubs, legumes or grasses upon the parts of such area where revegetation is possible, consistent with the recommendations of the soil conservation service.
6. New slopes on boundary areas shall not be steeper than four feet horizontal to one foot vertical. No slope or bank shall begin closer than 50 feet to the property line.
7. The maximum depth of excavation may be regulated by the Council.

Sec. 12-2325. Operating conditions.

As a condition of the permit issuing, the Council shall require the applicant or the owner of the premises to comply with the following:

- A. *Fencing.* Properly fence any pit or excavation.
 1. Where collections of water are 1 1/2 feet or more in depth; all access to such collections of water may be ordered barred by appropriate means.
 2. Where excavation slopes steeper than one foot vertical to 1 1/2 feet horizontal exists for a period of five working days, access to such slopes may be ordered barred by appropriate means.
- B. *Slope of excavation.* Slope the banks, and otherwise properly guard and keep any pit or excavation in such condition as not to be dangerous because of sliding or caving banks.
- C. *Setbacks.* Refrain from mining below grade closer than 30 feet to the boundary of any zone where such operations are not permitted, or closer than 50 feet to the boundary of an adjoining property line, unless the written consent of the owner in fee of such property is first secured in writing and filed with the City Clerk. Refrain from excavating below road grade closer than 50 feet to the right-of-way line of any existing or platted street, road, or highway, except that excavating may be conducted within such limits in order to reduce the elevation thereof in conformity to the existing or proposed street grades.
- D. *Inspection fee.* An annual inspection fee to cover the cost of periodic inspection shall be paid to the City. The method of determining the inspection fee shall follow one of the two schedules as outlined below. The schedule to be followed shall be designated by the Council at the time the annual permit is approved. The minimum annual inspection fee shall be \$100.00.
 1. *Schedule A.* The annual inspection fee shall be based on the actual and estimated costs which are incurred by the City in providing periodic inspections and administering the provision of the annual permit. These costs may include both actual cost incurred by the City such as charges made by an engineering firm or for legal services and indirect, internal, actual and computed costs incurred by the City such as mileage or computed charges for time spent by city officials or their staff. The Council shall estimate these charges at the time the annual permit is issued and the applicant shall make a cash deposit with the City equal to their estimate when the annual permit is issued. If at the expiration date of the annual permit there are any funds still available they will be refunded to the applicant or if the cost exceeds the estimate the applicant shall pay the additional cost.
 2. *Schedule B.* The annual inspection fee shall be based on the amount of material which is removed from the site. The charge shall be fixed at the rate of one cent per cubic yard of material removed with a maximum fee of \$3,000.00. The Council, based on the estimates of the applicant, shall estimate the annual inspection fee which shall be paid by the applicant according to a payment schedule as determined by the Council. The applicant shall keep records of all material removed from the site and these records shall be made available to the Council for their review. On the expiration date of the annual permit the applicant shall submit to the Council a complete record of all material removed for that year and pay any additional inspection fees as determined by the Council, based on the fixed rate as set forth in this schedule.
- E. *Survey.* Furnish a survey by a registered surveyor showing the boundaries of the property.
- F. *Bond.* Post a bond, cash deposits or other security, in such form and sum as the Council may require, running to the City, conditioned to pay the City the cost and expense of repairing any highways, street, or other public ways and the restoration of other sites within the City made necessary by the special burden resulting from hauling and transporting thereon by the applicant in the removal of rock, sand, dirt, gravel, clay or other

LAND USE
AFTON CODE

material, and conditioned further to comply with all the requirements of this article and the particular permit, and to save the City free and harmless from any and all suits or claims for damage resulting from the negligent excavation, removal or storage of rock, sand, dirt, gravel, clay or other material within the City boundary. Post a bond for 125 percent of the cost of restoring the mined-out area, including but not limited to soil, seed, sod and completed end use. Each mined-out area must be restored before excavation operations may begin on the next segment or section.

- G. *Insurance.* Carry bodily injury and property damage, public liability insurance in the amount of \$100,000.00 for any one person and \$300,000.00 for any occurrence including blasting insurance naming the City as an additional insured.
- H. *Noise.* Maintain and operate all equipment in such manner as to eliminate, as far as is practicable, noises and vibrations, in accordance with state and county standards.
- I. *Hours of operation.* Conduct operations only between the hours of 7:00 a.m. and 5:30 p.m., except no trucking shall be allowed on Saturdays, Sundays, or holidays. In the case of public emergencies such as floods or whenever any reasonable or necessary repairs to equipment are required the Council may allow an exception to this requirement.
- J. *Dust and dirt.* Construct, maintain and operate all equipment in such a manner as to minimize dust conditions. All operations shall meet the standards of the state pollution control agency.
- K. *Appearance.* Maintain buildings and plants in a safe condition in accordance with acceptable industrial practice. Weeds shall be controlled.
- L. *Removal of structures.* Within a period of three months after the termination of a sand and gravel operation, or within three months after abandonment of such operation for a period of six months (or within three months after expiration of a sand and gravel permit), dismantle or remove buildings, structures and plants incidental to such operation; except that such buildings, structures and plants need not be dismantled and removed so long as they are legally being used for the production or processing of sand and gravel or for some other purpose permitted in the zone in which they are located.
- M. *Lighting.* Set forth the planned lighting of the area and any other equipment or structures that will be installed or built.
- N. *Sewer.* Provide for adequate drainage to sanitary sewer and storm sewer including lift stations, if necessary.
- O. *Added provisions.* Comply with such other requirements as the Council from time to time may find necessary for the health, safety, welfare and prevention of nuisance in the area.
- P. *Variance.* The standards which apply to these permits may be varied by the Council according to the structure and size of the operation, and to factors presented by the applicant.

Secs. 12-2326--12-2350. Reserved.

ARTICLE XI. PERSONAL WIRELESS COMMUNICATIONS ANTENNAS AND TOWERS.⁴⁴⁰

Section 12-2351. Intent and Purpose.

In order to accommodate the communication needs of residents and business while protecting the public health and general welfare of the City, the Council finds that the regulations set forth in this article are necessary in order to establish predictable and balanced regulations for the siting and screening of personal wireless communications equipment while protecting the public against any adverse impacts on the City's aesthetic and environmental resources and the public welfare. Goals in adopting this article are as follows:

LAND USE

- A. Accommodate the desire of residents, travelers and businesses to have high quality telecommunications technology without endangering public health, safety and welfare.
- B. Minimize the adverse visual effects of personal wireless communications service facilities through careful design and siting standards, recognizing that local governmental units must look beyond their own communities to protect the views of adjoining communities as well. Minimize the adverse environmental effects of personal wireless communications facilities through careful design and siting standards.
- C. Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements.

Sec. 12-2352. Definitions.

- A. *City. Co-location.* The placement of wireless communication antennas by two or more service providers on a single tower, building or structure.
- B. *Personal Wireless Communications Facility.* A facility for the provision of wireless communications services, as defined by the Telecommunications Act of 1996.
- C. *Power Transmission Line.* Electrical lines designed for the bulk transfers of electrical power at or greater than 230kV.
- D. *Tower.* A monopole structure in excess of 35 feet in height intended primarily for the purpose of mounting an antenna or to serve as an antenna. Any structure intended for the same purpose but not built as a monopole is not considered an acceptable tower under these provisions.
- E. *Wireless Communication Facility.* Hardware that provides wireless communication services including antennas, towers and all associated equipment.

Sec. 12-2353. Permit and Location Requirements.⁴⁴¹

- A. A Wireless Communication Facility (other than for sending and receiving amateur radio signals) shall only be allowed:
 - 1. Within the Industrial I) zoning district,
 - 2. As a co-location on an existing tower,
 - 3. On an existing structure as long as the tower is not more than 10-feet higher than the structure at the point where it is attached, or
 - 4. Within the easement of an existing power transmission line, as long as the tower is not more than 20-feet higher than the power transmission line at the point where it is attached.
- B. A building permit shall be required for all towers and antennas that are subject to inspection by the Building Official to determine compliance with the Building Code.
- C. No person shall erect a tower, antennas or accessory structures without obtaining a Conditional Use Permit, except as provided for in this section. Procedures for obtaining a Conditional Use Permit is as outlined in Section 12-799 except that notification shall be to all property owners within 1,500 feet from all property lines and each governmental unit in Minnesota and Wisconsin from which the tower is likely to be visible.
- D. In reviewing an application for a Conditional Use Permit for the construction and maintenance of antennas, towers and accessory structures, the City Council shall consider the advice and recommendations of the Planning Commission, City Staff and all reviewing authorities as well as its conformance with:
 - 1. The Comprehensive Plan and this ordinance;
 - 2. Applicable state or federal law; and additionally,
 - 3. The effect of the proposed tower upon the health, safety, convenience and general welfare of occupants of surrounding land and the effects on property values in surrounding areas.

⁴⁴¹ Ordinance 11-2005, 7/19/2005

LAND USE
AFTON CODE

- E. The City Council may impose reasonable restrictions or conditions on a conditional use permit for a tower to achieve the goals of this chapter. Such conditions may include, but are not limited to:
 - 1. Requiring co-location of proposed antennae on existing towers or structures when feasible;
 - 2. Requiring construction practices to ensure that the installation and maintenance of the tower will not create a safety hazard or damage to the property or other persons;
 - 3. Requiring protections against unauthorized climbing to be constructed and maintained;
 - 4. Requiring plans and/or financial securities necessary to ensure that the tower, if discontinued from use or abandoned, is removed in an appropriate and timely manner;
 - 5. Requiring techniques to minimize the visual impact of the proposed tower, once constructed;
 - 6. Prohibiting the placement of signs, lights or other illuminating devices on the tower, except when required by local, state or federal law or regulation.
 - 7. Required inspections at regular intervals to ensure compliance with all requirements.
 - 8. Requiring design standards to protect the migratory patterns of birds or other wildlife.

- F. The use of any existing tower which becomes non-conforming as a result of this ordinance may be continued. If the tower needs replacement, a new Conditional Use Permit is required.

- G. A Conditional Use Permit shall be required for the addition of a new antenna on an existing mount.

- H. Exceptions: Permitting is not required for:
 - 1. Adjustment, repair or replacement of the elements of an antenna array affixed to a tower or antenna provided that the replacement does not reduce any safety factor, remains consistent with previously approved permits and is consistent with this Code.
 - 2. Antennas and/or towers erected temporarily for test purposes or for emergency communications. No temporary cell sites are permitted except in the case of equipment failure, equipment testing or in the case of an emergency situation as authorized by the Sheriff. Use of temporary mobile cell sites for testing purposes shall be limited to the twenty-four (24) hours; use of temporary mobile cell sites for equipment failure or in the case of emergency situations shall be limited to a term of thirty (30) days. These limits can be extended by the City for good cause shown.
 - 3. Facilities, located in any zone, erected for sending and receiving amateur radio (also known as “ham radio”) signals.

Sec. 12-2354. Permit Application Requirements for Conditional Use Permits for New and Modified Towers and Administrative Permits for Additional Antennas on Existing Mounts.

- A. General Filing Requirements
 - 1. Name, address and telephone number of applicant and co-applicant as well as any agents of either.
 - 2. Co-applicants include the landowner, licensed carrier(s) and tenants.
 - 3. Original signatures of an officer of each applicant and co-applicant.

- B. Location Filing Requirements
 - 1. Street address of proposed antenna location.
 - 2. Tax map and parcel number of proposed antenna location.
 - 3. Zoning district designation of proposed antenna location.

- C. Site Filing Requirements
 - 1. A certified survey that includes the following:
 - 2. Property lines for the subject property.
 - 3. Property lines of all properties adjacent to the subject property within 100 feet.
 - 4. Proposed location of antenna, mount and equipment shelter(s).
 - 5. Location of all roads, public and private, on the subject property and on all adjacent properties within 1,500 feet including driveways proposed to serve the wireless communication service facilities.

LAND USE

6. Distances at grade from the proposed wireless communication service facilities to each building on the vicinity plan.
7. All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
8. Representations, dimensioned and to scale, of the proposed mount, antennas, equipment shelter(s), cable runs, parking areas and any other construction or development attendant to the proposed wireless communication service facilities.

D. Sight lines and photographs as described below:

1. A sight line representation depicting on a map the area(s) from which the top of the wireless communication service facilities would be visible.
2. Existing (before condition) photographs. Photographs taken from the periphery of the site (north, south, east and west).
3. Proposed (after condition). Each of the existing condition photographs shall have the proposed wireless communication service facilities superimposed on it to show what will be seen after construction.

E. Siting elevations, or views at-grade from the north, south, east and west for a 50-foot radius around the proposed wireless communication service facilities. Elevations shall be at either one-quarter inch equals one foot or one-eighth inch equals one foot scale and show the following:

1. Antennas, mounts and equipment shelter(s), with total elevation dimensions.
2. Security barrier. If the security barrier will block views of wireless communication service facilities, the barrier drawing shall be cut away to show the view behind the barrier.
3. Any and all structures on the subject property.
4. Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.
5. Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours.

F. Design Filing Requirements

Equipment brochures for the proposed wireless communication service facilities such as:

1. Manufacturer's specifications or trade journal reprints shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
2. Materials of the proposed wireless communication service facilities specified by generic type and specific treatment (e.g., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
3. Colors of the proposed wireless communication facility represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables and security barrier, if any.
4. Dimensions of the proposed wireless communication service facility specified for all three directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any.
5. Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species.

G. Within 30 days of filing an application for a Conditional Use Permit for a tower, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed wireless communications service facility. The date, time and location of such test shall be:

1. Advertised in the newspaper of general circulation serving the City and,
2. Sent by return receipt mail to the same governmental units determined in Section 12.2353, subpart c, and to the owners of the parcels of property within one mile of the proposed site at least 14 days, but not more than 21 days prior to the test.
3. If lighting of the site is proposed, the applicant shall submit an engineer's computer-generated point-to-point printout indicating the horizontal foot-candle levels at grade within the property to be developed

LAND USE
AFTON CODE

and twenty-five (25) feet beyond the property lines. The printout shall indicate the locations and types of luminaries proposed.

H. Noise Filing Requirements

1. The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed wireless communication service facilities for the following:
 - a. Existing or ambient noise.
 - b. Existing plus proposed wireless communication service facilities: maximum estimate of noise from the proposed wireless communication service facilities plus the existing noise environment.
 - c. Such statement shall be certified and signed by an acoustical engineer, stating that noise measurements are accurate and meet the noise standards of this ordinance.

I. Radiofrequency Radiation (RFR) Filing Requirements

1. The applicant shall submit to the City verification that they are operating within the parameters of the FCC requirements for RFR limits.
2. The applicant shall forward all correspondence with the FCC for the City files.

J. Insurance and Licensing Filing Requirements

1. A copy of each applicant's and tenant's FCC licenses. If the applicant is not an FCC licensee, submit a copy of the executed leases from each FCC licensee proposing to locate wireless facilities at the site.
2. A Certificate of Insurance demonstrating that the applicant has a minimum of \$1,000,000 in general liability insurance covering any liability arising out of its construction or operation of the wireless telecommunication facility.
3. A copy of an executed lease requiring that the applicant to remove all above-ground wireless telecommunication facilities no later than ninety (90) days after the cessation of operations.
4. A copy of an executed standard facility maintenance/removal agreement.
5. Evidence that the FCC has reviewed and approved the application for National Environmental Policy Act of 1969.

Sec. 12-2355. Conditional Use Permits.

In addition to the submittal requirements required elsewhere in this ordinance, applications for Conditional Use Permits for new towers and antennas shall be accompanied by the following information:

- A. A report from a qualified and licensed professional engineer which:
 1. Describes the tower height and design including a cross section and elevation;
 2. Certifies the tower's compliance with structural and electrical standards; describes the tower's capacity, including the potential number and type of antennas that it can accommodate;
 3. Specifies the distance to any DNR protected lake or river, the St. Croix River, any scenic road, and any boundary of a park.
- B. Each application shall include a five-year facility plan. The City will maintain an inventory of all existing and proposed wireless communication service facilities and all carriers shall provide the following information in each five-year plan. The plan must be updated with each submittal:
 1. Written description of type of consumer services each company/carrier will provide to its customers over the next five years (Cellular, Personal Communication Services, Specialized Mobile Radio, Paging Private Radio or other anticipated communications technology).
 2. List of all existing sites, existing sites to be upgraded or replaced, and proposed cell sites within the City for these services by the applicant and each co-applicant.
 3. Provide a presentation size map of the City, which shows the five-year plan for cell sites, or if individual properties are not known, the geographic service areas of the cell sites.
- C. Information provided as part of the five-year facility plan that is a trade secret pursuant to MN Statute 13.37 shall be classified as non-public data.

Secs. 12-2356 – 12-2370. Reserved.⁴⁴²

ARTICLE XII. PRESERVATION AND LAND CONSERVATION DEVELOPMENTS.⁴⁴³

Sec. 12-2371. Scope.

This article applies to Preservation and Land Conservation Developments (PLCD) in the Agricultural (AG) zoning district.

Sec. 12-2372. General provisions.

A PLCD is a tract of land that is developed as a unit under single or unified ownership or controls. A Preservation and Land Conservation Development may be allowed in the AG zoning district to preserve prime agricultural land, woodland, wildlife habitat, vistas, groundwater recharge areas, areas with sensitive soils or geological limitations and areas identified in the Comprehensive Plan. Uses not otherwise allowed in the zoning district are prohibited within a planned development unless specifically permitted by provisions of this ordinance.

Sec. 12-2373. Purpose.

The purposes of this article are:

- A. To permit subdivisions in the Agricultural Zoning District which require the construction of a new public street.
- B. To encourage a more creative and efficient development of land and its improvements through the preservation of agricultural land, natural features and amenities than is possible under the more restrictive application of zoning requirements, while at the same time, meeting the standards and purposes of the comprehensive plan and preserving the health, safety, and welfare of the citizens of the City.
- C. To preserve open space, to preserve the natural resources of the site and to preserve wildlife habitat and corridors.
- D. To facilitate the economical provision of streets and public utilities.
- E. To allow the transfer of development rights (density) within a subdivision in order to preserve agricultural land, open space, natural features and amenities.

Sec. 12-2374. Permitted uses.

The Permitted Uses are:

- A. Those uses that are permitted in the underlying zoning district;
- B. Subdivisions that require the construction of a new public street in the AG zoning district;

Sec. 12-2375. General standards for approval.

- A. A Conditional Use Permit shall be required for all preservation and land conservation developments. The City may approve the preservation and land conservation development only if it finds that the development satisfies all of the following standards:
 1. The preservation and land conservation development is consistent with the comprehensive plan of the City.

⁴⁴² Ord. 97-55, 6/18/02, Ord 04-2009, 5/19/2009

⁴⁴³ Ord 06-2008, 4/15/2008; Ord 02-2014, 5/20/2014

LAND USE

AFTON CODE

2. The preservation and land conservation development is an effective and unified treatment of the development possibilities on the project site and the development plan provides for the preservation of unique natural amenities.
 3. The preservation and land conservation development can be planned and developed to harmonize with any existing or proposed development in the areas surrounding the project site.
- B. The tract is a minimum of eighty (80) contiguous acres in size and that all of the following conditions exist:
1. The proposal better adapts itself to the physical and aesthetic setting of the site and with the surrounding land uses than could be developed using strict standards and land uses allowed within the underlying zoning district.
 2. The proposal would benefit the area surrounding the project to a greater degree than development allowed within the underlying zoning district.
 3. The proposal would provide land use and/or site design flexibility while enhancing site or building aesthetics to achieve an overall higher quality of development than would otherwise occur in the underlying zoning district.
 4. The proposal would ensure the concentration of open space into more workable or usable areas and would preserve the natural resources of the site more effectively than would otherwise occur in the underlying zoning district.
- C. At least fifty (50) percent of the total tract is preserved as an undeveloped parcel.

Sec. 12-2376. Density, Frontage on a Public Street and Length of Cul-de-sac requirements.⁴⁴⁴

- A. The average density over the proposed PLCD shall not exceed the maximum density permitted in the underlying zoning district.
- B. The maximum length of cul-de-sacs may be exceeded to accommodate curvilinear streets and other design elements that tend to preserve the rural character or other resources within the PLCD.

Sec. 12-2377. Coordination with subdivision regulations.

- A. It is the intent of this article that subdivision review under Chapter 12 be carried out simultaneously with the review of a planned development under this article.
- B. The plans required under this article must be submitted in a form that will satisfy the requirements of Chapter 12 for the preliminary and final plats.
- C. Parcels which contain their maximum permitted density or have been previously subdivided to their permitted density may not be joined to a PLCD.

Sec. 12-2378. Pre-application meeting.

Prior to the submission of any plan to the Planning Commission, the potential applicant is required to meet with the City Administrator and other relevant partner agencies to discuss the contemplated project relative to community development objectives for the area in question and to learn the procedural steps and exhibits required. This includes the procedural steps for an Administrative Permit and a preliminary plat. The potential applicant may submit a simple sketch plan at this stage for informal review and discussion. The potential applicant is urged to seek the advice and assistance of the City staff to facilitate the informal review of the simple sketch plan.

Sec. 12-2379. General development plan.

- A. An applicant shall make an application for an Administrative Permit following the procedural steps as set forth in Section 12-78.
- B. In addition to the criteria and standards set forth in Sec. 12-78 of this article for the granting of Administrative Permits, the following additional findings shall be made before the approval of the outline development plan:

⁴⁴⁴ Ord 02-2014, 5/20/2014

LAND USE

1. The proposed PLCD is in conformance with the comprehensive plan.
 2. The uses proposed will not have an undue and adverse impact on the reasonable enjoyment of neighboring property and will not be detrimental to potential surrounding uses.
 3. Each phase of the proposed development, as it is proposed to be completed, is of sufficient size, composition, and arrangement that its construction, marketing, and operation are feasible as a complete unit, and that provision and construction of dwelling units and common open space are balanced and coordinated.
 4. The PLCD will not create an excessive burden on parks, schools, streets, and other public facilities and utilities that serve or are proposed to serve the district.
 5. The proposed total development is designed in such a manner as to form a desirable and unified environment within its own boundaries.
- C. The following exhibits shall be submitted to the City Administrator by the proposed developer as a part of the application for a Administrative Permit:
1. An explanation of the character of the proposed preservation and land conservation development and the manner in which it has been planned to take advantage of the preservation and land conservation development regulations.
 2. A statement of the present ownership of all the land included within the proposed preservation and land conservation development and a list of property owners within five hundred (500) feet of the outer boundaries of the property.
 3. A general indication of the expected schedule of development including progressive phasing and time schedule.
 4. A map giving the legal description of the property including approximate total acreage and also indicating existing property lines and dimensions, ownership of all parcels, platting, easements, street rights-of-way, utilities, buildings and use for the property and for the area five hundred (500) feet beyond.
 5. Natural features maps or maps of the property and area five hundred (500) feet beyond showing contour lines at no more than two-foot intervals, drainage patterns, wetlands, vegetation, soil and subsoil conditions.
 6. A map indicating proposed land uses including housing units and types, vehicular and pedestrian circulation, and open space uses.
 7. Full description as to how all necessary governmental services will be provided to the development.
 8. An engineering report presenting results of percolation tests and soil analysis of the site.
 9. Any additional information requested by the City Administrator, Planning Commission and City Council that might be required for clarification of the proposed project.
 10. Twenty-five (25) copies of all required information shall be submitted.
- D. The applicant shall also submit a preliminary plat and all the necessary documentation as required under Chapter 12 for all or that portion of the project to be platted. For purposes of administrative simplification, the public hearings required for the Administrative Permit and preliminary plat may be combined into one (1) hearing or may be held concurrently.

Sec. 12-2380. Final development plan.

- A. Within ninety (90) days following the approval of the general development plan with recommended modifications, if any, and the preliminary plat, the applicant shall file with the City Administrator a final development plan containing in final form the information required in the general development plan plus any changes recommended by the Planning Commission and the City Council as a result of the public hearing. The applicant shall also submit a final plat for that entire portion to be platted.
- B. The City Administrator shall submit the final development plan and the final plat to the Planning Commission for review.
- C. The final development plan and the final plat shall conform to the general development plan and preliminary plat plus any recommended changes by the Planning Commission or City Council to the general development plan and preliminary plat.

LAND USE
AFTON CODE

- D. The City Council shall review the final development plan and final plat. If the final development plan is approved by the City Council, the City Administrator shall issue a Conditional Use Permit to the applicant.
- E. The applicant(s) shall grant a Conservation Easement which shall run with the land in perpetuity to the City of Afton, all of the owners of the lots and parcels to be created in the PLCD, all land owners of property within Afton abutting the PLCD and the Minnesota Land Trust (or similar independent third party approved by the City of Afton), which restricts the lots and parcels, as well as the development rights on the undeveloped parcel(s), within the PLCD to the number of dwelling units approved for the PLCD and the land cover and use approved by the City of Afton as a part of this PLCD. If neither Minnesota Land Trust nor any comparable organization will accept the Conservation Easement the City of Afton, in its sole discretion, may upon a specific finding that no conservation organization will accept a Conservation Easement, waive such requirement. In the case of such waiver, the applicant(s) shall be required to extend the grant of a Conservation Easement to the owners of property that abuts all abutting property to the PLCD.

Sec. 12-2381. Enforcement of development schedule.

The construction and provisions of all of the common open spaces and public and recreational facilities that are shown on the final development plan must proceed at the same phase as the construction of dwelling units. At least once every six (6) months following the approval of the final development plan, the City Administrator shall review all of the building permits issued for the planned development and examine the construction which has taken place on the site. If he shall find that the rate of construction of dwelling units is greater than the rate at which common open space and public and recreational facilities have been constructed and provided, he shall forward this information to the City Council, which may revoke the PLCD permit.

Sec. 12-2382. Conveyance and maintenance of undeveloped parcel.

- A. All land shown on the final development plan as an undeveloped parcel must be conveyed to a homeowners association or similar organization provided in an indenture establishing an association or similar organization for the maintenance of the planned development. The undeveloped parcel must be conveyed to the homeowners association or similar organization subject to covenants to be approved by the City Council which restrict the undeveloped parcel to the uses specified on the final development plan and which provide for the maintenance of the undeveloped parcel in a manner which assures it continuing use for its intended purpose.
- B. If a homeowners association is created, the applicant shall submit plans at the time of final plan of development and documents which explain:
 - 1. Ownership and membership requirements.
 - 2. Articles of incorporation and bylaws.
 - 3. Time at which the developer turns the association over to the homeowners.
 - 4. Specific listing of items owned in common including such items as roads, recreation facilities, parking, common open space grounds, and utilities.

Sec. 12-2383. Standards for undeveloped parcel.

No open area may be approved as common undeveloped parcel under the provisions of this article unless it meets the following standards:

- A. The location, shape, size, and character of the undeveloped parcel must be suitable for the planned development.
- B. The undeveloped parcel must be used for amenity or recreational purposes. The uses authorized for the undeveloped parcel must be appropriate to the scale and character of the planned development, considering its size, density, expected population, topography, and the number and type of dwellings to be provided.
- C. The undeveloped parcel must be suitably improved for its intended use but common space containing natural features worthy of preservation may be left unimproved. The buildings, structures and improvements which are permitted in the undeveloped parcel must be appropriate to the uses which are authorized for the

LAND USE

undeveloped parcel and must conserve and enhance the amenities of the undeveloped parcel having regard to its topography and unimproved condition.

Sec. 12-2384. Review and amendments.

- A. The City Administrator shall review all PLCDs within the City at least once each year and shall make a report to the City Council on the status of the development in each of the PLCD districts. If the City Administrator finds that the development has not commenced within one (1) year after the original approval of the conditional use for the PLCD, the City Administrator may recommend that the City Council revoke the Administrative Permit as set forth in Section 12-78 of this chapter. Prior to cancellation or revocation of this permit, the City Council shall hold a public hearing at which time all interested parties will be given an opportunity to be heard.
- B. For additional phases of the PLCD, if within two (2) years of completion of the prior phase, the project has not progressed, the City Administrator may recommend that the City Council determine what action will be taken with the remainder of the project. Prior to determining the outcome of the PLCD, the Planning Commission shall hold a public hearing at which time all interested parties will be given an opportunity to be heard.
- C. Minor changes in the location, placement, and heights of the buildings or structures may be authorized by the Zoning Administrator if required by engineering or other circumstances not foreseen at the time the final plan was approved.
- D. Approval of the Planning Commission and City Council shall be required for other changes such as rearrangement of lots, blocks and building tracts. Those changes shall be consistent with the purpose and intent of the approved final development plan.
- E. Any amendment to the PLCD shall require the same procedures as for the application for an Administrative Permit as set forth in this chapter.
- F. This Ordinance shall be in full force and effect from the date of the publication of this Ordinance.