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CHAPTER 150: BUILDING REGULATIONS

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BUILDING CODE

§ 150.01 BUILDING CODE ADOPTED.

The state's Building Code, established pursuant to M.S. §§ 326B.101 through 326B.194, as they may be amended from time to time, one copy of which is on file in the office of the City Administrator, is hereby adopted as the Building Code for the city. The Building Code is hereby incorporated in this subchapter as completely as if set out in full.

(Prior Code, § 12-1801)

§ 150.02 ADMINISTRATION REQUIRED.

As periodically adopted and amended by the state, the International Building Code, as adopted by Minn. Rules part 1305.0011, will be administered as the Building Code for the city.

(Prior Code, § 12-1802)

§ 150.03 APPLICATION, ADMINISTRATION AND ENFORCEMENT.

(A) The application, administration and enforcement of the Building Code adopted in §150.01 of this code shall be in accordance with Minn. Rules part 1300.2100. The Building Code Department shall be the Building Code Department of the city. The administrative authority shall be a state-certified Building Official.

(B) The appointing authority shall designate the Building Code administrative authority for the jurisdiction of the city.

(Prior Code, § 12-1803)

§ 150.04 PERMITS, INSPECTIONS AND FEES.

(A) Permits, inspections and collection of fees shall be authorized in M.S. § 326B.121, subdivision 2, as it may be amended from time to time. 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 division (A) above, the applicant shall pay a surcharge to be remitted to the state's Department of Administration as prescribed by M.S. § 16B.70, as it may be amended from time to time.

(C) In addition to the basic building permit fee, a park fee is hereby imposed on each new home building permit as stated in Ch. 160 of this code, pertaining to subdivisions.

(Prior Code, § 12-1804)

VACANT BUILDINGS REGISTRATION

§ 150.15 POLICY.

The purpose of this subchapter is to protect the public health, safety and welfare by enactment of this subchapter which:

- (A) Establishes a program for identification and registration of vacant buildings;
- (B) Determines the responsibilities of owners of vacant buildings and structures; and
- (C) Provides for administration, enforcement and penalties.

(Ord. 03-2019, passed 6-18-2019)

§ 150.16 DEFINITIONS.

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

CODE VIOLATIONS. Violations of any code adopted and/or enforced by the city, which may include but not be limited to

the city code, codes covering plumbing, electrical, mechanical or building construction, installation or maintenance standards, zoning or fire codes.

DANGEROUS STRUCTURE. A structure which is potentially hazardous to persons or property, including, but not limited to:

- (1) A structure which is in danger of partial or complete collapse;
- (2) A structure with any exterior parts which are loose or in danger of falling; or
- (3) A structure with any parts, such as floors, porches, railings, stairs, ramps, balconies or roofs, which are accessible and which are either collapsed, in danger of collapsing or unable to support the weight of normally imposed loads.

ENFORCEMENT OFFICER. The City Administrator or duly authorized representative.

OWNER. Those shown to be the owner or owners on the records of the county's Department of Property Taxation, those identified as the owner or owners on a vacant building registration form, holder of an unrecorded contract for deed, a mortgagee or vendee in possession, a mortgagor or vendor in possession, assignee of rents, receiver, executor, trustee, lessee, other person, firm or corporation in control of the freehold of the premises or lesser state therein, mortgagee for the benefit of the owner or owners of the beneficial interests in possession, or its nominee. This person shall have a joint and several obligation for compliance with the provisions of this subchapter.

SECURED BY OTHER THAN NORMAL MEANS. A building secured by means other than those used in the design of the building.

UNOCCUPIED. A building which is not being used for a legal occupancy as defined in Ch. 153 of this code.

UNSECURED. A building or portion of a building which is open to entry by unauthorized persons without the use of tools or ladders.

VACANT BUILDING. A building or portion of a building which is:

- (1) Unoccupied and unsecured for a period of time over 365 days;
- (2) Unoccupied and secured by other than normal means for a period of time over 365 days;
- (3) Unoccupied and a dangerous structure;
- (4) Unoccupied and condemned;
- (5) Unoccupied and has multiple housing or Building Code violations;
- (6) Condemned and illegally occupied;
- (7) Unoccupied for a period of time over 365 days and during which time the enforcement officer has issued an order to correct nuisance conditions; or
- (8) Unoccupied for a period of time over 1,000 days.

(Ord. 03-2019, passed 6-18-2019)

§ 150.17 VACANT BUILDING REGISTRATION.

(A) The owner shall register with the enforcement officer not later than 30 days after any building in the city becomes a vacant building, as defined in § 150.16 of this code.

(B) The registration shall be submitted on forms provided by the enforcement officer and shall include the following information supplied by the owner:

- (1) A description of the premises;
- (2) The names and addresses of the owner or owners;
- (3) The names and addresses of all known lienholders and all other parties with an ownership interest in the building;
- (4) The period of time the building is expected to remain vacant; and
- (5) A plan and timetable for returning the building to appropriate occupancy or use and/or for demolition of the building.

(C) The owner shall order and pay for a code compliance inspection within 60 days after the designation of any building or portions thereof classified as a vacant building. The code compliance inspection is required regardless of the building's legal occupancy standard or intended use. Owners of vacant buildings on the effective date of this subchapter that have not ordered a code compliance inspection shall have 60 days following the effective date of this subchapter to order and pay for a code compliance inspection.

(D) In order to decrease the risk of fire, explosion or dangerous conditions, the owner shall install an excess flow automatic gas shut-off valve ("excess flow valve") on the building's gas piping immediately downstream of the gas meter outlet within 60 days after the designation of any building or portions thereof classified as a category II or a category III

vacant building. If the owner fails to install an excess flow valve, the enforcement officer, under the authority of this code, may install the excess flow valve on the building and enter the building if necessary. The costs incurred by the city for installation of the excess flow valve shall be assessed against the property as a summary nuisance abatement under the provisions of the city code. Owners of category II or III vacant buildings with active water and gas service on the effective date of this subchapter shall have 60 days following the effective date of this subchapter to install an excess flow valve. Prior to installation of the excess flow valve, the owner or another who can demonstrate a secured interest in the property must obtain the required permits from the Department of Safety and Inspections. Any excess flow valve model must be approved and installed as required by the Department of Safety and Inspections.

(E) The procedures in division (D) above may not be followed under the following conditions.

(1) If the enforcement officer determines that failure to install an excess flow valve constitutes an immediate danger or hazard which if not immediately addressed will endanger the health or safety of the public, the city may proceed with an emergency abatement.

(2) The owner or another who can demonstrate a secured interest in the property shall be exempt from the requirements of division (D) above if the following conditions are met:

(a) The owner or another who can demonstrate a secured interest in the property has registered the building as a vacant building with the enforcement officer; and

(b) After registration, the owner or another who can demonstrate a secured interest in the property has received or ordered a code compliance inspection and has shut off gas service and winterized the property.

(F) (1) For all vacant buildings that have code violations, the owner shall submit a plan to address the violations and a timetable which must meet the approval of the enforcement officer.

(2) The enforcement officer shall require completion of the plan within a reasonable period of time, up to 365 days. Any repairs, improvements or alterations to the property must comply with any applicable housing or Building Codes.

(G) All applicable laws and codes shall be complied with by the owner. The owner shall notify the enforcement officer of any changes in information supplied as part of the vacant building registration within 30 days of the change. If the plan or timetable for the vacant building is revised in any way, the revisions must meet the approval of the enforcement officer.

(H) The owner and the subsequent owners shall keep the building secured and safe and the building and ground properly maintained until the plan has been completed.

(I) (1) The new owner(s) shall register or re-register the vacant building with the enforcement officer within 30 days of any transfer of an ownership interest in a vacant building.

(2) The new owner(s) shall comply with the approved plan and timetable submitted by the previous owner until any proposed changes are submitted and meet the approval of the enforcement officer.

(J) Vacant building fees are as follows.

(1) The owner of a vacant building shall pay an annual registration fee of \$500 each year the building remains a vacant building. The registration fee is intended to at least partially recoup, and shall be reasonably related to the administrative costs for registering and processing the vacant building owner registration form and for the costs of the city in monitoring the vacant building site.

(2) The first annual fee shall be paid no later than 30 days after the building becomes vacant. If the fee is not paid within 30 days of being due, the owner shall be subject to prosecution as prescribed in § 150.99 of this code.

(3) The fee shall be paid in full prior to the issuance of any building permits, with the exception of a demolition permit.

(4) All delinquent fees shall be paid by the owner prior to any transfer of an ownership interest in any vacant building. If the fees are not paid prior to any transfer, the new owner shall pay the annual fee no later than 30 days after the transfer of ownership and subsequent annual fees shall be due on the original anniversary date.

(K) The enforcement officer shall include in the file any property-specific written statements from community organizations, other interested parties or citizens regarding the history, problems, status or blighting influence of a vacant building.

(L) Any building or portion of a building classified as a vacant building under this subchapter shall be posted with a placard by the enforcement officer, unless it is determined by the city that the placard would further detract from the character and attractiveness of the area.

(Ord. 03-2019, passed 6-18-2019)

§ 150.18 EXEMPTIONS.

(A) In order to encourage the prompt renovation of property, the owner of a fire-damaged building may be exempt from paying vacant building fees required under the subchapter; provided, that within 30 days from the date of the fire, the owner at the time of the fire, submits a request for an exemption in writing to the enforcement officer.

(B) This request shall include the following information supplied by the owner:

- (1) A description of the premises;
- (2) The names and address of the owner or owners;
- (3) A statement of intent to repair and reoccupy the building in an expedient manner; and

(4) An exemption granted under this section shall be valid for no more than 90 days. In the event that the owner of the property at the time of the fire who received an exemption under this section should, at any time after the fire, transfer to another person any ownership interest in the subject property, the exemption under this section is immediately void and any new owner(s) shall be responsible for paying any required vacant building fees.

(Ord. 03-2019, passed 6-18-2019)

§ 150.19 INSPECTIONS.

The enforcement officer shall inspect any premises in the city for the purpose of enforcing and assuming compliance with the provisions of this subchapter. Upon the request of the enforcement officer, an owner shall provide access to all interior portions of an unoccupied building in order to permit a complete inspection.

(Ord. 03-2019, passed 6-18-2019)

§ 150.20 COLLECTION OF UNPAID FEES.

(A) *Written notice of fees.*

(1) The enforcement officer shall, in addition to any other action the enforcement officer may undertake, serve written notice of the fees in conformance with the requirements set forth in this subchapter.

(2) Notice for collection of fees shall include the amount of the vacant building fee that is the responsibility of the building owner and a statement that the fee shall be paid within the time period(s) identified in the notice.

(B) *Fee and liability.* The city shall be entitled to collect the costs of vacant building registration and monitoring. The fees associated with the vacant building program shall be a debt owed to the city and unpaid costs shall be collected by special assessment under the authority in M.S. § 429.101, as it may be amended from time to time. Action under this section does not preclude any other civil or criminal enforcement procedure.

(Ord. 03-2019, passed 6-18-2019) Penalty, see § 150.99

NUMBERING BUILDINGS

§ 150.35 PURPOSE.

For the protection of citizens of the city and property owners, the City Council finds that the drivers of emergency vehicles must be able to identify easily the homes and businesses they serve and to reach them as quickly as possible, and that in order to do so all principal structures within the city must have readable addresses visibly displayed.

(Prior Code, § 20-61)

§ 150.36 NUMBERS REQUIRED.

It shall be the duty of the owner of every principal structure within the city to have the structure identified by reference to the county's Uniform Street Naming and Numbering System.

(Prior Code, § 20-62)

§ 150.37 MEANS OF DISPLAY.

(A) (1) Numerals indicating the official numbers for each principal building or each front entrance to the building shall be mounted at least three feet above grade at the intersection of the entrance drive to the building with the named street, in a manner as to be visible from both directions along the street.

(2) Numerals shall be displayed in metal, glass, plastic or other durable material at least three inches in height, in a reflective contrasting color to the base.

(B) In the VHS District only, numbers may be affixed directly to the house or building if they are clearly visible from the street.

(Prior Code, § 20-63)

§ 150.38 SHARED DRIVEWAYS.

Whenever two or more buildings are served by one driveway or a privately maintained road, the numbers for each building shall be displayed in a manner as to identify each separate building, in addition to the numbers required at the intersection of the entrance drive and the named street. If the driveway or private road divides at any point, additional numbers shall be located at the fork to indicate which buildings are served by each branch of the driveway or road.

(Prior Code, § 20-64)

Cross-reference:

Building regulations, see Ch. 150

Statutory reference:

Authority to number the lots and blocks of the city, see M.S. § 412.221, subdivision 18

FIRE PREVENTION AND LIFE SAFETY CODE

§ 150.50 FIRE CODE ADOPTED.

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 state's Uniform Fire Code being particularly the 2020 Edition thereof and the whole thereof. One copy of these codes and standards must be and are now filed in the office of the City Administrator 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 subchapter was derived shall take effect, the provision thereof shall be controlling within the limits of the city.

(Prior Code, § 12-1851)

§ 150.51 ESTABLISHMENT, DUTIES OF BUREAU OF FIRE PREVENTION.

(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 the 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 an 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.

(Prior Code, § 12-1852)

§ 150.52 DEFINITION.

Wherever the word **JURISDICTION** is used in the Uniform Fire Code, it means the city.

(Prior Code, § 12-1853)

§ 150.53 NEW CONSTRUCTION AND RENOVATION.

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.

(Prior Code, § 12-1854)

§ 150.54 APPEALS.

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 in this subchapter 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.

(Prior Code, § 12-1855)

§ 150.55 OPEN BURNING PROHIBITED.

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 therefore 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.

(Prior Code, § 12-1856) Penalty, see § 150.99

§ 150.56 RULES ADOPTED BY REFERENCE.

Chapter 8 of the state's Air Pollution Control Rules current edition as amended May 13, 1976, is hereby adopted by reference and is made a part of this subchapter as if fully set forth herein. Three copies of the rules are on file with the City Administrator.

(Prior Code, § 12-1857)

§ 150.57 FIRE INSPECTIONS OF COMMERCIAL BUILDINGS.

(A) *Scope.* This section applies to all commercial properties in the city.

(B) *Purpose.* The city has adopted this subchapter for the purpose of requiring fire inspections of all commercial buildings to protect the general public health, safety and welfare.

(C) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When consistent with the context, words in the plural include the singular and words in the singular include the plural.

CITY. City of Afton.

COMMERCIAL BUILDING. Any nonresidential or nonagricultural structure, the surrounding land and accessory structures.

FIRE INSPECTION. An inspection of a commercial building to identify fire/safety code violations and assist the property owner in complying with the applicable fire and safety codes, as well as to obtain information to enable the preparation of a pre-fire plan for the building.

PROGRAM OF FIRE INSPECTION. A program of periodic fire inspections and follow-up inspections to ensure or obtain compliance with applicable fire and safety codes.

(D) *Fire inspection.* All commercial buildings shall be subject to a program of fire inspection as developed and provided by the city through the local Fire Department.

(Ord. 03-2019, passed 4-21-2020)

§ 150.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) A violation of the Building Code adopted in §150.01 of this code is a misdemeanor and shall, upon conviction, be punished as provided in § 10.99 of this code.

(Prior Code, § 12-1805)

(C) Any person violating any provision of §§ 150.15 through 150.20 of this code or providing false information to the enforcement officer shall be guilty of a misdemeanor and upon conviction shall be punished in accordance with § 10.99 of this code.

(Ord. 03-2019, passed 6-18-2019)

CHAPTER 151: STREETS AND SIDEWALKS

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SIDEWALKS

§ 151.001 PERMIT REQUIRED.

No person shall construct or repair any sidewalk on any street, avenue or other public property in the city without first obtaining a permit; provided, however, that no permit shall be required for any construction or repair made by the city.

(Prior Code, § 20-1)

§ 151.002 APPLICATION FOR PERMIT.

- (A) All applications for permits required by this subchapter shall be made on forms approved by the Council.
- (B) All applications shall state:
 - (1) The dates construction or repair will begin and be completed; and
 - (2) A description of the contemplated construction or repair.

(Prior Code, § 20-2)

§ 151.003 COMPLIANCE WITH SPECIFICATIONS.

- (A) No person shall construct or repair any sidewalk in the city without fully complying with the plans and specifications

prepared by the city and set forth in the permit issued under § 151.002 of this code.

(B) Expenses incurred by the city in establishing grades, assisting and determining location and preparing basic engineering plans and specifications may be paid in full or in part by the city or may be charged against the applicant, in which case the expenses shall be payable in full as a condition precedent to issuance of the permit.

(Prior Code, § 20-3)

§ 151.004 DUTY OF OWNER.

The owner of any property within the city abutting on a public sidewalk shall keep the sidewalk in proper repair and safe for pedestrians at all times.

(Prior Code, § 20-4)

§ 151.005 INSPECTION OF SIDEWALKS.

(A) The City Engineer or designee shall periodically inspect the public sidewalks within the city to determine that they are kept in proper repair and safe for pedestrians. If a sidewalk abutting on private property is unsafe and in need of repairs, the City Engineer shall cause a notice to be served on the record owner of the property and the occupant either by registered or certified mail or by personal service.

(B) This notice shall order the owner to have the sidewalk repaired and made safe within 30 days, unless the owner requests a 30-day extension, which the City Administrator may grant if there is no immediate threat to public safety, and shall state that if the owner fails to do so, the City Administrator or other official will do so on behalf of the city, and the expense thereof, if not paid by the owner, made a special assessment against the property concerned.

(Prior Code, § 20-5)

§ 151.006 REPAIR BY CITY.

If a sidewalk is not repaired within 30 days after service of the notice required in §151.005 of this code, the City Engineer or designee shall report this fact to the Council and the Council shall by resolution order repair of the sidewalk. The City Engineer shall keep a record of the total cost of the repair attributable to each lot or parcel of property and report this information to the Council.

(Prior Code, § 20-6)

§ 151.007 SUPERVISION OF REPAIRS.

The Council shall require inspection and supervision of all work done whether by order of the Council or pursuant to permits issued under § 151.001 of this code. All work not done according to permit specifications shall be corrected or repaired at the owner's expense and all ongoing work shall be stopped by the inspector when discovered.

(Prior Code, § 20-7)

§ 151.008 SNOW, ICE, WEEDS, GRASS AND RUBBISH REMOVAL.

All snow, ice, dirt, weeds, grass or rubbish remaining on a public sidewalk more than 24 hours after its deposit thereon is a public nuisance. The owner and the occupant of any property adjacent to a public sidewalk shall use due diligence to keep the walk safe for pedestrians. No owner or occupant shall allow snow, ice, dirt, weeds, grass or rubbish to remain on the sidewalk longer than 24 hours after its deposit thereon.

(Prior Code, § 20-8) Penalty, see § 151.999

§ 151.009 REMOVAL OF SNOW, ICE, WEEDS, GRASS AND RUBBISH BY CITY.

When practicable, the City Administrator may cause to be removed from all public sidewalks all snow, ice, dirt, grass, weeds or rubbish beginning 24 hours after the matter has been deposited thereon or after the snow has ceased to fall. The City Administrator shall keep a record showing the cost of the removal adjacent to each separate lot and parcel and shall report the information to the Council.

(Prior Code, § 20-9)

§ 151.010 REMOVAL OR PRUNING.

Trees, branches or shrubs overhanging any sidewalk right-of-way within the city shall be removed or pruned by the owner of the abutting property so that the branches provide a clear space of eight feet above the surface of a sidewalk and provide for not less than an unobstructed sidewalk width of four feet. All dead or diseased trees, branches or shrubs which are or may become a hazard to the use of the sidewalk right-of-way shall be removed by the owner of the abutting property.

(Prior Code, § 20-10)

§ 151.011 REMOVAL OR PRUNING OF TREES BY CITY.

After sufficient notice to the owner, the City Administrator may cause to be removed or pruned from all sidewalk rights-of-way all branches to be removed or pruned. The City Administrator shall keep a record showing the cost of the removal or pruning adjacent to each separate lot and parcel and shall report this information to the Council.

(Prior Code, § 20-11) Penalty, see § 151.999

§ 151.012 OWNER LIABILITY FOR COST.

The owner of property on which, or adjacent to a sidewalk, to which a sidewalk has been constructed or repaired by the city; from which snow, ice, dirt, weeds, grass or rubbish has been removed by the city; or from which tree branches have been removed or pruned by the city, shall be personally liable for the cost of the construction, repair, removal or pruning. As soon as the service (repair, construction, removal, pruning and the like) has been completed and the cost determined, the City Administrator shall prepare and mail a bill to the owner and thereupon the amount shall be immediately due and payable at the office of the City Administrator.

(Prior Code, § 20-12)

§ 151.013 ASSESSMENT OF COSTS.

On or before September 1 of each year, the City Administrator shall list the total unpaid charges against each separate lot or parcel to which they are attributable under § 151.012 of this code. The Council may then spread the charges against the property benefited as a special assessment under M.S. § 429.101, as it may be amended from time to time, and other pertinent statutes, for certification to the County Auditor and collection in the following year along with current taxes.

(Prior Code, § 20-13)

STREET RECONSTRUCTION

§ 151.025 CONFORMITY WITH CITY STREET RECONSTRUCTION STANDARDS.

City street reconstruction projects shall comply with the design criteria in this subchapter. For more detailed information regarding street design, see § 160.059.

(Prior Code, § 20-20)

§ 151.026 STREET DESIGN.

(A) *Minimum widths.* Minimum pavement widths (face-to-face of curb) for each type of public street or road shall be as follows:

Type of Street	Roadway Width Including Shoulders*
Collector/commercial	44 feet
Cul-de-sac	45-foot turnaround radius
Industrial	44 feet
Local street (rural)	24-foot wide pave surface with a 4-foot wide aggregate shoulder
Local street (urban)	32 feet, measured from face of curb to face of curb
Minor arterial	As determined by traffic needs
* Actual pavement width may depart from the standard minimum pavement width to match width of the existing street pavement.	

(B) *Comprehensive Plan.* The type of street shall be as noted in the city’s Comprehensive Plan. The type of road to be constructed, whether it be rural or urban, shall be based on the existing and proposed topography, impact on adjoining properties, drainage consideration, environmental concerns, traffic projections and other aspects of the area served. It is the city’s intent to provide a roadway that both meets sound engineering principles and is consistent with the nature of the area to be served.

(C) *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.

(D) *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.

(Prior Code, § 20-21)

§ 151.027 ALLEY DESIGN.

All alley pavement widths shall conform to the following minimum standards:

<i>Classification</i>	<i>Pavement</i>
Industrial or commercial	20 feet
Residential (one-way)	6 feet
Residential (two-way)	20 feet

(Prior Code, § 20-22)

§ 151.028 DRAINAGE.

A complete and adequate drainage system design shall be required for all city streets and may include a storm sewer system or a system of open ditches, culverts, pipes and catch basins and ponding areas or both systems.

(Prior Code, § 20-23)

§ 151.029 PAVEMENT DESIGN.

(A) *Street pavement.* The design of street pavement for all streets covered by this regulation shall be in accordance with the state's Department of Transportation pavement design standards. 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 one and one-half inches of bituminous base course and one and one-half inches of bituminous wear course. More stringent design may be required by the City Engineer based on existing soil conditions. The final bituminous wear course shall be placed no sooner than one year after the date that the bituminous base course is placed.

<i>Classification</i>	<i>Pavement Design: Axle Load</i>
Arterials, collector street needs	As determined by traffic
Local streets	7-ton minimum

(B) *Soil tests.* To determine subgrade soil classifications and existing pavement section thickness, soil samples shall be collected and analyzed by an independent, certified testing laboratory. Soil samples shall be taken along the center line of the proposed road at intervals not exceeding 300 feet.

(C) *Curb and gutter.* Concrete curb and gutter will be constructed on both sides of urban design streets. Where required, the construction of concrete curb and gutter shall be in accordance with section 2531 of MNDOT's *Standard Specifications for Construction* and shall be either barrier or surmountable type curb. Bituminous curbs will not be allowed.

(D) *Boulevards.* All boulevards shall have a minimum of four inches of top soil (black dirt) placed on them and then be seeded or sodded.

(E) *Aggregate shoulders.* The aggregate shoulders constructed on rural design roadways shall consist of a four-foot wide section consisting of a minimum of two inches of class 2 aggregate.

(Prior Code, § 20-24)

§ 151.030 CONSTRUCTION PLANS AND INSPECTIONS.

(A) Construction plans for the required improvements conforming in all respects with the standards contained herein shall be prepared by the City Engineer.

(B) All required improvements that are to be installed under the provisions of this regulation shall be inspected during the course of construction by the City Engineer.

(Prior Code, 20-25) (Ord. 3-2008, passed 1-15-2008)

INTERFERENCE WITH PUBLIC LAND

§ 151.045 DEFINITIONS.

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

ADMINISTRATOR. The City Administrator.

COMPANY. A natural or corporate person, business association or other business entity including partnerships and sole proprietorships, political subdivision, public or private agency of any kind, its successors and assigns, who or which seeks to or is required to construct, install, operate, repair, maintain, remove or relocate facilities in the city.

FACILITIES. Communications lines or equipment of any kind, including but not limited to, lines or equipment for the transmission of audio, video or data or other similar communications services, not otherwise governed by M.S. Ch. 238, as it

may be amended from time to time, including all trunks, lines, cables, wires, optical fibers or other fiber optic cables, laser equipment, circuits, physical connections, switching equipment, wireless communication equipment of all kinds, towers and any necessary appurtenances owned, leased or operated by a company on, over, in, under, across or along any public ground.

PUBLIC GROUND. Highways, roads, streets, alleys, sidewalks, skyways, public ways, utility easements and public easements in the city, parks, parking lots, cemeteries and trails.

(Prior Code, § 20-31) (Res. 1995-9, passed 10-17-1995)

§ 151.046 RESTORATION AND RELOCATION.

(A) *Restoration.* Upon completion of the work contemplated by a permit as set forth in §§151.060 through 151.067 of this code, the company must restore the general use of the work, including the pavement and its foundation, to the same or better condition than existed prior to commencement of the work necessitating a permit. The work must be completed as promptly as weather permits. If the company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material and restore the public ground to the same condition, the city may put it in the same condition at the expense of the company. The company must, upon demand, pay to the city the direct and indirect cost of the work done for or performed by the city, including but not limited to the city's administrative costs. To recover its costs, the city first draws on the security posted by the company and then recovers the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the city.

(B) *Company initiated relocation.* The company must give the city written notice prior to a company initiated relocation of facilities. A company initiated relocation must be at the company's expense and must be approved by the city, the approval shall not be unreasonably withheld.

(C) *City required relocation.* The company must promptly, with due regard for seasonal working conditions, permanently relocate its facilities whenever the city's police power in grading, regrading, changing the location or shape of or otherwise improving public ground or constructing or reconstructing a public service or utility system therein, the relocation will be at the expense of the company. In other cases, the company and city may, by written agreement, apportion the costs or relocation between them. If the relocation is done without an agreement first being made as to who is to pay the relocation cost, the relocation of the facilities by the company is not to be construed as a waiver of its right to reimbursement for its relocation costs. If the company claims reimbursement for the relocation costs, it must notify the city within 30 days after receipt of the city's request for the costs.

(D) *Relocation where public ground vacated.* The vacation of public ground does not deprive the company of the right to operate and maintain its facilities in the city. If the vacation proceedings are initiated by the city, the city must pay the relocation costs. If the vacation proceedings are initiated by the company, the company must pay the relocation costs. If the vacation proceedings are initiated by other persons, the company must pay the relocation costs unless otherwise agreed to by city, company and the other persons.

(Prior Code, § 20-32) (Res. 1995-9, passed 10-17-1995)

§ 151.047 COMPANY DEFAULT.

(A) *Notice.* If the company is in default in the performance of the work authorized by the permit, including but not limited to restoration requirements, for more than 30 days after receiving written notice from the city of the default, the city may terminate the rights of the company under the permit, subject to the city's absolute right to revoke at any time in the exercise of the city's police powers. The notice of default must be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice must be served on the company by personally delivering it to an officer thereof at its principal place of business in the state or by certified mail to that address.

(B) *City action on default.* If the company is in default in the performance of the work authorized by the permit, the city may, after the notice to the company in division (A) above and failure of the company to cure the default, take action as may be reasonably necessary to abate the conditions caused by the default. The company must reimburse the city for the city's reasonable costs, including costs of collection and attorney fees incurred as a result of the company default. The security posted under § 151.065 of this code will be applied by the city first toward payment for the reimbursement.

(Prior Code, § 20-33) (Res. 1995-9, passed 10-17-1995)

§ 151.048 OTHER CONDITIONS OF USE.

(A) *Use of public ground.* Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel and use of public ground. The facilities are subject to additional conditions of the permit as established therein, including but not limited to:

- (1) The right of inspection by the city at reasonable times and places;
- (2) The obligation to relocate the facilities pursuant to §151.046 of this chapter; and
- (3) Compliance with all applicable regulations imposed by the state's Public Utilities Commission and other state and federal law.

(B) *Location.* The facilities must be placed in a location and in a manner as is designated by the city. The city may

designate whether facilities shall be placed above ground or in subsurface conduits.

(C) *Emergency work.* A company may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its facilities. In this case, the company must request a permit not later than the second working day thereafter and comply with the applicable conditions of the permit.

(D) *Street improvements, paving or resurfacing.* The city will give the company written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice must contain:

- (1) The nature and character of the improvements;
- (2) The streets upon which the improvements are to be made;
- (3) The extent of the improvements, the time when the city will start the work; and
- (4) If more than one street is involved, the sequence in which the work is to proceed.

(E) *Company protection of facilities.*

- (1) A company must take all reasonable measures to prevent its facilities from causing damage to persons or property.
- (2) A company must take all reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property or the elements. The company must take all reasonable protective measures when the city performs work near the facilities.

(F) *Guarding of obstructions or dangers.*

(1) If a company shall obstruct any public ground, the company shall keep the obstruction or obstructions properly guarded at all times. From sunset to sunrise, all obstructions must be guarded by a sufficient number of warning lights placed in a manner that they will give proper warning of the obstruction.

(2) The city may require any other restrictions or safety regulations as may be in the public interest.

(G) *Prior service connections.* In cases where streets are at final width and grade and the city has installed utilities and service connections to the property line abutting the streets prior to a permanent paving or resurfacing of the streets, and the facilities are located under the street, a company may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five-year period following the paving or resurfacing.

(Prior Code, § 20-34) (Res. 1995-9, passed 10-17-1995)

Cross-reference:

Mining, see Ch. 162

Statutory reference:

Authority to regulate dangerous excavations, see M.S. § 471.92

PERMIT

§ 151.060 REQUIRED.

(A) A company may not construct, install, repair, remove or relocate facilities, or any part thereof, or otherwise open or disrupt any public ground without first obtaining a permit from the city. The city shall require a separate permit of a company for each location where construction, installation or other disturbance of the public ground is to occur, or for each convenient subdivision of construction, installation or other related work for which the city determines in its sole discretion a permit is required.

(B) Each permit shall state specifically the locations of any facilities, and the nature of the work necessitating the permit, and shall contain reasonable regulations and conditions to protect the health, safety and welfare of the populace of the city.

(Prior Code, § 20-51) (Res. 1995-9, passed 10-17-1995)

§ 151.061 APPLICATION.

(A) An application for a permit is made to the Administrator. A company shall apply for a permit or renewal of a permit a minimum of two weeks before starting work and must submit detailed plans for street or sidewalk use and pedestrian safety on major projects. This provision or portions thereof may be waived by the city in the event of an emergency.

(B) Upon application by a company for a permit authorizing construction, installation, repair, removal or relocation of facilities, or other disturbance of public ground, the city may deny or approve the application. Denial of a permit shall be accompanied by a written statement of the reasons for denial. Denial of a permit shall be appealable to the City Council which shall issue detailed findings in the event the denial is sustained. An appeal of denial shall be heard at the first regularly scheduled Council meeting and any findings issued within 30 days of the meeting.

(Prior Code, § 20-52) (Res. 1995-9, passed 10-17-1995)

§ 151.062 ISSUANCE.

If the Administrator determines that the applicant has satisfied the requirements of this chapter, the Administrator may issue a permit to the company.

(Prior Code, § 20-53) (Res. 1995-9, passed 10-17-1995)

§ 151.063 FEE.

(A) A company shall make a one-time permit fee payment for each permit requested in an amount determined by the city. The permit fee shall include an application fee for administrative costs, plus an additional amount to be computed according to the portion of public right-of-way being occupied, computed by length of area in 50-foot increments, and the duration of the permit. The city shall establish a table of permit fees, which shall be subject to approval by the City Council and a copy of which shall be maintained in the office of the City Administrator. The table of fees shall be amended annually and may be amended at other times as deemed necessary by the city.

(B) (1) The permit fee shall be determined so as to fully reimburse the city for all costs incurred as a result of the construction, installation or other work approved by a permit, including but not limited to the costs incurred in returning the public ground to its original condition.

(2) Should the construction, installation or other work approved by the permit decrease the useful life or value of the public ground, or should the same not be returnable to its original condition, the city may recover the decreased value, damage, cost or fees from the permit fee.

(Prior Code, § 20-54) (Res. 1995-9, passed 10-17-1995)

§ 151.064 TERM.

The maximum period allowed for a permit shall be three months. Construction, installation or other opening, disturbance or obstruction of public ground beyond the period covered by each permit will require obtaining a new permit with payment of applicable fees and application for the permit shall be subject to the same review as the original permit application.

(Prior Code, § 20-55) (Res. 1995-9, passed 10-17-1995)

§ 151.065 SECURITY FOR COMPLETION OF WORK.

(A) (1) Prior to commencement of work, the company must deposit with the city security in the form of certified check, letter of credit or construction bond, in a sufficient amount as determined by the Administrator for the completion of the work.

(2) If more than three work projects are to be constructed during a calendar year, the applicant may, in lieu of individual securities, deposit \$2,000 with the city in a form satisfactory to the Administrator.

(B) The securities will be held until the work is completed plus a period of two months thereafter to guarantee that restoration work has been satisfactorily completed. The security will then be returned to the company with interest if held for a sufficient length of time to be required by law and then interest at the applicable statutory rate.

(Prior Code, § 20-56) (Res. 1995-9, passed 10-17-1995)

§ 151.066 INSPECTION OF WORK.

When the work is completed, the company must request an inspection by the Administrator. The Administrator will determine if the work has been satisfactorily completed and provide the company with a written report of the inspection and approval.

(Prior Code, § 20-57) (Res. 1995-9, passed 10-17-1995)

§ 151.067 DISPLAY.

Permits shall be available at all times for ease of inspection on the indicated worksite or at a site mutually agreed upon by the city and a company.

(Prior Code, § 20-58) (Res. 1995-9, passed 10-17-1995)

OFFICIAL MAP OF APPROVED PUBLIC STREETS

§ 151.080 PURPOSE.

To identify and record on an official map those streets that have been approved and accepted for maintenance by the City Council.

(Prior Code, § 20-70)

§ 151.081 OFFICIAL MAP.

(A) The location, name, length and level of improvement of every public street that has been approved and accepted by the City Council shall be shown on the Official Map of Approved Streets published herewith and made a part of this chapter, the map designated as the "Official Map of Approved Public Streets" of the city and shall be maintained as provided herein by the City Administrator.

(B) 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 subchapter by reference and incorporated herein as fully as if set forth herein at length.

(Prior Code, § 20-71) (Ord. 1997-58, passed 1-21-2003; Ord. 4-2006, passed 5-16-2006; Ord. 09-2013, passed 10-15-2013)

DAMAGE TO PUBLIC STREETS

§ 151.095 PURPOSE.

To enable the city to receive notification of construction projects prior to the start of construction activities so that the city is able to communicate with the property owner and/or contractor regarding a construction project prior to the start of construction activities to prevent damage to public streets caused by construction activities.

(Ord. 10-2020, passed 11-11-2020)

§ 151.096 SMALL PROJECT PERMIT.

All construction projects that do not require other city permitting, but involve the hauling of material to or from the site and/or the use of heavy equipment that could damage public streets, shall require a small project permit. The small project permit must be obtained prior to any construction activity, including bringing heavy equipment to the site or hauling material to the site in preparation for the construction project. The small project permit will have a nominal fee as set out in the city's fee schedule.

(Ord. 10-2020, passed 11-11-2020)

§ 151.999 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person who violates any provisions of §§151.001 through 151.013 is guilty of a misdemeanor and upon conviction shall be punished in accordance with § 10.99 of this code.

(Prior Code, § 20-14)

(C) Failure to secure the required permit prior to beginning construction, excavation, installation or work of any kind in public ground shall constitute a misdemeanor under §§ 151.060 through 151.067, punishable upon conviction as provided in § 10.99.

(Prior Code, § 20-59)

(Res. 1995-9, passed 10-17-1995; Ord. 1997-8, passed 3-17-1998)

CHAPTER 152: TREES

Section

Tree Diseases

152.01 Adoption of county model regulations

152.02 Modifications to county regulations

Tree Preservation and Reforestation

152.15 Purpose

152.16 Affected areas

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TREE DISEASES

§ 152.01 ADOPTION OF COUNTY MODEL REGULATIONS.

The September 5, 1972, resolution of the Board of County Commissioners, setting forth regulations to prevent, control and eliminate epidemic diseases of shade trees, is hereby adopted by reference in its entirety except as modified in § 152.02 of this code. Not less than three copies of the resolution are on file in the office of the City Administrator.

(Prior Code, § 10-91) (Res. 1997-16, passed 6-17-1997)

§ 152.02 MODIFICATIONS TO COUNTY REGULATIONS.

Wherever used in the model regulations adopted in §152.01 of this code, the words **COUNTY** or **COUNTY OF WASHINGTON** shall mean the city, and the words **COUNTY BOARD** shall mean the City Council, insofar as may be necessary to effectuate the policy of this chapter, which is hereby declared to be to cooperate with and participate in the program of the county to prevent, control and eliminate epidemic diseases of shade trees.

(Prior Code, § 10-92) (Res. 1997-16, passed 6-17-1997)

TREE PRESERVATION AND REFORESTATION

§ 152.15 PURPOSE.

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

(Prior Code, § 10-119)

§ 152.16 AFFECTED AREAS.

This subchapter shall apply to the following areas or applications to the city:

- (A) Any subdivision, regardless of the particular zoning district; and
- (B) Any planned unit development.

(Prior Code, § 10-120)

§ 152.17 DEFINITIONS.

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

DIAMETER. The measurement of a tree's trunk measured at four and one-half feet above the ground.

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

FORESTRY SPECIALIST. A landscape architect or forester who has been retained by the applicant.

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

- (1) Grade change or land alteration, whether temporary or permanent, of greater than one foot, measured vertically affecting 60% of the tree's root zone;
- (2) Primary construction (i.e., sewer, water, storm sewer, gas, electric, telephone and cable television and trenching) resulting in the cutting of 60% of the tree's roots at or within the root zone;
- (3) Mechanical injury to the trunk of a significant tree causing the loss of 40% of the circumference of the bark; or
- (4) Compaction to 90% of proctor to a depth of six inches or more, of 60% or more of the surface of the soil within the tree's root zone.

PRIMARY CONSTRUCTION ZONES AREAS WITHIN SUBDIVISION OR PLANNED UNIT DEVELOPMENT APPLICATIONS. All areas disturbed by construction of streets, sanitary sewer, water, storm sewer, gas, electric, telephone and cable television and trenching.

REPLACEMENT TREES. Trees which must be at least two caliper inches as defined by the *American Standard for Nursery Stock* (ANS 1-2-60) current edition for deciduous trees and at least six feet high for coniferous trees.

REPLACEMENT TREES shall be of the following genus: maple, linden, honey locust, oak, ash, bass wood, birch, fir,

spruce, pine and other trees native to the state or city.

SECONDARY CONSTRUCTION ZONES WITHIN SUBDIVISION OR PLANNED UNIT DEVELOPMENT

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

SIGNIFICANT TREES. A healthy deciduous tree measuring six inches in diameter or greater or a healthy coniferous tree measuring four inches greater in diameter.

TREE. A woody plant which at maturity is 13 to 20 feet or more in height and having a more or less definite crown.

TREE PRESERVATION PLAN WITHIN SUBDIVISION AND PLANNED UNIT DEVELOPMENTS. A plan certified by a forester or landscape architect, indicating all of the significant trees in the proposed development or subdivision. The **TREE PRESERVATION PLAN** shall include the size, species and surveyed location of all significant trees within the area of development, primary or secondary construction zones. A **TREE REPLACEMENT PLAN** must also be submitted if the proposed tree loss exceeds the allowable percentage of tree loss.

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

TREE PRESERVATION PLAN WITHIN INDICATED "WOODED AREAS" FOR NEW CONSTRUCTION, EXCAVATION AND FILL PERMITS OR ANY OTHER LAND ALTERATION PERMITS. This applicant must provide a **TREE PRESERVATION PLAN** certified by a forester, landscape architect indicating all of the significant trees in the proposed construction area. (For purposes of applying this definition, construction area shall include all areas to be disturbed by grading for excavation and fill permits and 30 feet surrounding the building pad area, ten feet along driveways). The **TREE PRESERVATION PLAN** shall include the size, species and location of all significant trees within the area and identify trees which would be removed. Replacement of the trees must adhere to the tree replacement guidelines set forth below. Single or individual lot development would not be required to submit this plan.

TREE PROTECTION.

(1) Snow fencing or erosion control fencing placed at the drip line of significant trees to be preserved. The **TREE PROTECTION** measures shall remain in place until all primary grading activity is terminated and the forestry specialist has certified to the city that the tree preservation plan has been followed.

(2) Fencing must be placed on a lot by lot basis, as new structures are constructed. A tree survey will be submitted by a registered landscape architect, licensed forester or other professional approved by the city, to determine existing baseline canopy coverage. In addition, two trees will be planted in the boulevard per 100 feet of front footage on any subdivision.

TREE ROOT ZONE. The area under a significant tree which is at and within the drip line of the tree.

(Prior Code, § 10-121) (Ord. 1997-33, passed 5-16-2000)

§ 152.18 REPLACEMENT GUIDELINES.

(A) *Tree replacement within subdivisions and planned unit developments.* Tree replacement shall be required if primary and secondary construction remove more than 30% of the significant trees. Every tree lost beyond 30% shall require replacement at a rate of one-half inch for every one inch of tree loss. The applicant must supply a tree replacement plan which has been certified by a forestry specialist.

(B) *Tree replacement within subdivisions and planned unit developments for new home construction.* Significant tree loss occurring beyond the indicated tree preservation plan as submitted during the subdivision or planned unit development process shall require tree replacement at a rate of one inch for every inch of tree lost. If during construction, a tree is lost (unplanned), as described in § 152.17 of this code, the replacement rate increases to two inches for every inch of tree lost.

(Prior Code, § 10-122)

§ 152.19 REFORESTATION GUIDELINES.

(A) In the event of a subdivision or PUD in an area where there are less than 15 trees per acre, reforestation will occur to achieve this ratio.

(B) The following criteria will be used to determine reforestation.

(1) Trees must be from the approved list of desirable species.

- (2) No more than one-third of the trees may be from any one tree genus.
- (3) Not less than 20% of the trees shall be conifers.
- (4) Tree replacement sizes will be followed.
- (5) Trees shall be used that are appropriate to the soil conditions found on site.

(6) Two trees (consistent with tree replacement standards and included as part of the overall calculation for reforestation) will be planted in the boulevard per 100 feet of frontage in any subdivision.

(Prior Code, § 10-123)

§ 152.20 SECURITY FOR TREE REPLACEMENT AND REFORESTATION.

(A) *Security within subdivisions or planned unit developments.* A letter of credit, cash or escrow will be provided by the applicant, in favor of the city, in an amount of 150% of the tree replacement estimate. If the project requires securities for other improvements, this amount will be held in the same security. If a subdivision or planned unit development does not require replacement, a \$10,000 security will be held until certification of the forestry specialist has been submitted indicating the tree preservation plans have been followed.

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

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

(Prior Code, § 10-124)

§ 152.21 REMEDIES.

If disputes arise as a result of this applying this subchapter, the City Council may gather information regarding the situation and determine the best remedy for the dispute.

(Prior Code, § 10-125) (Ord. 1997-33, passed 5-16-2000)

§ 152.22 REGULATIONS FOR COMMERCIAL TREE SERVICE CONTRACTORS.

(A) *License required.* No person, firm, corporation or franchise shall engage in the business of commercial tree service within the city, unless a license has been obtained from the City Administrator as provided herein.

(B) *License application procedure.* Applications for a commercial tree service license shall be submitted to the City Administrator. The application shall consist of the following:

- (1) Name, address and telephone number of applicant and any individuals authorized to represent the applicant; and
- (2) License fee.
 - (a) The license fee will be as reflected in the city's fee schedule. The license fee will not be prorated.
 - (b) The license will expire on December 31 of each year.

(c) The license may be revoked or suspended upon violation of the city's vegetative cutting or tree preservation and reforestation regulations as well as violation of scenic easement requirements and other city tree protection regulations and requirements.

(C) *Conditions of license.* A commercial tree service license shall be issued subject to the following conditions which shall be specified on the license form.

(1) *Possession of license.* The commercial tree service license or a copy thereof shall be in the possession of any party employed by the commercial tree service firm when undertaking tree service activities within the city.

(2) *Compliance with city regulations.* The licensee must abide by the city's regulations regarding vegetative cutting, and regarding tree preservation and reforestation.

(D) *Enforcement.* The City Council is responsible for the administration and enforcement of this subchapter.

(E) *Civil remedies.* This subchapter may also be enforced by injunction, action for abatement or other appropriate civil remedy, or by citation written and processed as an administrative proceeding in city court.

(Ord. 06-2021, passed 7-20-2021)

§ 152.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any violation of the provisions of § 152.22 of this chapter or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable by a fine of not more than \$1,000 or by imprisonment for not more than 90 days, or both, plus the cost of prosecution in any case. Violations of § 152.22 of this chapter can occur regardless of whether or not a permit is required for a regulated activity pursuant to §§ 152.15 through 152.22.

(Ord. 06-2021, passed 7-20-2021)

CHAPTER 153: ZONING

Section

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Administration

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GENERAL PROVISIONS

§ 153.001 SHORT TITLE.

This chapter may be cited as the “zoning ordinance” or “this chapter.”

(Prior Code, § 12-51)

§ 153.002 GENERAL PURPOSES.

The general purposes of this chapter 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.

(Prior Code, § 12-52)

§ 153.003 SPECIFIC PURPOSES.

It is hereby determined by the City Council that in order to accomplish the general purposes of this chapter as set forth in § 153.002 of this code, it is necessary and proper to establish and enforce the regulations contained in this chapter 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 the 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 the areas;
- (K) Provide for the enforcement of this chapter and to define and limit the powers and duties of the administrative officers and bodies responsible therefore;
- (L) Protect and preserve economically viable agricultural land;
- (M) Provide for the wise use and conservation of energy resources; and
- (N) Implement the city's comprehensive land use plan as prepared by the Planning Commission and adopted by the City Council.

(Prior Code, § 12-53) Penalty, see § 153.999

§ 153.004 INTERPRETATION AND CONSTRUCTION.

- (A) In the application of this chapter, the provisions thereof shall be interpreted to be the minimum requirements necessary to accomplish the general and specific purposes of this chapter.
- (B) Nothing contained in this chapter 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 chapter 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 chapter.

(Prior Code, § 12-54)

§ 153.005 DEFINITIONS.

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

ACCESSORY BUILDING OR STRUCTURE. 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.

ACCESSORY USE. A use related or subordinate to the principal use of the same land.

ADMINISTRATOR. The Zoning Administrator.

AGRICULTURAL BUILDING. A structure on agricultural land as defined in **AGRICULTURAL, RURAL**, 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.

AGRICULTURE, RURAL. A commercial food producing use on ten or more contiguous acres and is defined under a

portion of the state's Agricultural Property Tax Law (Green Acres Law), M.S. § 273.111, as it may be amended from time to time, 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. 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. 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:

- (1) More than 30% of the facility's income shall be derived from the impounding of stray animals;
- (2) Less than 10% 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;
- (3) No breeding of animals for sale or any other purpose shall be done on the premises;
- (4) Structure shall be completely enclosed to prevent noise from reaching adjacent properties. Structure shall be required to meet architectural standards required in this code and city ordinances;
- (5) Proper and healthful disposal of animal waste and dead animals shall be required;
- (6) Lighting, fencing, screening, berming and the like, may be required by the city; and
- (7) Other conditions as may be deemed reasonable by the city.

ANIMAL UNIT. 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. Cattle, hogs, horses, bees, sheep, goats, chickens and other animals commonly kept for commercial food producing purposes.

ANIMALS, DOMESTIC PETS. 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. A room or suite of rooms with cooking facilities designed to be occupied as a residency by a single family.

AREA, NET DEVELOPABLE. Those lands within a development parcel remaining after the deletion of floodplains, wetlands, slopes greater than 13% and unbuildable easements or rights-of-way.

AUTOMOBILE REPAIR. 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 the 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).

- (1) 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.
- (2) 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 one and one-half 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. Those uses catering to the traveling 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**.

BED AND BREAKFAST. 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). 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. 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:

- (1) A slope of 18% or greater as measured over horizontal distances of 50 feet or more;
- (2) The slope drains towards the waterbody, river or adjoining watershed channel; and
- (3) Part or all of the feature is located in the Shoreland District.

BLUFF IMPACT ZONE. Land located within 40 feet from a crest of a bluff.

BLUFFLINE. 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% and only includes slopes greater than 18% which drains toward the waterbody, river or adjoining watershed channel, except as provided in § 157.04 of this code.

BOARDINGHOUSE. 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.

(1) All land having a slope of 13% 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% meeting the requirements of § 153.051(B)(11).

(2) **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.

BUILDING. 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 the **BUILDING** shall be deemed a separate **BUILDING**.

BUILDING CODE. The state's Building Code.

BUILDING OFFICIAL. The officer or other designated authority, certified by the state under M.S. § 326B.133, as it may be amended from time to time, charged with the administration and enforcement of the state's Building Code, or his or her duly authorized representative. Also known as the **CITY BUILDING OFFICIAL**.

BUILDING SETBACK LINE. 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. Any occupation, employment or enterprise wherein merchandise is exhibited or sold, or where services are offered for compensation.

BUSINESS SERVICE. A service provided to other businesses such as information technology services or accounting services.

CARPORT. An automobile shelter having one or more sides open.

CERTIFICATE OF OCCUPANCY. See § 153.035 of this code.

CHANNEL. 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. That water which is flowing within the limits of the defined channel.

CHURCH. See **PLACES OF WORSHIP**.

CLUB or LODGE. 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 the 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 the serving is secondary and incidental to the operation of the dining room for the purpose of serving food and meals and providing further that the serving of alcoholic beverages is in compliance with the applicable federal, state, county and city laws.

COMMERCIAL. See § 153.053 for permitted uses.

COMMERCIAL RECREATION. A bowling alley, cart track, pool hall, vehicle racing or amusement, dance hall, skiing, skating, firearms range, golf driving ranges, miniature golf or putting courses, golf training facilities and similar uses.

COMMERCIAL SCHOOL. 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 students.

COMMON PLAN OF DEVELOPMENT OR SALE. A contiguous area where multiple separate and distinct land disturbing

activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

COMPREHENSIVE PLAN. 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. 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 the 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.

(1) Includes construction activity as defined in 40 C.F.R. § 122.26(b)(14)(x) and small construction activity as defined in 40 C.F.R. § 122.26(b)(15) and construction activity as defined by Minn. Rules part 7090.0080, subpart 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.

(2) **CONSTRUCTION ACTIVITY** includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more. **CONSTRUCTION ACTIVITY** does not include a disturbance to the land of less than five 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 or federal requirements, so it would be allowable for a local government.)

COOPERATIVE COMMERCIAL WAREHOUSING. A type of warehousing that serves only commercial businesses and provides commercial storage space larger than 350 square feet and up to 10,000 square feet that is suitable for business operations by providing amenities including but not limited to electricity, lights, climate control and a minimum 10% office component. Other characteristics are as follows.

- (1) Individual building size is a minimum of 4,000 square feet.
- (2) The building exteriors are finished with EIFS or insulated metal wall panels with an appearance similar to EIFS, on the sides without overhead doors.
- (3) No overhead doors directly face a public street.
- (4) All overhead doors are screened from public streets.

COUNCIL. The governing body of the city.

CURB LEVEL. 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 chapter.

DATA CENTER. A facility used to house computer systems and associated components, such as telecommunications and storage systems.

DECIBEL. 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. 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%.

DISTRIBUTION CENTER. A use that, apart from storing products, offers value-added services like product mixing, order fulfillment, cross docking, packaging and the like. The maximum size allowed for a distribution center is 30,000 square feet. A **DISTRIBUTION CENTER** use does not involve the exterior storage of motor freight tractors and trailers.

DREDGING. 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.

(1) 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.

(2) A **DRIVE-IN** shall also include any restaurant, café 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. A building or one or more portions thereof occupied or intended to be occupied exclusively for human habitation, but not including rooms in motels, hotels, nursing homes, boardinghouses, nor trailers, tents, cabins or trailer coaches.

DWELLING UNIT. A residential accommodation, which is arranged, designed, used or intended for use exclusively as living quarters for one family.

EASEMENT. 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. The City Engineer.

EROSION AND SEDIMENT CONTROL PLAN (ESC PLAN). 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. 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). 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. The storage of goods, materials, equipment, manufactured products and similar items not fully enclosed by a building and includes open storage.

FACILITIES FOR INSTITUTIONALIZED PERSONS. Housing for students, mentally ill, infirm, elderly, nurses, physically retarded and similar housing of a specialized nature.

FAMILY. 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 **AGRICULTURE, RURAL.**

FARM KITCHEN, ACCESSORY. A commercial kitchen used to produce value-added agricultural products as an additional process that involves using what might normally be waste and processing it into a value-added product of the farm, which may include canned goods, juices, vinegars, spreads, sauces, syrups, salsas, preserves, baked goods and the like.

FARM WINERY. A winery operated by the owner of a state farm, or agricultural land, with a vineyard and producing table, sparkling or fortified wines from grapes, grape juice, other fruit bases or honey with a majority of the ingredients grown or produced in the state. A **FARM WINERY** does not include retail sales, wine tastings or a commercial event venue.

FEED LOT. 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 the feeding of animals.

FENCE. A partition, structure, wall or gate erected as a dividing marker, barrier or enclosure.

FILL. 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. A drawing or map of an approved subdivision, meeting all requirements of the subdivision ordinance, and in the form as required by the city for purposes of recording. See Ch. 160 of this code.

FLEX OFFICE. Industrial space that is used for warehouse space, a portion of which can be converted to office or showroom space. The space can be "flexed" into larger or smaller office vs. warehouse spaces as needed.

FLOOD. See Ch. 159 of this code.

FLOOR AREA. 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. 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. 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 the buildings are located.

FLOOR PLAN, GENERAL. A graphic representation of the anticipated utilization of the floor area within a building or structure, but not necessarily as detailed as construction plans.

FRONTAGE. That boundary of a lot which abuts an existing and improved public right-of-way.

FULFILLMENT CENTER, E-COMMERCE. Industrial space that serves ecommerce merchants by enabling them to outsource warehousing and shipping. Sellers send merchandise to the fulfillment center, and the outsourced provider ships it to customers for them. The maximum size allowed for a fulfillment center is 30,000 square feet.

GARAGE, PRIVATE. 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. A building or space for the commercial repair or maintenance of motor vehicles, but not including factory assembly of the vehicles, auto wrecking establishments or junk yards.

GARAGE SALE.

(1) 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 the sales. As used in this chapter, 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.

(2) **GARAGE SALE** as used in this chapter 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 chapter, and further provided that the sale is conducted by a licensed auctioneer.

GARAGE, STORAGE. 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 chapter, 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. The City Council.

GRADE PLANE. 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 six feet (1,829 millimeters) from the building, between the building and a point six feet (1,829 millimeters) from the building.

HEIGHT, BUILDING. The vertical distance from grade plane to the average height of the highest roof surface.

HOME OCCUPATION. An activity conducted in a dwelling unit for gain, profit or financial support by persons living in the dwelling unit.

HOTEL. 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. A hard surface, created by construction or usage, 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. 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 material in conjunction with a permitted manufacturing process when within an enclosed area or building shall not be included. The use shall not include organic waste or material.

KENNEL, COMMERCIAL. Anyplace where four or more dogs over six months of age are boarded, bred, trained or offered for sale.

KENNEL, PRIVATE. Anyplace where four or more dogs over six months of age are owned by any member or members of the household.

LAND ALTERATION. The excavation or grading of land involving movement of earth and materials in excess of 50 cubic yards.

LAND DISTURBANCE.

(1) 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.

(2) 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**.

(3) 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.

LAND RECLAMATION AND LAND GRADING. 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. Planting of trees, shrubs and ground covers.

LOADING SPACE. 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. 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. 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 the parcel from other lands for tax purposes.

LOT AREA. The area of a horizontal plane within the lot lines.

LOT, BUILDABLE. A lot which meets or exceeds all requirements of the city land use and development ordinances without the necessity of variances.

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

LOT DEPTH. 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. 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 the public right-of-way shall be the **LOT LINE**.

LOT LINE, FRONT. The 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. That boundary of a lot which is opposite the front lot line. If the **REAR LOT LINE** is less than ten feet in length, or if the lot forms a point at the rear, the **REAR LOT LINE** shall be a line ten feet in length within the lot, parallel to, and at the maximum distance from the front lot line.

LOT LINE, SIDE. Any boundary of a lot which is not a front lot line or a rear lot line.

LOT OF RECORD. 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 chapter was derived.

LOT, THROUGH. 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 chapter.

LOT WIDTH. The horizontal distance between the side lot lines of a lot measured at the setback line.

MAJOR SUBDIVISION. 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 an existing street or extension of the local government facilities, or the creation of any public improvements.

MANUFACTURED HOME. A structure transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; except that the term includes any structure which meets all the requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary and complies with the standards established under M.S. § 327.31, subdivision 3, as it may be amended from time to time. No **MANUFACTURED DWELLING** shall be moved in the city that does not meet the Manufactured Home Building Code as defined in M.S. § 327.31, subdivision 3, as it may be amended from time to time.

MANUFACTURING AND INDUSTRIAL, LIGHT. Includes the compounding, processing, packaging, treatment or assembly of products and materials provided the use will not generate offensive odors, glare, smoke, dust, noise, vibrations or other effects which would be damaging to the environment. The 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. 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. The 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. Any solid or liquid containing animal excreta.

MARINA. An area of concentrated small craft mooring, where ancillary facilities may be provided for some or all of the 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. The average flow elevation of a stream or river computed as the midpoint between extreme low and extreme high water.

MEDICAL USES. 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 and sanitarium.

MEZZANINE. 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 the **MEZZANINE** is located except for walls not more than 42 inches (1,067 millimeters) high, columns and posts.

MINING. 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 chapter, **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 Ch. 162 of this code.

MINOR SUBDIVISION. Any subdivision containing three 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. 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's Manufactured Home Building Code.

MOBILE HOME LOT. A parcel of land for the placement of a single mobile home for the exclusive use of the occupants of the mobile home.

MOBILE HOME PARK. 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 the mobile home park.

MOTOR COURTS OR MOTEL. A building or group of buildings, other than a hotel, used primarily as a temporary residence of a motorist.

MOTOR FREIGHT TERMINAL. A building or area in which freight brought by motor truck is transferred and/or stored for movement by motor truck.

MUNICIPALITY. The City of Afton.

NATURE CENTER.

(1) An area of land that is set aside, used and managed by a non-profit organization or government entity with an explicit interest in protecting open spaces, water resources and other natural resources. The land within the **NATURE CENTER** is to be set aside for the express purpose of protecting and preserving open space and natural resources, including the conservation of wildlife, flora, fauna or features of geological, ecological and/or other special interest, such as wetlands, streams and ravines.

(2) The land within a **NATURE CENTER** may also be used to provide opportunities and/or spaces for study, research or public outreach, including outdoor experiences such as hiking and biking trails. A **NATURE CENTER** may include an interpretive center designed to educate people about nature and the environment. Donations may be accepted to support the operation of the **NATURE CENTER**.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES). The program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing permits under the Clean Water Act (§§ 301, 318, 402 and 405 and being 33 U.S.C. §§ 1311, 1311, 1328, 1342 and 1345).

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

NOISE, AMBIENT. 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. A parcel not reduced by more than 10% of its lot area due to right-of-way dedication or a perturbation in the rectangular survey system.

NONCONFORMING USE. 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 chapter 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 chapter is derived or amendment thereto.

NOXIOUS MATTER. 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. 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. 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. A building with facilities for the care of children, the aged, infirm or place of rest for those suffering bodily disorder. The **NURSING HOME** shall be licensed by the state's Board of Health as provided for in M.S. § 144.50, as it may be amended from time to time.

OFFICE USES. 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.

(1) 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.

(2) The **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. The area originally platted as the Village of Afton.

OPEN SALES LOT. Land devoted to the display of goods for sale, rent, lease or trade where the goods are not enclosed within a building.

OPEN STORAGE. Storage of any material outside of a building.

OTHER SPECIALLY PERMITTED USE. A land use or development allowed with appropriate conditions as determined by the Zoning Administrator and as specifically set forth in this chapter.

OWNER. All persons interested in a property as fee simple owner, life estate holder, encumbrancer or otherwise.

PARK. A noncommercial, not-for-profit facility designed to serve the recreational needs of the residents of the community. Such facilities include subdivision recreational facilities (neighborhood parks), community parks, regional parks and special use facilities that are controlled by a governmental jurisdiction. Such facilities may also include, but are not limited to, school ballfields, football fields and soccer fields, if they meet the this definition. Commercial amusement facilities, such as water slides, go-cart tracks, and miniature golf courses, shall not be considered **PARKS**.

PARK, PRIVATE. A park that is not controlled by a governmental jurisdiction.

PARKING SPACE. A suitably surfaced and permanently maintained area on privately owned property either within or outside of a building of sufficient size.

PERFORMANCE STANDARDS. The minimum development standards as adopted by the City Council and on file in the office of the Zoning Administrator. The standards shall also be filed with the City Administrator.

PERSON. An individual, political and corporate bodies and partnerships and other unincorporated associations.

PLACES OF WORSHIP. 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.

PLANNING COMMISSION. The duly appointed Planning and Zoning Commission of the city.

PRINCIPAL STRUCTURE OR USE. One which determines the predominant use as contrasted to accessory use or structure.

PRIVATE STREET. 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. 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. A contract entered into between private parties which constitutes a restriction of the use of a particular parcel of property.

PUBLIC LAND. Land owned and/or operated by a governmental unit including school districts.

PUBLICATION. An official notice as prescribed by state statute.

PUBLIC WATERS. All water basins and watercourses that are described in M.S. § 103G.005, subdivision 15, as it may be amended from time to time.

RACE TRACK. Any area where two or more animals or power driven vehicles are raced for profit or pleasure.

RECREATION EQUIPMENT (IN RESIDENTIAL DISTRICTS). 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.

(1) 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; and

(c) Is towed or self-propelled on public streets or highways incidental to recreation or vacation activities.

(2) Examples of 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. 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 the recreation vehicles are parked. The term **RECREATION VEHICLE PARK** shall include all buildings used or intended for use as part of the equipment thereof, whether or not a charge is made for the use of the park and its facilities.

REDUCTION YARD. 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. 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. § 508.47, as it may be amended from time to time. A **REGISTERED LAND SURVEY** shall not be used as a means to subdivide property.

RESEARCH. Medical, chemical, electrical, metallurgical or other similar research and quality control, conducted in accordance with the provisions of this chapter.

RESIDENCE, ATTACHED DWELLING. A dwelling which is joined to another dwelling at one or more sides by a party wall or walls.

RESIDENCE, DETACHED DWELLING. A dwelling which is entirely surrounded by open space on the same lot.

RESIDENCE, DUPLEX. A residential building containing two dwelling units.

RESIDENCE, MULTIPLE DWELLING. A residential building, or portion of a building, containing three or more dwelling units served by a common entrance.

RESIDENCE, SINGLE-FAMILY DWELLING. A residential building containing one detached dwelling unit.

RESIDENCE, TOWNHOUSE. 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 § 153.053 of this code for permitted uses.

RESORT. 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 the 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. Any establishment having appropriate facilities for the serving of food to the general public.

RESTRICTIVE COVENANT. See **PROTECTIVE COVENANT**.

RETAIL BUSINESS USES. Stores and shops selling personal services or goods for final consumption.

RIDING STABLE. 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. A structure used only for the display and sale of products with no space for customers within the structure, on a seasonal basis.

SAFEGUARD. 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 the 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. A business is limited to agricultural goods actually raised on land owned or leased by the business operator. These sales activities are limited to the following period: Saturdays from 7:00 a.m. to 12:00 p.m., from May 15 to November 1. These 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.

SATURATED SOIL. The highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. **SATURATED SOIL** is evidenced by the presence of soil mottling associated with the presence of water or other information.

SCENIC EASEMENT. 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 or her heirs, successors or assigns. Unless specifically provided by the parties, no easement shall give the holder or any beneficiary the right to enter on the land except for enforcement of the easement.

SCREENING. 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 Ch. 157 of this code, **SCREENING** does not include fences and walls.

SEDIMENT CONTROL. 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.

SELF STORAGE, MULTI STORY. A climate controlled multi-story facility with quality exterior materials as required by the Industrial Zone architectural standards.

SETBACK. 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. 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. Any grouping of two or more principal retail uses whether on a single lot or on abutting lots under multiple or single ownership.

SIGN. A display, illustration, structure or device which directs attention to an object, product, place, activity, person, institution, organization or business.

SLOPE. 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'.

SMALL CONSTRUCTION ACTIVITY.

(1) As defined in 40 C.F.R. § 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.

(2) **SMALL CONSTRUCTION ACTIVITY** includes the disturbance of less than one 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 acres.

ST. CROIX RIVERWAY. All lands and public waters within the riverway boundary subject to the standards and criteria for the state's Lower Saint Croix National Scenic Riverway.

STABILIZED. 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. Seeding alone, whether with grass, agricultural crop or other seeding, is not stabilization. Mulch materials must achieve approximately 90% ground coverage (typically two ton/acre.)

STORMWATER. As defined under Minn. Rules part 7077.0105, subpart 41b, and includes precipitation runoff, stormwater runoff, snowmelt runoff and any other surface runoff and drainage.

STORMWATER FACILITY. 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). A plan for stormwater discharge that includes erosion prevention BMPs, sediment control BAIN and permanent stormwater management systems that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution.

STORY. The 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**.

STORY ABOVE GRADE. 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 six feet (1,829 millimeters) above grade plane;
- (2) More than six feet (1,829 millimeters) above the finished ground level for more than 50% of the total building perimeter; and
- (3) More than 12 feet (3,658 millimeters) above the finished ground level at any point.

STORAGE SITE. 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. 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. 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. A street which serves or is designed to serve heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

STREET, LOCAL. A street intended to serve primarily as an access to abutting properties.

STREET PAVEMENT. The wearing of exposed surface of the roadway, used by vehicular traffic.

STREET WIDTH. The width of the right-of-way, measured at right angles to the centerline of the street.

STRUCTURAL ALTERATION. 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. Anything constructed or erected on the ground, or attached to something having a location on the ground.

SUBDIVISION. 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. Any building, structure or lot lawfully existing on the effective date of the ordinance from which this chapter 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 chapter is derived or amendment thereto.

SUPPER CLUB. 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). 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. A building with facilities for the serving of 3.2% malt liquor, wine, set-ups and short order foods.

TEMPORARY EROSION PROTECTION. 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.

- (1) Any vehicle or structure designed and used for human living quarters which meets all of the following qualifications:
 - (a) Is not used as the residence of the owner or occupant;
 - (b) Is used for temporary living quarters by the owner or occupant while engaged in recreational or vacation activities; and
 - (c) Is towed or otherwise transported, by its own or by other motive power, on the public streets or highways incidental to recreational or vacation activities.
- (2) 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. 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 the 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. 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. 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). Water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined or perched conditions, in near surface unconsolidated sediment or in rock formations deeper underground. The term **GROUNDWATER** shall be synonymous with **UNDERGROUND WATER**.

USE. 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. A use subordinate to and serving the principal use or structure on the same lot and customarily incidental thereto.

USE, NONCONFORMING. Use of land, buildings or structures legally existing at the time of adoption of the ordinance from which this chapter was derived that does not comply with all the regulations of this chapter or any amendments hereto governing the zoning district in which the use is located. See § 153.007 of this code.

USE, OPEN. The use of a lot without a building or including a building incidental to the open use.

USE, PERMITTED. A public or private use which of itself conforms with the purposes, objectives, requirements, regulations and performance standards of a particular district.

USE, PRINCIPAL. The main use of land or buildings as distinguished from subordinate or accessory uses. **PRINCIPAL USE** may be either permitted, conditional or special.

VALUE-ADDED AGRICULTURAL PRODUCT. An agricultural commodity or product produced and/or marketed in a way as to provide enhanced value, including expanded customer base and increased revenue, such as organically produced products and/or a change in the physical state or form of the product (such as milling wheat into flour or making strawberries into jam).

VARIANCE. A modification or variation of the strict provisions of this chapter 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 chapter. 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 § 153.026 of this code.

VEHICLE REPAIR. General repair, rebuilding or reconditioning of engines, motor vehicles or trailers, including body work, framework, welding and major painting services.

VETERINARY. Those uses concerned with the diagnosis, treatment and medical care of animals, including animal or pet hospitals.

WAREHOUSING. The storage of materials or equipment within an enclosed building as a principal use, including packing and crating.

WATERFRONT USES, RESIDENTIAL. Boat docks and storage, fish house, fish cleaning, water recreation equipment and other uses normally incidental to a lakeshore residence provided the uses are for the exclusive use of the occupants and nonpaying guests.

WETLANDS. 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; and/or

(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.

WETLANDS IN THIS CITY. Identified in the city's *Water Resources Inventory, County Soil and Water Conservation*

District, January 1983, or later revisions.

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

YARD. The open space on an occupied lot which is not covered by any structure.

YARD, DEPTH OF REAR YARD. The horizontal distance between the rear building line and the rear lot line.

YARD, FRONT. 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. 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. A yard area which may not be built on or covered by structures because of the dimensional setbacks for the structures within the zoning district.

YARD, SIDE. A yard between the side lines of the lot and the nearest building line.

ZONING DISTRICT OR DISTRICT. An area or areas within the city in which the regulations and requirements of this chapter are uniform.

(Prior Code, § 12-55) (Res. 1997-5, passed 2-11-1997; Res. 1997-16, passed 6-17-1997; Ord. 1997-19, passed 7-15-1997; Ord. 5-2005, passed 4-19-2005; Ord. 8-2005, passed 5-17-2005; Ord. 02-2008, passed 1-9-2008; Ord. 02-2011, passed 7-19-2011; Ord. 05-2013, passed 3-19-2013; Ord. 03-2017, passed 3-21-2017; Ord. 01-2018, passed 6-19-2018; Ord. 04-2021, passed 7-20-2021; Ord. 07-2021, passed 8-17-2021; Ord. 08-2021, passed 10-19-2021; Ord. 02-2022, passed 6-21-2022; Ord. 03-2022, passed 11-15-2022)

§ 153.006 APPLICATION.

(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 chapter for the district in which it is located.

(B) *Application to existing structures.* This chapter shall not apply to existing buildings and structures, nor to the existing use of any building, structure or land to the extent of the use on the effective date of the ordinance from which this chapter was derived. However, this chapter 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 chapter was derived.

(C) *Use definitions.* 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 chapter 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 chapter are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution or regulation of any kind, the regulations which are most restrictive or which impose higher standards or requirements shall prevail.

(Prior Code, § 12-56)

§ 153.007 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 chapter was derived or on the effective date of any amendment thereto may be continued although the use does not conform to the provisions of this chapter.

(B) *Notice of nonconforming use.*

(1) 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 chapter 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 chapter that affects the use.

(2) 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.

(3) 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 code was derived or on the effective date of any amendment hereto may be maintained although the building or structure does not conform to the dimensional standards of this chapter, but any building or structure shall not be altered or improved beyond normal maintenance as determine by the Zoning Administrator unless it meets the requirements of § 153.007 of this code.

(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 chapter, provided:

- (1) The structure involved is the principal structure;
- (2) The structure was built prior to September 18, 1975;
- (3) The existing setback of the structure is within 60% 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 chapter.

(E) *Unlawful uses, buildings and structures.* No unlawful use of property existing on the effective date of the ordinance from which this chapter was derived or any amendment thereto nor any building or structure which is unlawfully existing on the 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 chapter was derived or any amendment thereto may be completed and occupied in accordance with the requirements of any valid building permit issued therefore prior to the 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 the 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 the building or structure, or part thereof, which existed at the time of 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 the building or structure is equal to 50% 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 chapter.

(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, the land, building or structure shall, thereafter, be used only as provided by this chapter.

(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:

- (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 county's Soil and Water Conservation District;

(7) Applicant must demonstrate that a conforming sewage treatment system is present, pursuant to Ch. 154 of this code; and

(8) The proposed improvement will be in compliance with all other requirements and dimensional standards of this chapter.

(Prior Code, § 12-57) (Ord. 1997-25, passed 8-17-1999; Ord. 02-2009, passed 4-21-2009) Penalty, see § 153.999

§ 153.008 INTERPRETATION OF CONFLICTING PROVISIONS.

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

(Prior Code, § 12-58)

§ 153.009 ENFORCEMENT.

(A) *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 failure unless the liability is specifically provided for by law.

(B) *Equitable remedies.* Upon a violation or the threatened violation of any provision of this chapter or any provision or condition of a permit issued pursuant to this chapter, the city in addition to other remedies, may institute appropriate actions or proceedings to prevent, restrain, correct or abate the violation or threatened violation.

(C) *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 chapter.

(Prior Code, § 12-59) Penalty, see § 153.999

§ 153.010 SUPREMACY.

When any condition imposed by any provision of this chapter 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.

(Prior Code, § 12-60)

ADMINISTRATION

§ 153.025 ZONING ADMINISTRATOR; DUTIES.

(A) The Zoning Administrator shall enforce the provisions of this chapter as provided herein.

(B) In addition to the duties and powers of the Zoning Administrator under this chapter, express or implied, he or she shall have the duty and power to:

(1) Issue permits required by this chapter;

(2) Conduct inspections of land, buildings or structures at reasonable times, to determine compliance with and enforce the provisions of this chapter;

(3) Maintain all records necessary for the enforcement of this chapter, including, but not limited to all maps, amendments and conditional use permits, variances, appeal notices and applications therefor;

(4) Receive, file and forward all appeals, notices, applications for variances, conditional use permits or other matters to the appropriate officials or boards; and

(5) Institute in the name of the city, any appropriate actions or proceedings to enforce this chapter.

Action	When Applicable	Property Owner Should Apply To	Application Approved or Denied By	Appeal Considered By	Public Hearing Required	Reference
Action	When Applicable	Property Owner Should Apply To	Application Approved or Denied By	Appeal Considered By	Public Hearing Required	Reference

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	§ 153.028
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	§ 153.029
Building permits	Any proposed construction	Building Official	Building Official or inspector	Court	No	Building Code
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	§ 153.035
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	§ 153.027
Driveway permit	Prior to application for building permit	Zoning Administrator	Zoning Administrator	Court	No	§ 153.033
Land reclamation and land grading	Moving 50 cubic yards or more of materials and/or disturbance of 1,000 square feet or more of land per lot	Zoning Administrator	Zoning Administrator	Court	No	§§ 153.101, 153.102
Moving permit	Relocating a structure	Zoning Administrator	City Administrator	Court	No	§ 153.031
Septic permit	Prior to application for driveway permit and building permit	Building Official	Building Official	Court	No	Ch. 154
Sign permit	Erection of any sign	Zoning Administrator	See § 153.130	Court	Option of City Council	§ 153.130
Subdivision	Creating new lots	City Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	Yes	Ch. 160 and § 153.050
Tree or vegetative cutting permit	See Lower St. Croix River Bluffland and Shoreland Management Ordinance, Ch. 157 of this code	Zoning Administration	Zoning Administrator	Court	No	Ch. 157
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	§ 153.026

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	Court	Yes	§ 153.029
*Fees are established from time to time by resolution of the City Council, see §153.036 of this code						

(Prior Code, § 12-76) (Res. 1997-16, passed 6-17-1997; Ord. 8-2005, passed 5-17-2005; Ord. 02-2009, passed 4-21-2009; Ord. 01-2014, passed 5-20-2014)

§ 153.026 APPEALS AND VARIANCES; BOARD OF ADJUSTMENT AND APPEALS.

(A) *Board of Appeals and Adjustments hearings.*

(1) Appeals to the Board of Appeals and Adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by this chapter. The Board of Appeals and Adjustments has the following powers with respect to this chapter:

(a) 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 this chapter; and

(b) 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 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.

1. The property owner proposes to use the property in a reasonable manner not permitted by this chapter.
2. The plight of the landowners is due to circumstances unique to the property not created by the landowner.
3. The variance, if granted, will not alter the essential character of the locality.

(2) 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.

(3) The Board of Adjustments and Appeals may not permit as a variance any use that is not permitted under the provisions for property in the zone where the affected person's land is located. Variances shall be granted for earth sheltered construction as defined in M.S. § 216C.06, subdivision 14, as it may be amended from time to time, when in harmony with these provisions.

(4) The Board may impose conditions in the granting of variances to ensure compliance and to protect adjacent properties. A condition must be directly related to and must bear 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 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; and
- (d) The relief requested by the appellant.

(2) An appeal stays all proceedings in furtherance of the action appealed from unless the Board of Adjustment 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 Adjustment 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.*

(1) Application for a variance shall be filed with the Zoning Administrator. The application shall be accompanied by development plans for the proposed use showing the information as may be reasonably required by the Administrator, including but not limited to those items listed below. The plans shall contain sufficient information for the city to determine whether the proposed development will meet all applicable development standard:

- (a) Name and mailing address of the applicant;
- (b) The legal property description of the land involved in the request, including the street address, if any, of the property;
- (c) The names and mailing addresses of the owners of the property and any other persons having a legal interest therein;
- (d) 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:
 1. Distance between existing structures, proposed structures, well and septic system;
 2. 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% or steeper; and
 3. Possible location of any and all detached accessory buildings permitted by this chapter for the property for which the application is being made.
- (e) Landscaping and screening plans including species and size of trees and shrubs proposed;
- (f) 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;
- (g) Type of business or activity and proposed number of employees or occupants;
- (h) Proposed floor plan and elevations of all buildings with the use indicated;
- (i) 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;
- (j) A location map showing the parcel's general location within the city;
- (k) 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;
- (l) 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; and
- (m) 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.

(2) The Board of Adjustment 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 chapter and with the Comprehensive Plan. The Board of Adjustment and Appeals may also impose the conditions and requirements as are necessary to ensure compliance with the terms of the variance.

(E) *Hearing procedure.*

(1) 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 Adjustment and Appeals and the Planning Commission and establish a time for the hearing thereof by the 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 the hearing, published in the designated legal newspaper for the city.

(2) The 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 §153.026 of this code, 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 this chapter 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 chapter would deprive the applicant of the rights commonly enjoyed by other property in the same district under the terms of this chapter.

(e) The variance requested is the minimum variance that would alleviate the practical difficulty.

(2) The order issued by the Board of Adjustments and Appeals shall include the legal description of the land involved. Any 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) The 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 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.

(H) *Time limit for implementing a variance.* A variance must be implemented within one year from the date the variance was approved. "Implementing a variance" means that a grading permit (if needed) has been approved, site work has been completed, a building permit has been issued, construction activities have begun and substantial progress has been made toward completion of the project, as determined and verified in writing by the Building Inspector and Zoning Administrator. The implementation time limit may be extended administratively one time, for a period not to exceed one-year, if sufficient progress toward implementation is demonstrated, as determined and verified in writing by the Building Inspector and Zoning Administrator, and if a construction plan and timeline have been provided. In addition, the implementation time limit may be extended one time by the City Council, for a period not to exceed one year, if the need is demonstrated and a clear plan for completion is provided. For complex projects, a time limit for implementing a variance may be established that exceeds two years at the time of the variance approval, if the extended time limit is requested as part of the variance application and is based on a construction timetable that exceeds two years. If an implementation time limit beyond two years is approved, annual monitoring of progress is required. Any variance not implemented within one year of the date of approval, or within an approved extension is considered to be expired and must be reapplied for and is subject to any amendment to this chapter and any new conditions the Council to ensure 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 has determined that a variance to exceed 20% impervious surface as required per the Department of Natural Resources Lower St. Croix River Bluffland and Shoreland District is acceptable in the VHS-C and VHS-R Districts subject to meeting the requirements of § 153.051 of this code, 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% impervious coverage prohibits reasonable use within the district.

(c) The conditions of § 153.051 of this code allow for adequate review and improved protection from erosion concerns, groundwater contamination and surface water discharge.

(d) The city is required to adhere to and enforce the Lower St. Croix River Bluffland and Shoreland regulations.

(Prior Code, § 12-77) (Ord. 1997-10, passed 5-19-1998; Ord. 02-2009, passed 4-21-2009; Ord. 2004-17, passed 12-21-2004; Ord. 02-2014, passed 5-20-2014; Ord. 01-2022, passed 5-17-2022) Penalty, see § 153.999

§ 153.027 CONDITIONAL USE PERMITS.

(A) *Purpose.* The purpose of a conditional use permit is to provide the city 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 § 153.053 of this code.

(B) *Application.* Requests for conditional use permits, as provided within this chapter, shall be filed with the Zoning Administrator on an official application form. The 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 information as may be reasonably required by the Administrator, including but not limited to the following:

- (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% or steeper; and
 - (c) Possible location of any and all detached accessory buildings permitted by this chapter 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 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; and
- (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 working days from the date as a notice of the hearing is published in the official newspaper. The notice shall contain a legal property description and description of the request, and shall be published no more than 30 days and no less than ten days prior to the hearing. Written notification of the hearing shall also be mailed at least ten working days prior to the date of the hearing to all owners of land within 500 feet of the boundary of the property in question. Failure of the property owner to receive the notice shall not invalidate any proceedings as set forth within this chapter.

(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 possible 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;

- (b) The proposed use is or will be compatible with present and future land uses of the surrounding area;
- (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, the information to be declared necessary to establish performance conditions in relations to all pertinent sections of this code.

(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 chapter. The 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 60 days of receipt of a complete application, unless the review period of the application is extended pursuant to M.S. § 15.99, as it may be amended from time to time, 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.

(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. The 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 the 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 months from the date of its denial, unless a decision to reconsider the 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. The 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% 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 Building Official.

(4) Failure to comply with the conditional use permit or the ordinances of the city shall result in forfeiture of the security.

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

(J) *Revocation.* If an approved conditional use permit is in violation of this chapter 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 division (E) above.

(Prior Code, § 12-78) (Ord. 2004-16, passed 12-21-2004; Ord. 02-2009, passed 4-21-2009) Penalty, see § 153.999

§ 153.028 ADMINISTRATIVE PERMIT.

(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 chapter, shall be filed with the Zoning Administrator on an official application form. The 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;
- (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% or steeper; and
 - (c) Possible location of any and all detached accessory buildings permitted by this chapter 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; and
- (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 60 days from the date of submission of a complete application unless the review is extended as allowed by M.S. § 15.99, as it may be amended from time to time.

(D) *Review criteria.* The Zoning Administrator shall consider possible adverse effects of the proposed administrative permit. This 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 city's 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 which the use, event or activity is proposed.

(E) *Approval report.* A written report or letter of approval shall be issued to the applicant when a determination of compliance has been made. Specific conditions to assure compliance with applicable evaluation criteria, codes, ordinances and the standards of this chapter shall be attached to the permit or letter.

(F) *Non-compliance.* Determination of non-compliance with applicable codes, ordinances and the standards in this chapter shall be communicated to the applicant in writing and the application of the permit shall be considered denied; unless, within ten days of the date of the 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 chapter shall be subject to appeal to the City Council.

(H) *Administration and enforcement.*

(1) The Zoning Administrator shall keep a record of applications and administrative permits or approvals.

(2) A copy of all administrative permits issued shall be forwarded to appropriate staff as determined by the Zoning Administrator.

(3) (a) Enforcement of the provisions of this chapter shall be in accordance with §153.009 of this code.

(b) Violation of an issued permit or of the provisions of this section also shall be grounds for denial of future permit applications.

(Prior Code, § 12-79) (Ord. 2004-16, passed 12-21-2004; Ord. 02-2009, passed 4-21-2009) Penalty, see § 153.999

§ 153.029 AMENDMENTS AND REZONINGS.

(A) *Initiation.* An amendment to this chapter 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 chapter.

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

(1) The plans shall contain sufficient information for the city to determine whether the proposed development is in keeping with the intent and purpose of this chapter and the Comprehensive Plan.

(2) The development plans shall show the information as may be reasonably required by the Administrator, including but not limited to the following:

(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; and

(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 the consideration may be at the second regular meeting after the filing.

(1) At that meeting, the Planning Commission shall set a date for a public hearing on the 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 the 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 other persons as the Planning Commission may direct at least ten days prior to the date of the hearing.

(3) 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 or her 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 therefor.

(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 the consideration may be at the second regular meeting after the 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 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 the order directs amendment of this chapter, the City Administrator shall refer the order to the City Attorney to prepare an amendment of this chapter 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 chapter 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 chapter 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.

(J) *Agreement with Comprehensive Plan.* In granting or recommending any rezoning provided for in this chapter, the Planning Commission and Council shall find that the proposed development conforms substantially to the policies, goals and standards of the Comprehensive Plan.

(Prior Code, § 12-80) (Res. 1997-18, passed 6-17-1997; Ord. 97-45, passed 11-13-2001; Ord. 02-2009, passed 4-21-2009)

§ 153.030 BUILDING PERMITS AND THE BUILDING CODE.

(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 chapter 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, with the exception of the installation of siding, windows and doors for which the International Residential Code (IRC) requires a building permit.

(C) 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 chapter.

(D) 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.

(E) 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 other information as the Building Official may reasonably require to determine compliance with this chapter and the Building Code. The Building Official may require a certificate of survey before a building permit will be issued.

(F) No building permit shall be issued for any improvement which would result in a use, building or structure violation of this chapter, or Ch. 150, 154, 156, 157, 159, 160, 161 and 162 of this code or other city ordinances.

(G) 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 or her.

(H) 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 division (G) above.

(I) 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.

(J) The Building Official may, in writing, suspend or revoke a permit issued under the provisions of this chapter and the Building Code whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any city ordinance, regulation or code.

(Prior Code, § 12-81) (Res. 1997-18, passed 6-17-1997; Ord. 1997-20, passed 4-20-1999; Ord. 07-2012, passed 12-18-2012) Penalty, see § 153.999

§ 153.031 MOVING PERMITS AND RELOCATED STRUCTURES.

(A) 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:

- (1) Photographs taken from two or more angles of the structure to be moved;
- (2) Photographs of the lots on which the structure is to be located; and
- (3) Photographs of adjacent lots and structures.

(B) Any building or structure shall conform to all the provisions of this chapter 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 the relocation. If the City Council grants a moving permit, it may impose conditions as it deems to be in the public interest.

(Prior Code, § 12-82) (Res. 1997-18, passed 6-17-1997)

§ 153.032 SEPTIC PERMITS.

(A) No building permit for any use requiring on-site sewage treatment and disposal shall be issued until a septic permit has first been issued by the Building Official.

(B) A septic permit shall be issued only after proof is furnished by the applicant that a suitable on-site sewage treatment and disposal system can be installed on the applicant's lot. In the Historic Village Septic Treatment Service Area, no new permits will be issued for individual septic treatment systems. All septic systems shall conform to all of the requirements of Ch. 154 of this code.

(C) Notwithstanding the procedures and regulations specified in §154.03 of this code, existing on-site sewage treatment systems shall be evaluated to determine location, condition and function, and shall be brought into conformance with this chapter and Ch. 154 of this code 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; or
- (5) Upon sale or transfer of the property.

(D) Notwithstanding the provisions specified in §§ 154.03 and 154.04 of this code, when an existing nonconforming septic system is required to be upgraded according to § 153.032 of this code, 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% of the cost of installing such a system and is valid for one year is issued to the city.

§ 153.033 DRIVEWAY ACCESS PERMITS AND STANDARDS.

(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 road shall require an access permit from the county's 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; and
- (4) Copy of an issued county or state access permit if required.

(D) *Driveway design standards.*

(1) All driveways and all related applications shall indicate that the proposed driveway meets the following standards:

	Residential Uses	Commercial and Industrial Uses
	Residential Uses	Commercial and Industrial Uses
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 grade in right-of-way	3%	3%
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
Maximum slope	12%, but driveways with slopes greater than 10% must have bituminous surface	8%
Maximum turning radius onto street	15 feet	40 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
Minimum driveway angle in right-of-way	60 degrees to 90 degrees	60 degrees to 90 degrees
Minimum lot line setback	10 feet	10 feet
Minimum setback from intersection of two or more rights-of-way	60 feet (20 feet in VHS)	60 feet
Minimum setback from principal structure	3 feet	5 feet
Minimum turning radius onto street	5 feet	10 feet
Minimum vertical	12 feet	12 feet clearance
Minimum width	12 feet	16 feet

Minimum width in right-of-way	16 feet	As determined by the Zoning Administrator
Surface strength	Minimum of 6 inches class V gravel or its equivalent as determined by the City Engineer	

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

(E) *Turnaround.* All residential structures set back more than 150 feet from the centerline of the fronting city street or approved private road shall provide a turnaround in the driveway near the principal structure. The turnaround area shall be a minimum of 40 feet by 50 feet, have a minimum turning radius of 45 feet if a cul-de-sac, or be a design approved by the Zoning Administrator. All turnarounds shall have the same surface strength as required for the driveway.

(F) *Permit issuance restricted.* No building or septic permit shall be issued for a particular parcel of property until a driveway permit has been approved or issued.

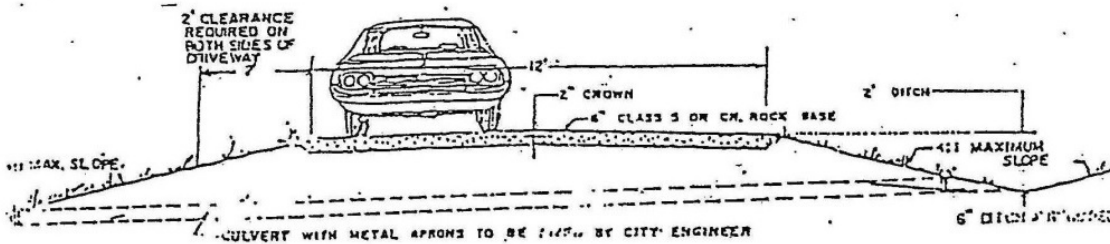
(G) *Conformity of work.* Before any site preparation work is done, that part of the driveway located in the street right-of-way shall be constructed according to the permit.

(H) *Number and type.* The number and types of driveways onto city streets may be controlled and limited in the interests of public safety and efficient traffic flow as determined by the Zoning Administrator.

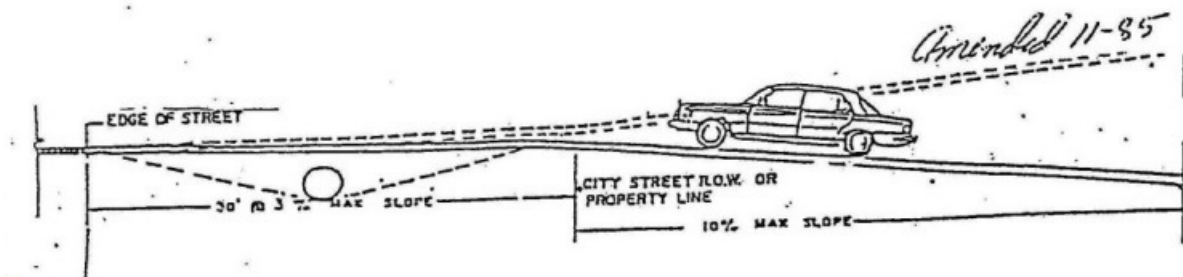
(I) *Change of use.* Upon a change in land use or a major change in the traffic pattern of the existing use, existing driveways are not automatically perpetuated and a new driveway application may be required.

(J) *Financial guarantee.* To assure compliance with this chapter 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 chapter. The amount of the financial guarantee shall be equal to 125% 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 chapter and any conditions of the driveway permit.

(K) *Typical driveway cross-section.*



(L) *Typical driveway profile.*



(M) *Review and approval.*

(1) The City Engineer shall review and approve driveway plans that have greater than a 10% 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% of the cost of construction of the driveway and stabilization of the slopes must be posted with the city.

(2) 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.

(3) 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.

(Prior Code, § 12-84) (Res. 1997-16, passed 6-17-1997)

Cross-reference:

Streets and Sidewalks, Ch. 151

§ 153.034 FARM SITE PLAN PERMITS.

(A) Agricultural buildings and/or structures, as defined in M.S. § 326B.103, as it may be amended from time to time, on parcels of 20 and more acres shall require a farm site plan permit to be issued by the Zoning Administrator.

(B) An application for a farm site plan permit shall include but not be limited to the following:

- (1) Location of all existing structures on the property;
- (2) Dimensions of existing structures;
- (3) Use of existing structures;
- (4) Location of driveway, well, septic tank and septic drainfield;
- (5) Location of proposed structure;
- (6) Dimensions of proposed structure;
- (7) Use of proposed structure;

(8) Setbacks of all existing and proposed structures from lot lines, street, slopes exceeding 18%, drainage courses, wetlands and bodies of waters; and

(9) Any other information as may be required by the Zoning Administrator.

(Prior Code, § 12-86) (Ord. 12-2005, passed 9-20-2005)

§ 153.035 CERTIFICATE OF OCCUPANCY.

(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 chapter was derived, unless he or she has first obtained a certificate of occupancy.

(B) (1) 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 the building.

(2) The certificate of occupancy shall be issued within ten days after the construction or alteration of the building or part thereof has been completed in conformity with the provisions of this chapter and the Building Code.

(3) Pending the issuance of the 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 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 the restrictions and provisions as will adequately ensure the safety of the occupants.

(4) The use of any structure for which a building permit is required shall be considered a violation of this chapter 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 land shall be so used. The certificate shall be issued within ten days after this application if the use is in conformity with the provisions of this chapter.

(D) A record of all applications for and certificates of occupancy shall be kept on file.

(Prior Code, 12-87) Penalty, see § 153.999

§ 153.036 FEES.

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

(Prior Code, § 12-88)

§ 153.037 ENVIRONMENTAL ASSESSMENT WORKSHEETS (EAW) AND ENVIRONMENTAL IMPACT STATEMENTS (EIS).

(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, Minn. Rules parts 4410.1000 through 4410.1700.

(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 effects, 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% 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; and

(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 MCAR § 3.041 shall be exempt from these regulations.

(G) (1) 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 Administrator. 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 or she shall return the document to the proposer to correct the inadequacies.

(2) The preparation of an EAW must be done by a consultant with the credentials required by state statutes and/or administrative rules and the consultant must be approved by the city. The consultant shall meet with the Zoning Administrator and the city's engineering consultant prior to the preparation of the EAW to confirm the credentials of the consultant and to identify the key elements of the EAW as it relates to the specific proposed project and the key information to be provided in the EAW.

(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 § 153.027 of this code.

(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 chapter 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 chapter. 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 the 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 security funds.

(Prior Code, § 12-89) (Res. 1997-16, passed 6-17-1997; Ord. 01-2020, passed 1-21-2020)

DISTRICTS

§ 153.050 DISTRICTS; GENERAL PROVISIONS.

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

<i>District Symbol</i>	<i>Intent and Primary Use</i>
A	Preserve agriculture as a viable permanent land use and a significant economic activity within the city.
I	Provide areas adjacent to major thoroughfares for the express use of industrial developments.
MS	Provide an area for storage and repair of boats and boat trailers to complement the river access and marinas in the city.
RR	Provide rural low density housing on lands not capable of supporting long-term, permanent agricultural production.
VHS-C	Provide a mix of commercial and residential uses within the old village consistent with the atmosphere of a rural village.
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.

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

<i>District Symbol</i>	<i>Intent and Primary Use</i>
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 waterbodies by regulating setbacks and lot sizes.
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.
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.

(Prior Code, § 12-131) (Ord. 1997-19, passed 7-15-1997)

§ 153.051 MINIMUM REQUIREMENTS.

(A) *Minimum area, height and the like.*

(1) 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
	A	RR	VHS-R	VHS-C	I-1A	I-1B	I-1C	MS
Front yard setback for all structures from centerline								
Local roads (except 15th Street, 60th Street and 50th Street west of County Highway 21	105	105	0****	65	105	105	105	105
State and county highways and 15th Street, 60th Street and 50th Street west of County Highway 21	150**	150**	0****	65	150* *	150* *	150* *	150**
Frontage on improved public street (ft) and lot width on cul-de-sac	300***	300***	150***	150***	300* **	300* **	300* **	300** *
Lot area per dwelling unit (du)								
One-family structure	1 du / 10A*** (5A min)	5A***	22,500 sq. ft.***	22,500 sq. ft.***				5A
Two-family		10A***						
Lot depth (ft)	300*	300*	130*	130*	300*	300*	300*	300*
Maximum buildable slope for structures (percent) except substandards structures****	18	18	12	12	18	18	18	12
Maximum site coverage by any structure and/or impervious surface	10% or one-half acre, whichever is greater	10% or one-half acre, whichever is greater	20%*	20% or 4,350 sq ft, whichever is greater*	35% *	35%	35%	25%
Maximum slope for on-site sewage treatment systems and driveways	12	12	12	12	12	12	12	12
Maximum structure height (ft)	35	35	35	35	50	50	35	35

Minimum main floor area per du (sq ft)	800	800	800	800	800	800	800	800
Minimum nonresidential area				22,500 sq ft	5A	5A	5A	5A
Rear yard setback for all structures (except accessory buildings over 1,500 sq ft)	50	50	30	30	50	50	50	50
Setbacks: accessory buildings over 1,500 sq ft								
Side	100	100	NA	NA	50	50	50	50
Rear	100	100	NA	NA	50	50	50	50
Well	200	200	NA	NA	50	50	50	50
Side yard setback for all structures (except accessory buildings over 1,500 sq ft)								
From interior lot line (ft)	50	50	10	10	50	50	50	50
From street	As required for a corner lot (ft)							
du = dwelling unit / ft = feet / sq ft= square feet								
* Maximum three times the width of the 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. In the I-1A and I-1B Districts, the setback from the I-94 right-of-way line shall be a minimum of ten feet.								
*** 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 §153.007 of this code.								
***** Subject to all corner lots meeting an 80-foot site triangle.								

(2) The maximum site coverage and/or impervious surface in the I-1C Industrial District may exceed 35% per conditional use approval subject to the site not exceeding a maximum of 65% and meeting the requirements of divisions (B) (12) and (C)(1) through (C)(4) below. Any site with coverage and/or impervious surface in excess of 25% or 35% shall require an effective reduction of the impact of impervious surface to the equivalent of 25% or 35% impervious surface site coverage through the use of Low Impact Design (LID) methods and the completion and acceptance by the City Engineer, the county's Conservation District (WCD) Engineer and Valley Branch Watershed Organization (VBWD) Engineer of the Impervious Surface Worksheet, as set forth in the city's Best Management Practice (BMP) and Storm Water Guide.

(3) For additional setback requirements (other than those included in the table above), see division (E) below.

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

(1) *Existing lot.* For the purpose of this chapter, 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 chapter was derived, except as provided for in division (B)(2) below.

(2) *Buildable lots.* Except in the VHS-R and VHS-C Zoning Districts, any lot or parcel created in accordance with Ch. 160 of this code, which contains at least two and one-half acres of buildable or net developable area as defined by this chapter and has at least 60% 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 chapter, including division (B)(3) below.

(3) *Contiguous lots or parcels.* 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 division (B)(2) above, 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 lot width and area requirements of division (B)(2) above. In the case of two contiguous existing nonconforming lots under common ownership, each containing an existing residence, these lots will have exemption from this division (B)(3), as long as both residences continue to qualify as existing legally nonconforming uses. The ordinance from which this chapter is derived shall take effect upon publication.

(4) *Subdivision of lots.* Any lot or parcel of land subdivided by any means after the effective date of the ordinance from

which this chapter was derived for purposes of erecting a structure, must be approved as required in Ch. 160 of this code.

(5) *Lake and stream frontage lots.* All lots having frontage on a waterbody or lying within a shoreland management area shall be subject to the regulations of Ch. 156 of this code.

(6) *Lots in floodplains.* All lots in a designated floodplain shall be subject to the regulations of Ch. 159 of this code.

(7) *Through or double frontage lots.* Lots as defined in Ch. 160 of this code and include lake and stream frontage lots having a public street as one lot line and a waterbody 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 chapter.

(8) *Reduction of required area.* No lot or parcel shall be reduced in area or dimension so as to make the lot or parcel less than the minimum required by this chapter; 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) *On-site sewage treatment systems.* All on-site sewage treatment systems shall be maintained in conformity with the regulations of Ch. 154 of this code. 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.

(11) *Slopes.* Land having a slope between 13% and 18%, outside of the Lower St. Croix Bluffland District, may be included in the required buildable area of a lot or parcel if the county's 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;

(b) The development of this land will not damage heavily wooded areas or other significant natural features;

(c) All structures, including driveways, are set back at least 40 feet from the crest of any 18% slope; and

(d) There is at least one acre of contiguous land with a slope of less than 13% that is suitable for the required on-site sewage treatment systems and the driveways.

(12) *Site coverage.* Site coverage (impervious surfaces) for churches and institutional housing permitted by administrative permit in the RR Zoning District may exceed their allotted maximum impervious surface allowance, provided that:

(a) The soils on the land will support the structures and required on-site sewage treatment systems, parking areas, driveways and other proposed impervious surface. The site shall demonstrate the development does not pose significant risk of erosion, groundwater contamination or surface water discharge in excess of standards used by the Watershed District and the county's Soil and Water Conservation District. In addition, whenever possible low impact development methods shall be used to mitigate any groundwater discharge;

(b) The applicant will restrict its surface water runoff to predevelopment rates to be in conformance with the Watershed District rules and regulations;

(c) The applicant will restrict its surface water runoff volumes to those volumes that would have been generated from the site had it been developed to have 10% of the parcel covered with impervious surfaces. That applicant shall prove that runoff equal to three-fourths' inch times the total impervious surface area minus three-fourths' inch times 10% of the impervious area shall infiltrate within 72 hours based on the infiltration rate of the soil. No infiltration basin shall be deeper than two feet. The bottom of all infiltration basins shall be a minimum of two feet above the seasonal high water table; and

(d) The development proposed by the applicant is in harmony with the goals of the Comprehensive Plan.

(13) *Parcel or lot area of five or more acres.* Wherever in this chapter 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 this chapter. All new parcels or subdivision of existing parcels must meet all of the requirements of this chapter.

(14) *Maximum impervious surface coverage.* The maximum impervious surface coverage in the I-1A, I-1B and I-1C Zoning Districts may be increased up to 35%, 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%. The method and completion of reduction shall be approved by the City Engineer, County Engineer and Valley Branch Watershed District.

(C) *Engineering and design guidelines.* 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

county's 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 county's Conservation Office prior to any building permits being issued.

(2) The applicant must identify 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 five feet of soil to reduce the potential for any pollutants reaching the groundwater.

(3) The applicant may be asked, as a condition, to install a time dosing device to control rate of the flow of effluents from the septic system.

(4) The development agreement must address traffic concerns, and any improvements needed to accommodate additional traffic, as a result of the use.

(5) The applicant shall also enter into a development agreement, to address all of the conditions as set forth in divisions (B)(12)(a) and (B)(12)(b) above, along with a cash escrow deposit or an irrevocable letter of credit, equal to 150% 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% of the City Engineer's estimate shall also be required to satisfy any conditions agreed to in the development agreement, in order to satisfy division (B)(12)(b) above.

(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 chapter.

(1) *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) *Corner lots.* Nothing shall be placed or allowed to grow in a manner as to impede vision between a height of two and one-half and ten feet above the centerline grades of the intersecting streets within 100 feet of the intersection.

(3) *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) *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 chapter 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.

(2) *Setbacks from slopes.*

(a) All structures, including but not limited to, driveways, decks, swimming pools and the like, shall be setback a minimum of 20 feet from the crest of all slopes exceeding 18% as determined by the Zoning Administrator, with the exception of driveways crossing human-made slopes that were created by the construction of roads or related ditches, and that extend only perpendicular to the road for a horizontal distance of 30 feet or less, and, where no other option is available to the landowner.

(b) An exception to this requirement, allowing an encroachment within the 20-foot setback from an 18% slope, is allowed outside of the Lower St. Croix River Bluffland and Shoreland Management District via a conditional use permit. As a condition of approval the applicant must submit an erosion control plan for the proposed encroachment.

(c) 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 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.

(3) *Setbacks adjacent to Residential Zoning Districts.* Where a commercial or Industrial Zoning District is adjacent to a Residential Zoning District, the minimum commercial or industrial building setback from the lot line shall be 75 feet.

(4) *Setbacks along collector and arterial streets.* Along streets designated as collectors and arterials in the Comprehensive Plan, the minimum setback for all structures shall be as required in division (A) above from the nearest

planned street centerline.

(5) *Setbacks from private roads.* All setback requirements of this section shall also be applicable to private roads and easement access rights-of-way.

(6) *Side yard setback from interior lot line on substandard lots.* The side yard setbacks for all structures from interior lot lines on lots in the rural residential and agricultural zones, which are less than five acres in size and which were of record prior to March 3, 1970, shall be 25 feet rather than 50 feet if the proposed structure meets the requirements for a administrative permit as set out in § 153.028 of this code and meets all other zoning ordinance requirements.

(7) *Side yard setback from interior lot line on extreme substandard rural residential lots.* The sideyard setback for all structures from interior lot lines on lots in the Rural Residential District which are two acres or less in size and/or have a lot width of 200 feet or less the setback shall be ten feet rather than 25 feet if the proposed use meets all other zoning ordinance requirements.

(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.

(2) The maximum height limitations for churches and other places of worship shall be as follows:

(a) A maximum height of 35 feet for the occupied area of the structure;

(b) A maximum height of 50 feet for the structural elements; and

(c) A maximum height of 60 feet for the following non-structural elements: spires or steeples, belfries or bell towers, cupolas, crosses or other religious symbols or decorative elements.

(G) *Public convenience structures.* No public convenience structure shall be located within the public right-of way except by administrative permit issued by the Zoning Administrator. The 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 and others. The structures do not include public utility facilities.

(Prior Code, § 12-132) (Res. 1997-16, passed 6-17-1997; Ord. 1997-10, passed 5-19-1998; Ord. 1997-19, passed 7-15-1997; Ord. 1997-27, passed 1-18-2000; Ord. 97-39, 3-20-2000; Ord. 2004-45, passed 8-17-2004; Ord. 13-2004, passed 9-21-2004; Ord. 7-2006, passed 3-16-2006; Ord. 09-2008, passed 9-16-2008; Ord. 11-2008, passed 12-17-2008; Ord. 01-2009, passed 1-20-2009; Ord. 05-2009, passed 6-16-2009; Ord. 01-2014, passed 5-20-2014; Ord. 03-2015, passed 8-18-2015; Ord. 11-2016, passed 10-18-2016; Ord. 01-2017, passed 1-17-2017; Ord. 01-2018, passed 6-19-2018)

§ 153.052 ZONING DISTRICT MAP.

(A) The boundaries of the districts as established by this chapter are as shown on the map published herewith and made part of this chapter, the 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 the map are intended to follow street right-of-way lines, street centerlines or lot lines unless the 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 chapter 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 the vacated street or way shall not be affected by the vacation.

(B) When any permit as provided for in this chapter is issued which affects any zoning district in a substantial way, the 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 chapter.

(C) When uses in a zoning district are listed as both permitted and conditionally permitted uses, or when any other conflict appears in this chapter with respect to permitted uses within a zoning district, the more restrictive portion shall be applied.

(D) (1) Any landowner may request a determination that a use not included in any district of this chapter 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 a determination shall be filed with the City Administrator who shall refer it to the Planning Commission.

(2) The Planning Commission shall review the application in accordance with this chapter and the Comprehensive Plan and forward a recommendation of approval or denial to the City Council along with an explanation for taking the action. If the City Council determines the use is substantially similar to a use included in these regulations, the use shall thereafter be an allowable use whenever the similar listed use is authorized.

(Prior Code, § 12-133)

§ 153.053 USES.

Uses in the various districts shall be as follows:

	<i>Agricultural (Ag)</i>	<i>Rural Residential (R)</i>	<i>VHS-Residential (VHS-R)</i>	<i>VHS-Commercial (VHS-C)</i>	<i>Light Industrial (I-1A)</i>	<i>Light Industrial (I-1B)</i>	<i>Light Industrial (I-1C)</i>	<i>Marine Service (MS)</i>
	<i>Agricultural (Ag)</i>	<i>Rural Residential (R)</i>	<i>VHS-Residential (VHS-R)</i>	<i>VHS-Commercial (VHS-C)</i>	<i>Light Industrial (I-1A)</i>	<i>Light Industrial (I-1B)</i>	<i>Light Industrial (I-1C)</i>	<i>Marine Service (MS)</i>
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	N	N
Animals, commercial training	C	N	N	N	C	C	C	N
Antennas 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 § 153.108 of this code)	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	N
Boat dock (non-commercial)	A	A	A	N	N	N	N	N
Boat, boat trailer, marine sales	N	N	N	C	N	N	N	A
Boat, boat trailer and marine storage and repair, enclosed or screened	N	N	N	N	N	N	N	C
Broadcasting studio	N	N	N	C	N	N	C	N
Business service	N	N	N	P	P	P	P	N
Cafés 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 § 153.104 of this code							
*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
Data center	N	N	N	N	C	C	C	N
Disposal, solid and liquid waste	N	N	N	C	N	N	N	N

Distribution center	N	N	N	N	C	C	C	N
Domestic pets	A	A	A	A	N	N	A/C	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	N	N	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
Farm kitchen, accessory	A	A	N	N	N	N	N	N
Farm kitchen, A/C	A/C	A/C	N	N	N	N	N	N
Farm winery	C	N	N	N	N	N	N	N
Feedlots, commercial (see § 153.078 of this code)	C	N	N	N	N	N	N	N
Fences	See § 153.080 of this code							
Flammable gases and liquids, business distribution	N	N	N	N	N	N	N	N
Flex office	N	N	N	N	C	C	C	N
Forests	P	P	P	P	P	P	C	N
Fuel sales (wholesale and storage)	N	N	N	N	N	N	N	N
Fulfillment Center: e-commerce	N	N	N	N	C	C	C	N
Funeral homes	N	N	N	N	N	N	N	N
Garage, private	A	A	A	A	A	A	A/C	N
Garage, repair (commercial)	N	N	N	N	N	N	N	N
Garage, storage (commercial)	N	N	N	N	N	N	N	N
Golf courses	C	N	N	N	N	N	N	N
Grading	See §§ 153.101 and 153.102 of this code							
Greenhouses (commercial production only)	C	N	N	N	N	N	N	N
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	N	N
Hotel (see § 153.109 of this code)	N	N	N	C	N	N	N	N
Institutional housing	N	C	N	N	N	N	N	N
Junkyard	N	N	N	N	N	N	N	N
Kennels, private (see § 153.005 of this code)	C	C	N	N	N	N	N	N

Kennels, commercial (see § 153.005 of this code)	N	N	N	N	N	N	N	N
Land reclamation	See § 153.101 of this code							
Laboratory: Medical, dental	N	N	N	N	C	C	C	N
Laboratory: research and development	N	N	N	N	C	C	C	N
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)	N	N	N	N	C	C	C	N
Marina (including boat rental)	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	N	N
Nursery, retail sale of plants	S	N	N	N	N	N	N	N
Nursery, wholesale growing of plants	P	C	N	N	N	N	N	N
Nursery and garden supplies (exterior or enclosed sales)	P	C	N	N	N	N	N	N
Offices (maximum height of 35 feet in I-1C)	N	N	C	C	C	C	C	N
Offices, accessory	N	N	N	C	C	C	C	A
Office/warehouse use	N	N	N	N	C	C	C	N
Off-street loading	N	N	N	A	A	A	A/C	A
Off-street parking	A	A	A	A	A	A	A/C	A
Park	P	P	P	P	P	P	P	N
Park, private	C	C	C	C	C	C	C	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	N	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 § 153.005 of this code)	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	P	P	P	P	N	N	N	C
Residential waterfront uses	A	A	A	A	N	N	N	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	N	N	N	C	C	C	C	N
Retail sales of agricultural supplies	C	N	N	N	N	N	N	N
Riding stable, commercial (minimum of 20 acres)	C	N	N	N	N	N	N	N
Riding stable, private (minimum of 20 acres)	C	C	N	N	N	N	N	N
Riding stable, private, with equine-assisted therapy (minimum of 20 acres)	C	C	N	N	N	N	N	N
Sales, open lot and outdoor	N	N	N	N	N	N	N	N
Sales, seasonal agricultural	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	N	N
Self storage, multi-story	N	N	N	N	C	C	C	N
Service station	N	N	N	N	N	N	N	N
Signs	See § 153.130 of this code							
Solar, accessory to principal use	A	A	A	A	A	A	A	A
Solar, community solar energy system								
Ground-mounted					CUP	CUP	CUP	
Rooftop					P	P	P	
Solar farm					CUP	CUP	CUP	
Stand, private roadside (notify neighbor for CUP)	ADMIN	C	N	C	N	N	C	N
Storage, highway during construction	ADMIN	ADMIN	ADMIN	ADMIN	ADMIN	ADMIN	I	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	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	N
Studio, arts or crafts	C	C	C	C	N	N	N	N
Supper club	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	N	N
Taverns and bars	N	N	N	C	N	N	N	N
Tennis courts (private)	ADMIN	ADMIN	ADMIN	ADMIN	N	N	N	N
Training facility	N	N	N	N	C	C	C	N
Terminal, transportation /motor freight	N	N	N	N	N	N	N	N
Theater	N	N	N	C	N	N	N	N
Theater, drive-in	N	N	N	N	N	N	N	N
Townhouses	N	N	N	N	N	N	N	N
Trailer parks	N	N	N	N	N	N	N	N
Truck and auto service station	N	N	N	N	N	N	N	N
Temporary farm dwelling (mobile home)	ADMIN	ADMIN	N	N	N	N	N	N
Transportation school	N	N	N	N	N	N	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 § 153.104 of this code							
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	C	C	N
Waterfront uses (commercial)	N	N	N	C	N	N	N	N
Waterfront uses (residential)	A	A	A	A	N	N	N	N
Wholesale business	N	N	N	N	C	C	C	N

A	Permitted accessory use
ADMIN	Administrative permit required
C	Conditionally permitted use
I	Interim use permit
N	Not allowed
P	Permitted use
A/C	Permitted accessory, conditional use permit required
*	Except as otherwise noted
**	Conditional permitted uses may be subject to performance standards set out in §§ 153.075 through 153.116 of this code

(Prior Code, § 12-134) (Res. 1997-16, passed 6-17-1997; Ord. 1997-10, passed 5-19-1998; Ord. 1997-12, passed 8-18-1998; Ord. 1997-21, passed 12-15-1998; Ord. 1997-15, passed 1-19-1999; Ord. 07-2008, passed 4-18-2008; Ord. 09-2008, passed 9-16-2008; Ord. 06-2009, passed 6-16-2009; Ord. 02-2014, passed 5-20-2014; Ord. 03-2015, passed 8-18-2015;

Ord. 05-2016; passed 5-17-2016; Ord. 01-2018, passed 6-19-2018; Ord. 04-2019, passed 8-20-2019; Ord. 07-2021, passed 8-17-2021; Ord. 08-2021, passed 10-19-2021; Ord. 02-2022, passed 6-21-2022)

§ 153.054 FLOODPLAIN OVERLAY DISTRICT.

- (A) *Permitted uses.* As permitted and regulated under Ch. 159 of this code.
- (B) *Accessory uses.* As permitted and regulated under Ch. 159 of this code.

(Prior Code, 12-135)

§ 153.055 SHORELAND MANAGEMENT OVERLAY DISTRICT.

- (A) *Permitted uses.* As permitted and regulated under Ch. 156 of this code.
- (B) *Accessory uses.* As permitted and regulated under Ch. 156 of this code.

(Prior Code, 12-136)

§ 153.056 CONSERVANCY OVERLAY DISTRICT.

(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. The 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 division (A) above, 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.

(Prior Code, § 12-137)

§ 153.057 ST. CROIX RIVER OVERLAY DISTRICT.

- (A) *Permitted uses.* As permitted and regulated under Ch. 157 of this code.
- (B) *Accessory uses.* As permitted and regulated under Ch. 157 of this code.

(Prior Code, § 12-138)

§ 153.058 AGRICULTURAL PRESERVES (AP) OVERLAY DISTRICT.

(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 the 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 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 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 § 153.059 of this code;

(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 section;

(c) This procedure is subject to the regulations of Ch. 160 and § 153.059(K) of this code. 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 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:

1. Local street: 300 feet;
2. Collector street: 300 feet;
3. Minor arterial: 500 feet; and
4. 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 § 153.053 of this code 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 § 153.053 of this code 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 chapter are fully met:

(1) Feedlots and poultry facilities;

(2) Home occupations; and

(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 § 153.053, of this code 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 § 153.027 of this code.

(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 the places and in a 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.*

(1) *Lot size.* Five acres with a minimum buildable area of two and one-half acres, not to exceed a density of one dwelling unit for each quarter-quarter section of at least 35 acres.

(2) *Yard requirements.* As regulated by § 153.053 of this code for A and AP Zoning Districts of this chapter.

(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, and the state's 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 division (H) above, 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 division (H) above. 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 landowners a high priority for providing technical and cost share assistance.

(K) *Subdivision.* Subdivision of property within an AP Overlay District shall be subject to the following regulations in addition to the regulations of Ch. 160.

(1) To the extent feasible, each lot created for a non-farm use shall be located on land not suitable for agricultural use. The land includes areas of nonprime agricultural soils as defined in the Comprehensive Plan, areas with slopes of 13% and greater, areas of heavy natural vegetation and areas unsuitable for agricultural production because of size.

(2) Each lot less than one quarter-quarter 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 chapter was derived unless the City Council has approved the property description and certificate of survey for the 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 two and one-half acres. Buildable area shall be defined as land having a slope of 13% 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.

(L) *Eligibility.* To be eligible for agricultural preserve certification, the landowner must submit a rezoning application to the City Administrator requesting that his or her land be zoned at a density of one dwelling unit for each quarter-quarter 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 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 section of less than 40 acres; noncontiguous parcels may be included to achieve the minimum acreage requirement provided that each parcel is at least ten acres in size and provided that all separate parcels are farmed together as a unit.

(3) The land comprises not less than 20 acres, is surrounded by eligible land on not less than two sides, consists predominately of class I, II or III soils according to the land capability classification system of the county's 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.

(M) *Application for rezoning.* An application for rezoning shall be processed as regulated by §153.029 of this code.

(N) *Forms.* The following forms may be obtained from the Zoning Administrator or City Administrator. 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.

(O) *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.

(P) *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.

(Q) *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, within five days, submit the original application to the County Recorder for proper recording and copies to:

- (1) The County Auditor, County Assessor, County Soil Conservation District; and
- (2) The Metropolitan Council.

(R) *Fee.* The City Council may require an application fee not to exceed \$50 to defray administrative costs.

(S) *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) (a) 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 section.

(b) 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.

(c) 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.

(d) An agricultural preserve shall not expire any sooner than eight years after the date of the notice initiating expiration of a metropolitan agricultural preserve.

(T) *Expiration.* Expiration of an agricultural preserve initiated by the landowner shall not automatically result in a rezoning of the property to a greater density.

(U) *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 or her by either the landowner or the City Council.

(V) *Architectural standards for institutional use structures.* Institutional use structures shall be of fire-resistive construction, and exterior surfaces of all structures must be faced with brick, stone, architectural concrete (block), precast concrete, EIFS/stucco panels or glass, of earthtones or other tones or colors in harmony with the natural characteristics of the area in which it is constructed and approved by the Design Review Commission, acting as the Architectural Standards Committee.

(1) Building design shall be reviewed and evaluated by the Design Review Commission, City Planner and/or Zoning Administrator.

(2) Blank facades without windows and doors are prohibited, with the exception of the side facing away from the public street.

(3) All sides of structures shall have the same quality of architectural treatment.

(4) Variety and creativity in building facade is required through changes in building materials (but not in quality of materials), placement of doors and windows, height and roof lines. Primary facades shall not present a continuous wall without architectural details that add visual interest through articulation, recession or projection.

(5) Topographical features shall be incorporated into the form of the structure when possible, utilizing natural grade.

(6) (a) 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 chain link with slats shall not be used for screening.

(b) 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.

(7) Rooftop solar collectors, skylights and other potentially reflective rooftop building elements shall be designed and installed in a manner that prevents reflected glare and obstruction of views from other sites and structures.

(8) Roof slopes shall not exceed 1:12 for all principal buildings.

(9) Delivery, service, storage, maintenance and trash collection areas shall be located out of view from the public right-of-way or substantially screened through landscaping or architectural features that match the primary structure. Service, storage and trash collection areas are not allowed in setback areas.

(10) All permanent utilities connecting to a building shall be underground.

§ 153.059 AGRICULTURAL (Ag) ZONING DISTRICT.

(A) *Purpose.*

(1) The Ag 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.

(2) 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.

(3) 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 ten acres provided that total acreage divided by ten equals 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; and

(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) Twenty acres are required to subdivide a property, of which two or more parcels may qualify if 100% of all of the land owners apply; and

(6) Other uses as permitted by § 153.053 of this code 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 § 153.053 of this code 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 chapter 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 Ag Zoning District in §153.053.

(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 §§ 153.027 and 153.058 of this code.

(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 two and one-half acres, not to exceed a density of three dwelling units in any quarter-quarter section.

(2) *Yard requirements.* As regulated by § 153.051 of this code.

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

(H) *Nuisances.* 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. 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 section was exceeded at the time the ordinance from which this chapter was derived was adopted, individual lots of record before the adoption of the 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 § 153.051 of this code.

(2) Existing dwelling units in areas where the maximum density of three dwelling units for each quarter-quarter section was exceeded prior to the adoption date of the ordinance from which this chapter 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 § 153.051 of this code.

(J) *Conservation.* Land within the Ag Zoning District shall be farmed and otherwise managed according to sound soil and water conservation management practices.

(K) *Subdivision.* Subdivision of property within the Ag Zoning District shall be subject to the following regulations in addition to the regulations of Ch. 160 of this code.

(1) To the extent feasible, each lot created for a non-farm use shall be located on land not suitable for agricultural use. The land includes areas of nonprime agricultural soils as defined in the Comprehensive Plan, areas with slopes of 13% 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 chapter 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 two and one-half 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.

(M) *Architectural standards for institutional use structures.* Institutional use structures shall be of fire-resistive construction, and exterior surfaces of all structures must be faced with brick, stone, architectural concrete (block), precast concrete, EIFS/stucco panels or glass, of earthtones or other tones or colors in harmony with the natural characteristics of the area in which it is constructed and approved by the Design Review Commission, acting as the Architectural Standards Committee.

(1) Building design shall be reviewed and evaluated by the Design Review Commission, City Planner and/or Zoning Administrator.

(2) Blank facades without windows and doors are prohibited, with the exception of the side facing away from the public street.

(3) All sides of structures shall have the same quality of architectural treatment.

(4) Variety and creativity in building facade is required through changes in building materials (but not in quality of materials), placement of doors and windows, height and roof lines. Primary facades shall not present a continuous wall without architectural details that add visual interest through articulation, recession or projection.

(5) Topographical features shall be incorporated into the form of the structure when possible, utilizing natural grade.

(6) (a) 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.

(b) Screening may include parapet walls, penthouses or other architecturally integrated elements. Wood fencing or chain link with slats shall not be used for screening.

(c) 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.

(7) Rooftop solar collectors, skylights and other potentially reflective rooftop building elements shall be designed and installed in a manner that prevents reflected glare and obstruction of views from other sites and structures.

(8) Roof slopes shall not exceed 1:12 for all principal buildings.

(9) Delivery, service, storage, maintenance and trash collection areas shall be located out of view from the public right-of-way or substantially screened through landscaping or architectural features that match the primary structure. Service, storage and trash collection areas are not allowed in setback areas.

(10) All permanent utilities connecting to a building shall be underground.

(Prior Code, 12-140) (Ord. 7-2006, passed 8-15-2006; Ord. 01-2012, passed 1-17-2012) Penalty, see § 153.999

§ 153.060 RURAL RESIDENTIAL (RR) ZONING DISTRICT.

(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 § 153.053 of this code.

(C) *Accessory uses.* As permitted and regulated under § 153.053 of this code.

(D) *Minimum lot requirements.* Each lot shall be a minimum of five acres in size with a minimum buildable area of two and one-half acres except as provided for in this chapter. 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.

(E) *Architectural standards for institutional use structures.* Institutional use structures shall be of fire-resistive construction, and exterior surfaces of all structures must be faced with brick, stone, architectural concrete (block), precast concrete, EIFS/stucco panels or glass, of earthtones or other tones or colors in harmony with the natural characteristics of the area in which it is constructed and approved by the Design Review Commission, acting as the Architectural Standards Committee.

(1) Building design shall be reviewed and evaluated by the Design Review Commission, City Planner and/or Zoning Administrator.

(2) Blank facades without windows and doors are prohibited, with the exception of the side facing away from the public street.

(3) All sides of structures shall have the same quality of architectural treatment.

(4) Variety and creativity in building facade is required through changes in building materials (but not in quality of materials), placement of doors and windows, height and roof lines. Primary facades shall not present a continuous wall without architectural details that add visual interest through articulation, recession or projection.

(5) Topographical features shall be incorporated into the form of the structure when possible, utilizing natural grade.

(6) 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 chain link 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.

(7) Rooftop solar collectors, skylights and other potentially reflective rooftop building elements shall be designed and installed in a manner that prevents reflected glare and obstruction of views from other sites and structures.

(8) Roof slopes shall not exceed 1:12 for all principal buildings.

(9) Delivery, service, storage, maintenance and trash collection areas shall be located out of view from the public right-of-way or substantially screened through landscaping or architectural features that match the primary structure. Service, storage and trash collection areas are not allowed in setback areas.

(10) All permanent utilities connecting to a building shall be underground.

(Prior Code, § 12-141) (Ord. 08-2020, passed 10-20-2020) Penalty, see § 153.999

§ 153.061 VILLAGE HISTORIC SITE, RESIDENTIAL (VHS-R) AND COMMERCIAL (VHS-C) ZONING DISTRICTS.

(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:

(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 § 153.053 of this code, 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:

- (1) All public improvements;
- (2) Signs as required in § 153.130 of this code;
- (3) All new construction requiring a building permit and exceeding \$500 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 or she determines the proposed use satisfies the following conditions and the conditions set forth in § 153.028 of this code.

(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 a manner that if the 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 §§161.15 and 161.16 of this code, provide additional guidance for administrative permit design review.

(E) *Special uses.*

(1) As permitted by § 153.053 of this code; and

(2) As regulated by the standards contained in division (D) above and §153.027 of this code.

(F) *The Design Review Committee.*

(1) *Established; members.* The Design Review Committee is a function of the Heritage Preservation Commission described in § 32.32 of this code.

(2) *Determination of level of review; minor work.* The Zoning Administrator may apply the guidelines in division (D) above and §§ 161.15 and 161.16 of this code, 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; or

(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; or

(e) Demolition.

(G) *Exemptions.* Properties abutting Pennington Avenue and west of Pennington Avenue are exempt from division (D) above and §§ 161.15 and 161.16 of this code. Residences constructed after 1940 and before January 1, 1995, shall be exempt from division (D) above and §§ 161.15 and 161.16 of this code, unless the proposed work involves additions, the construction of new accessory buildings or demolition.

(Prior Code, § 12-142) (Ord. 02-2008, passed 1-9-2008)

§ 153.062 LIGHT INDUSTRIAL (I-1A), LIGHT INDUSTRIAL (I-1B) AND LIGHT INDUSTRIAL (I-1C).

(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 § 153.053 of this code.

(C) *Accessory uses.* As permitted and regulated in § 153.053 of this code.

(D) *Architectural standards.* In the industrial zone, structures must be of fire-resistive construction and exterior surfaces of all structures must be faced with brick, stone, architectural concrete (block), precast concrete, EIFS/stucco panels or glass, of earthtones or other tones or colors in harmony with the natural characteristics of the area in which it is constructed and approved by the Design Review Commission, acting as the Architectural Standards Committee.

(1) Building design shall be reviewed and evaluated by the Design Review Commission, City Planner and/or Zoning Administrator.

(2) Blank facades without windows and doors are prohibited.

(3) All sides of structures shall have the same quality of architectural treatment.

(4) Variety and creativity in building facade is required through changes in building materials (but not in quality of materials), fenestration height and roof lines. Primary facades should not present a continuous wall without architectural details that add visual interest.

(5) Minimizing continuous expanses of wall through facade articulation, recession or projection is required.

(6) The incorporation of topographical features into the form of the structure when possible, utilizing natural grades to create unique design, is required.

(7) 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 chain link 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) Rooftop solar collectors, skylights and other potentially reflective rooftop building elements shall be designed and installed in a manner that prevents reflected glare and obstruction of views from other sites and structures. Screening may be in the form of walls constructed of the same building material and match the coloring of the principal building.

(9) Roof slopes shall not exceed 1:12 for all principal buildings.

(10) Overhead garage doors shall not be visible from a public street, with the exception of interstate highway I-94, and shall not exceed 50% of the perimeter of the building exterior.

(11) Above ground and underground fuel storage tanks are prohibited, with the exception of an above-ground fuel storage tank incorporated into an emergency generator.

(12) Delivery, service, storage, maintenance and trash collection areas shall be located out of view from the public right-of-way or substantially screened through landscaping or architectural features that match the primary structure. Service, storage and trash collection areas are not allowed in setback areas.

(13) All permanent utilities connecting to a building shall be underground.

(E) *Landscaping standards.* All landscaping shall comply with §§ 153.081 and 153.082 of this code. All properties zoned Light Industrial shall be landscaped in accordance with the following:

(1) *Green space.* Total green space shall be a minimum of 20% of the gross lot area.

(2) *Quality landscape treatment.* 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. Industrial sites shall contain at a minimum the greater of one tree per 500 square feet of gross building floor area, or one tree per 25 lineal feet of site perimeter.

(3) *Minimum size of plantings.* Required trees and shrubs shall be of the following minimum planting size:

(a) Deciduous trees: Three inches in diameter as measured six inches above ground;

(b) Coniferous trees: Six feet in height; and

(c) Shrubs: Shrubs used for screening shall be in #5 containers.

(4) *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. Native vegetation such as prairie grasses and pollinator-friendly vegetation rather than turf grass is required to be used on 25% of the green space on a site.

(5) *Front or side yards.* The front or side yard from a public street shall be at least ten feet deep, measured from the street right-of-way line. This yard shall be kept clear of all structures, storage and off-street parking. Except for driveways, this front or side yard shall extend along the entire frontage of the lot and along both streets in the case of a corner lot.

(6) *Buffer yard.* The buffer yard requirements for a specific use shall be determined as part of the CUP review process based on the standards and factors listed below.

(a) *Buffer yard on side or rear property lines adjacent to property zoned for industrial use.*

1. The buffer yard shall be a minimum of 25 feet wide.
2. The buffer yard is not required to include landscaped screening.
3. The buffer yard shall be pervious and vegetated and/or may include areas of stormwater ponding.
4. The buffer yard may also include deciduous canopy trees, shrubs and eco-grasses, but may not include irrigated grass.
5. If a side or rear property boundary is adjacent to undevelopable open space, i.e. wetlands, this open space may reduce or replace the need for a buffer yard.

(b) *Buffer yard adjacent to property zoned for residential use.*

1. The buffer yard shall extend a minimum of 100 feet from the property line, but can be reduced to a minimum of 50 feet if adequate screening is provided and maintained. Adequate screening is generally defined as 90% opacity year-round that is achieved within a period of five years. The degree of opacity is measured based on the view of a person standing on the adjacent property at a distance equal to the required yard setback.

2. The actual type and amount of screening to be considered adequate screening for a specific use shall be determined based on the following criteria:

- a. The height and width of the proposed structure(s) to be screened;
- b. The anticipated level of activity and noise to be generated by the proposed use;
- c. The distance to the nearest residential structure;
- d. The quality and density of existing vegetation on the adjacent property;
- e. The ability to adequately screen the proposed structure(s) from the residential use;
- f. The topography of the area, which could make it difficult or impossible to fully screen the industrial building or use from the residential;
- g. The buffer yard shall not include irrigated lawn area; and
- h. The maintenance of the vegetation in the buffer yard shall be the responsibility of the conditional use permit holder.

(c) *Plant units required.* Within the landscaped buffer yard, a minimum of 200 plant units shall be required for each 100 feet of property line.

(d) *Plant unit credit.* Credit for plant units shall be assigned as follows:

Vegetation	Plant Unit Value
Deciduous trees	10
Evergreen/coniferous shrubs	5
Evergreen trees	15
Shrubs/bushes	1

(7) *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 or she will replace and/or correct any deficiencies or defaults that occur in the plan for a period of two complete growing seasons subsequent to the installation of the landscaping plan. A letter of credit or cash deposit will be submitted along with the agreement at this time.

(a) If after two growing seasons all the commitments are met, then the letter of credit or cash deposit 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.

(8) *Approved landscaping plan maintenance.*

(a) It shall be the responsibility of the current property owner to see that the approved landscaping plan is maintained in an attractive and well-kept condition. Maintenance shall include replacement of dead or damaged plant material; the furnishing and installation of mulch; weeding; mowing of grass; cleaning of litter; or any other action deemed necessary by the city to ensure the requirements of this section are met.

(b) Any action that reduces canopy cover and/or landscaping below what is required in this section shall require in-kind replacement. Failure to maintain a landscape area shall be deemed a violation of this chapter.

(9) *Landscaping in parking areas.*

(a) Parking areas that contain more than four parking spaces shall be landscaped throughout the lot to the extent of at least 10% of the hard surface area of the parking lot and driveways to the public right-of-way, as measured from the outside curb. These landscaped areas shall consist of curb islands approximately ten feet in width at the ends of each row of parking, excluding locations of handicapped spaces. Curb islands shall also be designed to break up longer rows of parking.

(b) Where feasible, linear parking lot landscaped islands, parking lot rain gardens, depressed infiltration curb islands and demonstrated parking areas shall also be included in the parking lot design.

(c) A combination of at least one tree and shrubs or semi-annual flower species plants shall be planted in curb islands or interior parking lot open space for each ten required parking spaces. Where the city determines that the parking lot design cannot reasonably accommodate curb islands or other landscaping open space features or cannot accommodate that amount of landscaping cited herein, plant materials shall be moved to the outside perimeter of the parking lots.

(F) *Lighting.* The following shall apply to all industrial properties in addition to the requirements set forth in §53.085 of this code.

(1) Any light fixture intended to illuminate the site shall contain a cutoff which directs the light at an angle of 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 25 feet.

(3) No light sources shall be located on the roof unless the light enhances the architectural features of the building and is approved by the Zoning Administrator.

(4) All light poles shall be black or another similarly dark color.

(G) *Exterior storage screening standards.*

(1) Exterior storage includes the storage of goods, materials, manufactured products, equipment school buses, motor freight tractors and trailers and similar items not fully enclosed by a building.

(2) Exterior storage requires 100% screening with a wall constructed only of the materials allowed to be used for the principal structure, and requires vegetative screening along the wall.

(3) The area of exterior storage may not exceed 40% of the area of a lot that is five or more acres. The area of exterior storage may not exceed the lesser of 75% of the footprint of the building or 40% of the area of the lot on lots smaller than five acres. Storage must be located to the rear or side of the principal building on the site.

(Prior Code, § 12-143) (Ord. 11-2007, passed 8-7-2007; Ord. 07-2009, passed 6-16-2009; Ord. 01-2018, passed 6-19-2018; Ord. 03-2021, passed 5-18-2021) Penalty, see § 153.999

§ 153.063 MARINE SERVICES (MS) ZONING DISTRICT.

(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 § 153.053 of this code.

(C) *Accessory uses.* As provided in § 153.053 of this code.

(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.

(Prior Code, § 12-144) (Ord. 1997-15, passed 1-19-1999)

§ 153.064 PRESERVATION AND LAND CONSERVATION DEVELOPMENT (PLCD).

(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 Ch. 166 of this code.

(B) *Permitted uses.* As permitted and regulated under this title.

(Prior Code, § 12-145) (Ord. 06-2008, passed 4-15-2008)

DESIGN AND PERFORMANCE STANDARDS

§ 153.075 PERFORMANCE STANDARDS.

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

(Prior Code, § 12-185)

§ 153.076 PRINCIPAL BUILDING.

(A) There shall be no more than one residential dwelling unit on any one parcel of land described in §153.051 of this code, unless otherwise allowed in this chapter.

(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 chapter.

(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's Building Code, the state's Uniform Fire Code, the Department of Health, the Pollution Control Agency and Ch. 154 of this code, except that manufactured homes shall meet or exceed the requirements of the state's Manufactured Home Building Code in lieu of the state's 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 chapter and Ch. 154 of this code, 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 the 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 § 153.099 of this code.

(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's 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.

(Prior Code, § 12-186) (Ord. 03-2012, passed 4-17-2012) Penalty, see § 153.999

§ 153.077 TYPES OF ACCESSORY BUILDINGS.

(A) Storage or tool sheds; detached residential accessory buildings; detached domesticated farm animal buildings on residential parcels; and agricultural buildings on rural farms are as follows:

(1) *Storage or tool sheds.* A one-story accessory building of less than 160 square feet gross area with a maximum roof height of 12 feet. No door or other access opening in a storage or tool shed shall exceed 28 square feet in area;

(2) *Detached residential accessory building.* A one-story accessory building used or intended for the storage of motor-driven passenger vehicles, hobby tools, garden equipment, workshop equipment and the like. The total area of all accessory buildings shall not exceed 2,500 square feet, subject to the requirements in divisions (A)(4) and (B) below;

(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 § 153.005 of this code. The total area of all accessory building shall not exceed 2,500 square feet, subject to the acreage requirements in division (B) below. Such buildings shall be regulated by divisions (B), (M) and (N) below;

(4) *Agricultural buildings on rural farms.* An accessory building used or intended for use on a parcel on which rural

agriculture, as defined in § 153.005 of this code, 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;

(5) *Existing agricultural buildings.* 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 division (B) below. Any additions to or expansions of accessory buildings shall thereafter be subject to requirements of this subchapter with the existing agricultural buildings being included in both the square footage and building number calculations; and

(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.

(B) Permitted uses of accessory buildings are as follows.

Agricultural building on rural farm of:	A	R	VHS
Maximum square footage	***	***	N
More than 10 but less than 20 acres:			
Permit required	Admin	Admin	N
Over 20 acres:			
Permit required	Admin/farm site plan	Admin/farm site plan	N

Detached domesticated farm animal building on residential parcels:	A	R	VHS
Maximum number of stories	1 story*	1 story*	N****
Maximum square footage	***	***	N****
Permit required	Admin and building	Admin and building	N****

Detached residential accessory building:	A	R	VHS
Maximum number of stories	1 story*	1 story*	1 story*
Maximum square footage	***	***	720
Permit required	Admin and building	Admin and building	Building

Storage or tool shed:	A	R	VHS
Maximum door opening area	28 square feet	28 square feet	28 square feet
Maximum number of stories	1 story*	1 story*	1 story*
Maximum roof height	12 feet	12 feet	12 feet
Maximum square footage	160	160	160
Permit required	Building	Building	Building

* See Ch. 11, § 1102 of the International Building Code (IBC)			
***Total number of accessory buildings possible:	1 or 2 on parcels of 10 to 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 square feet or less.	1 or 2 on parcels of 5 and more acres. 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 square feet or less.	1 not to exceed 720 square feet.
**** See § 153.078(M) of this code regulating the keeping of chickens on parcels less than 5 acres			

(C) A storage or tool shed as defined in division (B) above 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 Ch. 156 of this code and division (G) above.

(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 chapter. All houseboats used within the city limits for a period of 30 consecutive days or more shall require an administrative permit. The permit shall show the owner, owner's address, boat license number, whether the boat is to be used as a seasonal residence, and if so, for what period of time during the year, type of sanitary sewage facility, water supply and site plan showing the method of access to the public street. Each houseboat shall have one off-street parking space within 400 feet of the docking of the 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 division (A)(1) above. Ice fishing houses shall meet the size limitations of division (B) above and all other provisions of this chapter, except division (K) below.

(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 §153.051 of this code 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's Soil Conservation District; and

(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:

<i>Natural or Human-made Feature</i>	<i>Minimum Horizontal Setback</i>
Any body of seasonal or year-round surface water, stream or drainageway	200 feet
Any existing well or residential structure on adjacent or nearby parcels	200 feet
Any existing well or residential structure on the same parcel	50 feet
Any property line	100 feet

(2) *Slopes.* The building, feedlot or manure storage area shall not be placed on slopes that exceed 13%.

(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.

(Prior Code, § 12-187) (Ord. 09-2010, passed 9-21-2010; Ord. 05-2013, passed 3-19-2013; Ord. 04-2019, passed 8-20-2019; Ord. 01-2021, passed 2-16-2021) Penalty, see § 153.999

§ 153.078 LIVESTOCK.

(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 manure or waste or a solution thereof from the site that may result in pollution of any public waters or any health hazard. No manure shall be stored within 100 feet of any property line.

(B) *Pollution control agency standard minimum requirements.* All regulations imposed by the state's Pollution Control Agency relating to keeping of livestock shall be adhered to, and the 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 therefore has first been issued by the state's 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 therefore upon the 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 or she 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 the loss of stored manure involves a substantial amount that would be likely to enter any waters of the city. The 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 other pertinent information as may be available at the time.

(F) *Acreage requirement.*

(1) Chickens can be kept on parcels less than five acres as regulated by division (M) below. A parcel of at least five acres, with a minimum of two acres of natural pasture having a slope of less than 12% 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 the land.

(2) 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.

(3) 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.

(a) Leased land shall be contiguous to the parcel upon which the owner of the horses resides.

(b) Farm animals shall have access to the leased land from the residence parcel.

(c) Leased land shall be grazable and fenced.

(d) 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% and with the ability to feed grazing animals. For the purposes of these regulations, the following animal unit equivalents apply.

<i>Animal</i>	<i>Animal Units</i>
<i>Animal</i>	<i>Animal Units</i>

1 chicken	0.01
1 duck	0.2
1 horse	1.0
1 mature dairy cow	1.4
1 sheep	0.1
1 slaughter steer or heifer	1.0
1 swine over 55 pounds	0.4
1 turkey	0.018

(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 these conditions exist, building permits shall not be issued until the property is brought into conformance with the regulations of this chapter.

(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 a manner as not to create a nuisance.

(M) *Keeping chickens on parcels less than five acres.*

(1) *Permit required.*

(a) No person shall, on any lot less than five acres anywhere in the city keep, harbor or maintain care, custody or control over any chicken, without obtaining a permit issued by the city.

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

(2) *Application.* Included with the information required prior to issuance of the permit must be a scaled diagram that indicates the lot size, the number of chickens, the location of any chicken coop and run, which includes the distance from dwelling units on the parcel and abutting properties and the approximate size of the chicken coop and run. If the coop exceeds 200 square feet, a building permit will be required.

(3) *Permit fee.* A one-time fee of \$20 will be charged for each permit and the fee may be amended by resolution.

(4) *Number allowed.* For parcels that are less than one-half acre, the maximum number of chickens is five. For every additional one-half acre of land an additional five chickens can be kept. On parcels greater than four and one-half acres and less than five acres, up to 45 chickens are allowed.

(5) *Confinement standards.* Every person who owns, controls, keeps, maintains or harbors hen chickens by permit must keep them confined on the premises at all times. If confinement is in a chicken coop or chicken run, the following standards apply.

(a) Where more than five chickens are being kept, the coop and run shall be at least 25 feet from any residential structure, wells and any other premises or wells on any adjacent lots.

(b) All chicken coops and runs must be located within the rear yard subject to the required setbacks for the principal building.

(c) Chicken feed must be kept in metal, predator-proof containers.

(6) *Conditions and inspection.* No person who owns, controls, keeps, maintains or harbors hen chickens shall permit the premises where the hen chickens are kept to be or remain in an unhealthy, unsanitary or noxious condition or to permit the premises to be in such condition that noxious odors are carried to adjacent public or private property.

(7) *Prohibited uses.* The following uses are not allowed as they pertain to this chapter:

(a) Roosters;

(b) Breeding, raising or slaughtering of chickens for a commercial purpose; and

(c) Odors, solid matter or noise of such quality or quantity as to be reasonably objectionable at any point beyond the lot line of the site on which the use is located.

(8) *Public nuisance.* Failure to comply with this chapter 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 chapter.

(Prior Code, § 12-188) (Ord. 02-2009, passed 4-21-2009; Ord. 04-2011, passed 11-15-2011; Ord. 07-2013, passed 6-18-2013) Penalty, see § 153.999

Cross-reference:

Animals, see Ch. 93

§ 153.079 AGRICULTURAL OPERATIONS.

(A) (1) All agricultural operations in existence upon the effective date of the ordinance from which this chapter 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.

(2) 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 and shall meet the provisions of this chapter. See § 153.034 of this code.

(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 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 the 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 operations upon the following conditions:

(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 these 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.

(Prior Code, § 12-189)

Cross-reference:

Animals, see Ch. 93

§ 153.080 FENCES.

(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.

(5) All fences shall be maintained and kept in good repair.

(6) Barbed wire and razor wire fencing are prohibited, except in the case of:

(a) Agricultural uses; and

(b) In the industrial zone at the top of a security fence if the height of the barbed wire is not less than six feet from grade and the fence is located not less than 100 feet from a residence.

(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 in the I-1A and I-1B Zoning Districts may be erected on the lot line to a height of six feet or 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 §153.005 of this code may be a maximum of six feet in height, except as provided in division (B)(5) below. 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 division (B)(8) below.

(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.

(Prior Code, § 12-190) (Ord. 06-2020, passed 7-21-2020) Penalty, see § 153.999

§ 153.081 SCREENING.

(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) The driveway to a parking area of more than six parking spaces is within 15 feet of an adjoining residential use or zoning district.

(B) Where any business or industrial use (structure, parking or storage) is adjacent to property zoned for residential use, that business or industry shall provide screening along the boundary of the residential property. Screening shall also be provided where a business, parking lot or industry is across the street from a Residential Zoning District, but not on the side of a business or industry considered to be the front.

(C) All exterior storage shall be screened except materials and equipment currently being used for construction on the premises and exterior storage on farms, except those required to do so on an individual basis by action of the City Council.

(D) The screening required in this section shall mean the installation of a solid wooden fence of a required height, and/or plantings, and/or berms. All plantings used as screening shall be a minimum of six feet in height when planted, shall be of a variety that the Soil and Water Conservation District recommends as suitable for the site, and shall be a variety which is fast growing and non-deciduous. In addition, earth berms shall be considered to be screening. Any berm required as a condition of a conditional use permit shall be high enough to prevent visual access to the structure it is screening. Berms may be required to have plantings, watering systems to support life for the plants, fences or other screening. All screening of whatever type shall provide 90% screening of the structure or facility being screened.

(Prior Code, § 12-191)

§ 153.082 LANDSCAPING.

(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 division (D) below.

(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 thus 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 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.

(Prior Code, § 12-192)

§ 153.083 REASONABLE MAINTENANCE REQUIRED.

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.

(Prior Code, § 12-193)

§ 153.084 EXTERIOR STORAGE.

(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. This 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 division (B) below. Existing uses shall comply with this provision within 12 months following enactment of the ordinance from which this chapter was derived.

(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. This 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 the property is so stored for purposes relating to a use of the property permitted by this chapter and will not be contrary to the intent and purposes of this chapter.

(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 these purposes. The owner of vacant land shall be responsible for keeping the 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 chapter was derived.

(E) Unlicensed passenger vehicles and trucks shall not be parked on any property for a period exceeding seven days. 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 chapter shall be considered to be refuse.

(Prior Code, § 12-194) (Ord. 1997-19, passed 7-15-1997) Penalty, see § 153.999

§ 153.085 LIGHTING, LIGHTING FIXTURES AND GLARE.

(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 foot-candle meter reading as measured from the centerline of the street nor shall any light or combination of lights that cast light on residential property exceed 0.4 foot-candles.

(B) Lighting standards shall not exceed 35 feet in height.

(Prior Code, § 12-195) Penalty, see § 153.999

§ 153.086 PARKING.

(A) *General provisions.*

(1) Existing off-street parking spaces and loading spaces upon the effective date of the ordinance from which this chapter was derived shall not be reduced in number unless the number exceeds the requirements set forth herein for a similar use.

(2) Benches in places of public assembly, in stadiums, sport arenas, churches and other places of public assembly, in which patrons or spectators occupy benches, pews or other similar seating facilities, each 22 inches of the seating shall be counted as one seat for the purpose of determining requirements for off-street parking facilities under this chapter.

(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. The 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 when 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 MS, C 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.

(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 the principal use, the owner of the principal use shall file a recordable document with the County Recorder requiring the owner and his or her heirs and assigns to maintain the required number of off-street parking spaces during the existence of the 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, the 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 the 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. These areas shall be so graded and drained as to dispose of all surface water accumulation within the parking area. Durable and dustless surface may include crushed rock and similar treatment for parking accessory to residential structures; all other uses shall utilize asphalt, concrete or a reasonable substitute surface as approved by the City Engineer. All surfacing must be completed prior to occupancy of the structure unless other arrangements have been made with the city. Parking areas for less than three vehicles shall be exempt.

(5) Any lighting used to illuminate an off-street parking area shall be so arranged so it is not directly visible from the adjoining property and in a downward vertical direction.

(6) All open off-street parking areas designed to have head-in parking along the property line shall provide a bumper curb or guard not less than ten feet from the property line. When the 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 MS, C 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.

(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 MS, C and I Zoning Districts.

(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 division (A)(4) above.

(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 the number exceeds the requirements set forth herein.

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

<i>Use</i>	<i>Requirements</i>
<i>Use</i>	<i>Requirements</i>
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
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	1.5 spaces per slip plus 1 space per employee and a minimum of 20 12-foot by 25-foot trailer stalls
Medical or dental clinic	6 spaces per doctor or dentist
Offices	3 spaces for each 1,000 square feet gross floor area
One- and two-family residences	2 spaces per dwelling unit but not to exceed 4 per unit
Restaurants, cafés, bars, taverns or supper clubs	1 space for each 2.5 seats, based on capacity design
Retail store	4.5 spaces for each 1,000 square feet of gross floor area
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
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
Uses not specifically noted	As determined by the Planning Commission

(Prior Code, § 12-196) (Ord. 1997-19, 7-15-1997; Ord. 02-2008, passed 1-9-2008; Ord. 03-2017, passed 3-21-2017)

Cross-reference:

Traffic and parking rules, see Ch. 70

§ 153.087 OFF-STREET LOADING AREAS.

(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 chapter, 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 chapter 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.

(Prior Code, § 12-197)

§ 153.088 TRAFFIC CONTROL.

(A) (1) The traffic generated by any use shall be controlled so as to prevent:

- (a) Congestion of the public streets;
- (b) Traffic hazards; and
- (c) Excessive traffic through residential areas, particularly truck traffic.

(2) 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.

(B) On any corner lot, nothing shall be placed or allowed to grow in a manner as to impede vision between a height of two and one-half 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.

(Prior Code, § 12-198) Penalty, see § 153.999

Cross-reference:

Traffic and parking rules, see Ch. 70

§ 153.089 FALLOUT SHELTERS.

Fallout shelters may be permitted in any district subject to the yard regulations of the zoning district. The 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 the use.

(Prior Code, § 12-199)

§ 153.090 GUESTHOUSES.

Guesthouses shall not be permitted in any zoning district.

(Prior Code, § 12-200) Penalty, see § 153.999

§ 153.091 DWELLING UNITS IN COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS.

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.

(A) A dwelling unit in the Commercial District located in a commercial structure shall not occupy the front half of the ground floor or basement.

(B) A dwelling unit in a commercial or industrial building shall not contain more than one bedroom.

(C) No detached dwelling unit shall be permitted in the Industrial Zoning District.

(D) A dwelling unit that is part of the principal building shall be provided with two exits; one shall be a direct outside exit.

(E) All buildings shall conform to the Building Code and applicable fire codes.

(Prior Code, § 12-201) (Ord. 1997-21, passed 12-15-1998) Penalty, see § 153.999

§ 153.092 RADIATION AND ELECTRICAL INTERFERENCE PROHIBITED.

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 omissions are hereby declared a nuisance.

(Prior Code, § 12-202) Penalty, see § 153.999

§ 153.093 STORAGE OF HAZARDOUS MATERIALS.

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, above ground 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 chapter was derived. Suitably sealed diking capable of holding a leakage capacity equal to 115% of the tank capacity shall be required around these 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.

(Prior Code, § 12-203)

§ 153.094 EXPLOSIVES.

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. These 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.

(Prior Code, § 12-204)

§ 153.095 ENVIRONMENTAL POLLUTION.

(A) All uses, buildings and structures shall conform to the regulations of the state's Pollution Control Agency relating to air, water, noise and solid wastes.

(B) No use shall be permitted that will cause or result in the pollution of any tributary of the St. Croix River, any lake, stream, groundwater 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's Pollution Control Agency.

(Prior Code, § 12-205)

§ 153.096 NUISANCES.

(A) No odors, vibration, noise, smoke, air pollution, liquid or solid wastes, heat, glare, dust or other sensory irritations or health hazards shall be permitted in any zoning district in excess of the minimum standards as set forth in this section.

(B) Any violation of these standards is hereby declared a nuisance. The minimum standards shall be as follows.

(1) *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 §§ 153.058 and 153.059 of this code regulating agricultural operations.

(2) *Vibrations.* The following vibrations are prohibited:

(a) Any vibration discernible beyond the property line to the human sense of feeling for three minutes or more duration in any one hour; and

(b) 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.

(3) *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.

(4) *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.

(5) *Animals.* Any building in which domestic farm animals are kept shall be a minimum distance of 100 feet from all lot lines.

(C) 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.

(Prior Code, § 12-206)

(D) 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.

(E) Creating or maintaining a junkyard or vehicle dismantling yard shall be a nuisance and shall be prohibited.

(F) The following are declared to be nuisances endangering public health:

(1) Causing or suffering the effluent from any cesspool, septic tank, drainfield or human sewage disposal system to discharge upon the surface of the ground, or dumping the contents thereof at any place except as authorized by the state's 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; and

(3) Causing or suffering carcasses of animals to not be buried or destroyed or otherwise disposed of within 24 hours after death.

(G) 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; and

(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.

(Prior Code, § 12-207)

(H) For abatement information, see Chapter 90 of this code of ordinances.

Penalty, see § 153.999

§ 153.097 NOISE.

(A) *Definitions.* Except as provided in this section, words or phrases used in this section and defined in the rules of the state's Pollution Control Agency Noise Section, Minn. Rules Ch. 7030, shall have the meanings given in those rules.

A-WEIGHTED. 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, § 5.1.

CUT-OUT or BYPASS. 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.

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

EXHAUST SYSTEM. A combination of components which provides an enclosed flow of exhaust gas from engine parts to the atmosphere.

HOLIDAY. Any day fixed by the United States or by state law for suspension of business in whole or in part.

L10. The sound level, expressed in dB(A) which is exceeded 10% of the time for a one-hour period, as measured by test procedures approved by the director of the MPCA.

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

MPCA. The state's Pollution Control Agency.

NOISE. Any sound not occurring in the natural environment, including but not limited to, sounds emanating from airways, roadways, waterways, industrial, commercial and residential sources.

NOISE CONTROL OFFICER. The Zoning Administrator or other person appointed by the City Council.

NOISE POLLUTION. The presence of any noise or combination of noises in the quantity, at these levels, of the nature and duration, or under 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.

PERSON. 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, Minn. Rules parts 7030.0010 through 7030.0080, and all amendments thereof and supplements thereto are hereby referred to, adopted, incorporated by reference and made a part of

this chapter. A current copy shall be available for public inspection through the City Administrator'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 a manner as to create a noise level outdoors exceeding the dB limit set in Table 1 for the receiving land use district specified.

Table 1. Sound Levels by Receiving Land Use Districts				
	Day		Night	
	(7:00 a.m. to 10:00 p.m.)		(10:00 p.m. to 7:00 a.m.)	
Commercial (VHS-C)	70	65	70	65
Industrial	80	75	80	75
Land Use Districts	L10	L50	L10	L50
Residential (RR, VHS-R)	65	60	55	50

(C) *Exemptions.*

(1) The levels prescribed in division (B)(2) above do not apply to noise originating on public streets and alleys but this 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 and the like.* No person shall sound any signaling device on any vehicle except as a warning of danger.

(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 chapter. 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 and the like.* No person shall use or operate or permit the use or operation of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for 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 set, instrument, phonograph, machine or other device between the hours of 10:00 p.m. and 7:00 a.m. in 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 a 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 the 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 and the like.* 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 and the like.* No person shall create any excessive noise on a street, alley or public grounds adjacent to any school, institution of learning, church or other place of worship.

(E) *Hourly restriction on certain operations.*

(1) *Domestic power equipment.* No person shall operate a garden or lawn tractor, power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, power device for bug eradication, drill or other similar domestic power maintenance equipment except between the hours of 7:00 a.m. and 10:00 p.m. Snow removal equipment is exempt from this provision.

(2) *Refuse hauling.* No person shall collect or remove garbage or refuse in any Residential District except between the hours of 6:00 a.m. and 6:00 p.m., Monday through Saturday.

(3) *Construction activities.* No person shall engage in or permit construction activities involving the use of any electric, diesel or gas-powered machine or other power equipment except between the hours of 7:00 a.m. and 10:00 p.m.

(4) *Exception for emergency work.*

(a) 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 chapter for a period not to exceed 48 hours after the work is commenced.

(b) Persons responsible for the work shall inform the noise control officer of the need to initiate the 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.

(c) Any person responsible for 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 these guidelines shall be kept in the office of the City Administrator 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 chapter and shall make all investigations and inspections in accordance with law as required in applying the provisions of this chapter.

(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 statement shall be reviewed to ascertain whether the granting of the change in zoning classification, permit or license would result in the violation of any provision of this chapter. 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 other powers and perform 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 division (B) above, 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 this person to correct or remove each specified violation within a 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 this demand would subject the violator to appropriate criminal enforcement procedure.

(Prior Code, § 12-208) Penalty, see § 153.999

Cross-reference:

Environment, see Ch. 91

Statutory reference:

Horns, sirens, see M.S. § 169.68

§ 153.098 VISUAL STANDARDS.

(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 waterbodies are subject to the provisions of this chapter.

(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.

(Prior Code, § 12-209)

§ 153.099 MANUFACTURED HOMES.

(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 an accessory dwelling unit to be occupied by persons who:

(a) Are infirm to the extent that they require extraordinary care;

(b) Need care that can only be provided, without great economic hardship, by family members residing in the principal dwelling on the premises; and

(c) Have a written statement of a physician stating the infirmity and the need for care required by divisions (B)(1)(a) and (B)(1)(b) above.

(2) The administrative permit is so conditioned that it will expire and terminate at a time when the care facility is no longer the residence of the person suffering from the infirmity who requires care, or at a time as this 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.

(5) Pursuant to authority granted by M.S. § 462.3593, subdivision 9, as it may be amended from time to time, the city opts out of the requirements of M.S. § 462.3593, as it may be amended from time to time, which defines and regulates temporary family health care dwellings.

(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 an accessory dwelling unit located on a farm of at least 75 acres.

(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/or

(b) Engaged in the occupation of farming on the premises as partners or other business associates of the persons living in the principal dwelling on the premises and who earn 50% or more of their annual gross income for federal income tax purposes from farming on the premises.

(3) The administrative permit is so conditioned that it will expire and terminate at a time as the persons occupying the manufactured home are no longer engaged in farming on the premises as required by division (C)(2)(b) above.

(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.

(1) The manufactured home will be utilized as a field headquarters for directing the ongoing 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) The 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 dwelling unit by the present or potential occupant of a single-family residence during the construction, reconstruction or alteration of the residency by the present or potential occupant.

(2) The manufactured home shall have adequate sanitary facilities as prescribed by Ch. 154 of this code.

(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) The 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. § 327.31, subdivision 3, as it may be amended from time to time. The manufactured home shall have a sanitary sewer treatment and disposal system in compliance with Ch. 154 of this code, the state's 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; and

(3) Have ground anchors or tie downs as approved by the state's Manufactured Home Building Code.

(Prior Code, § 12-213) (Ord. 6-2006, passed 6-6-2006; Ord. 09-2016, passed 9-20-2016)

§ 153.100 MINING.

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 activities and all regulations in the mining ordinance, Ch. 162 of this code.

(Prior Code, § 12-214)

Cross-reference:

Mining, see Ch. 162

§ 153.101 LAND RECLAMATION AND LAND GRADING.

(A) Within this chapter, **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 regrading of an area shall constitute land reclamation and land grading.

(3) Land reclamation and land grading in floodplains shall be in accordance with Ch. 159 of this code.

(4) The permit shall include as a condition thereof a finished grading plan that will not adversely affect the adjacent land and as conditions thereof shall regulate the type of material permitted, program for rodent control, plan for fire control and general maintenance of the site, controls of vehicular ingress and egress, drainage and control of material disbursed from wind or hauling of material to or from the site, and erosion control and stabilization plans for the deposited material or excavated area.

(5) In addition to a finished grading plan, a Stormwater Pollution Prevention Plan (SWPPP) and an Erosion and Sediment Control Plan (ESCP) may be required, if in the judgment of the Zoning Administrator, significant soil erosion, vegetation destruction, 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 Ch. 158 of this code.

(6) The finished grading plan and stormwater pollution prevention and erosion control plan shall be reviewed by the City Engineer and may be reviewed, as deemed necessary by the Zoning Administrator or the City Council, by the state's Department of Natural Resources, the county's Soil and Water Conservation District and the appropriate Watershed Management Organization and/or District.

(7) The Zoning Administrator may require the applicant to post a bond or other financial guarantee to ensure compliance with the permit.

(B) No person, county, municipality or other political subdivision shall appropriate or use any public water, surface or underground, without first obtaining a use of public waters permit and written permission of the Commissioner of the Division of Waters, Soils and Minerals of the state's Department of Natural Resources. For purposes of these regulations, public waters shall be defined in M.S. Ch. 103G, as it may be amended from time to time, 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's Department of Natural Resources and the U.S. Army Corps of Engineers, and a grading permit from the city. 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;

(2) Subdivisions that have received preliminary plat approval;

(3) Driveways permitted in conjunction with a driveway permit;

(4) Cemetery graves;

(5) Refuse disposal sites controlled by other regulations;

(6) Excavations for wells or tunnels for utilities;

(7) Mining, quarrying, excavating, processing or stockpiling of sand, gravel, rock, aggregate or clay where regulated by Ch. 162 of this code; and

(8) Exploratory excavations under the direction of soil engineers or engineering geologists.

(D) Guidelines for grading of slopes are as follows.

(1) No slopes of 18% or greater shall be disturbed, with the exception of driveways crossing human-made slopes that were created by the construction of roads or related ditches, and that extend only perpendicular to the road for a horizontal distance of 30 feet or less, and, where no other option is available to the landowner.

(2) Within the Lower St. Croix River Bluffland and Shoreland Management District, no slopes of 12% or greater shall be disturbed. See § 157.41 of this code.

(3) Additional grading and filling requirements are applicable if in Shoreland Management District. See §156.056 of this code.

(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 division (E) above.

(Prior Code, § 12-215) (Ord. 8-2005, passed 5-17-2005; Ord. 02-2009, passed 4-21-2009; Ord. 11-2016, passed 10-18-2016; Ord. 03-2017, passed 3-21-2017)

§ 153.102 SOIL CONSERVATION PLANS.

(A) On any development or land reclamation project with more than one acre of soil, drainage patterns or vegetation cover that would be either destroyed or disturbed by the construction process, the Zoning Administrator may require the owner or contractor on the 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% to 18%, the Zoning Administrator shall require the applicant to provide a grading and erosion control plan and to obtain an administrative permit.

(E) The City Council may require the applicant to post a financial guarantee to ensure the orderly completion of the grading and erosion control plan by a specific date.

(Prior Code, § 12-216)

§ 153.103 DRAINAGE.

(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 waterbodies. The run-off shall be properly channeled into a stormwater management facility that is consistent with the stormwater management and erosion and sediment control requirements of Ch. 158 of this code. 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 Ch. 158 of this code.

(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 a site or the contractor of the 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's Department of Natural Resources, the county's 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% 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.

(Prior Code, § 12-217) (Ord. 03-2017, passed 3-21-2017)

§ 153.104 VEGETATIVE CUTTING.

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

CLEAR CUTTING. 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.

SELECTIVE CUTTING. 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 division (E) below. A reclamation, soil conservation or revegetation plan may be required by the Zoning Administrator as part of the conditional use permit application.

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

(D) Clear cutting shall not be permitted on slopes greater than 13%.

(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%;

(2) On slopes greater than 13% the Zoning Administrator may require a revegetation plan and a administrative permit; and

(3) Cutting within the St. Croix River District shall be regulated by Ch. 157 of this code.

(Prior Code, § 12-218)

§ 153.105 SWIMMING POOLS.

(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 three and one-half 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 the units;

(f) Location of back-flush and drainage outlets;

- (g) Grading plan, finished elevations and final treatment (decking, landscaping and the like) around the pool;
- (h) Location of existing overhead and underground wiring, utility easements, trees and similar features; and
- (i) 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) A safety fence of a nonclimbable type at least five feet in height, with a self-closing and latching gate, shall completely enclose the pool, or a pool auto cover approved by the city shall be an acceptable enclosure so long as the degree of protection afforded by the pool auto cover is similar to that afforded by the enclosure, gate and latch described above for fences; the pool auto cover complies with the American Society for Testing and Materials (ASTM) Standard F1346-91 (2003) or most recent ASTM standard and is UL listed; and is sufficient to support the weight of 500 pounds minimum and completely covers or encloses the pool; and subject to the requirements listed in divisions (B)(12)(a) and (B)(12)(b) below. The applicant shall submit documentation verifying that the proposed cover meets the required standard. The substitution with a pool auto cover shall be done by the issuance of a building permit.

(a) The pool auto cover as an alternative to a fence is only allowed in the Rural Residential and Agricultural zones.

(b) The pool auto cover must be kept in good repair and the auto cover must be designed, installed and used so that the degree of protection provided by the auto cover is similar to that afforded by a fence.

(13) Required structure or fencing shall be completely installed within three weeks following the installation of the pool and before any water is allowed in the pool. A financial guarantee shall be required to assure erection of the structure or fence.

(14) Water in the pool shall be maintained in a suitable manner to avoid health hazards of any type. The 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.

(Prior Code, § 12-219) (Ord. 03-2018, passed 9-18-2018)

§ 153.106 TENNIS COURTS.

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; and
 - (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 the walls.
- (G) Chain link fencing surrounding the tennis court may extend up to 12 feet in height above the tennis court surface elevation.
- (Prior Code, § 12-220)

§ 153.107 PRIVATE KENNELS.

- (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 chapter.
 - (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 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.
 - (a) 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.
 - (b) The applicant shall provide a list of adjoining landowners at least 30 days before the required review and pay fees as are set from time to time by resolution of the City Council.
 - (15) All waste materials shall be disposed of in accordance with the ordinances of the city and state law and in 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.

(Prior Code, § 12-221) (Ord. 1997-3, passed 12-16-1997) Penalty, see § 153.999

§ 153.108 BED AND BREAKFAST FACILITIES.

- (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.

(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 and the like, 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's 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 conditional use permit 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.

(Prior Code, § 12-222) Penalty, see § 153.999

§ 153.109 HOTELS.

(A) A hotel as defined in § 153.005 of this code 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 § 153.086 of this code 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 § 153.051 of this code, 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 § 153.130 of this code.

(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.

(H) All other codes, including Ch. 157 and 159 of this code, must be complied with.

(Prior Code, § 12-223)

§ 153.110 MARINAS.

(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 §153.086 of this code) 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 chapter and Ch. 157 of this code.

(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 Ch. 157 of this code.

(F) Design and operation of facilities must be consistent with applicable provisions of the state's Fire Code, various licenses, permits or design standards of the state's Pollution Control Agency, Department of Natural Resources and 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 Ch. 157 and 159 of this code, must be complied with.

(Prior Code, § 12-224)

§ 153.111 COIN-OPERATED MACHINES.

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.

(Prior Code, § 12-225)

§ 153.112 GARAGE SALES.

(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.

(Prior Code, § 12-227) (Res. 1997-5, passed 2-11-1997; Res. 1997-16, passed 6-17-1997) Penalty, see § 153.999

§ 153.113 HOME OCCUPATIONS.

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 § 153.053 of this code.

(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.

(Prior Code, § 12-228) (Res. 1997-16, passed 6-17-1997) Penalty, see § 153.999

§ 153.114 FARMERS MARKET.

(A) A farmers market requires a special event permit.

(B) In the VHS-R, a farmers market can be held only in a public park.

(C) A farmers market shall be operated by a local non-profit organization, and shall not be operated by a commercial entity.

(D) The sale of food products is subject to obtaining any required permits or licenses from the Public Health Department.

(E) Parking and display areas associated with the farmers market shall not distract or interfere with existing business operations, traffic circulation patterns or parking.

(F) The site shall be kept in a neat and orderly manner and display of items shall be as compact as possible so as to not interfere with existing business, parking or driveway operations.

(G) Sales merchandise trailers, temporary stands and the like shall be located on an asphalt or concrete surface unless approved in a city park through a special event permit.

(H) A farmers market with a valid special event permit may have one temporary sign not to exceed 24 square feet in area and not more than six feet in height.

(I) The operator shall have the written permission of the current property owner to locate on a specific site.

(J) A daily clean-up program shall be presented as part of the permit application.

(K) Signage and lighting plans shall be approved by the Zoning Administrator prior to any sales.

(L) Dates, times and location of the sales shall be approved as part of the special event permit.

(Prior Code, § 12-231) (Ord. 01-2015, passed 5-19-2015)

§ 153.115 SHORT-TERM HOME RENTALS.

(A) *Scope.* This section applies to all short-term home rentals in the city.

(B) *Purpose.* The city has adopted this section for the purpose of allowing short-term home rentals consistent with Rural Residential, Agricultural and Village Historic Site zone uses where appropriate while mitigating impacts upon surrounding properties by implementing balanced regulations, and to protect the general public health, safety and welfare.

(C) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When consistent with the context, words in the plural include the singular and words in the singular include the plural.

CERTIFICATE OF SEPTIC SYSTEM COMPLIANCE. A compliance certificate that was issued on a new septic system installed within the past five years or a copy of a compliance inspection which was performed within the past three years.

CITY. City of Afton.

DWELLING. A principal structure that contains one dwelling unit, intended or designated to be used, rented, leased, let or hired out to be occupied for living purposes.

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

GUEST. A person who is registered as staying at the property as part of a short-term home rental.

OWNER. Any person who, alone or with others, has title or interest in any building, property, dwelling, dwelling unit or portion thereof, with or without accompanying actual possession thereof, including any person who as tenant, agent, executor, administrator, trustee or guardian of an estate has charge, care, control of any dwelling or dwelling unit.

PERSON. Any individual, firm, corporation, association, governmental entity or partnership and its agents or assigns.

PRIMARY RESIDENCE. The dwelling unit within which a person lives for six months plus a day during a calendar year.

PRIMARY RESIDENT. A person living on a property where the property is the person's primary residence.

SHORT-TERM HOME RENTAL, TYPE A. Short-term home rentals in a homesteaded property with less than 14 days of rentals per year. **TYPE A SHORT-TERM HOME RENTAL** does not require a license, but must operate in accordance with the performance standards in this section.

SHORT-TERM HOME RENTAL, TYPE B (HOSTED SHORT-TERM RENTAL). A dwelling unit that is offered to transient guests for a period of less than 30 consecutive days, where a primary resident of the property is present while the transient guests are present.

SHORT-TERM HOME RENTAL, TYPE C (UNHOSTED SHORT-TERM RENTAL). A dwelling unit that is offered to transient guests for a period of less than 30 consecutive days, where the property serves as a person's primary residence but a primary resident of the property is not present while the transient guests are present.

SHORT-TERM HOME RENTALS, TYPE D (DEDICATED SHORT-TERM RENTAL). A dwelling unit that is offered to transient guests for a period of less than 30 consecutive days, where the property does not serve as a person's primary residence.

SHORT-TERM RENTAL. A dwelling unit, or a portion of a dwelling unit, rented for a period of less than 30 days. No more than one rental of a **SHORT-TERM RENTAL** dwelling unit or portion thereof shall be permitted per day.

(D) *License required.* No property may be used for Type B, C or D short-term home rental unless a license is granted by the city.

(1) *Term.* The initial short-term rental license shall expire one year from the date the license is issued, unless revoked. Subsequent renewals shall not be for a period of more than three years.

(2) *Renewal.* A renewal license must be applied for every three years. The renewal license application may only be submitted after the property has passed a city inspection as required and appropriate fees have been paid.

(3) *Non-transferable.* Licenses are non-transferable and shall expire upon change of ownership of the property.

(E) *License application.* Any property owner desiring to undertake short-term home rentals must apply to the city for a short-term home rental license. A license must be approved prior to operating within the city. The license application request must be submitted on the form provided by the city and must include all the information requested on the application form. A criminal background check consistent with M.S. Ch. 299C, as it may be amended from time to time, will be conducted on managers (as defined by M.S. § 299C.67, subdivision 4, as it may be amended from time to time) as part of the license application review.

(F) *License fee.* The license application form must be accompanied by payment in full of the required license application fee. The license application fee will be determined by the City Council in the city's fee schedule.

(G) *License issuance.* Licenses shall be issued exclusively for principal structures with one dwelling unit, with the exception of a duplex with a valid conditional use permit, which has two dwelling units. The process for review and issuance of a license will vary depending upon the type of short-term home rental as follows:

(1) *Type A.* Short-term home rentals in a homesteaded property with less than 14 days of rentals per year. Type A short-term home rental does not require a license, but must operate in accordance with the applicable performance standards in this section.

(2) *Type B.* Hosted short-term home rentals in a homesteaded property with more than 14 days of rentals per year. Type B short-term home rental licenses will be issued administratively if all the terms and conditions of this section are met.

(3) *Type C.* Unhosted, short-term home rentals in a homesteaded property. Type C short-term home rental licenses will be issued administratively if all the terms and conditions of this section are met.

(4) *Type D.* Unhosted, dedicated short-term rental. Type D short-term home rental licenses require a conditional use permit and will be issued administratively if all the terms and conditions of this section are met and a conditional use permit (CUP) is granted. The conditional use permit application will be reviewed according to the CUP process established in § 153.027 of this code.

(H) *Performance standards.* Type A, B, C and D short-term home rentals shall be subject to the performance standards identified below, except where a performance standard is specifically applicable to only specific types of rentals.

(1) *Parking.* In Residential Zoning Districts, all guest parking must be accommodated on improved driveways and improved parking surfaces on the premises. No on-street parking is allowed for guests.

(2) *Length of guest stay.* The minimum length of stay is one day. The maximum length of stay, as it pertains to this chapter, is 30 days.

(3) *Number of guests.* The maximum number of guests will be limited to two times the number of bedrooms, plus two guests. Children under the age of 12 are excluded from the calculation of number of guests.

(4) *Annual water testing.* The licensee for Type B, C and D short-term rentals shall test the water serving the dwelling for coliform bacteria, nitrates and lead on an annual basis, and the water must meet health-based standards for these items.

(5) *Guest records.* The licensee for Type C and D short-term rentals must keep a guest record including the name, address, phone number and vehicle license plate information for all guests and must provide this information in a report to the city upon 48 hours' notice, if requested by the city. The request for a report will include how and to whom the report shall be provided.

(6) *Manager information.* For Type C and D short-term home rentals, the licensee must provide the name, phone number and address of the owner, operating lessee or managing agent/representative to the city, along with mailing labels for all property owners within 150 of the property lines. The city will then send the information to the adjacent property owners. The licensee shall provide any changes to this information, along with additional mailing labels, to the City Administrator within ten days of any changes. The City Administrator will then send the information to the adjacent property owners.

(7) *Guest disclosures.* The licensee must disclose in writing to their guests the following rules and regulations and must submit a copy of the disclosure to the city with the license application and renewal applications. In addition, the disclosures must be conspicuously displayed in the home. The disclosures must include the following:

(a) For Type D short-term home rentals, the name, phone number and address of the owner, operating lessee or managing agent/representative;

(b) The maximum number of guests allowed at the property;

(c) The maximum number of vehicles allowed at the property and the approved parking areas, as indicated on the site plan provided with the license application;

(d) Property rules related to use of outdoor features, such as decks, patios, grills, recreational fires, saunas and other recreational facilities;

(e) That city nuisance ordinances will be enforced by the County Sheriff's Department, including reduced noise levels between 10:00 p.m. and 8:00 a.m.; and

(f) That no events are allowed to be hosted by a guest on the premises.

(8) *Posting of license number.* The licensee must post the city license number at the property and on all print, poster or web advertisements.

(9) *Proximity of assistance.* For Type D short-term home rentals, the property owner or a manager/representative must be located within 30 minutes travel time of the property.

(10) *Signage.* For Type A, B, C and D short-term home rental no signage is allowed on the property.

(11) *Events.* Events are not allowed to be hosted by guests on the premises. For purposes of this section, an **EVENT** means a gathering on the premises of more than three un-registered guests. Events hosted by the property owner are allowed but must comply with all applicable city ordinances and policies, including the prohibition on renting out private residential property for events.

(12) *Insurance.* The licensee must provide proof of sufficient and suitable property insurance, as determined by the Zoning Administrator, with the license application and must be able to confirm that the coverage remains in place within 24 hours of a request by the city.

(13) There shall be no change in the exterior appearance of the home or premises, or other visible evidence of the conduct of a short-term home rental, except that additional on-site city code compliant parking may be provided.

(14) No lessee under this chapter shall be granted any benefit otherwise granted to lessees of homes under the firearms ordinance in Ch. 130 of this code.

(I) *Required health and safety inspections.*

(1) Type B and C license applications will not be accepted without an approved inspection report signed by the city's Fire Department and Building Department. The inspection must have been completed no more than 60 days prior to submission of the license application.

(2) The list of health and safety items that will be inspected will be included in license application materials so that the licensee will know in advance what items will be inspected. If the inspection identifies items that must be corrected, all corrections must be completed and verified by the city before the license will be issued.

(3) Any property licensed under this section shall be subject to lawful inspection by the Zoning Administrator and the Zoning Administrator's authorized representatives upon a schedule determined by the Zoning Administrator or upon complaint.

(J) *Site plan and floor plan for Type C and D short-term home rentals.*

(1) The applicant must submit a site plan of the property drawn to scale, showing parking and driveways, all structures and outdoor recreational areas that guests will be allowed to use, including, but not limited to, deck/patio, barbeque grill, recreational fire or sauna.

(2) The applicant must submit a floor plan of the residence drawn to scale identifying which rooms are proposed to be

used as guest bedrooms. The number of bedrooms in the application must match the number of bedrooms reflected in the county's property tax records.

(K) *Interchangeability of license types.* A licensee may use the license to operate any short-term home rental type equal to or less restrictive than the one for which the license was issued. For example, if an owner is issued a Type C license, the property is permitted to operate as a Type C, B or A. If a Type B license is issued, the property is permitted to operate as a Type B or A.

(L) *Enforcement.*

(1) *Injunctive relief.* In the event of a violation or threatened violation of this section, the city, in addition to other remedies, is entitled to seek injunctive relief or proceedings to prevent, restrain, correct or abate the violations or threatened violations.

(2) *Suspension or revocation.*

(a) Any short-term home rental license may be suspended or revoked for one or more of the following reasons upon notice and the provision of an opportunity for hearing for good cause:

1. Violation of, or noncompliance with, any license requirement or standard, or any applicable law, statute or ordinance;
2. It is the third substantiated and relevant complaint, as determined by the Zoning Administrator, within a 12-month period;
3. The licensee has failed to pay all of the appropriate fees related to the license, or is delinquent on any other city fees;
4. The licensee has made fraudulent statements, misrepresentations, not fully disclosed information or made false statements in the application for or in the course of the licensee's business;
5. The licensee has been convicted of any crime or offense in the previous five years involving or relating to the short-term home rental business and the licensee has failed to show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the business;
6. The licensee has acted in an unauthorized manner or beyond the scope of the license granted; or
7. The licensee has advertised the property in a way that conflicts with any limitation or requirement of this chapter.

(b) If a license is revoked, the owner is prohibited from making application for another license for any type of short-term home rental for a period of six months. If a property is found to be providing short-term home rentals without the required license, the owner shall be prohibited from using the property for short-term home rentals, or making application for a license for any type of short-term home rental, for a period of two years, subject to the payment of any penalty fees.

(Ord. 03-2020, passed 3-17-2020) Penalty, see § 153.999

§ 153.116 FARM KITCHEN, ACCESSORY.

(A) A majority of the foods prepared shall include ingredients grown in the city.

(B) Value added agricultural products produced in an accessory farm kitchen may be sold via a CSA (community supported agriculture) or a roadside farm stand.

(C) An accessory farm kitchen shall be an accessory use to a farm that meets the definition of agriculture, rural.

(D) An accessory farm kitchen shall obtain all applicable state and county licensing and permits.

(E) An accessory farm kitchen shall not exceed a size of 1,200 square feet unless a conditional use permit is obtained.

(Ord. 08-2021, passed 10-19-2021)

SIGNS

§ 153.130 SIGNS.

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

SIGN. A notice that directs attention to a product, place, activity, person, institution, organization or business for public view.

SIGN, ADVERTISING. A sign that directs attention to a business or profession or to a commodity, service or entertainment.

SIGN, AREA. The entire area within a continuous perimeter enclosing the extreme limits of the sign. However, the perimeter shall not include any structural elements lying outside of the sign and not forming an integral part or border of the sign.

SIGN, BANNER. 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.

SIGN, BILLBOARD. An outdoor panel for the display of large advertisements in public places, such as alongside highways, roads and streets.

SIGN, BUSINESS. A sign that directs attention to a business or profession or to the commodity, service or entertainment sold or offered upon the premises where the sign is located or to which it is attached.

SIGN, DISPLAY. 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.

SIGN, FLASHING. An illuminated sign which has a light source not constant in intensity or color at all times while the sign is in use.

SIGN, GROUND. A sign which is supported by one or more uprights, poles or braces in or upon the ground.

SIGN, ILLUMINATED. 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.

SIGN, MOTION. A sign that has moving parts.

SIGN, NAMEPLATE. 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.

SIGN, OFF-PREMISES DIRECTIONAL. 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.

SIGN, PORTABLE. An unlighted sign not affixed to the ground or building and easily carried or moved.

SIGN, REAL ESTATE. A sign offering property (land and/or buildings) for sale, lease or rent and located on the property being offered.

SIGN, ROOF. A sign erected upon or above a roof or parapet of a building.

SIGN, STRUCTURE. The supports, uprights, braces and framework of the sign.

SIGN, TEMPORARY. Any sign, except a banner sign, placed in 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.

SIGN, WALL. A sign attached to or erected against the wall of a building with the exposed face of the sign parallel to the wall.

SIGN, WARNING. 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.*

(1) Except as otherwise provided in this subchapter, 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 § 153.133 of this code.

(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; and
- (e) Nameplate signs two square feet in area or less.

(D) *Exceptions.*

(1) The regulations contained in this subchapter do not apply to signs attached by adhesive or otherwise attached to or visible through windows and glass portions of doors.

(2) On-premises signs for churches or other places of worship shall be permitted by conditional use permit. The total surface area of all on-premises 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 one-tenth square feet per foot of road frontage. The signs

may be illuminated as restricted in §§ 153.130 and 153.132 of this code.

(E) *General prohibitions.*

(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.*

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

(2) *Projecting signs.* Signs shall in no case project from a building or structure to any point closer than two feet of a line drawn perpendicularly upward from the curb line. No projecting sign shall be less than nine feet above the sidewalk or the ground level. All projecting signs for which a permit is required shall be constructed entirely of fire-resistant material.

(3) *Ground signs.*

(a) No ground sign for which a permit is required shall be erected to a height of more than 12 feet above the ground, unless the face is constructed of sheet metal or other noncombustible facing materials.

(b) The bottom of the facing of every ground sign shall be a minimum of one foot and a maximum of three feet above the ground, which space may be filled with landscaping, platform or decorative trim of light wood or metal construction.

(c) The soil used for the dug-in type of anchor or post support shall be carefully placed and thoroughly compacted. The anchors and supports shall penetrate to a depth below ground level of 42 inches.

(4) *Multi-faced signs.* Multi-faced signs shall not exceed two times the allowed square footage of single faced signs, except for billboard signs which shall be limited to single facing.

(5) *Wall signs.* Wall signs attached to exterior walls of solid masonry or concrete shall be safely and securely attached to the same by means of metal anchors, bolts or expansion screws of not less than three-eighths inch in diameter which shall be embedded at least five inches. No wooden blocks or anchorage with wood used in connection with screws or nails shall be considered proper anchorage, except in the case of wall signs attached to buildings with walls of wood. No wall sign shall be entirely supported by an unbraced parapet wall.

(6) *Sign maintenance.* The owner of any sign shall be required to have the sign properly painted at least once every two years, if needed, including all parts and supports of the sign, unless the parts or supports are galvanized or otherwise treated to prevent rust or decay. 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 the 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.

(Prior Code, § 12-210) (Ord. 01-2014, passed 5-20-2014) Penalty, see § 153.999

Cross-reference:

Signs in heritage preservation areas, see §161.56

Street signs, see § 160.084

§ 153.131 REGULATIONS BY ZONING DISTRICTS.

(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 subchapter.

(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 subchapter.

(1) Banner, business, nameplate, political, portable, real estate sales, religious organization, temporary, wall and warning signs are allowed.

(2) No sign shall be so constructed as to have more than two surfaces.

(3) One of each of the permitted type signs, except temporary signs where two will be permitted and political signs where one for each candidate, will be permitted per lot frontage.

(4) The size of sign may be no more than a total of 32 square feet, with an eight-foot maximum for any dimension except as otherwise provided in § 153.130(D)(2) of this code.

(5) The top of the sign and supporting structure shall not exceed ten feet above grade except as otherwise provided in § 153.130(D)(2) of this code.

(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.*

(1) Gateway, nameplate, political, portable, real estate sales, religious organization, temporary, wall and warning signs are allowed.

(2) No sign shall be so constructed as to have more than two surfaces.

(3) The number of each type of sign allowed per lot frontage is one of each of the permitted type signs, except temporary signs where two will be permitted and political signs where one for each candidate will be permitted.

(4) The size of signs may be not more than a total of 16 square feet with a four-foot maximum for any dimension except as otherwise provided in this section. The total surface area for all signs shall not exceed 32 square feet per lot except as otherwise provided in § 153.130(D)(2) of this code.

(5) The top of the sign shall not exceed eight feet above grade except as otherwise provided in § 153.130(D)(2) of this code.

(6) The number and size of a gateway sign is exempted from this section of the code and is instead regulated in § 153.132(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.*

(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 six 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-premises 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 one-tenth 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) *Industrial (I) Zoning Districts.*

(1) The type of signs allowed are advertising, banner, business, illuminated, nameplate, political, portable, real estate sales, religious organization, temporary, wall and warning.

(2) The number of each type of sign allowed per lot frontage is one of each of the permitted type signs, except temporary where two will be permitted and political where one for each candidate will be permitted.

(3) No business sign shall exceed 100 square feet in area or face a Residential Zoning District. No other sign shall exceed 35 square feet in area, except a billboard sign.

(4) The top of the sign shall not exceed 20 feet above the average grade.

(5) Any sign over ten square feet, with the exception of a billboard sign, shall be set back at least ten feet from any lot line or right-of-way. All signs shall be set back at least 50 feet from any Residential or Agricultural Zoning District.

(Prior Code, § 12-211) (Ord. 1997-19, passed 7-15-1997; Ord. 09-2006, passed 9-13-2006; Ord. 01-2014, passed 5-20-2014)

§ 153.132 REGULATIONS BY SIGN TYPE.

(A) *Banner signs.*

(1) Banner signs shall conform to the provisions of this subchapter 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 square feet). The structure, including the border, trim and apron is not to exceed ten and one-half feet by 22 feet (231 square feet.)

(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) These signs shall be removed when the project is substantially completed.

(D) *Displays.*

(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 subchapter.

(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.

(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.* No electrically illuminated sign shall be permitted in a Residential or Agricultural Zoning District except as otherwise provided in § 153.130(D)(2) of this code.

(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 ten feet to a street right-of-way line or property line, notwithstanding more restrictive portions of this section, except as otherwise provided in § 153.131(E).

(F) *Gateway signs.* 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 the 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 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 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.*

(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-premises directional signs for public and non-profit organizations, including religious organizations.*

(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.*

(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.* 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 square feet) 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.*

(1) Real estate sales signs may be placed in any yard providing the 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) These signs shall not exceed 32 square feet in area and shall require a sign permit;

(b) Only one sign shall be erected on each road frontage with a maximum of two signs per project;

(c) These signs shall be removed when the project is 80% completed or within six months or when sold or leased, whichever comes first; and

(d) These signs shall not be located closer than 100 feet to any existing residence.

(M) *Temporary signs.*

(1) Signs for non-profit organizations, city sponsored events, fairs and the like 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 the 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.

(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 the signs do not exceed three square feet and are used exclusively for traffic control purposes.

(Prior Code, § 12-211.5) (Ord. 09-2006, passed 9-13-2006; Ord. 01-2014, passed 5-20-2014) Penalty, see § 153.999

§ 153.133 SIGN PERMIT CHART.

Key:	
Key:	
CC	Required City Council review and approval
CUP	Conditional use permit (issued by Zoning Administrator)
N	Not allowed
P	Permitted use
SP	Sign permit (issued by Zoning Administrator)

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

Zoning District	MS, A or AP	RR	VHS-R	VHS- C	I
Advertising/billboard sign	N	N	N	N	CUP
Banner sign	SP	N	N	SP	SP
Churches and other places of worship, on-premises signs	CUP	N	CUP	P	P
Displays	CUP	CUP	CUP	CUP	N
Flashing sign	N	N	N	N	N
Gateway sign	CC	CC	CC	CC	CC
Illuminated sign	N	N	CUP	CUP	P
Motion sign	N	N	N	N	N
Nameplate sign	P	P	N	SP	P
Off-premises directional signs (non-profit and religious)	SP	SP	SP	SP	SP
Political sign	P	P	P	P	P
Portable sign	SP	SP	SP	SP	SP
Real estate development project sales sign	SP	SP	SP	SP	N
Real estate sales sign (over 9 square feet in area)	SP	SP	SP	SP	SP
Real estate sales sign (up to 9 square feet in area)	P	P	P	P	P
Roof sign	N	N	N	N	N
Temporary sign	SP	SP	SP	SP	SP
Wall sign	P	P	SP	SP	SP
Warning sign	P	P	P	P	P

(Prior Code, § 12-212) (Ord. 1997-19, passed 7-15-1997; Ord. 97-40, passed 6-12-2001; Ord. 01-2014, passed 5-20-2014)

WIND ENERGY SYSTEMS

§ 153.145 PURPOSE.

The purpose of this subchapter is to regulate the installation and operation of a Wind Energy Conversion System (WECS) within the city not otherwise subject to siting and oversight by the state under the state's Power Plant Siting Act (M.S. §§ 216E.001 through 216E.18, as they may be amended from time to time).

(Prior Code, § 12-229) (Ord. 05-2010, passed 6-15-2010; Ord. 10-2010, passed 11-16-2010)

§ 153.146 DEFINITIONS.

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

A-WEIGHTED. A specific weighting of the sound pressure level for the purpose of determining the human response to sound.

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

L10. The sound level, expressed in dB(A) which is exceeded 10% of the time for a one-hour period, as measured by test procedures approved by the Director of the MPCA.

L50. The sound level, expressed in dB(A) which is exceeded 50% 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.

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.

WIND ENERGY CONVERSION SYSTEM (WECS). 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.

(Prior Code, § 12-229) (Ord. 05-2010, passed 6-15-2010; Ord. 10-2010, passed 11-16-2010)

§ 153.147 GENERAL REQUIREMENTS.

(A) *Safety design standards.*

(1) *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.

(2) *Clearance.* Rotor blades or airfoils must maintain at least 12 feet of clearance between their lowest point and the ground.

(B) *Standards.*

(1) *Generating capacity.* A WECS of no more than 40 kW in total name plate generating capacity shall be permitted in the city.

(2) *Number per lot.* No more than one WECS per lot shall be permitted.

(3) *Tower configuration.* Each WECS shall be installed with monopole or lattice tower type; no guyed towers shall be permitted.

(4) *Height.* Total height shall not exceed 135 feet from grade existing at the base of the tower prior to construction or grading.

(5) *Property line setback.* The setback from all property lines and other structures shall be one and one-half times the tower height plus the minimum accessory structure setback as defined in § 153.051 of this code.

(6) *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.

(7) *Lighting.* No tower requiring a light shall be allowed. Lighting of or on the tower shall be prohibited.

(8) *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.

(9) *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.

(10) *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 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.

(11) *Orderly development.* Upon issuance of a conditional use permit, each WECS applicant shall notify the appropriate state agency of the project location and details.

(C) *Performance standards.*

(1) *Noise.*

(a) The following standards which shall include ambient noise shall be measured and applied at all property lines.

Day (7:00 a.m. to 10:00 p.m.)		Night (10:00 p.m. to 7:00 a.m.)	
L10	L50	L10	L50
65 dB	60 dB	55 dB	50 dB

(b) 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; and
2. Existing plus proposed WECS: maximum estimate of noise from the proposed WECS plus the existing noise environment.

(c) No WECS shall be operated in a manner as to create a noise level exceeding the decibel limit set in Table 1 (see § 153.097 of this code) at any location outside the parcel on which the WECS is located.

(2) *Electrical codes and standards.* Each WECS and any accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.

(3) *Federal aviation administration.* Each WECS shall comply with FAA standards and permits.

(4) *State Building Code.* Each WECS shall comply with the International Building Code as adopted by the state.

(5) *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 state's Department of Transportation microwave transmissions.

(Prior Code, § 12-229) (Ord. 05-2010, passed 6-15-2010; Ord. 10-2010, passed 11-16-2010) Penalty, see § 153.999

§ 153.148 REQUIRED PERMITS.

(A) 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.

(B) In all cases, review by the 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 chapter.

(Prior Code, § 12-229) (Ord. 05-2010, passed 6-15-2010; Ord. 10-2010, passed 11-16-2010) Penalty, see § 153.999

§ 153.149 SUBMITTAL REQUIREMENTS.

The following information is required.

(A) The names of project applicant;

(B) The name of the project owner;

(C) The legal description and address of the project;

(D) 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;

(E) 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;

(F) Engineer's state certification and project design specifications; and

(G) Documentation of land ownership or legal control of the property.

(Prior Code, § 12-229) (Ord. 05-2010, passed 6-15-2010; Ord. 10-2010, passed 11-16-2010)

§ 153.150 DISTRICT REGULATIONS.

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

(Prior Code, § 12-229) (Ord. 05-2010, passed 6-15-2010; Ord. 10-2010, passed 11-16-2010)

SOLAR ENERGY SYSTEMS

§ 153.165 SCOPE.

This subchapter applies to all solar energy installations in the city.

(Prior Code, § 12-230) (Ord. 03-2015, passed 8-18-2015)

§ 153.166 PURPOSE.

(A) Consistent with the city's Comprehensive Plan, the intent of this subchapter is to allow reasonable capture and use, by households, businesses and property owners, of their solar energy resource, and encourage the development of

renewable energy businesses, consistent with community development standards.

(B) The city has adopted this subchapter for the following purposes:

(1) *Comprehensive Plan goals.* To meet the goals of the Comprehensive Plan and preserve the health, safety and welfare of the city's citizens by promoting the safe, effective and efficient use of active solar energy systems installed to reduce the on-site consumption of fossil fuels or utility-supplied electric energy. The following solar energy standards specifically implement the following goals:

(a) Encourage the use of local renewable energy resources, including appropriate applications for wind, solar and biomass energy; and

(b) Promote sustainable building design and management practices in residential, commercial and industrial buildings to serve the needs of current and future generations.

(2) *Green house gas reduction (GHG).* Solar energy is an abundant, renewable and nonpolluting energy resource and its conversion to electricity or heat will reduce our dependence on nonrenewable energy resources and decrease the green house gas (GHG) emissions and other air and water pollution that results from the use of conventional energy sources;

(3) *Local resource.* Solar energy is an under-used local energy resource. Encouraging the use of solar energy will diversify the community's energy supply portfolio and limit exposure to fiscal risks associated with fossil fuels; and

(4) *Improve competitive markets.* Solar energy systems offer additional energy choice to consumers and will improve competition in the electricity and natural gas supply market.

(Prior Code, § 12-230) (Ord. 03-2015, passed 8-18-2015)

§ 153.167 DEFINITIONS.

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

BUILDING-INTEGRATED SOLAR ENERGY SYSTEMS. An active solar energy system that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. **BUILDING-INTEGRATED SYSTEMS** include but are not limited to photovoltaic or hot water solar energy systems that are contained within roofing materials, windows, skylights and awnings.

COMMUNITY SOLAR. A solar-electric (photovoltaic) array that provides retail electric power (or a financial proxy for retail power) to multiple community members or businesses residing or located off-site from the location of the solar energy system, consistent with M.S. § 216B.1641, or successor statute, as it may be amended from time to time. A **COMMUNITY SOLAR** system may be either an accessory or a principal use.

GRID-INTERTIE SOLAR ENERGY SYSTEM. A photovoltaic solar energy system that is connected to an electric circuit served by an electric utility company.

OFF-GRID SOLAR ENERGY SYSTEM. A photovoltaic solar energy system in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility company.

PASSIVE SOLAR ENERGY SYSTEM. A solar energy system that captures solar light or heat without transforming it to another form of energy or transferring the energy via a heat exchanger.

PHOTOVOLTAIC SYSTEM. A solar energy system that converts solar energy directly into electricity.

RENEWABLE ENERGY EASEMENT, SOLAR ENERGY EASEMENT. An easement that limits the height or location, or both, of permissible development on burdened land on which the easement is placed in terms of a structure or vegetation, or both, for the purpose of providing access for the benefited land to wind or sunlight passing over the land on which the easement is placed, as defined in M.S. § 500.30 subdivision 3, or most recent version, as it may be amended from time to time.

RENEWABLE ENERGY SYSTEM. A solar energy or wind energy system. **RENEWABLE ENERGY SYSTEMS** do not include passive systems that serve a dual function, such as a greenhouse or window.

ROOF PITCH. The final exterior slope of a building roof calculated by the rise over the run, typically but not exclusively expressed in twelfths such as 3/12, 9/12, 12/12.

SOLAR ACCESS. Unobstructed access use of the solar resource (see definition below) on a lot or building, including access across adjacent parcel air rights, for the purpose of capturing direct sunlight to operate a solar energy system.

SOLAR COLLECTOR. A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical or electrical energy.

SOLAR COLLECTOR SURFACE. Any part of a solar collector that absorbs solar energy for use in the collector's energy transformation process. **COLLECTOR SURFACE** does not include frames, supports and mounting hardware.

SOLAR DAYLIGHTING. A device specifically designed to capture and redirect the visible portion of the solar spectrum, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

SOLAR ENERGY. Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

SOLAR ENERGY DEVICE. A system or series of mechanisms designed primarily to provide heating, cooling, electrical power, mechanical power, solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into uses either by active or passive means. The systems may also have the capability of storing energy for future utilization. Passive solar energy systems are designed as a **SOLAR ENERGY DEVICE**, such as a trombe wall, and not merely a part of a normal structure such as a window.

SOLAR ENERGY SYSTEM. A device or structural design feature, a substantial purpose of which is to provide for the collection, storage and distribution of sunlight for space heating or cooling, generation of electricity, water heating or providing daylight for interior lighting.

SOLAR FARM. A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A **SOLAR FARM** is the principal land use for the parcel on which it is located.

SOLAR HEAT EXCHANGER. A component of a solar energy device that is used to transfer heat from one substance to another, either liquid or gas.

SOLAR HOT AIR SYSTEM. An active solar energy system that includes a solar collector to provide direct supplemental space heating by heating and re-circulating conditioned building air. The most efficient performance typically uses a vertically-mounted collector on a south-facing wall.

SOLAR HOT WATER SYSTEM (also referred to as **SOLAR THERMAL**). A system that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs, including residential domestic hot water and hot water for commercial processes.

SOLAR MOUNTING DEVICES. Racking, frames or other devices that allow the mounting of a solar collector onto a roof surface or the ground.

SOLAR RESOURCE. A view of the sun from a specific point on a lot or building that is not obscured by any vegetation, building or object for a minimum of four hours between the hours of 9:00 a.m. and 3:00 p.m. standard time on any day of the year.

SOLAR STORAGE UNIT. A component of a solar energy device that is used to store solar generated electricity or heat for later use.

(Prior Code, § 12-230) (Ord. 03-2015, passed 8-18-2015)

§ 153.168 GENERAL REQUIREMENTS.

All solar energy systems shall comply with all applicable local, state and federal regulatory codes including all electrical, building and plumbing code requirements.

(A) *Permitted accessory use.* Active solar energy systems shall be allowed as accessory to the primary land use in all zoning districts in which structures of any sort are allowed and are designed to supply energy for the primary use.

(B) *Solar access.* The city encourages solar access to be protected in all new subdivisions and allows for existing solar to be protected consistent with state statutes.

(1) *Right to solar access.*

(a) No structure shall be erected that will block solar access for existing principal structures or infringe on the solar access of the buildable area of a vacant lot or parcel.

(b) No homeowners' agreement, covenant, common interest community or other contract between multiple property owners shall forbid installation of solar energy systems or create design standards that effectively preclude solar energy installations.

(2) *Easements allowed.* The city has elected to allow solar easements to be filed, consistent with M.S. § 500.30, as it may be amended from time to time. Any building owner can purchase an easement across neighboring properties to protect access to sunlight. The easement is purchased from or granted by owners of neighboring properties and can apply to buildings, trees or other structures that would diminish solar access.

(3) *Subdivision solar easements.* The city may require new subdivisions to identify and create solar easements when solar energy systems are implemented as a condition of a PUD, subdivision, conditional use or other permit, as specified in Section 8.

(C) *Safety conditions.* All applicable health and safety standards shall be met.

(D) *Required permits.* Building permits, electrical permits and/or plumbing permits are required to construct and install solar energy systems in the city, whether residential or commercial and whether ground-, pole-, building- or roof-mounted. Electrical permits are obtained through the state. Building and plumbing permit applications are obtained through the city and shall include:

(1) To-scale horizontal and vertical (elevation) drawings of the solar energy system, including:

(a) For a pitched roof-mounted system, the highest finished slope of the solar collector and the slope of the finished roof surface on which it is mounted.

(b) For a flat roof-mounted system, the distance to the roof edge or parapets on the building, identifying the height of the building on the street frontage side, the shortest distance of the system from the street frontage edge of the building, and the highest finished height of the solar collector above the finished surface of the roof and/or parapet.

(2) Site drawing showing the type and locations of the systems and their placement on the property, including required setbacks and property lines.

(E) *Interconnection agreement.*

(1) All electric solar energy systems that are connected to the electric distribution or transmission system through the existing service of the primary use on the site shall obtain an interconnection agreement with the electric utility in whose service territory the system is located.

(2) Solar energy systems connected directly to the distribution or transmission system must obtain an interconnection agreement with the interconnecting electric utility. Off-grid systems are exempt from this requirement.

(Prior Code, § 12-230) (Ord. 03-2015, passed 8-18-2015)

§ 153.169 STANDARDS.

All solar energy systems are subject to the accessory use standards for the district in which it is located, including, but not limited to, setback, height and coverage limits.

(A) *Aesthetic.* Solar energy systems are subject to the following aesthetic standards.

(1) Installation on residential structures must be designed to blend into the architecture of the building.

(2) Installation on commercial structures shall be placed on the roof to limit visibility from the public right-of-way or to blend into the roof design, provided that minimizing visibility still allows the property owner to reasonably capture solar energy.

(3) The color of the solar collector is not required to be consistent with other roofing materials.

(4) Active solar energy systems that do not meet the aesthetic standards will require a conditional use permit.

(B) *Size.* For residential applications, under no circumstances shall a solar array exceed 40 kW.

(C) *Height.*

(1) *Building- or roof-mounted systems.* Shall not exceed the maximum height allowed in any zoning district.

(a) Shall be no higher than 24 inches above the roof.

(b) For purposes of height measurement, solar systems other than building-integrated systems shall be considered to be mechanical devices and are restricted consistent with other building-mounted mechanical devices for the zoning district in which the system is being installed, except that solar energy systems shall not be required to be screened.

(2) *Ground- or pole-mounted systems.* Shall not exceed 20 feet in height when oriented at maximum tilt.

(D) *Set-backs.* Active solar energy systems must meet the accessory structure setback for the zoning district and primary land use associated with the lot on which the system is located.

(1) *Building- or roof-mounted systems.*

(a) In addition to the building setback, the collector surface and mounting devices for roof-mounted solar energy systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built, unless the collector and mounting system has been explicitly engineered to safely extend beyond the edge, and setback standards are not violated.

(b) Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the building on a side yard exposure.

(2) *Ground- or pole-mounted systems.* Must be set back from the property line the same distance as required for other accessory structures and may not extend into the side- or rear-yard setback when oriented at minimum design tilt.

(E) *Impervious coverage.* The surface area of pole- or ground-mount systems must comply with the city's overall impervious coverage requirements. Impervious coverage will be calculated based on the footprint of the system at minimum tilt.

(1) *Building- or roof-mounted systems.* Shall allow for adequate roof access to the south-facing or flat roof upon which the panels are mounted.

(2) *Ground- or pole-mounted system.* The collector surface of any foundation, compacted soil or other component of

the solar installation is considered impervious surface.

(3) *Stormwater runoff.* Vegetated ground under the collector surface shall be used to mitigate stormwater runoff.

(F) *Glare.* All solar energy systems shall minimize glare so as not to affect adjacent or nearby properties. Measures to minimize glare include selective placement of the system, screening on the north and/or sides of the solar array, modifying the orientation of the system, reducing use of the reflector system or other remedies that limit glare.

(G) *Historic buildings.* Solar energy systems on buildings within Designated Historic Districts or on locally designated historic buildings (exclusive of state or federal historic designation) will require an administrative permit and a design review by the Heritage Preservation Commission (HPC).

(Prior Code, § 12-230) (Ord. 03-2015, passed 8-18-2015)

§ 153.170 ZONING DISTRICT AND LOT SIZE REQUIREMENTS.

(A) *VHS Districts.*

(1) For ground-mounted systems, the maximum solar panel square footage allowed is 150 square feet or 1% of the total square footage of the lot, whichever is less.

(2) Roof-mounted systems solar panel square footage is not restricted, however, it may be limited by the size of the roof or the roof structure.

(3) Must meet city historical preservation standards.

(4) Requires an administrative permit and design review by the Heritage Preservation Commission (HPC).

(B) *Rural Residential (RR) and Agriculture (Ag) Districts.*

(1) On lots up to ten acres:

(a) If not fully screened: A maximum height of 15 feet at maximum vertical tilt and a total panel square footage of 300 square feet, at the required setback; and

(b) If fully screened: A maximum height of 20 feet and a total panel square footage of 1,000 square feet, subject to being fully screened from public roads and neighboring properties, and subject to statutory and/or public utility power generation restrictions.

(2) On lots ten to 20 acres:

(a) If not fully screened:

1. A maximum height of 15 feet at maximum vertical tilt and a total panel square footage of 300 square feet, at the required setback; and

2. A maximum height of 15 feet and a total panel square footage of 500 square feet if setback 200 feet from all property lines, subject to statutory and/or public utility power generation restrictions.

(b) If fully screened: A maximum height of 20 feet and a total panel square footage of 1,000 square feet, subject to statutory and/or public utility power generation restrictions, at the required setback.

(3) On lots 20 acres or greater:

(a) If not fully screened:

1. A maximum height of 20 feet at maximum vertical tilt and a total panel square footage of 300 square feet, at the required setback;

2. A maximum height of 20 feet and a total panel square footage of 500 square feet if setback 200 feet from all property lines, subject to statutory and/or public utility power generation restrictions; and

3. A maximum height of 20 feet and a total panel square footage 750 square feet if setback 250 feet from all property lines, subject to statutory and/or public utility power generation restrictions.

(b) If fully screened: A maximum height of 20 feet and a total panel square footage of 2,000 square feet if fully screened, subject to statutory and/or public utility power generation restrictions, at the required setback.

(C) *Industrial Districts.*

(a) Rooftop community systems are permitted only in the Industrial Districts.

(b) Ground-mount community solar energy systems are allowed only in the Industrial Districts and are allowed as conditional uses.

(c) Solar farms are only allowed in the Industrial Districts.

(Prior Code, § 12-230) (Ord. 03-2015, passed 8-18-2015)

§ 153.171 SOLAR USE STANDARDS.

(A) *Community solar energy systems.* Roof- or ground-mount solar energy systems, may be either accessory or primary use, designed to supply energy for off-site uses on the distribution grid, consistent with M.S. § 216B.1641 or successor statute, as it may be amended from time to time.

(1) Rooftop community systems are permitted only in the Industrial Districts.

(2) Ground-mount community solar energy systems are allowed only in the Industrial Districts and are allowed as conditional uses.

(3) An interconnection agreement must be completed with the electric utility in whose service territory the system is located.

(4) All structures must comply with setback, height and coverage limitations for the district in which the system is located.

(5) Ground-mount systems must comply with all required standards for structures in the district in which the system is located.

(B) *Solar farms.*

(1) *General provisions.*

(a) Solar farms are only allowed in the Industrial Districts.

(b) Solar farms require a conditional use permit.

(c) Solar farms are subject to the city's stormwater management and erosion and sediment control provisions and National Pollutant Discharge Elimination System (NPDES) permit requirements.

(2) *Foundations.* A qualified engineer shall certify that the foundation and design of the solar panels racking and support is within accepted professional standards, given local soil and climate conditions.

(3) *Power and communication lines.* Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings shall be buried underground. Exemptions may be granted by the city in instances where shallow bedrock, water courses or other elements of the natural landscape interfere with the ability to bury lines, or distance makes undergrounding infeasible, at the discretion of the Zoning Administrator.

(4) *Site plan required.* A detailed site plan for both existing and proposed conditions must be submitted, showing location of all solar arrays, other structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, electric equipment and all other characteristics requested by the city. The site plan should also show all zoning districts and overlay districts.

(5) *Aviation protection.* For solar farms located within 500 feet of an airport or within the A or B safety zones of an airport, the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.

(6) *Agricultural protection.* Solar farms must comply with site assessment or soil identification standards that are intended to protect agricultural soils.

(7) *Proper maintenance.* All solar installations shall be maintained according to industry standards and shall be in working order for the duration of its useful life.

(Prior Code, § 12-230) (Ord. 03-2015, passed 8-18-2015) Penalty, see § 153.999

§ 153.172 DISCONTINUATION AND DECOMMISSIONING.

(A) A decommissioning plan shall be required to ensure that facilities are properly removed if they are known to be dysfunctional or are discontinued after their useful life.

(B) Decommissioning of solar panels must occur in the event they are not in use for six consecutive months.

(C) The plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and a plan ensuring financial resources will be available to fully decommission the site.

(D) Disposal of structures and/or foundations shall meet the provisions of the city's solid waste ordinance.

(E) The city may require the posting of a bond, letter of credit or the establishment of an escrow account to ensure proper decommissioning.

(Prior Code, § 12-230) (Ord. 03-2015, passed 8-18-2015)

§ 153.999 PENALTY.

(A) The violation of any provision of this chapter or the violation of the conditions or provisions of any permit issued

pursuant to this chapter shall be a misdemeanor and upon conviction thereof the violator shall be subject to punishment in accordance with § 10.99 of this code. Unless otherwise provided, each act of violation and every day on which the violation occurs or continues constitutes a separate offense.

(Prior Code, § 12-59)

(B) Any owner who fails to implement corrective measures to the satisfaction of the City Council according to § 53.058 of this code within one year of notice shall be subject to a fine of not more than \$1,000. 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.

(Prior Code, § 12-139)

(C) The penalty for a violation of § 153.115 of this code shall be a misdemeanor.

(D) In addition to penalty provisions in division (D) above, the administrative fines for violations of §153.115 of this code shall be as established by the City Council in the annual fee schedule.

(E) Section 10.99 of this code shall apply to a violation of §153.097 of this code.

(Ord. 03-2020, passed 3-17-2020)

CHAPTER 154: SEWER REGULATIONS

Section

General Provisions

154.01 Purpose

154.02 Definitions

154.03 Connection to individual subsurface septic treatment system (ISTS) and community septic treatment systems

154.04 Connection to large subsurface treatment system (LSTS)

154.05 Inspections

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154.07 Appeals or variance requests

154.08 ISTS located in a floodplain and/or subject to flooding

154.09 Septic system compliance and inspection

Public Sewage Treatment Systems

154.20 Unlawful surface discharge

154.21 Unlawful connection to public sewage treatment system, permit

154.22 Unlawful discharge to LSTS

154.23 Pretreatment, control and refusal of extraordinary wastes

154.99 Penalty

Cross-reference:

Septic permits regarding zoning, see § 153.032

Sewers and subdivisions, see § 160.082

GENERAL PROVISIONS

§ 154.01 PURPOSE.

This chapter 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; and

(B) Regulating the discharge of wastes into soil treatment units and associated collection systems which would have an adverse effect on the operation and maintenance of the wastewater treatment facilities.

(Prior Code, § 12-1951)

§ 154.02 DEFINITIONS.

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

ACTIVE MAINTENANCE. A maintenance program for individual sewage treatment systems whereby the property owner has complete responsibility for effecting operation, maintenance and replacement (OM&R) in a manner acceptable to the city.

BUILDING DRAIN. The part of the lower horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer which begins at least one foot outside the building line.

BUILDING SEWER. The part of the drainage system which extends from the end of the building drain and conveys its discharge to the public sewer, private sewer, individual sewage-disposal system or other point of disposal.

BIOLOGICAL OXYGEN DEMAND (BOD). The amount of oxygen required for organic material breakdown. It is often used as a gauge for organic water quality.

COMMUNITY SEWAGE TREATMENT SYSTEM. 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. A legal transfer of rights, privileges or uses of private property.

EQUIVALENT RESIDENTIAL UNITS (ERU). Wastewater charges will be established based on **EQUIVALENT RESIDENTIAL UNITS (ERU)**. One **ERU** is defined as a unit of wastewater volume of 240 gallons per day with a theoretical waste strength of 300 mg/l of BOD, 200 mg/l of TSS and 50 mg/l O&G.

GARBAGE. Solid waste resulting from the domestic and commercial preparation, cooking and dispensing of food and from the handling, storage or sale of meat, fish, fowl, fruit or vegetables and condemned food.

HISTORIC VILLAGE SEWAGE TREATMENT SERVICE AREA (HVSTSA). The part of the city served by the publicly operated large subsurface/sewage treatment system as shown in the Comprehensive Plan.

INDIVIDUAL SUBSURFACE SEWAGE TREATMENT SYSTEM (ISTS) or ON-SITE SEWAGE TREATMENT SYSTEM.

(1) An individual sewage treatment system or part thereof, as set forth in M.S. §§ 115.03 and 115.55, as they may be amended from time to time, that employs sewage tanks or other treatment devices with final discharge into the soil below the natural soil elevation or elevated final grade that are designed to receive a sewage design flow of 5,000 gallons per day or less.

(2) **ISTS** includes the holding tanks and privies, but does not include any pump tanks used in a sewage collection system. **ISTS** does not include building sewers or other components regulated under Minn. Rules part 4715, or sewage collection systems.

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

LARGE SUBSURFACE/SEWAGE TREATMENT SYSTEM (LSTS). A subsurface collection and sewage treatment system that employs sewage tanks or other treatment devices with final discharge into the soil below the natural soil elevation or elevated final grade and that is designed to receive sewage design flow of greater than 10,000 gallons per day.

NATURAL OUTLET. Any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

NORMAL DOMESTIC STRENGTH WASTES. Wastes which are characterized by a per capita discharge of 75 gallons per day at a loading of 300 mg per liter BOD, 200 mg per liter TSS and 50 mg per liter O&G.

O&G (also known as **FOG**). Oil and grease (or fat, oil and grease), a component of sewage typically originating from foodstuffs such as animal fats or vegetable oils or consisting of compounds of alcohol or glycerol with fatty acids such as soaps and lotions, typically expressed in mg/l.

OPERATION AND MAINTENANCE. 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. 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. 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. The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

SANITARY SEWER. A sewer which carries sewage and to which stormwater, surface water and groundwater are not intentionally discharged.

SANITARY WASTE. The liquid and water carried wastes discharged from sanitary plumbing facilities.

SEWER. A pipe or conduit for carrying sewage, industrial wastes or other waste liquids.

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

SUSPENDED SOLIDS (TSS). 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. 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 § 307(a) of the Clean Water Act.

UNPOLLUTED WATER. Clean water uncontaminated by industrial wastes, other wastes or any substance which renders 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. The structures, equipment or processes required to collect, convey and treat domestic and commercial waste and dispose of the effluent.

(Prior Code, § 12-1952) (Ord. 08-2010, passed 9-21-2010; Ord. 04-2015, passed 9-15-2015)

§ 154.03 CONNECTION TO INDIVIDUAL SUBSURFACE SEPTIC TREATMENT SYSTEM (ISTS) AND COMMUNITY SEPTIC TREATMENT SYSTEMS.

All improved properties not located in the Historic Village Sewage Treatment Service Area shall be connected to a compliant ISTS, per Minnesota Rules.

(Prior Code, § 12-1953)

§ 154.04 CONNECTION TO LARGE SUBSURFACE TREATMENT SYSTEM (LSTS).

(A) This chapter shall apply and be in effect for the stated purposes within the Historic Village Sewage Treatment Service Area, as shown in the Comprehensive Plan. Any property outside of the HVSTSA shall be connected to an individual subsurface sewage treatment system (ISTS) meeting the requirements of § 153.032 of this code or to a community sewage treatment system approved under the authority of the city.

(B) The sewer permit fee and sewer connection charges shall be established by the city, as outlined in the city's fee schedule.

(C) At the time the LSTS becomes available to properties within the HVSTSA, the City Engineer shall contact the property owner in writing notifying them of the availability of the LSTS and requesting completion of a sewer permit and to schedule a connection. Properties previously connected to the "201" community sewage treatment system or with existing ISTS which are failing to adequately treat sewage, posing a hazard to the public health or otherwise deemed by the city to be non-compliant shall connect within 60 days from when the LSTS becomes available.

(1) In the case when it is not clear whether an existing ISTS is compliant; if a property owner is not able to demonstrate that the existing ISTS is compliant, a compliance inspection is required within 30 days.

(2) If the compliance inspection does not find that the ISTS is compliant, or if the property owner fails to obtain a compliance inspection within 30 days, the property shall be connected to the sanitary sewer system within 60 days.

(D) At the time a property within the HVSTSA with an ISTS is sold, transferred or otherwise disposed of, the property shall connect to the LSTS within 60 days.

(E) All properties located in the HVSTSA shall be connected to the LSTS no later than December 31, 2024.

(F) Properties within the HVSTSA where construction is proposed for a new structure with a building drain requiring sewage treatment shall not be granted final building permit approval without the issuance of a sewer permit to connect to the LSTS system.

(G) 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's 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.

(H) If ground conditions do not reasonably allow a connection to sewer within the required 60-day period, i.e. the ground is frozen, an extended time for connection could be allowed, as determined by the city.

(I) A non-compliant ISTS that is not connected within the required timeline shall be subject to a fee, and the fee shall be as set out in the city's fee schedule.

(Prior Code, § 12-1954) (Ord. 02-2019, passed 6-18-2019)

§ 154.05 INSPECTIONS.

Inspections of ISTS, community systems or connections to LSTS, including inspections to determine unlawful connections and unlawful discharge to LSTS, as required to determine compliance with this chapter shall be performed by the City Administrator or his or her agent under the following circumstances.

(A) Duly authorized employees of the city shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling and testing in accordance with § 10.20 of this code and the provisions of this chapter. 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 or her agent, for the purpose of performing inspections required under this chapter.

(C) While performing the necessary work on private property as referred to in division (A) above, 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 chapter 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 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 chapter:

- (1) Withhold inspections or issuance of certificates or approvals;
- (2) Revoke any permit issued by the city to the applicant;
- (3) Conduct remedial or corrective action on the development site or adjacent site affected by the failure;
- (4) Charge the applicant for all costs associated with correcting the failure or remediating damage from the failure; if payment is not made within 30 days, payment will be made from the applicant's financial securities; and/or
- (5) Bring other actions against the applicant to recover costs of remediation or meeting the terms of this chapter.

(Prior Code, § 12-1955) (Ord. 03-2017, passed 3-21-2017; Ord. 02-2019, passed 6-18-2019) Penalty, see § 154.99

§ 154.06 ENFORCEMENT.

(A) The City Administrator and his or her agent shall be responsible for administration and enforcement of this chapter.

(B) The City Administrator or his or her agent shall be qualified and certified by the MPCA as competent in the design, evaluation and inspection of ISTS and connections to LSTS and shall carry a current individual sewage treatment system certificate and a current class C operator's certificate.

(Prior Code, § 12-1957) Penalty, see § 154.99

§ 154.07 APPEALS OR VARIANCE REQUESTS.

(A) The City Council shall hear and decide appeals and review any order, decision or determination made by the City Administrator and his or her agent regarding the enforcement of this chapter.

(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.

(Prior Code, § 12-1957)

§ 154.08 ISTS LOCATED IN A FLOODPLAIN AND/OR SUBJECT TO FLOODING.

ISTS located in a floodplain and/or subject to flooding shall be prohibited from being used during periods when the system does not meet the required three-foot separation from groundwater that is necessary to properly treat wastewater and/or any part of the system is inundated with water in order that wastewater may be released into the floodwaters, with the exception that a water-tight septic tank that can be disconnected and sealed off from the drainfield and regularly pumped to prevent wastewater from being released into the floodwaters could continue to be used.

(Ord. 02-2019, passed 6-18-2019) Penalty, see § 154.99

§ 154.09 SEPTIC SYSTEM COMPLIANCE AND INSPECTION.

(A) In addition to the septic system compliance inspection regulations detailed in § 8.10, Ch. 4 of the county's Subsurface Sewage Treatment System (SSTS) Regulations, Ord. 196, the city does hereby require existing septic systems to be inspected for compliance when any building permit application is made for work:

- (1) That has a valuation of over \$75,000; or
- (2) That has a value that is more than 40% of the assessed value of the principal structure on the property.

(B) A septic inspection must be conducted to ensure compliance with applicable requirements, unless the owner can document that the septic system has passed an inspection within the last ten years.

(Ord. 10-2016, passed 10-18-2016)

PUBLIC SEWAGE TREATMENT SYSTEMS

§ 154.20 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 chapter and the city's National Pollutant Discharge Elimination System (NPDES) permit.

(Prior Code, § 12-1981) Penalty, see § 154.99

§ 154.21 UNLAWFUL CONNECTION TO PUBLIC SEWAGE TREATMENT SYSTEM, PERMIT.

It shall be unlawful for any person to connect a building sewer to the large subsurface treatment system in the HVSTSA without first obtaining a sewer permit from the city.

(Prior Code, § 12-1982) Penalty, see § 154.99

§ 154.22 UNLAWFUL DISCHARGE TO LSTS.

(A) No person shall discharge or cause to be discharged directly or indirectly any waste which, by volume or strength or nature, may harm the LSTS facility or cause obstruction to the free flow in sewers or endanger life or cause a nuisance.

(B) No person shall discharge or cause to be discharged directly or indirectly any stormwater, groundwater, roof runoff, subsurface drainage, waste from on-site disposal systems, unpolluted cooling or processing water to the LSTS except as permitted by the city.

(C) No person shall connect a sump pump to the LSTS. Unlawful connections shall be subject to penalty, per city's fee schedule.

(D) Stormwater and all other unpolluted water shall be discharged to a storm sewer or to the ground surface, and as allowed by MPCA.

(E) No person shall discharge or cause to be discharged directly or indirectly to any treatment system the following substances:

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

(2) Any water or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance or create any hazard in the wastewater treatment works;

(3) Any water or waste having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and people;

(4) Solid or viscous substances, either whole or ground, in quantities or of a 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; and/or

(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 affect the permeability of soils, such as dairy products and blood.

(F) No person shall discharge or cause to be discharged directly or indirectly the following described substances to the LSTS unless, in the opinion of the city, the discharge will not harm the wastewater facilities, nor cause obstruction to free flow in the LSTS, nor otherwise endanger life, limb or public property, nor constitute a nuisance. In forming its opinion as to the acceptability of the wastes, the city may give consideration to 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 the determination either on a general basis or as to discharges from individual users or specific discharges, and may prohibit certain discharges from individual users because of unusual concentrations or combinations which may occur. The substances include:

(1) Any liquid or vapor having a temperature in excess of 150°F (65°C);

(2) Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of 50 milligrams per liter or containing substances which may solidify or become viscous at temperatures between 32°F and 150°F (0°C and 65°C). Any garbage that has not been ground or comminuted to the degree that all particles will be carried freely in suspension under flows normally prevailing in the public sewers, with no particles greater than one-half inch in any dimension. Commercial sources shall have a grease interceptor internal or external prior to discharge. O&G must be intercepted prior to discharge;

(3) Any water or wastes containing strong acid, iron pickling wastes or concentrated plating solutions, whether neutralized or not; substances not intended for use in household cleaning, including but not limited to solvents, pesticides, flammables, photo finishing chemicals, paint and dry-cleaning chemicals and medicines;

(4) Chemically-treated hot tub and all pool water; floor drains from garages;

(5) Any water or wastes containing phenols or other taste or odor producing substances which constitute a nuisance or hazard to the structures, equipment or personnel of the sewage works, or which interfere with the treatment required to meet the requirements of the state or federal government, or any other public agency with proper authority to regulate the discharge from the sewage treatment plant;

(6) Any radioactive wastes or isotopes of the half-life or concentration that they are not in compliance with regulations issued by the appropriate authority having control over their use or may cause damage or hazards to the treatment works or personnel operating it;

(7) Any water or wastes having a pH in excess of 9.5; and

(8) Materials which exert or cause:

(a) Unusual concentrations of suspended solids, (such as, but not limited to, Fuller's earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride or sodium sulfate);

(b) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions);

(c) Unusual BOD or chemical oxygen demand in the quantities as to constitute a significant load on the wastewater treatment facilities; and

(d) Unusual volume of flow or concentration of waste constituting a slug.

(Prior Code, § 12-1984) (Ord. 02-2009, passed 4-21-2009; Ord. 02-2019, passed 6-18-2019) Penalty, see § 154.99

§ 154.23 PRETREATMENT, CONTROL AND REFUSAL OF EXTRAORDINARY WASTES.

(A) If any water or wastes are discharged, or are proposed to be discharged directly or indirectly to the LSTS, which water or wastes do not meet the standards set out in or promulgated under this section, or which in the judgment of the city may have a deleterious effect upon the treatment facilities, processes, equipment or receiving waters or which otherwise create a hazard to life, or constitute a public nuisance, the city may take all or any of the following steps:

(1) Refuse to accept the discharges;

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

(3) Require pretreatment to an acceptable condition for the discharge to the public sewers; or

(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 C.F.R. part 403, entitled *Guidelines Establishing Test Procedure for the Analysis of Pollutants*, and the state's 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 § 154.22 of this code, or any flammable wastes, sand or other harmful ingredients; except that the 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 or her 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 the necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. These 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 chapter shall be determined in accordance with 40 C.F.R. part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants; the latest edition of *Standard Methods for the Examination of Water and Wastewater* shall be determined at the control structure provided, or upon suitable samples taken at the 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 chapter and any special condition for discharge established by the city or regulatory agencies having jurisdiction over the discharge. The number, type and frequency of sampling and laboratory analyses to be performed by the owner shall be as stipulated by the city. The industry must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with 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 the 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.

(Prior Code, § 12-1985) Penalty, see § 154.99

§ 154.99 PENALTY.

(A) It is hereby declared unlawful for any person to violate any term or provision of this chapter. All violations and penalties of this chapter shall following the procedures set forth in § 10.99 of this code.

(B) If no action or remedy is made regarding making a required connection to the LSTS, the city will make that connection to the LSTS and shall assess the cost of connection to benefitting properties.

(C) Any person failing to comply with or violating any regulations in §154.05 of this code, 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.

(Prior Code, § 12-1958) (Ord. 03-2017, passed 3-21-2017)

CHAPTER 155: WASTEWATER SERVICE CHARGE SYSTEM

Section

Charges Established

155.01 Sewer utility and connection charges

155.02 Equivalent residential units (ERU)

155.03 Annual user charge rates

155.04 Records

Determination of Charges

- 155.15 Recovery of costs
- 155.16 Fees and payments
- 155.17 Septic tank effluent pumping surcharge
- 155.18 Fees for unusual wastes
- 155.19 Toxic or incompatible waste clean-up
- 155.20 Establishment of special accounts

Administration

- 155.35 Applicability of wastewater service charge system
- 155.36 Enforcement
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Failure to Make Payment

- 155.50 Interest on unpaid balances
- 155.51 Permit revocation and service disconnection
- 155.52 Effective date

- 155.99 Penalty

CHARGES ESTABLISHED

§ 155.01 SEWER UTILITY AND CONNECTION CHARGES.

(A) *Sewer utility charge.* The city hereby establishes a sewer utility charge system whereby revenue collected from users of the LSTS will be used to offset all expenditures incurred for administration, annual operation and maintenance and equipment replacement.

(B) *Sewer connection charge.*

(1) The city hereby establishes a sewer connection charge whereby a one- time connection fee will be collected from new properties to cover the costs related to capital investments in the LSTS.

(2) New properties shall include any properties connected to the LSTS that were not originally assessed for the construction, including those newly created lots through lot split or subdivision.

(Prior Code, § 12-2201) (Ord. 04-2015, passed 9-15-2015)

§ 155.02 EQUIVALENT RESIDENTIAL UNITS (ERU).

(A) Wastewater charges will be established based on equivalent residential units (ERU). One ERU is defined as a unit of wastewater volume of 240 gallons per day with a theoretical waste strength of 300 mg/l of BOD, 200 mg/l of TSS and 50 mg/L O&G. The assignment of ERUs will be made by the city. Commercial properties will have multiple units as identified by the City Administrator or his or her agent.

(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. The meters shall be equipped with remote registering recorders located at an accessible site on the owner's property.

(C) (1) The city may, at its discretion require nonresidential users to install water meters for the purpose of determining wastewater volume. The city may require residential connections to install water or wastewater meters within the HVSTSA as part of a comprehensive program to install meters.

(2) When so required, the 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.

(Prior Code, § 12-2202) (Ord. 02-2009, passed 4-21-2009; Ord. 04-2015, passed 9-15-2015)

§ 155.03 ANNUAL USER CHARGE RATES.

At the beginning of each calendar year, the city will update its user charge rates as part of the city's fee schedule approval.

(Prior Code, § 12-2203) (Ord. 04-2015, passed 9-15-2015)

§ 155.04 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.

(Prior Code, § 12-2204) (Ord. 04-2015, passed 9-15-2015)

DETERMINATION OF CHARGES

§ 155.15 RECOVERY OF COSTS.

It is the intent of this subchapter 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.

(Prior Code, § 12-2211) (Ord. 04-2015, passed 9-15-2015)

§ 155.16 FEES AND PAYMENTS.

All users of the wastewater treatment facilities shall be charged for sewer service based on the number of equivalent residential units assigned. Payment shall be rendered in full within 30 days of the billing date.

(Prior Code, § 12-2212) (Ord. 04-2015, passed 9-15-2015)

§ 155.17 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 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.

(Prior Code, § 12-2214) (Ord. 04-2015, passed 9-15-2015)

§ 155.18 FEES FOR UNUSUAL WASTES.

If a user discharges wastes of unusual strength or character to the treatment facilities which cause or increase the operation and maintenance costs, he or she shall be ordered either to install pretreatment facilities or pay for the extra costs of treating the wastes. This decision will be made by the city, prior to the time the user begins to discharge extra strength wastes.

(Prior Code, § 12-2215) (Ord. 04-2015, passed 9-15-2015)

§ 155.19 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 the wastes, at no expense to the city.

(Prior Code, § 12-2216) (Ord. 04-2015, passed 9-15-2015)

§ 155.20 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 ensure adequate replacement shall be held in the replacement fund separate from the Operation and Maintenance Fund proportionately to each fund.

(Prior Code, § 12-2217) (Ord. 04-2015, passed 9-15-2015)

ADMINISTRATION

§ 155.35 APPLICABILITY OF WASTEWATER SERVICE CHARGE SYSTEM.

This subchapter shall apply and be in effect for the stated purposes within the historic village sewage treatment service area in the city.

(Prior Code, § 12-2226) (Ord. 04-2015, passed 9-15-2015)

§ 155.36 ENFORCEMENT.

(A) The City Administrator shall be responsible for administration and enforcement of this chapter.

(B) The City Administrator or his or her agent shall be qualified and certified by the MPCA as competent in the design, evaluation and inspection of the following sewage treatment systems as overseen or regulated by the city:

(1) Large subsurface/sewage treatment systems, and shall carry a current large subsurface/sewage treatment system certificate and a current class C operator's certificate;

(2) Individual on-site sewage treatment systems, and shall carry a current individual sewage certificate and a current Class D operation's certificate; and

(3) Community sewage treatment systems.

(Prior Code, § 12-2227) (Ord. 04-2015, passed 9-15-2015)

§ 155.37 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 chapter.

(B) The Board of Adjustment and 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.

(Prior Code, § 12-228) (Ord. 04-2015, passed 9-15-2015)

FAILURE TO MAKE PAYMENT

§ 155.50 INTEREST ON UNPAID BALANCES.

(A) In addition to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the owner or user of the real estate being served by the treatment works shall be liable for interest upon all unpaid balances at the rate set forth in the city's fee schedule.

(Prior Code, § 12-2237)

(B) It is the policy of the city to discontinue utility service to customers by reason of nonpayment of bills only after notice and a meaningful opportunity to be heard on disputed bills. The city's form for application for utility service and all bills shall contain, in addition to the title, address, room number and telephone number of the official in charge of billing, clearly visible and easily readable provisions to the effect that:

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

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

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

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

(D) When it becomes necessary for the city to discontinue utility service to a customer for nonpayment of bills, service will be reinstated only after all bills for service then due have been paid, along with a turn-on charge in the sum of \$20.

(Ord. 04-2015, passed 9-15-2015)

§ 155.51 PERMIT REVOCATION AND SERVICE DISCONNECTION.

The city reserves the right to revoke discharge permits and to disconnect service to any user whenever wastewater treatment becomes unacceptable or negatively impacts the LSTS.

(Prior Code, § 12-2238) (Ord. 04-2015, passed 9-15-2015)

§ 155.52 EFFECTIVE DATE.

The ordinance codified in this chapter took effect upon passage and publication.

(Prior Code, § 12-2239) (Ord. 04-2015, passed 9-15-2015)

§ 155.99 PENALTY.

(A) Any bill not paid four 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 and 12 weeks after the billing date.

(B) Should a bill still be delinquent after 120 days, the city may elect to take the following actions.

(1) *Delinquent bills.* 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.

(2) *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 this 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 the form of a sworn statement setting forth:

(a) A description of the real estate, sufficient for the identification thereof, upon or for which the sewage service was supplied;

(b) The amount of money due for sewage service; and

(c) The date or dates when the 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.

(3) *Civil action.* In the alternative of levying a lien, the city may, at its discretion, file suit in a civil action to collect the 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. The attorney's fees shall be fixed by order of the court.

(Prior Code, § 12-2236) (Ord. 02-2009, passed 4-21-2009; Ord. 04-2015, passed 9-15-2015)

CHAPTER 156: SHORELAND MANAGEMENT

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GENERAL PROVISIONS

§ 156.001 STATUTORY AUTHORIZATION.

This chapter is adopted pursuant to the authorization and policies contained in M.S. §§ 103F.201 through 103F.227, as it may be amended from time to time, Minn. Rules parts 6120.2500 through 6120.3900, and the planning and zoning enabling legislation in M.S. Ch. 462, as it may be amended from time to time.

(Prior Code, § 12-276)

§ 156.002 POLICY.

(A) 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.

(B) 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.

(Prior Code, § 12-277)

§ 156.003 JURISDICTION.

The provisions of this chapter shall apply to the shorelands of the public waterbodies as classified in § 156.035 of this code. Pursuant to Minn. Rules parts 6120.2500 through 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 chapter.

(Prior Code, § 12-278)

§ 156.004 COMPLIANCE.

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 chapter and other applicable regulations.

(Prior Code, § 12-279)

§ 156.005 ENFORCEMENT.

The Zoning Administrator is responsible for the administration and enforcement of this chapter.

(Prior Code, § 12-280) Penalty, see § 156.999

§ 156.006 INTERPRETATION.

In their interpretation and application, the provisions of this chapter 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.

(Prior Code, § 12-281)

§ 156.007 ABROGATION AND GREATER RESTRICTIONS.

(A) It is not intended by this chapter to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

(B) Where the conditions imposed by any provision of this chapter are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution or regulation of any kind, the regulations which are most restrictive or which impose higher standards or requirements shall prevail.

(Prior Code, § 12-282)

§ 156.008 DEFINITIONS.

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

BLUFF. A topographic feature such as a hill, cliff or embankment having the following characteristics:

- (1) Is a slope of 18% or greater as measured over horizontal distances of 50 feet or more;
- (2) The slope drains toward the waterbody; and
- (3) Part or all of the feature is located in the shoreland area.

BLUFF IMPACT ZONE. A bluff and land located within 40 feet from the top of a bluff.

BLUFFLINE. A line along the top of a slope connecting the points at which the slope, proceeding away from the water, becomes less than 18% and it only includes slopes greater than 18% 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. A structure designed and used solely for the storage of boats or boating equipment.

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

COMMISSIONER. The Commissioner of the Department of Natural Resources.

CONDITIONAL USE. A land use or development as defined by this chapter which may be allowed as provided by this chapter.

CONDITIONAL USE PERMIT. 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 Ch. 153 of this code, exist, the use or development conforms to the comprehensive and use plan of the community, and the use is compatible with the existing neighborhood.

DECK. 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 above ground.

DUPLEX. 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. A designated location for residential use by one or more persons using temporary or moveable shelter, including camping and recreational vehicle sites.

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

EARTHEN TONE. 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. 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. §§ 93.44 through 93.51, as they may be amended from time to time.

FOREST LAND CONVERSION. The clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.

FOREST MANAGEMENT. The primary use of the land is for commercial timber production.

GUEST COTTAGE. Is not permitted in any zoning district.

HARDSHIP. The same as that term is defined in M.S. Ch. 462, as it may be amended from time to time.

INDUSTRIAL USES. The use of land or buildings for the production, manufacture, warehousing, storage or transfer of goods, products, commodities or other wholesale items.

INTENSIVE VEGETATION CLEARING. The complete removal of trees or shrubs in a contiguous patch, strip, row or block.

LOT. A parcel of land designated by plat, metes and bounds, registered land survey, auditor's plat or other accepted means and separated from other parcels or portions by the description for the purpose of sale, lease or separation.

LOT COVERAGE. The portion of a lot covered by any structures, driveway, parking facility or any impervious surface.

LOT WIDTH. Three hundred feet of frontage on an improved public road and at the ordinary high water mark.

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

ORDINARY HIGH WATER LEVEL. 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. Any water as defined in M.S. § 645.44, subdivision 8a, and M.S. § 103G.005, subdivision 15a, as they may be amended from time to time.

PUBLIC WATER. Any waters as defined in M.S. § 645.44, subdivision 8a, and M.S. § 103G.005, subdivision 15a, as they may be amended from time to time.

SCENIC EASEMENT, also referred to as a **NATURAL PROTECTION EASEMENT**. 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.

(1) **SCENIC EASEMENTS** shall be required on slopes of 18% and greater, wetlands, drainageways and other lands and soils judged to be fragile by the soil conservation service. The easements shall be required as a condition of subdivision approval, and shall prohibit the following activities:

- (a) Dumping;
- (b) Burning;
- (c) Grading;
- (d) Grazing of domesticated farm animals;
- (e) Vegetative cutting;
- (f) Motorized vehicles; and
- (g) Construction of any structure, including driveways.

(2) The **SCENIC EASEMENTS** shall be recorded against the affected lots in the subdivision.

(3) 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 access.

(4) 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. 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. The preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils,

steep slopes, susceptibility to flooding or occurrence of flora or fauna in need of special protection.

SETBACK. 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. A septic tank and soil absorption system as described in §156.062 of this code.

SEWER SYSTEM. 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. Land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50% of the structure setback.

SHORELAND. 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. 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's Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of M.S. § 307.08, as it may be amended from time to time. 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 state's Historical Society. All unplatted cemeteries are automatically considered to be **SIGNIFICANT HISTORIC SITES**.

SPECIAL PROTECTION DISTRICT. 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.

STRUCTURE. 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. Land that is divided for the purpose of sale, rent or lease.

VARIANCE. The same as that term is defined or described in M.S. Ch. 462, as it may be amended from time to time.

WETLANDS. 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 *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 of 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.

WETLANDS IN THIS CITY. Are identified in the city's water resources inventory and the county's *Soil and Water Conservation District*, January 1983, or later revisions.

(Prior Code, § 12-283) Penalty, see § 156.999

ADMINISTRATION

§ 156.020 PERMITS REQUIRED.

(A) A permit is required for the construction of buildings or building additions (and including 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 § 156.056 of this code. 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 § 156.062 of this code, shall be reconstructed or replaced in accordance with the provisions of this chapter.

(Prior Code, § 12-326)

§ 156.021 CERTIFICATE OF ZONING COMPLIANCE.

The Zoning Administrator shall issue a certificate of zoning compliance for each activity requiring a permit as specified in §

156.020 of this code. This certificate will specify that the use of land conforms to the requirements of this chapter. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this chapter and shall be punishable as provided in § 156.999 of this code.

(Prior Code, § 12-327) Penalty, see § 156.999

§ 156.022 VARIANCES.

(A) Variances may only be granted in accordance with M.S. Ch. 462, as it may be amended from time to time. A variance may not circumvent the general purposes and intent of this chapter. 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 § 156.023 of this code 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 Ch. 154 of this code.

(Prior Code, § 12-328) Penalty, see § 156.999

§ 156.023 NOTIFICATIONS TO THE DEPARTMENT OF NATURAL RESOURCES.

(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.

(Prior Code, § 12-329)

CLASSIFICATION SYSTEMS

§ 156.035 BASIS OF CLASSIFICATION.

The public waters of the city have been classified below consistent with the criteria found in Minn. Rules part 6120.3300, and the Protected Waters Inventory Map for the county.

(A) *Shoreland areas.* The shoreland area for the waterbodies listed in divisions (B) and (C) below shall be defined in § 156.008 of this code and as shown on the official zoning map.

(B) *Lakes.*

<i>Natural Environment Lakes</i>	<i>Protected Waters Inventory I.D. #</i>
Belwin Lake	7W
Fahlstrom Pond	5W
Lake Edith	4P
Metcalf Lake	464W

(C) *Rivers and streams.*

(1) *Tributary streams.* All protected watercourses in the city shown on the county’s Protected Waters Inventory Map, a copy of which is hereby adopted by reference, not given a classification in divisions (A) and (B) above shall be considered tributary.

Trout Brook	Sections 30, 31, 32, 33, 34
Unnamed to St. Croix River	Sections 28, 21, 22, 23

Valley Branch	Sections 9, 10, 14, 15
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(2) *Trout streams.*

South Fork of the Valley Branch	Sections 14, 15, 16, 17, 18
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(3) *Other rivers.* 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.

(Prior Code, § 12-361)

§ 156.036 CRITERIA FOR DESIGNATION.

The land use districts in § 156.037 of this code, and the delineation of a land use district’s boundaries on the official zoning map, must be consistent with the goals, policies and objectives of the comprehensive land use plan and the following criteria, considerations and objectives:

(A) *General considerations and criteria for all land uses:*

- (1) Preservation of natural areas;
- (2) Present ownership and development of shoreland areas;
- (3) Shoreland soil types and their engineering capabilities;
- (4) Topographic characteristics;
- (5) Vegetative cover;
- (6) In-water physical characteristics, values and constraints;
- (7) Recreational use of the surface water;
- (8) Road accessibility;
- (9) Socioeconomic development needs and plans as they involve water and related land resources; and
- (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; and
- (5) Protection of the environment of outdoor educational facilities.

(C) *Restrictions.* In order to achieve the above-listed objectives and in consideration of the limited size of the waterbodies:

- (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; and
- (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.

(Prior Code, § 12-362) Penalty, see § 156.999

§ 156.037 LAND USE DISTRICT DESCRIPTIONS.

(A) *Land use districts.* The land use districts, provided below, and the allowable land uses therein for the given classifications of waterbodies, 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 Minn. Rules part 6120.3200, subdivision 3:

A	Administrative permit
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C	Conditional use permit
N	Not permitted
P	Permitted use

(B) *Land use districts for lakes.*

Special Protection District Uses	Natural Environment Lakes
Special Protection District Uses	Natural Environment Lakes
Agricultural cropland and pasture	P
Agricultural feedlots	N
Duplex	C
Extractive use	N
Forest management	N
Industrial use	N
Mining of metallic minerals and peat	N
Parks and historic sites	C
PUD	N
Semipublic	C
Sensitive resource management	P
Single residential	P

(C) *Land use districts for rivers and streams.*

Special Protection District Uses	Tributary	Trout Stream
Special Protection District Uses	Tributary	Trout Stream
Agricultural cropland and pasture	P	P
Agricultural feedlots	N	N
Duplex	C	C
Extractive use	N	N
Forest management	N	N
Industrial use	N	N
Mining of metallic minerals and peat	N	N
Parks and historic sites	C	C
PUD	N	N
Semipublic	C	C
Sensitive resource management	P	P
Single residential	A	A

(1) 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 § 153.007 of this code.

(2) 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.

(Prior Code, § 12-363)

§ 156.038 USE, UPGRADING OF INCONSISTENT LAND USE DISTRICTS.

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.

(Prior Code, § 12-364)

ZONING AND WATER SUPPLY SANITARY REQUIREMENTS

§ 156.050 LOT AREA AND WIDTH STANDARDS.

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

(A) *Unsewered lakes.* Natural environment lakes:

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

(B) *River or stream lot width standards.*

(1) *Tributary.*

	<i>Acres</i>	<i>Feet</i>
Duplex (CUP)	10	400
Single	5	300

(2) *Trout stream.*

	<i>Acres</i>	<i>Feet</i>
Duplex (CUP)	10	400
Single	5	300

(C) *Additional special provisions.*

(1) Only land above the ordinary high water level of public waters can be used to meet lot area standards, and lot width standards must be met at both the ordinary high water level and at the building setback line.

(2) Subdivisions of duplexes, (permitted only by conditional use permit) on natural environment lakes and tributary and trout streams must also meet the following standards.

(a) Each building must be set back at least 200 feet from the ordinary high water level.

(b) Each building must have common sewage treatment and water systems in one location and serve both dwelling units in the building.

(c) Watercraft docking facilities for each lot must be centralized in one location and serve both dwelling units in the building.

(d) No more than 25% 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.

(Prior Code, § 12-401)

§ 156.051 PLACEMENT OF STRUCTURES ON LOTS.

(A) 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 the 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 the adjacent structures plus 40 feet or the minimum standard setback, whichever is less.

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

<i>Setbacks</i>		
<i>Classes of Public Waters</i>	<i>Structures Unsewered (feet)</i>	<i>Sewage Treatment System (feet)</i>

Lakes:		
Natural environment	200	150
Recreational rivers:		
Tributary	200	150
Trout streams	200	150

(C) (1) The following additional structure setbacks apply, regardless of the classification of the waterbody:

<i>Setback From</i>	<i>Setback (in feet)</i>
Top of bluff	40
Unplatted cemetery	150

(2) All other setbacks shall meet the regulations in Ch. 153 of this code.

(D) 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 the ordinary high water mark. All other lot requirements shall be subject to the regulations of Ch. 153 of this code, for the basic zoning district in which the lot is located.

(E) Maximum site coverage by any structure and parking area is 10% or one-half acre, whichever is greater.

(F) Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

(Prior Code, § 12-402)

§ 156.052 DESIGN CRITERIA FOR STRUCTURES.

(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; or

(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 Minn. Rules parts 6120.5000 through 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 divisions (B)(1) through (B)(5) above are complied with in addition to the requirements of M.S. Ch. 1034G, as it may be amended from time to time.

(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.*

(1) 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.

(2) 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.

(Prior Code, § 12-403)

Statutory reference:

Curb Ramps and Blended Transitions and Platform Lifts, see Minn. Rules 1341.0406 A117.1 § 406 through Minn. Rules 1341.0410 A117.1 § 410

§ 156.053 HEIGHT OF STRUCTURES.

All structures in Special Protection District must not exceed 35 feet in height.

(Prior Code, § 12-404) (Ord. 97-43, passed 11-13-2001)

§ 156.054 SHORELAND ALTERATIONS.

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.

§ 156.055 VEGETATION ALTERATIONS.

(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 §156.076 of this code 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.

(Prior Code, 12-406)

§ 156.056 TOPOGRAPHIC ALTERATIONS; GRADING AND FILLING.

(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 § 156.057 of this code.

(C) Notwithstanding divisions (A) and (B) above, a grading and filling permit will be required in order to meet the following.

(1) Within this chapter, 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% 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 Ch. 159 of this code. 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's Department of Natural Resources and all other state, county and local permits.

(3) For purposes of these regulations, public waters shall be defined in M.S. § 103G.005, subdivision 8a, and M.S. § 103G.005, subdivision 15a, as they may be amended from time to time.

(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) (a) 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's Department of Natural Resources and the U.S. Army Corps of Engineers, and a grading permit from the city.

(b) These 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, with the exception of driveways over human-made slopes that were created by the construction of roads or related ditches, and that extend only perpendicular to the road for a horizontal distance of 30 feet or less.

(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. § 103G.245, as it may be amended from time to time.

(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% shall be required as per Ch. 160 of this code, with the exception of driveways over human-made slopes that were created by the construction of roads or related ditches, and that extend only perpendicular to the road for a horizontal distance of 30 feet or less.

(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.

(Prior Code, § 12-407) (Ord. 11-2016, passed 10-18-2016)

Cross-reference:

Mining, see Ch. 162

§ 156.057 PLACEMENT AND DESIGN OF ROADS, DRIVEWAYS AND PARKING AREAS.

(A) (1) 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.

(2) 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.

(Prior Code, § 12-408)

Cross-reference:

Streets and sidewalks, see Ch. 151

§ 156.058 STORMWATER MANAGEMENT.

(A) Unless otherwise exempted by this chapter, a Stormwater Pollution Prevention Plan (SWPPP) 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 in Ch. 158 of this code. All related plans shall achieve at least the minimum standards of Ch. 158 of this code.

(B) 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 shall not be eliminated by construction or land disturbance.

(2) Impervious surface coverage of lots must not exceed 10% of the lot area or one-half acre, whichever is greater.

(Prior Code, § 12-409) (Ord. 03-2017, passed 3-21-2017)

§ 156.059 AGRICULTURAL USE STANDARDS.

General cultivation farming, grazing, nurseries, horticulture, truck farming and wild crop harvesting are permitted provided they do not occur on slopes greater than 12% 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.

(Prior Code, § 12-410)

§ 156.060 SPECIAL USES.

(A) 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.

(B) The following additional evaluation criteria and conditions apply within shoreland areas.

(1) *Evaluation criteria.* A thorough evaluation of the waterbody and the topographic, vegetation and soils conditions on the site must be made to ensure:

(a) 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;

(b) The visibility of structures and other facilities as viewed from public waters is limited;

(c) The site is adequate for water supply and onsite sewage treatment; and

(d) 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.

(2) *Conditions attached to conditional use permits.* The Planning Commission, upon consideration of the criteria listed above and the purposes of this chapter, shall recommend to the City Council conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this chapter. These conditions may include, but are not limited to, the following:

(a) Increased setbacks from the ordinary high water level;

(b) Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and

(c) Special provisions for the location, design and use of structures, sewage treatment systems, watercraft launching and docking areas and vehicle parking areas.

(Prior Code, § 12-411)

§ 156.061 WATER SUPPLY.

Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the state's Department of Health and the state's Pollution Control Agency.

(Prior Code, § 12-412)

§ 156.062 SEWAGE TREATMENT.

(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's Pollution Control Agency's standards for individual sewage treatment systems contained in the document titled, *Individual Sewage Treatment Systems Standards*, Minn. Rules Ch. 7080, a copy of which is hereby adopted by reference and declared to be a part of this chapter and must meet the city's 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 § 156.051 of this code.

(4) All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in divisions (A)(1) through (A)(3) above. 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 groundwater table or bedrock;
- (b) Soil conditions, properties and permeability;
- (c) Slope; including the ability of the septic system to meet the required setbacks; and
- (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 § 156.035(B) and (C) of this code 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.

(3) 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's Public Health Department.

(Prior Code, § 12-413)

NONCONFORMITIES

§ 156.075 NONCONFORMING USES.

All legally established nonconformities as of the date of adoption of the ordinance from which this chapter was derived may continue, but they will be managed according to applicable state statutes and other regulations of this community for the subjects of alterations and additions, repair after damage, discontinuance of use and intensification of use; except that the standards in this subchapter will also apply in shoreland areas.

(Prior Code, § 12-476)

§ 156.076 CONSTRUCTION ON NONCONFORMING LOTS OF RECORD.

(A) Lots of record in the office of the County Recorder on August 19, 1975, that do not meet the requirements of § 156.050 of this code 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 chapter are met and the lot meets the requirements of Ch. 153 of this code, regarding nonconformity.

(B) A variance from setback requirements must be obtained before any use, sewage treatment system or building permit is issued for the lot. In evaluating the variance, the Board of Adjustment shall consider, along with all criteria listed in § 156.022 of this code, 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 § 156.050 of this code 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 § 156.050 of this code and Ch. 153 of this code.

(Prior Code, § 12-477)

§ 156.077 ADDITIONS AND EXPANSIONS TO NONCONFORMING STRUCTURES.

(A) All structures in existence prior to the adoption of the ordinance from which this chapter was derived which do not meet the structure setbacks and other dimensional standards of this chapter 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 chapter.

(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 Ch. 153 of this code.

(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, the replacement shall comply with the dimensional standards of this chapter.

(Prior Code, § 12-478) (Ord. 97-43, passed 11-13-2001)

SUBDIVISION REQUIREMENTS

§ 156.090 LAND SUITABILITY.

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.

(Prior Code, § 12-501)

§ 156.091 CONSISTENCY WITH OTHER CONTROLS.

(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 §§ 156.051 and 156.062 of this code and an approved septic system can be provided for every lot.

(B) Each lot shall meet the minimum lot size and dimensional requirements of §156.050 of this code, 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.

(Prior Code, § 12-502) Penalty, see § 156.999

§ 156.092 INFORMATION REQUIREMENTS.

(A) Sufficient information must be submitted by the applicant for the community to make a determination of land suitability as well as complying with Ch. 160 of this code.

(B) The information shall include at least the following:

(1) Topographic contours at ten-foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics;

(2) The surface water features required in M.S. § 505.02, subdivision 1, as it may be amended from time to time, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;

(3) 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;

(4) 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 achieving the controlling stormwater runoff and erosion and sediment control provisions of Ch. 158 of this code; proposed methods for controlling runoff of landscape chemicals including fertilizers, herbicides and pesticides both during and after construction activities;

- (5) Location of 100-year floodplain areas and floodway districts from existing adopted maps or data;
- (6) 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;
- (7) All slopes of 18% or greater shall be identified; and
- (8) All slopes of 12% to 18% shall be identified.

(Prior Code, § 12-503) (Ord. 03-2017, passed 3-21-2017)

§ 156.093 DEDICATIONS.

When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage, facilities for management of stormwater required by Ch. 158 of this code and significant wetlands.

(Prior Code, § 12-504) (Ord. 03-2017, passed 3-21-2017)

§ 156.094 PLATTING.

All subdivisions as a plat in accordance with M.S. Ch. 505, as it may be amended from time to time, and this subchapter: 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.

(Prior Code, § 12-505)

§ 156.095 CONTROLLED ACCESS OR RECREATIONAL LOTS.

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.

(Prior Code, § 12-506) Penalty, see § 156.999

§ 156.999 PENALTY.

Any violation of the provisions of this chapter 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 chapter can occur regardless of whether or not a permit is required for a regulated activity pursuant to § 156.020 of this code.

(Prior Code, § 12-280)

**CHAPTER 157: LOWER ST. CROIX RIVER BLUFFLAND
AND SHORELAND MANAGEMENT**

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Cross-reference:

Subdivision requirements for the Lower St. Croix River shoreland, see §160.103

GENERAL PROVISIONS

§ 157.01 SHORT TITLE.

This chapter 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 chapter.”

(Prior Code, § 12-576)

§ 157.02 INTENT AND PURPOSE.

This chapter 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 human-made 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; and
- (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 the state’s Department of Natural Resources’ standards and criteria for the Lower St. Croix National Scenic Riverway.

(Prior Code, § 12-577) (Res. 1997-16, passed 6-17-1997)

Statutory reference:

Related provisions, see Minn. Rules parts 6105.0351 through 6105.0550

§ 157.03 EXISTING CODES.

(A) The provisions of this chapter are in addition to and not in replacement of the provisions of Ch. 153 of this code. Any provisions of Ch. 153 of this code, 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 chapter.

(B) In the Village Historic Site (VHS) District of this chapter designated in §157.25 of this code, existing zoning districts in effect and uses permitted on May 1, 1974, by Ch. 153 of this code may again be permitted by the City Council by conditional use permit, subject to the provisions of Minn. Rules part 6105.0510, subpart 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 § 157.26 of this code;
- (3) The sideyard setbacks and frontage requirements of Ch. 153 of this code;
- (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 sewered 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 ensure compliance with the landscaping plan;
- (8) A public hearing as per § 157.60 of this code 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; and
- (12) Detailed plans and specifications as presented at the public hearing are sufficient to obtain all local access, building, zoning and sewer permits.

(C) In the Village Historic Site (VHS) District, the following are considered conditionally permitted uses:

- (1) Seasonal business;
- (2) Cemeteries;
- (3) Churches;
- (4) Information centers;
- (5) Medical uses;
- (6) Day and school nurseries;
- (7) Offices;
- (8) Off-street loading;
- (9) Parks;
- (10) Photo studios;
- (11) Recreation areas: public and semi-public;
- (12) Retail shopping;
- (13) Historic or scenic structures;
- (14) Taverns or bars;
- (15) Utility substations;
- (16) Commercial waterfront uses;
- (17) Marinas;
- (18) Hotels;
- (19) Cafés and restaurants;

- (20) Supper clubs;
- (21) Theaters; and
- (22) Nursery and garden supplies (exterior or enclosed sales).

(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.

(Prior Code, § 12-578) (Ord. 1997-21, passed 12-15-1998; Ord. 1997-19, passed 7-15-1997)

§ 157.04 DEFINITIONS.

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

APPURTENANCE. 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. 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% and it only includes slopes greater than 12% 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. 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. An area of concentrated small craft mooring, where ancillary facilities may be provided for some or all of 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.

NONCONFORMING USE. Any use of land established before the effective date of the ordinance from which this chapter 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. 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 waterbodies that have permanent flow or open water; the main channel, adjoining side channels, backwaters and sloughs.

RIVERWAY BOUNDARY. A legally described line delineating the landward extent of the St. Croix Riverway.

ST. CROIX RIVERWAY. 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. 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 the state; specifically enforceable by its holder or any beneficiary; and binding on the holder of the servient estate, his or her heirs, successors or assigns. Unless specifically provided by the parties, no easement shall give the holder or any beneficiary the right to enter on the land except for enforcement of the easement.

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

SLOPE. All lands between the ordinary high water mark and the riverway boundary having an angle of ascent or descent of more than 12% from the horizontal.

STRUCTURE. Any building or appurtenance thereto, except transmission services.

SUBSTANDARD STRUCTURE. Any structure established before the effective date of the ordinance from which this chapter was derived which is permitted within a particular zoning district but does not meet the structure setbacks or other dimensional standards of this chapter.

VARIANCE. Any modification or variation of the dimensional standards of this chapter where it is determined that, because of practical difficulties, strict enforcement of this chapter is impractical.

VISUALLY INCONSPICUOUS. Difficult to see or not readily noticeable in summer months as viewed from the river.

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

(Prior Code, § 12-579) (Res. 1997-16, passed 6-17-1997; Ord. 1997-15, passed 1-19-1999; Ord. 02-2014, passed 5-20-2014)

§ 157.05 SUBSTANDARD STRUCTURES.

(A) All structures in existence prior to the adoption of the ordinance from which this chapter was derived which do not meet the structure setbacks and other dimensional standards of this chapter 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 chapter.

(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 chapter and the side yard standards of Ch. 153 of this code.

(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 the 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, the replacement shall comply with the dimensional standards of this chapter.

(Prior Code, § 12-580)

§ 157.06 SUBSTANDARD LOTS.

(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 Ch. 153 of this code; and

(5) The preexisting single lot or parcel area dimensions in the Rural District shall meet or exceed 60% 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 chapter, the 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 chapter; 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 § 157.26 of this code.

(Prior Code, § 12-581) (Res. 1997-16, passed 6-17-1997)

§ 157.07 COLOR OF STRUCTURES.

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. 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.

(Prior Code, § 12-582)

§ 157.08 MARINAS.

(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 Minn. Rules part 6105.0410, subpart 2.

(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 chapter.

(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 Minn. Rules part 6105.0530. The Council may approve or deny the marina on the standards of the Department of Natural Resources.

(3) 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 Minn. Rules part 6105.0410.

(Prior Code, § 12-583) (Res. 1997-16, passed 6-17-1997; Ord. 1997-15, passed 1-19-1999; Ord. 02-2012, passed 2-21-2012)

§ 157.09 ALTERATIONS IN PUBLIC WATERS.

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

(Prior Code, § 12-584) (Res. 1997-16, passed 6-17-1997)

§ 157.10 TRANSMISSION SERVICES.

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

(Prior Code, § 12-585) (Res. 1997-16, passed 6-17-1997)

§ 157.11 PUBLIC ROADS.

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. The permit shall be in accordance with the natural resources regulations including Minn. Rules part 6105.0440.

(Prior Code, § 12-586) (Res. 1997-16, passed 6-17-1997)

§ 157.12 REQUIREMENTS FOR SEWAGE DISPOSAL.

(A) (1) Any premises intended for human occupancy must be provided with an adequate method of sewage disposal.

(2) 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 § 157.26 of this code. 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 therefor from the Zoning Administrator for the specific installation, alteration, repair or extension.

(Prior Code, § 12-587) (Ord. 02-2009, passed 4-21-2009)

§ 157.13 CONFLICTING PROVISIONS.

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

(Prior Code, § 12-588)

§ 157.14 MEASUREMENT OF DISTANCES.

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

(Prior Code, § 12-589)

DISTRICTS

§ 157.25 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.

(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 chapter and is on file with the Zoning Administrator.

(Prior Code, § 12-636)

§ 157.26 MINIMUM DISTRICT DIMENSIONAL REQUIREMENTS.

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

	<i>Rural</i>	<i>VHS</i>
	<i>Rural</i>	<i>VHS</i>
Blufflines	40 feet	40 feet
Building setback from bluffline	100 feet	40 feet
Building setback from ordinary high water mark	200 feet	100 feet
Lot width at building setback line	200 feet	150 feet
Lot width at waterline	200 feet	150 feet
Maximum structure height	35 feet	35 feet
Maximum total lot area covered by impervious surface	10% (1.5 acres)	20% or 4,350 square feet, whichever is greater
Minimum lot size above ordinary high water mark	Five acres	One acre
On-site sewage treatment system setback from bluffline	40 feet	40 feet
On-site sewage treatment system setback from ordinary high water mark	200 feet	100 feet
On slopes less than 12%, the controlled vegetative cutting areas setback are from ordinary high water mark	200 feet	100 feet

(B) No structures shall be placed or grading done on any slopes greater than 12% (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 Ch. 159 of this code and state floodplain ordinances.

(D) Exceptions to the minimal dimensional requirements include the following.

(1) (a) 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.

(b) The 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 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 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 35 feet for the occupied area of the structure;

(b) A maximum height of 50 feet for the structural elements; and

(c) A maximum height of 60 feet for the following non-structural elements: spires or steeples, belfries or bell towers, cupolas, crosses or other religious symbols or decorative elements.

(Prior Code, § 12-637) (Ord. 97-46, passed 1-15-2002; Ord. 46-2004, passed 8-17-2004; Ord. 02-2008, passed 1-9-2008; Ord. 05-2015, passed 9-15-2015)

USES

§ 157.40 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.

(Prior Code, § 12-701) Penalty, see § 10.99

§ 157.41 PERMITTED USES.

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

(A) Conservancy;

(B) Agriculture; and

(C) Single-family residential.

(Prior Code, § 12-702)

§ 157.42 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.

(Prior Code, § 12-703)

§ 157.43 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% in all districts, there shall be no vegetative cutting of live trees or shrubs without a vegetative cutting permit from the 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

(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; and

(2) Maintenance trimming or pruning on a particular parcel or in transportation or utility rights-of-way.

(Prior Code, § 12-704)

§ 157.44 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 Zoning Administrator. A grading permit may be issued only if:

- (1) Slopes greater than 12% (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.

(Prior Code, § 12-705)

§ 157.45 CONDITIONALLY PERMITTED USES.

(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; and
- (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 conditional uses. In the VHS District, the conditionally permitted uses listed in § 157.03(C) of this code may be permitted as conditional uses, in accordance with § 157.03(B) of this code.

(C) *Rural District conditionally permitted uses.* In Rural Districts of this chapter, 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; and
- (3) Marine services in the Riverway District.

(Prior Code, § 12-706) (Res. 1997-16, passed 6-17-1997; Ord. 1997-15, passed 1-19-1999; Ord. 05-2015, passed 9-15-2015)

§ 157.46 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;
- (B) Junkyards;
- (C) Mobile home parks;
- (D) Downhill ski areas;
- (E) Marinas downstream from Stillwater in Rural Districts; and
- (F) All uses not authorized in the local zoning ordinances.

(Prior Code, § 12-707) (Ord. 02-2012, passed 2-21-2012; Ord. 05-2015, passed 9-15-2015) Penalty, see § 10.99

§ 157.47 NONCONFORMING USES.

Uses which are prohibited by this chapter but which are in existence prior to the effective date of the ordinance from which this chapter was derived shall be nonconforming uses and may continue as lawful, nonconforming uses. These 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 chapter was derived.

(Prior Code, § 12-708) Penalty, see § 10.99

ADMINISTRATION

§ 157.60 ADMINISTRATIVE PROCEDURE.

(A) In addition to the applicable administrative procedures set forth in Ch. 153 of this code, the following procedures shall be implemented with respect to land, subject to this chapter.

(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 Zoning Administrator shall send notice and copies of the applicants information as specified in § 157.65 of this code to the following agencies for review and comment:

- (a) Department of Natural Resources; and
- (b) The Planning Commission.

(B) The applicant for any permit requiring a public hearing shall submit to the Council at least 30 days prior to the hearing, an abstractors certificate showing the names and addresses of all property owners within 500 feet of the affected, in incorporated areas or one-half mile in unincorporated areas.

(C) Notice of the purpose, time and place of any public hearing shall be mailed to all property owners listed in division (B) above 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 public hearing shall be published in the official newspaper of the affected community at least ten days prior to the date of the hearing.

(Prior Code, § 12-831) (Res. 1997-16, passed 6-17-1997; Ord. 05-2015, passed 9-15-2015)

§ 157.61 CERTIFICATION BY THE COMMISSIONER.

(A) Before any zoning district or ordinance amendment becomes final, the Council shall forward the decision to the Commissioner.

(B) The Commissioner of Natural Resources shall certify in writing that the proposed action complies with the intent of the Wild and Scenic Rivers Acts and the master plan for the Lower St. Croix River in the manner specified in Department of Natural Resources regulations, including Minn. Rules part 6105.0540.

(Prior Code, § 12-832) (Res. 1997-16, passed 6-17-1997)

§ 157.62 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.

(Prior Code, § 12-833)

§ 157.63 PERMIT PROCESS.

The permit process for Urban and Rural Districts shall be as follows:

	<i>Urban District</i>	<i>Rural District</i>
	<i>Urban District</i>	<i>Rural District</i>
Amendments to district boundary	PH-CC	PH-CC
Amendments to ordinance	PH-CC	PH-CC
Building permits	LP	LP
Conditional use permits	PH-FD	PH-FD
Grading permits	LP	LP
Plats and cluster developments	PH-WA-FD	PH-WA-FD
Septic permits	LP	LP
Tree cutting permits	LP	LP
Variances	PH	PH

CC	Certification by the Commissioner of Natural Resources prior to final local approval.
FD	Local authority forwards any decisions to the Commissioner of Natural Resources within ten days after taking final action.
LP	Permit issued by the local authority in accordance with this chapter and all other local permits.

PH	Public hearing necessary by the local authority giving a 20-day notice of meeting to the Commissioner of Natural Resources and other agencies listed in § 157.60(A)(2) of this code.
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.

(Prior Code, § 12-834) (Ord. 1997-15, passed 1-19-1999)

§ 157.64 VARIANCES.

(A) Variances shall only be granted where there are practical difficulties which make the strict enforcement of this chapter impractical, and only when the 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.

(1) *Reasonableness.* The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.

(2) *Uniqueness.* The plight of the landowners is due to circumstances unique to the property not created by the landowner.

(3) *Essential character.* The variance, if granted, will not alter the essential character of the locality.

(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 chapter. In addition, no variance shall be granted that would permit any use that is prohibited in this chapter 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, especially in regard to the view from the river.

(C) The formal public hearing for a variance shall be held by the Planning Commission as set forth in Ch. 153 of this code.

(Prior Code, § 12-835) (Ord. 02-2014, passed 5-20-2014) Penalty, see § 10.99

§ 157.65 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; and

(H) An estimate of permanent and transient residents.

(Prior Code, § 12-836)

§ 157.66 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; and
- (J) The compatibility of the proposed development with uses on adjacent land.

(Prior Code, § 12-837)

CHAPTER 158: STORMWATER MANAGEMENT

Section

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GENERAL PROVISIONS

§ 158.01 STATUTORY AUTHORIZATION.

(A) This chapter is adopted pursuant to the authorization and policies contained in M.S. Ch. 103B, 103D and 462, as they may be amended from time to time; Minn. Rules parts 6120.2500 through 6120.3900; and Minn. Rules parts 8410 and 8420.

(B) This chapter is intended to meet the construction site erosion and sediment control and post construction stormwater management regulatory requirements for construction activity and small construction activity (NPDES permit) as defined in 40 C.F.R. § 122.26(b)(14)(x) and (b)(15), respectively.

(C) This chapter is intended to meet the minimal impact design standards (MIDS) developed under M.S. § 115.03 subdivision 5c, as it may be amended from time to time.

(Ord. 03-2017, passed 3-21-2017)

§ 158.02 PURPOSE.

(A) The purpose of this chapter is to establish regulatory requirements for land development and land disturbing activities aimed at minimizing the threats to public health, safety, public and private property and natural resources within the city from construction site erosion and postconstruction stormwater runoff.

(B) Specifically, the ordinance establishes regulatory requirements that:

- (1) Meet MIDS performance standards;
- (2) Assist in meeting NPDES/SDS construction stormwater general permit requirements;
- (3) Assist in meeting Total Maximum Daily Load (TMDL) plan waste load allocations for impaired waters through quantification of load reductions;
- (4) Assist in meeting policies and performance standards of the Middle St. Croix Water Management Organization (MSCWMO) and Valley Branch Watershed District (VBWD);
- (5) Protect life and property from dangers associated with flooding;
- (6) Protect public and private property and natural resources from damage resulting from stormwater runoff and erosion;
- (7) Ensure site design minimizes the generation of stormwater runoff and maximizes pervious areas for stormwater treatment within the context of the allowable use;
- (8) Provide a single, consistent set of performance goals that apply to all developments;
- (9) Protect water quality from pollutant loadings of sediment, suspended solids, nutrients, heavy metals, toxics, debris, bacteria, pathogens, biological impairments, thermal stress and other pollutants;
- (10) Promote infiltration and groundwater recharge;
- (11) Provide vegetated corridors (buffers) to protect water resources from development;
- (12) Protect functional values of all types of natural waterbodies (e.g, rivers, streams, wetlands, lakes, seasonal ponds); and
- (13) Sustain or enhance biodiversity (native plant and animal habitat) and support riparian ecosystems.

(Ord. 03-2017, passed 3-21-2017)

§ 158.03 SCOPE.

Land shall not be developed for any use without providing stormwater management measures and erosion and sediment control measures that control or manage stormwater runoff from the developments.

(Ord. 03-2017, passed 3-21-2017)

§ 158.04 ABROGATION; GREATER RESTRICTIONS.

(A) *Relationship to watershed district/water management organization requirements.*

(1) All stormwater management and erosion and sediment control activities shall comply with all applicable requirements of the relevant Water Management Organization or Watershed District.

(2) In the case of conflict between provisions of this chapter and other stormwater regulations, the strictest provisions shall apply to land development and/or land disturbing activities.

(B) *Relationship to city zoning requirements.* In the case of conflict between provisions of this chapter and other regulations in the city's Zoning Code, the strictest provisions shall apply to land development, construction and/or land disturbing activities.

(C) *Relationship to existing easements, covenants and deed restrictions.*

(1) The provisions of this chapter are not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions.

(2) However, where this chapter imposes greater restrictions the provisions of this chapter shall prevail.

(Ord. 03-2017, passed 3-21-2017)

§ 158.05 STORMWATER MANAGEMENT PERMIT.

(A) All stormwater management permits shall include an Erosion and Sediment Control Plan (ESC Plan) or a Stormwater Pollution Prevention Plan (SWPPP).

(B) Unless otherwise exempted by § 158.08 of this code, an approved stormwater management permit shall be required prior to any proposed land development activity that meets any of the following criteria:

- (1) Any project that creates or fully reconstruct 6,000 square feet or more of impervious surface;
- (2) All major subdivisions or minor subdivisions that are part of a common plan of development;
- (3) Projects within the St. Croix Riverway that add 500 square feet or greater of additional impervious surface;
- (4) Any project requiring a variance from the current local impervious surface zoning requirements for the property; or
- (5) Any land development activity, regardless of size, that the city determines is likely to cause an adverse impact to an environmentally sensitive area or other property.

(Ord. 03-2017, passed 3-21-2017)

§ 158.06 EROSION AND SEDIMENT CONTROL PLAN.

Unless otherwise exempted by § 158.08 of this code, an Erosion and Sediment Control Plan shall be required as part of any grading and filling permit or building permit which proposes any land disturbing activity that meets any of the following criteria:

- (A) Any project undertaking grading, filling or other land alteration activities which involve movement of 100 cubic yards of earth or removal of vegetation on greater than 6,000 square feet of land;
- (B) Any project with wetland impacts, grading within public waters, grading within buffers or within 40 feet of the bluff line; or
- (C) A land disturbing activity, regardless of size, that the city determines is likely to cause an adverse impact to an environmentally sensitive area or other property, or may violate any other erosion and sediment control standard set forth in this chapter.

(Ord. 03-2017, passed 3-21-2017) Penalty, see § 158.99

§ 158.07 BUFFERS.

A buffer of unmowed natural vegetation shall be required upslope of wetlands, lakes and streams prior to the approval of any proposed land development requiring a subdivision, lot split, rezoning, special use permit or variance, unless otherwise exempted in § 158.08 of this code.

(Ord. 03-2017, passed 3-21-2017)

§ 158.08 EXEMPTIONS.

The following activities shall be exempt from all of the requirements of this chapter:

- (A) Emergency work necessary to protect life, limb or property; and
- (B) Routine agricultural activity such as tilling, planting, harvesting and associated activities. Other agricultural activities are not exempt including activities such as construction of structures.

(Ord. 03-2017, passed 3-21-2017)

§ 158.09 DEFINITIONS.

Words or phrases used in this chapter shall have the meanings as defined by Appendix B of the state's construction stormwater permit No: MN R100001 (construction permit.) If not defined in the construction permit, then for the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words or phrases shall be interpreted so as to give this chapter its most reasonable application. For the purpose of this chapter, the words "must," "shall" and "will" are mandatory and not permissive.

APPLICANT. The owner of land submitting an application under the provisions of this chapter for a stormwater management permit (SWMP) and/or Erosion and Sediment Control Plan (ESC Plan) to be issued by the community.

BEST MANAGEMENT PRACTICES (BMPS). 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.

BETTER SITE DESIGN. The control and management of stormwater quantity and quality through the application of better site design techniques as outlined in the current version of the state's *Stormwater Manual*. **BETTER SITE DESIGN** includes:

preservation of natural areas; site reforestation; stream and shoreland buffers; open space design; disconnection of impervious cover; rooftop disconnection; grass channels; stormwater landscaping; compost and amended soils; impervious surface reduction; and trout stream protection.

COMMON PLAN OF DEVELOPMENT OR SALE. A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur. Available at <http://www.pca.state.mn.us/wfhy5b>.

CONSTRUCTION ACTIVITY. Includes **CONSTRUCTION ACTIVITY** as defined in 40 C.F.R. § 122.26(b)(14)(x) and small construction activity as defined in 40 C.F.R. § 122.26(b)(15) and **CONSTRUCTION ACTIVITY** as defined by Minn. Rules part 7090.0080, subpart 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 acre or more. **CONSTRUCTION ACTIVITY** does not include a disturbance to the land of less than five 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 or federal requirements, so it would be allowable for a local government.)

DEVELOPMENT, NEW. Any development that results in the conversion of land that is currently prairie, agriculture, forest or meadow. Land that was previously developed, but now razed and vacant, will not be considered **NEW DEVELOPMENT**.

EROSION AND SEDIMENT CONTROL PLAN (ESC PLAN). 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. 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.

FULLY RECONSTRUCTED IMPERVIOUS SURFACE. Areas where impervious surfaces have been removed down to the underlying soils. Activities such as structure renovation, mill and overlay projects and pavement rehabilitation projects that do not alter underlying soil material beneath the structure, pavement or activity are not considered **FULLY RECONSTRUCTED IMPERVIOUS SURFACES**. Reusing the entire existing building foundation and re-roofing of an existing building are not considered fully reconstructed.

IMPERVIOUS SURFACE. A hard surface created by construction or usage, 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.

LAND DISTURBANCE. 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.

LINEAR PROJECT. Construction or reconstruction of roads, trails, sidewalks and rail lines that are not part of a common plan of development or sale. Mill, overlay and other resurfacing projects are not considered to be reconstruction.

MAJOR SUBDIVISION. All subdivisions not classified as minor subdivisions or simple subdivisions including, but not limited to, subdivisions of four or more lots, or any size subdivision requiring any new street or extension of an existing street, or extension of the local government facilities, or the creation of any public improvements

MINOR SUBDIVISION. Any subdivision containing three 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.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES). The program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing permits under the Clean Water Act (§§ 301, 318, 402 and 405 and being 33 U.S.C. §§ 1311, 1328, 1342 and 1345).

OWNER. 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.

PERMANENT COVER. Surface types that will prevent soil failure under erosive conditions. Examples include: gravel, asphalt, concrete, riprap, rooftops, perennial cover or other landscaped material that will permanently arrest soil erosion. A uniform perennial vegetative cover (e.g., evenly distributed, without large bare areas) with a density of 70% of the native background vegetative cover for the area must be established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures. **PERMANENT COVER** does not include the practices listed

under temporary erosion protection.

PERMITTEE. A person or persons, firm or governmental agency or other entity that signs the application submitted to the city and is responsible for compliance with the terms and conditions of the permit.

PREDEVELOPMENT STATE. The rate and volume of stormwater is unchanged. The calculation of predevelopment is based on native soils and vegetation.

PUBLIC WATERS. All water basins and watercourses that are described in M.S. § 103G.005, subdivision 15, as it may be amended from time to time.

REDEVELOPMENT. Any development that is not considered new development.

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

ST. CROIX RIVERWAY. All lands and public waters within the riverway boundary subject to the standards and criteria for the Lower Saint Croix National Scenic Riverway in the state.

SATURATED SOIL. The highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. **SATURATED SOIL** is evidenced by the presence of soil mottling associated with the presence of water or other information.

SEDIMENT CONTROL. 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.

STORMWATER FACILITY. A stationary and permanent BMP that is designed, constructed and operated to prevent or reduce the discharge of pollutants in stormwater.

SMALL CONSTRUCTION ACTIVITY. As defined in 40 C.F.R. § 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 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 acres.

STABILIZED. 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. Seeding alone, whether grass, agricultural crop or other seeding, is not stabilization. Mulch materials must achieve approximately 90% ground coverage (typically two ton/acre).

STORMWATER. As defined under Minn. Rules part 7077.0105, subpart 41b, and includes precipitation runoff, stormwater runoff, snowmelt runoff and any other surface runoff and drainage.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP). 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.

SURFACE WATER(S). All streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses and irrigation systems whether natural or artificial, public or private, except that **SURFACE WATERS** do not include treatment basins or ponds that were constructed from upland.

TEMPORARY EROSION PROTECTION. Methods employed to prevent erosion during construction activities. Examples of **TEMPORARY EROSION PROTECTION** include; straw, wood fiber blanket, wood chips, vegetation, mulch and rolled erosion control products.

UNDERGROUND WATERS (GROUNDWATER). Water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined or perched conditions, in near surface unconsolidated sediment or in rock formations deeper underground. The term **GROUNDWATER** shall be synonymous with **UNDERGROUND WATER**.

WETLAND(S). As defined in Minn. Rules part 7050.0186, subpart 1a(B) and includes those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. **WETLANDS** generally include swamps, marshes, bogs and similar areas. Constructed wetlands designed for wastewater treatment are not waters of the state. **WETLANDS** must have the following attributes:

- (1) A predominance of hydric soils;
- (2) Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition; and
- (3) Under normal circumstances support a prevalence of vegetation.

(Ord. 03-2017, passed 3-21-2017)

PERMITTING PROCESSES, PERFORMANCE STANDARDS

§ 158.20 PERMIT REVIEW PROCESS.

(A) *Pre-application meeting.* At the discretion of the Zoning Administrator, the city shall facilitate a pre-application meeting with the applicant, city staff (or their authorized representative) and staff of relevant partner agencies (e.g., WCD, MSCWMO, VBWD, MDNR and the like). The purposes of the meeting are to understand the general parameters of the proposed project and to convey the requirements of meeting the provisions of this chapter.

(B) *Application completeness review.* The city shall make a determination regarding the completeness of a permit application and notify the applicant in writing if the application is not complete including the reasons the application was deemed incomplete.

(C) *Application review.* The applicant shall not commence any construction activity subject to this chapter until a permit has been authorized by the city.

(D) *Permit authorization.* If the city determines that the application meets the requirements of this chapter, the city may issue approval authorizing the project or activity. The approval shall be valid for one year.

(E) *Permit denial.* If the city determines the application does not meet the requirements of this chapter the application must be denied. If the application is denied, the applicant will be notified of the denial in writing including reasons for the denial. Once denied, a new application must be resubmitted for approval before any activity may begin.

(F) *Plan information requirements.* The minimum information requirements of the application shall be consistent with the requirements in the most recent version of the NPDES/SDS construction stormwater general permit and Middle St. Croix WMO or Valley Branch Watershed District performance standards. The application information must also include permanent treatment information showing the proposed project meets the MSC WMO or VBWD performance goals.

(G) *Modification of permitted plans.* If any of the following instances occur to a site with an approved ESC Plan or SWMP, the applicant shall apply for an amendment to the associated permit(s), submitting all updated materials, reflecting the needed changes; the review of the amended materials shall use the same process as a new submittal, as designated in this chapter.

(1) There is a change in design, construction, operation, maintenance, weather or seasonal conditions that has a significant effect on the discharge of pollutants to surface water or underground water.

(2) Inspections or investigations by site operators, local, state or federal officials indicate the plans are not effective in eliminating or significantly minimizing the discharge of pollutants to surface water or underground water or that the discharges are causing water quality standard exceedances.

(3) The plan is not achieving the general objectives of minimizing pollutants in stormwater discharges associated with construction activity.

(H) *Permit completion.* Before work under the permit is deemed complete, the permittee must submit as-builts, a long-term maintenance plan and information demonstrating that the stormwater facilities conform to design specifications.

(Ord. 03-2017, passed 3-21-2017)

§ 158.21 SITE DESIGN AND MIDS CALCULATOR.

(A) *Better site design.* Whenever possible, development projects shall be designed using the better site design techniques of the current version of the state's *Stormwater Manual*.

(B) *MIDS calculator.* Final site design and choice of permanent stormwater volume reduction practices shall be based on outcomes of the MIDS calculator (or other model that shows the performance goal can be met) and shall meet the performance standards in § 158.22 of this code.

(C) *Buffer requirement.* Buffer locations and widths must comply with the state, the state's Pollution Control Agency and Middle St. Croix Watershed Management Organization or Valley Branch Watershed District standards.

(Ord. 03-2017, passed 3-21-2017)

§ 158.22 STORMWATER VOLUME REDUCTION PERFORMANCE STANDARDS.

Any applicant for a stormwater management permit as defined in Section 2 must meet all of the following performance standards:

(A) *New development volume control.* For new, nonlinear developments on sites without restrictions, stormwater runoff volumes will be controlled and the post-construction runoff volume shall be retained on site for one and one-tenth inches of runoff from all impervious surfaces on the site.

(B) *Redevelopment volume control.* Nonlinear redevelopment projects on sites without restrictions that create or fully reconstruct impervious surfaces shall capture and retain on site one and one-tenth inches of runoff from the new and/or fully reconstructed impervious surfaces.

(C) *Linear development volume control.* Linear projects on sites without restrictions that create new and/or fully

reconstructed impervious surfaces, shall capture and retain the larger of the following:

- (1) Fifty-five hundredths inches of runoff from the new and fully reconstructed impervious surfaces on the site; or
- (2) One and one-tenth inches of runoff from the net increase in impervious area on the site. Mill and overlay and other resurfacing activities are not considered fully reconstructed.

(Ord. 03-2017, passed 3-21-2017)

§ 158.23 FLEXIBLE TREATMENT ALTERNATIVES FOR SITES WITH RESTRICTIONS.

(A) Applicant shall attempt to comply fully with the appropriate performance standards described above. Alternatives considered and presented shall examine the merits of relocating project elements to address, varying soil conditions and other constraints across the site.

(B) If full compliance is not possible due to any of the factors listed below, the applicant must document the reason. If site constraints or restrictions limit the full treatment goal, the following flexible treatment alternatives shall be used.

(1) Applicant shall document the flexible treatment alternatives sequence starting with Alternative #1. If Alternative #1 cannot be met, then Alternative #2 shall be analyzed. Applicants must document the specific reasons why Alternative #1 cannot be met based on the factors listed below.

(2) If Alternative #2 cannot be met, then Alternative #3 shall be met. Applicants must document the specific reasons why Alternative #2 cannot be met based on the factors listed below.

(3) When all of the conditions are fulfilled within an alternative, this sequence is completed.

(C) Volume reduction techniques considered shall include infiltration, reuse and rainwater harvesting and canopy interception and evapotranspiration and/or additional techniques included in the MIDS calculator and the state's *Stormwater Manual*.

(D) Higher priority shall be given to BMPs that include volume reduction. Secondary preference is to employ filtration techniques, followed by rate control BMPs. Factors to be considered for each alternative will include:

- (1) Karst geology;
- (2) Shallow bedrock;
- (3) High groundwater;
- (4) Hotspots or contaminated soils;
- (5) Drinking water source management areas or within 200 feet of drinking water well;
- (6) Zoning, setbacks or other land use requirements; and
- (7) Poor soils (infiltration rates that are too low or too high, problematic urban soils).

(E) *Alternative #1.* Applicant attempts to comply with the following conditions:

(1) Achieve at least fifty-five hundredths inches volume reduction from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment or linear development site;

(2) Remove 75% of the annual TP load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site; and

(3) Options considered and presented shall examine the merits of relocating project elements to address, varying soil conditions and other constraints across the site.

(F) *Alternative #2.* Applicant attempts to comply with the following conditions:

(1) Achieve volume reduction to the maximum extent practicable;

(2) Remove 60% of the annual TP load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site; and

(3) Options considered and presented shall examine the merits of relocating project elements to address, varying soil conditions and other constraints across the site.

(G) *Alternative #3.* Off-site treatment.

(1) Mitigation equivalent to the performance of one and one-tenth inches of volume reduction for new development, linear development or redevelopment as described above in this section, (including banking or cash) can be performed off-site to protect the receiving waterbody.

(2) Off-site treatment shall be achieved in areas selected in the following order of preference:

- (a) Locations that yield benefits to the same receiving water that receives runoff from the original construction activity;

(b) Locations within the same Department of Natural Resource (DNR) catchment area (Hydrologic Unit 08) as the original construction activity;

(c) Locations within the next adjacent DNR catchment area upstream; and

(d) Locations anywhere within the city's jurisdiction.

(3) The MIDS design sequence flowchart can be found in the state's *Stormwater Manual*, available at http://stormwater.pca.state.mn.us/index.php/Flexible_treatment_options.

(Ord. 03-2017, passed 3-21-2017)

§ 158.24 STORMWATER MANAGEMENT RATE CONTROL.

For new development, redevelopment and linear development sites the site design shall provide onsite treatment during construction and post-construction to ensure no increase from existing conditions in offsite peak discharge for the one-year, two-year, ten-year and 100-year, 24-hour storm events based on the standards defined by the MSCWMO or VBWD. For single-family residential building lots not part of a common plan of development site rate control requirements do not apply.

(Ord. 03-2017, passed 3-21-2017)

§ 158.25 OTHER DESIGN STANDARDS.

(A) *Stormwater Manual*. All volume control for water quality and quantity and site design specifications shall conform to the current version of the state's *Stormwater Manual*.

(B) *NPDES/SDS construction stormwater general permit*. All volume control and water quality and quantity best management practice design specifications shall conform to the current version of the NPDES/SDS construction stormwater general permit.

(C) *Site erosion and sediment control requirements*. All erosion and sediment control requirements shall conform to the current requirements of NPDES/SDS construction stormwater general permit.

(D) *Watershed District/WMO requirements*. All stormwater management and erosion and sediment control activities shall comply with all applicable requirements of the Watershed Districts or Watershed Management Organizations in which the project is located. In case provisions in this chapter and requirements of Watershed District or Watershed Management Organizations overlap or conflict, the strictest provisions shall apply to the activities.

(E) *Publicly-owned stormwater facilities*. Where applicable, a minimum of 20 feet shall be provided on all sides of all publicly-owned stormwater facilities for facility maintenance.

(Ord. 03-2017, passed 3-21-2017)

INSPECTIONS, MAINTENANCE AND ENFORCEMENT

§ 158.40 INSPECTIONS AND RECORD KEEPING.

(A) *Applicant responsibilities*. The applicant is responsible for inspections and record keeping during and after construction for all privately-owned stormwater treatment practices on the site.

(B) *City inspections*. The city reserves the right to conduct inspections on a regular basis to ensure that both temporary and permanent stormwater management and erosion and sediment control measures are properly installed and maintained prior to construction, during construction and at the completion of the project.

(Ord. 03-2017, passed 3-21-2017)

§ 158.41 RIGHT OF ENTRY AND INSPECTION.

(A) The issuance of a permit constitutes a right-of-entry for the city or its authorized representative to enter upon the construction site, in accordance with § 10.20 of this code.

(B) The applicant shall allow the city and its authorized representatives, upon presentation of credentials, to:

(1) Enter upon the permitted site for the purpose of obtaining information, examining records and conducting investigations or surveys;

(2) Bring the equipment upon the permitted development as is necessary to conduct surveys and investigations;

(3) Examine and copy any books, papers, records or memoranda pertaining to activities or records required to be kept under the terms and conditions of the permit;

(4) Inspect the stormwater pollution control measures;

(5) Sample and monitor any items or activities pertaining to stormwater pollution control measures; and

(6) Correct deficiencies in stormwater and erosion and sediment control measures.

(Ord. 03-2017, passed 3-21-2017)

§ 158.42 FEES.

Fees will be applied per the city's fee schedule.

(Ord. 03-2017, passed 3-21-2017)

§ 158.43 ENFORCEMENT TOOLS AND STOP WORK ORDERS.

The city reserves the right to issue construction stop work orders when cooperation with inspections is withheld or when a violation has been identified that needs immediate attention to protect human health and/or the environment.

(A) *Construction stop work order.* The city may issue construction stop work orders until stormwater management measures meet specifications and the applicant repairs any damage caused by stormwater runoff. An inspection by the city must follow before the construction project work can resume.

(B) *Other actions to ensure compliance.* The city can take any combination of the following actions in the event of a failure by applicant to meet the terms of this chapter:

- (1) Withhold inspections or issuance of certificates or approvals;
- (2) Revoke any permit issued by the city to the applicant;
- (3) Conduct remedial or corrective action on the development site or adjacent site affected by the failure;
- (4) Charge applicant for all costs associated with correcting the failure or remediating damage from the failure; if payment is not made within 30 days, payment will be made from the applicant's financial securities; and/or
- (5) Bring other actions against the applicant to recover costs of remediation or meeting the terms of this chapter;

(Ord. 03-2017, passed 3-21-2017) Penalty, see § 158.99

§ 158.44 LONG-TERM INSPECTION AND MAINTENANCE OF STORMWATER FACILITIES.

(A) *Private stormwater facilities.*

(1) *Maintenance plan required.*

(a) No private stormwater facilities may be approved unless a maintenance agreement is provided that defines who will conduct the maintenance, the type of maintenance necessary to ensure effective performance and the maintenance intervals.

(b) All private stormwater facilities shall be inspected by the property owner and maintained in proper condition by the owner consistent with the performance goals for which they were originally designed.

(2) *Facility access.* The applicant shall obtain all necessary easements or other property interests to allow access to the facilities for inspection or maintenance for both the responsible party and the city or authorized representative.

(3) *Removal of settled materials.* All settled materials including settled solids, shall be removed from ponds, sumps, grit chambers and other devices as necessary and disposed of properly.

(4) *Inspections.* All stormwater facilities within the city shall be inspected by the property owner at a frequency consistent with the maintenance plan. Inspection reports shall be provided to the city upon request.

(B) *Public stormwater facilities.*

(1) *Acceptance of publicly-owned facilities.* Before work under the permit is deemed complete, the permittee must submit as-builts and a maintenance plan demonstrating at the time of final stabilization that the stormwater facilities conform to design specifications. A final inspection shall be required before the city accepts ownership of the stormwater facilities.

(2) *Maintenance.* The city shall perform maintenance of publicly-owned stormwater facilities in accordance with their comprehensive stormwater management plan and other regulatory requirements.

(Ord. 03-2017, passed 3-21-2017)

§ 158.45 FINANCIAL SECURITIES.

(A) *Amount.* At the discretion of the city, the city may require a financial security from the applicant in an amount sufficient to cover the entirety of the estimated costs of permitted and remedial work based on the final design as established in a set financial security schedule determined by the city.

(B) *Release.* The financial security shall not be released until all permitted and remedial work is completed.

(C) *Use by city.* The financial security may be used by the city to complete work not completed by the applicant.

(D) *Form of security.* The form of the financial security shall be one or a combination of the following to be determined by the city.

- (1) *Cash deposit.* A financial security for erosion and sediment control, as determined by the city, shall be by cash

deposit to the city. The cash will be held by city in a separate account.

(2) *Security deposit.* Deposit, either with the city, a responsible escrow agent or trust company, at the option of the city, either:

(a) An irrevocable letter of credit, negotiable bonds of the kind approved for securing deposits of public money, or other instruments of credit from one or more financial institutions, subject to regulation by the state and federal government wherein the financial institution pledges funds are on deposit and guaranteed for payment;

(b) Cash in U.S. currency; or

(c) Other forms and securities (e.g., disbursing agreement) as approved by the city.

(E) *City indemnity.* This financial security shall hold the city 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 city.

(F) *Maintaining the financial security.* If at any time during the course of the work the balance of the financial security falls below 50% of the total 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 days after notification by the city that the amount has fallen below 50% of the required amount the city may:

(1) Withhold the scheduling of inspections and/or the issuance of a certificate of occupancy; or

(2) Revoke any permit issued by the city to the applicant for the site in question or any other of the applicant's sites within the city's jurisdiction.

(G) *Action against the financial security.* The city may access the financial security for remediation actions if any of the conditions listed below exist. The city shall use the financial security to pay for remedial work undertaken by the city, or a private contractor under contract with the city, or to reimburse the city for all 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 city.

(3) *Failure to perform.* The BMPs utilized on the project fail within one year of installation.

(4) *Failure to reimburse city.* The applicant fails to reimburse the city for corrective action taken.

(H) *Proportional reduction of the financial security.*

(1) When more than one-third of the applicant's maximum exposed soil area achieves final stabilization, the city can reduce the total required amount of the financial security by one-third. When more than two-thirds of the applicant's maximum exposed soil area achieves final stabilization, the city can reduce the total required amount of the financial security to two-thirds of the initial amount. This reduction in financial security will be determined by the city.

(2) The security deposited with the city 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, including vegetation establishment, as shown on the SWPPP or ESC plan.

(J) *Emergency action.*

(1) If circumstances exist so that noncompliance with this chapter poses an immediate danger to the public health, safety and welfare, as determined by the city, the city may take emergency preventative action.

(2) The city shall also take every reasonable action possible to contact and direct the applicant to take any necessary action. Any cost to the city for emergency action may be recovered from the applicant's financial security.

(Ord. 03-2017, passed 3-21-2017) Penalty, see § 158.99

§ 158.46 ENFORCEMENT.

The city shall notify the permit holder of the failure of the permit's measures.

(A) *Initial contact.* The initial contact will be to the party or parties listed on the application and/or the SWPPP as contacts. Except during an emergency action, 48 hours after notification by the city or 72 hours after the failure of erosion and sediment control measures, whichever is less, the city at its discretion, may begin corrective work. This notification should be in writing, but if it is verbal, a written notification should follow as quickly as practical. If after making a good faith effort to notify the responsible party or parties, the city has been unable to establish contact, the city may proceed with corrective work. There are conditions when time is of the essence in controlling erosion. During this condition, the city may take immediate action, and then notify the applicant as soon as possible.

(B) *Erosion off-site.* If erosion breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-entry from the adjoining property owner, and implement the cleanup and restoration plan

within 48 hours of obtaining the adjoining property owner's permission. In no case, unless written approval is received from the city, may more than seven calendar days go by without corrective action being taken. If in the discretion of the city, the permit holder does not repair the damage caused by the erosion, the city may do the remedial work required. When restoration to wetlands and other resources are required, the applicant shall be required to work with the appropriate agencies to ensure that the work is done properly.

(C) *Erosion into streets, wetlands or waterbodies.* If eroded soils (including tracked soils from construction activities) enter or appear likely to enter streets, wetlands or other waterbodies, cleanup and repair shall be immediate. The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.

(D) *Failure to do corrective work.* When an applicant fails to conform to any provision of this policy within the time stipulated, the city may take the following actions:

(1) Issue a stop work order, withhold the scheduling of inspections and/or withhold the issuance of a certificate of occupancy;

(2) Revoke any permit issued by the city to the applicant for the site in question or any other of the applicant's sites within the city's jurisdiction; and/or

(3) Correct the deficiency or hire a contractor to correct the deficiency.

(a) The applicant will be required to reimburse the city for all costs incurred in correcting stormwater pollution control deficiencies. If payment is not made within 30 days after costs are incurred by the city, payment will be made from the applicant's financial securities as described in § 158.45 of this code.

(b) If there is an insufficient financial amount in the applicant's financial securities as described in §158.45 of this code, the city may assess the remaining amount against the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the city, concur that the benefit to the property exceeds the amount of the proposed assessment and waive all rights by virtue of M.S. § 429.081, as it may be amended from time to time, to challenge the amount or validity of assessment.

(Ord. 03-2017, passed 3-21-2017) Penalty, see § 158.99

§ 158.99 PENALTY.

(A) Any person, firm or corporation failing to comply with, or violating any of the regulations in this chapter shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. All land use and building permits may be suspended until the applicant has corrected the violation. Each day that a separate violation exists shall constitute a separate offense.

(B) Any person, firm or corporation failing to comply with or violating any of the regulation of this chapter 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.

(Ord. 03-2017, passed 3-21-2017)

CHAPTER 159: FLOODPLAIN REGULATIONS

Section

General Provisions

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GENERAL PROVISIONS

§ 159.001 STATUTORY AUTHORIZATION.

The legislature of the state has, in M.S. Ch. 103F and 462, as they may be amended from time to time, delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the City Council does ordain as follows.

(Prior Code, § 12-901)

§ 159.002 FINDINGS OF FACT.

(A) *Flood hazard areas.* The flood hazard areas of the city 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 chapter is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the state's Department of Natural Resources.

(C) *National flood insurance program compliance.* This chapter is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 C.F.R. parts 59 through 78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

(Prior Code, § 12-902)

§ 159.003 STATEMENT OF PURPOSE.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize those losses described in § 159.002 of this code by provisions contained herein.

(Prior Code, § 12-903)

§ 159.004 SCOPE OF APPLICATION.

This chapter shall apply to all lands within the jurisdiction of the city shown on the official zoning map and/or the attachments thereto as being located within the boundaries of the Floodway, Flood Fringe or General Floodplain Districts.

(Prior Code, § 12-904)

§ 159.005 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 chapter. 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; as updated by the Letter of Map Revision, Case No. 21-05-4359P, including the attached map, with an effective date of November 18, 2021; all prepared by the Federal Emergency Management Agency. The official zoning map shall be on file in the office of the City Administrator and the Zoning Administrator.

(Prior Code, § 12-905) (Ord. 09-2021, passed 10-19-2021)

§ 159.006 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 floodplain that result from designation of a floodway.

(Prior Code, § 12-906)

§ 159.007 INTERPRETATION.

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

(B) The boundaries of the zoning districts shall be determined by scaling distances on the official zoning map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of Adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile, the ground elevations that existed on the site at the time the community adopted its initial floodplain ordinance or on the date of the first National Flood Insurance Program map showing the area within the 100-year floodplain if earlier and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the Board of Adjustment and to submit technical evidence.

(Prior Code, § 12-907)

§ 159.008 ABROGATION AND GREATER RESTRICTIONS.

It is not intended by this chapter to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. All other ordinances inconsistent with this chapter are hereby repealed to the extent of the inconsistency only.

(Prior Code, § 12-908)

§ 159.009 WARNING AND DISCLAIMER OF LIABILITY.

This chapter does not imply that areas outside the Floodplain Districts or land uses permitted within the districts will be free from flooding or flood damages. This chapter shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made

thereunder.

(Prior Code, § 12-909)

§ 159.010 DEFINITIONS.

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

- (1) Certain conditions as detailed in the zoning ordinance exist; and
- (2) 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 floodplain 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. General direction the flow of the flood water.

FLOOD FREQUENCY. The frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

FLOOD FRINGE. The portion of the floodplain 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*

FLOODPLAIN. 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 floodplain 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 floodplain which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water.

PRINCIPAL USE OR STRUCTURE. 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 human-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 chapter, 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 the state 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. 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 floodplain 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. Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT.

(1) Within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage regardless of the actual repair work performed.

(2) The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local Code Enforcement Official and which are the minimum necessary to assure safe living conditions; or

(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 chapter, **HISTORIC STRUCTURE** shall be as defined in 44 C.F.R. § 59.1.

VARIANCE. A modification of a specific permitted development standard required in an official control including this chapter 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.

(Prior Code, § 12-911) (Ord. 02-2014, passed 5-20-2014)

§ 159.011 NONCONFORMING USES.

(A) A structure or the use of a structure or premises which was lawful before the passage or amendment of this chapter but which is not in conformity with the provisions of this chapter may be continued subject to the following conditions.

(1) No 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 allowable in the state's Building Code, except as further restricted in divisions (A)(3) and (A)(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% 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% of the market value of the structure, then the structure must meet the standards of §§ 159.030 through 159.033 and §§ 159.045 through 159.049 of this code 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 chapter. 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 §159.010 of this code, it shall not be reconstructed except in conformity with the provisions of this chapter. The applicable provisions for establishing new uses or new structures in §§ 159.030 through 159.033, §§ 159.045 through 159.049 and §§ 159.060 and 159.061 of this code will apply depending upon whether the use or structure is in the Floodway, Flood Fringe or General Floodplain District, respectively.

(6) If a substantial improvement occurs, as defined in §159.010 of this code, 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 §§ 159.030 through 159.033 and §§ 159.045 through 159.049 of this code for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

(B) Historic structures, as defined in §159.010 of this code, shall be subject to the provisions of divisions (A)(3) and (A)(6) above.

(Prior Code, § 12-912) (Ord. 09-2021, passed 10-19-2021) Penalty, see § 159.999

§ 159.012 MANUFACTURED HOMES, MOBILE HOMES, TRAVEL TRAILERS AND THE LIKE 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.

(Prior Code, § 12-913) Penalty, see § 159.999

§ 159.013 ANNEXATIONS.

The Flood Insurance Rate Map panels adopted by reference into §159.005 of this code may include floodplain areas that lie outside of the corporate boundaries of the city at the time of adoption of this chapter. If any of these floodplain land areas are annexed into the city after the date of adoption of this chapter, the newly annexed floodplain lands shall be subject to the provisions of this chapter immediately upon the date of annexation into the city.

(Prior Code, § 12-915)

§ 159.014 AMENDMENTS.

(A) 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 or she determines that, through other measures, lands are adequately protected for the intended use.

(B) All amendments to this chapter, 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 ten days' written notice of all hearings to consider an amendment to this chapter and the notice shall include a draft of the ordinance amendment or technical study under consideration.

(Prior Code, § 12-916)

§ 159.015 DISTRICTS ESTABLISHED.

(A) *Floodway District.* The Floodway District shall include:

- (1) Those areas designated as floodway on the Flood Insurance Rate Map adopted in §159.005 of this code; and
- (2) Those areas designated as Zone AE on the Flood Insurance Rate Map adopted in §159.005 of this code that lie below the ordinary high water level of the St. Croix River as defined in M.S. § 103G.005, subdivision 14, as it may be amended from time to time, except as further modified in this section.

(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 §159.005 of this code that lie outside of a delineated floodway; and
- (2) Those areas designated as Zone AE on the Flood Insurance Rate Map as adopted in §159.005 of this code that lie above the ordinary high water level of the St. Croix River as defined in M.S. § 103G.005, subdivision 14, as it may be amended from time to time, and that lie below the 100-year flood elevation, except as further modified in this section.

(C) *General Floodplain District.* The General Floodplain District shall include those areas on the Flood Insurance Rate Map adopted in § 159.005 of this code 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.

(Prior Code, § 12-917)

§ 159.016 COMPLIANCE.

(A) 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 chapter and other applicable regulations which apply to uses within the jurisdiction of this chapter.

(B) Within the Floodway, Flood Fringe and General Floodplain Districts, all uses not listed as permitted uses or conditional uses in §§ 159.030 through 159.033, §§ 159.045 through 159.049 and §§ 159.060 and 159.061 that follow, respectively, shall be prohibited. In addition, a caution is provided here that:

- (1) New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are not permitted in any floodplain within the city;
- (2) 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 chapter and specifically § 159.011 of this code; and
- (3) 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 chapter and specifically as stated in §§ 159.105 through 159.108 of this code.

(Prior Code, § 12-918) Penalty, see § 159.999

Cross-reference:

Building regulations, see Ch. 150

FLOODWAY DISTRICT (FW)

§ 159.030 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;

(C) Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, fish hatcheries, hunting and fishing areas and single or multiple purpose recreational trails; and

(D) Residential lawns, gardens, parking areas and play areas.

(Prior Code, § 12-1001) (Ord. 05-2015, passed 9-15-2015)

§ 159.031 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.

(Prior Code, § 12-1002)

§ 159.032 CONDITIONAL USES.

(A) Structures accessory to the uses listed in §159.030 of this code and the uses listed in divisions (B) through (G) 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; and

(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 ten-year frequency flood event.

(Prior Code, § 12-1003)

§ 159.033 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) *Conditional uses.* All floodway conditional uses shall be subject to the procedures and standards contained in § 159.108 of this code. The conditional use shall be permissible in the underlying zoning district if one exists.

(C) *Fill.*

(1) Fill, dredge spoil and all other similar materials deposited or stored in the floodplain 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 and/or sedimentation prevention element to the plan.

(3) As an alternative, and consistent with division (B) 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.

(D) *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 floodwaters.
 - (a) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow.
 - (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's 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's 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.

(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.

(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) *Structural works for flood control.* 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 M.S. Ch. 103G, as it may be amended from time to time. Community-wide structural works for flood control intended to remove areas from the regulatory floodplain shall not be allowed in the floodway.

(G) *Levees, dikes, floodwalls.* 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.

(Prior Code, § 12-1004) Penalty, see § 159.999

FLOOD FRINGE DISTRICT (FF)

§ 159.045 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 nonresidential structure or use of a structure or land shall be a permitted use in the Flood Fringe District provided the use does not constitute a public nuisance. All permitted uses shall comply with the standards for Flood Fringe District's permitted uses listed in § 159.046 and the standards for all flood fringe uses listed in § 159.049 of this code.

(Prior Code, § 12-1005)

§ 159.046 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 foot below the regulatory flood protection elevation and the fill shall extend in all directions at an elevation at least 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 § 159.033 of this code.

(C) The cumulative placement of fill where at any one time in excess of 1,000 cubic yards of fill is located on the parcel shall be allowable only as a conditional use, unless the fill is specifically intended to elevate a structure in accordance with § 159.046 of this code.

(D) The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.

(E) The provisions of § 159.049 of this code shall apply.

(Prior Code, § 12-1006)

§ 159.047 CONDITIONAL USES.

Any structure that is not elevated on fill or flood proofed in accordance with §159.046(A) and (B) of this code and or any use of land that does not comply with the standards in § 159.046(C) and (D) of this code 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 §§ 159.048, 159.049 and 159.108 of this code.

(Prior Code, § 12-1007)

§ 159.048 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 and the like, 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 the enclosed area is above-grade on at least one side of the structure, it is designed to internally flood and is constructed with flood-resistant materials and 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's 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 floodwaters 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's Building Code and shall be used solely for building access, parking of vehicles or storage.

(B) Basements, as defined by § 159.010 of this code, shall be subject to the following.

(1) Residential basement construction shall not be allowed below the regulatory flood protection elevation.

(2) Nonresidential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry flood proofed in accordance with division (C) below.

(C) All areas of nonresidential 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's Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the state's 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 the 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 floodplain if adequate flood warning time exists.

(E) Storage of materials and equipment shall be subject to the following.

(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 § 159.049 of this code shall also apply.

(Prior Code, § 12-1008) Penalty, see § 159.999

§ 159.049 STANDARDS FOR ALL FLOOD FRINGE USES.

(A) *New principal structures.* All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.

(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 the 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 so that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four 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 division (B) above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in floodplain areas.

(D) *Fill.* 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) *Floodplain developments.* Floodplain developments shall not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the official zoning map.

(Prior Code, § 12-1009)

GENERAL FLOODPLAIN DISTRICT

§ 159.060 PERMITTED USES.

(A) The uses listed in § 159.030 of this code shall be permitted uses.

(B) All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to §159.061 of this code. Sections 159.030 through 159.033 of this code shall apply if the proposed use is in the Floodway District and §§ 159.045 through 159.049 of this code shall apply if the proposed use is in the Flood Fringe District.

(Prior Code, § 12-1010)

§ 159.061 FLOODWAY AND FLOOD FRINGE DETERMINATIONS.

(A) Upon receipt of an application for a permit or other approval within the General Floodplain District, the applicant shall be required to furnish 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 Minn. Rules parts 6120.5000 through 6120.6200 and 44 C.F.R. 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; and

(3) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than one-half foot. A stage increase less than one-half feet 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 §§ 159.030 through 159.033, §§ 159.045 through 159.049 of this code.

(Prior Code, § 12-1011)

SUBDIVIDING PROPERTY

§ 159.075 LAND SUITABILITY REVIEW CRITERIA.

(A) 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 Floodplain Districts shall be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation.

(B) All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this chapter and have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation.

(C) For all subdivisions in the floodplain, 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.

(Prior Code, § 12-1012)

§ 159.076 FLOODWAY/FLOOD FRINGE DETERMINATIONS.

In the General Floodplain District, applicants shall provide the information required in §159.061 of this code to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.

(Prior Code, § 12-1013)

§ 159.077 REMOVAL OF SPECIAL FLOOD HAZARD AREA DESIGNATION.

(A) 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.

(B) 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.

(Prior Code, § 12-1014)

PUBLIC SERVICES

§ 159.090 PUBLIC UTILITIES.

All public utilities and facilities such as gas, electrical, sewer and water supply systems to be located in the floodplain shall be flood proofed in accordance with the state's Building Code or elevated to above the regulatory flood protection elevation.

(Prior Code, § 12-1015)

§ 159.091 PUBLIC TRANSPORTATION FACILITIES.

(A) Railroad tracks, roads and bridges to be located within the floodplain shall comply with §§159.030 through 159.033, §§ 159.045 through 159.049 of this code.

(B) 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 these 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.

(Prior Code, § 12-1016)

§ 159.092 ON-SITE SEWAGE TREATMENT AND WATER SUPPLY SYSTEMS.

Where public utilities are not provided:

(A) On-site water supply systems must be designed to minimize or eliminate infiltration of floodwaters into the systems; and

(B) (1) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters and they shall not be subject to impairment or contamination during times of flooding.

(2) Any sewage treatment system designed in accordance with the current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this section.

(Prior Code, § 12-1017)

ADMINISTRATION

§ 159.105 ZONING ADMINISTRATOR.

A Zoning Administrator or other official designated by the governing body shall administer and enforce this chapter. If the Zoning Administrator finds a violation of the provisions of this chapter, the Zoning Administrator shall notify the person responsible for a violation.

(Prior Code, § 12-1018) Penalty, see § 159.999

§ 159.106 PERMITS, CERTIFICATION REQUIREMENTS AND RECORD KEEPING.

(A) *Permit required.* A permit issued by the Zoning Administrator in conformity with the provisions of this chapter 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 floodplain.

(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 chapter.

(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 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 chapter.

(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 chapter. 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 floodplain. 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 M.S. Ch. 103G, as it may be amended from time to time, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of the 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 months after the date the supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the technical or scientific data.

(Prior Code, § 12-1019) Penalty, see § 159.999

§ 159.107 APPEALS AND VARIANCES/DUTIES OF THE BOARD OF ADJUSTMENT.

(A) *Rules.* The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on 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 chapter.

(C) *Variances.* The Board of Adjustment may authorize, upon appeal in specific cases, the relief or variance from the terms of this chapter 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 the variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this chapter, 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:

(a) A showing of good and sufficient cause;

(b) 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

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(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 the appeal or variance within 60 days. In passing upon an appeal, the Board of Adjustment may, so long as the action is in conformity with the provisions of this chapter, 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 § 159.108, which are in conformity with the purposes of this chapter. Violations of these conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation. A copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten days of 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 state 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) Construction below the 100-year or regional flood level increases risks to life and property. The 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 variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

(Prior Code, § 12-1020) (Ord. 02-2014, passed 5-20-2014) Penalty, see § 159.999

§ 159.108 CONDITIONAL USES; STANDARDS AND ELEVATION PROCEDURES.

The City Council shall hear and decide applications for conditional uses permissible under this chapter. 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 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 division (C)(6) below, which are in conformity with the purposes of this chapter. Violations of these 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 chapter. A copy of all decisions granting conditional use permits shall be forwarded by mail to the Commissioner of Natural Resources within ten days of this action.

(C) *Procedures to be followed by the City Council in passing on conditional use permit applications within all Floodplain Districts.*

(1) Require the applicant to furnish 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 division (C)(1) above 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) In passing upon conditional use applications, the City Council shall consider all relevant factors specified in other sections of this chapter, 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 the 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 floodplain 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 floodwaters expected at the site; and

(l) The other factors which are relevant to the purposes of this chapter.

(5) 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 division (C)(1) above. The City Council shall render a written decision within 60 days from the receipt of additional information.

(6) Upon consideration of the factors listed above and the purpose of this chapter, the City Council shall attach the conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this chapter. The 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; and

(e) Flood proofing measures, in accordance with the state's Building Code and this chapter. 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.

(Prior Code, § 12-1021) Penalty, see § 159.999

§ 159.999 PENALTY.

(A) Violation of the provisions of this chapter 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 from taking other lawful actions as is necessary to prevent or remedy any violation. These actions may include but are not limited to:

(1) In responding to a suspected 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 violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

(2) When a 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 chapter 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:

(a) 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

(b) 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 chapter 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 chapter.

(Prior Code, § 12-914)

CHAPTER 160: SUBDIVISIONS

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GENERAL PROVISIONS

§ 160.001 PURPOSE OF CHAPTER.

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.

(Prior Code, § 12-1251)

§ 160.002 BASIS OF NEED.

(A) In the past land has been bought and sold using metes and bounds descriptions, but now with smaller parcels being bought and sold the practice of describing them by metes and bounds is no longer practical.

(B) Many metes and bounds descriptions, past and present, written by unqualified people do not properly describe conveyance of land. Overlaps and gaps have been created by these poor descriptions and can only be corrected by the courts. Descriptions based on a good boundary survey can be checked, therefore the record plat is a highly desirable instrument. The underlying description of the property to be platted can be adjusted or corrected, based on a boundary survey. The recorded plat then becomes a legal document denoting lots and blocks as the subdivision of the described tract of land. Clean, simple and accurate conveyances can then be made and described as lot, block-plat name.

(C) The present platting system was established to provide a simple system for keeping records of the division and ownership of land. State statutes give the registered land surveyor exclusive rights to prepare plats. The statutes also set minimum standards that the surveyor must meet, and regulate the plat itself, as to information required, size, number and kind. The reader is referred to M.S. Ch. 505, as it may be amended from time to time, and the standard procedures for platting in the county.

(Prior Code, § 12-1252)

§ 160.003 BASIC PROCEDURES.

(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 the 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 or her 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 matters are agreed to by the subdivider, and are covered as necessary by written contract, and by bond, before the plat is approved.

(Prior Code, § 12-1253) (Res. 1997-16, passed 6-17-1997)

§ 160.004 PURPOSE.

(A) The process of dividing raw land into home sites, or separate parcels for other uses, is one of the most important factors in the growth of any community. Few activities have a more lasting effect upon its appearance and environment. Once the land has been subdivided 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; and

(5) Set the minimum requirements necessary to protect the public health, safety, comfort, convenience and general welfare.

(Prior Code, § 12-1254)

§ 160.005 SCOPE.

(A) 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.

(B) Except in the case of resubdivision, this chapter 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's first subdivision ordinance, nor is it intended by this chapter 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 chapter, or with private restrictions placed upon property by deed, covenant or other private agreement, or with restrictive covenants governing the land. Where this chapter imposes a greater restriction upon the land than is imposed or required by existing provisions of law, ordinance, contract or deed, the provisions of this chapter shall control.

(Prior Code, § 12-1255)

§ 160.006 DEFINITIONS.

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

ALLEY. Any dedicated public right-of-way providing a secondary means of access to abutting property.

APPLICANT. The owner of land proposed to be subdivided or his or her representative. Written consent for subdivision shall be required from the legal owner of the property before the sketch plan is submitted.

ARTERIAL, MINOR. A road intended to move through and from adjacent subregions and activity centers with subregions.

BLOCK. 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.

BUILDING. Includes **STRUCTURE**. A **BUILDING** or **STRUCTURE** includes any part thereof.

BUTT LOT. A lot at the end of a block and located between two corner lots.

CITY ATTORNEY. The attorney employed by the city.

CITY ENGINEER. The registered engineer employed by the city.

CLUSTER DEVELOPMENT. 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 chapter and Ch. 153 of this code. **CLUSTER DEVELOPMENTS** are not permitted under this chapter.

COLLECTOR STREET. 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 a development.

COMMUNITY. The City of Afton.

COMPREHENSIVE DEVELOPMENT PLAN. A Comprehensive Plan prepared by the city including a compilation of policy statements, goals, standards and maps indicating the general locations recommended for the various functions and classes of land use, places and structures, and for the general physical development of the city and includes any unit of part of the

plan or parts thereof.

CONTOUR MAP. 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. A print or reproduction made from a tracing.

COUNTY. Washington County, Minnesota.

COUNTY BOARD. The county's Board of Commissioners.

CUL-DE-SAC. 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. The owner of land proposed to be subdivided or his or her representative. Written consent for subdivision shall be required of the legal owner of the land.

DEVELOPMENT. The act of subdividing land, installing site improvements and/or building structures.

DEVELOPMENT AGREEMENT. The contract between the subdivider and the city which requires the subdivider to furnish and construct at his or her 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. Lots which have a front line abutting on one street and a back or rear line abutting on another street.

DRAINAGE COURSE. A watercourse or indenture for the drainage of surface water.

EASEMENT. A grant by an owner of land for a specific use by persons other than the owner.

ESCROW. A deposit of cash with the city to guarantee the subdivider's contractual obligations to the city. The **ESCROW** funds may be deposited by the City Administrator into regular city accounts but shall be accounted for separately for the purposes specified in the development agreement.

FINAL PLAT. 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 state laws.

GOVERNING BODY. The City Council.

GRADE. The slope of a road, street or other public way, specified in percentage (%) terms.

INDIVIDUAL SEWAGE DISPOSAL SYSTEM. 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. A road intended to provide access to other roads from individual properties.

LOT, CORNER. A lot situated at the intersection of two streets, the interior angle of the intersection not exceeding 135 degrees.

MAJOR SUBDIVISION. 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 chapter.

MARGINAL ACCESS STREET (SERVICE ROAD). A minor street parallel to and adjacent to high volume arterial streets and highways, which provide access to abutting properties and protection of through traffic.

METES AND BOUNDS. 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. 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. 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, Ch. 153 of this code or these regulations.

NATURAL WATERWAY. A natural passageway in the surface of the earth so situated and having a topographical nature that allows surface water to flow 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. A subdivision whose intended use is other than residential, such as commercial or industrial. This subdivision shall comply with the applicable provisions of these regulations.

OUTLOT.

(1) A lot remnant or any parcel of land included in a plat, which may be used as open space.

(2) The **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.

OWNER. 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. A public right-of-way across or within a block, to be used by pedestrians.

PERSON. Any individual, firm, association, syndicate or partnership, corporation, trust or any other legal entity. Includes a corporation, a partnership and an incorporated association of **PERSONS** such as a club.

PLANNER. The planner employed by the community unless otherwise stated.

PLANNING COMMISSION. The city's Planning Commission.

PLAT. 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. 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 § 160.037 of this code.

PROTECTIVE COVENANTS. 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. A narrow strip of land placed between lot lines and streets to control access.

RE-SUBDIVISION. A change in a map of an approved or recorded subdivision plat if the change affects any street layout on a map or area reserved thereon for public use, or any lot line, or if it affects any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

RIGHT-OF-WAY. 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. A road or a portion of a street with only one vehicular-traffic outlet.

RURAL DESIGN STREET. 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.

SHALL. Mandatory.

SIMPLE SUBDIVISION. See § 160.011 of this code.

SKETCH PLAN. 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. 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. The shortest distance between the lines delineating the right-of-way of a street.

SUBDIVIDER. The owner, agent or person having control of land as the term is used in this chapter.

SUBDIVISION IDENTIFICATION SIGN/MONUMENT. A permanent structure identifying the existence of a subdivision, usually placed at an entrance/exit to the subdivision. These **SUBDIVISION IDENTIFICATION SIGNS** are prohibited.

SURVEY, LAND. 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. A land surveyor registered under state laws.

THOROUGHFARE. 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. 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.

USED or OCCUPIED. As applied to any land or building shall be construed to include the definition "intended, arranged or designed to be used or occupied."

VICINITY MAP. 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. A zoning ordinance or resolution controlling the use of land as adopted by the City Council being Ch. 153 of this code.

(Prior Code, § 12-1256) (Res. 1997-16, passed 6-17-1997; Ord. 01-2020, passed 1-21-2020)

Cross-reference:

Cul-de-sac streets, see § 160.058

§ 160.007 PROTECTION OF NATURAL FEATURES.

(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 Ch. 153 of this code. Any mandatory environmental assessment worksheet or impact statement as required by the state's Environmental Quality Board regulations shall be submitted as part of the application for preliminary plat approval.

(Prior Code, § 12-1257)

§ 160.008 SOLAR ACCESS PLANNING.

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.

(Prior Code, § 12-1258)

§ 160.009 PUBLIC SITES AND OPEN SPACES.

(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 the public sites are not dedicated, the 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 the public ground or park by purchase or other methods.

(B) *Scenic easements.* Scenic easements shall be required on slopes of 18% and greater, wetlands, drainageways and other lands and soils judged to be fragile by the soil conservation service, with the exception of driveways over human-made slopes that were created by the construction of roads or related ditches, and that extend only perpendicular to the road for a horizontal distance of 30 feet or less.

(C) *Park fees.* A park fee shall be paid by the builder of each dwelling unit as provided in §160.019 of this code.

(Prior Code, § 12-1259) (Ord. 11-2016, passed 10-18-2016) Penalty, see § 160.999

§ 160.010 MINOR SUBDIVISION.

(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 Ch. 153 of this code.

(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 Ch. 153 of this code, 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 two and one-half 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 chapter. 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 the hearing, published in the designated legal newspaper for the city. The notice shall also contain a description of the land and any requested variances. The notice should specify that any variances identified during the minor subdivision process will be considered at the hearing. At least ten days before the hearing, the City Administrator shall mail an identical notice to the owner and to each of the property owners of record for property within 500 feet of the outside boundaries of the land in question.

(Prior Code, § 12-1260) (Res. 1997-16, passed 6-17-1997; Ord. 14-2004, passed 10-19-2004) Penalty, see § 160.999

§ 160.011 SIMPLE SUBDIVISION.

(A) *Definition.* 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. The transfer must occur between two parcels which meet all the requirements of Ch. 153 of this code 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) *Prohibition.* 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.

(Prior Code, § 12-1261) (Res. 1997-16, passed 6-17-1997) Penalty, see § 160.999

§ 160.012 LAND DIVISION.

(A) (1) 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 the land division shall be filed with the City Administrator.

(2) 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 the division, until the division has been approved by the City Council. Prior to the consideration of the 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 the division neither parcel will be more nonconforming in accordance with Ch. 153 of this code, 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 subdivision 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.

(Prior Code, § 12-1262) (Res. 1997-16, passed 6-17-1997; Ord. 14-2004, passed 10-19-2004; Ord. 02-2009, passed 4-21-2009) Penalty, see § 160.999

§ 160.013 REGISTERED LAND SURVEYS.

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.

(Prior Code, § 12-1263)

§ 160.014 METES AND BOUNDS.

(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.

(Prior Code, § 12-1264) Penalty, see § 160.999

§ 160.015 UNAPPROVED SUBDIVISIONS.

(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 of Minnesota 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 the time;

(3) Was a separate parcel not less than two and one-half 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 compliance.

(Prior Code, § 12-1265) Penalty, see § 160.999

§ 160.016 VARIANCES.

(A) The City Council may grant a variance in any particular case where the subdivider can show that by reason of the unfavorable topography or other physical conditions the strict compliance to these regulations could cause practical difficulties. Practical difficulties as used in connection with the granting of a variance includes a three-factor test, all three of which must be met in order for a variance to be granted.

(1) *Reasonableness.* The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.

(2) *Uniqueness.* The plight of the landowners is due to circumstances unique to the property not created by the landowner.

(3) *Essential character.* The variance, if granted, will not alter the essential character of the locality.

(B) Economic considerations alone shall not constitute a practical difficulty if reasonable use for the property exists under the terms of this chapter.

(C) Applications for any variance shall be made in writing by the subdivider at the time when the plat is filed for consideration. The 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. The variances shall be considered at the next regular meeting held by the Planning Commission. The plans for the 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.

(Prior Code, § 12-1266) (Ord. 02-2014, passed 5-20-2014)

§ 160.017 SECURITY INTEREST.

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 chapter and Ch. 153 of this code.

(Prior Code, § 12-1267)

§ 160.018 BUILDING PERMITS.

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 chapter have been fully met.

(Prior Code, § 12-1268) Penalty, see § 160.999

Cross-reference:

Building permits, inspections and fees, see § 150.04

§ 160.019 PARK AND OPEN SPACE DEDICATION.

(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;
- (2) To create multiple use, non-motorized trails along roads or as a link between various points of interest and public facilities where the 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 chapter.

(B) *Requirements.* Subdividers, as a prerequisite to approval of a subdivision, shall dedicate to the city for park or playground purposes or for public open space or trail systems a reasonable portion of the land being subdivided or in lieu thereof a cash equivalent. The form of dedication, land or cash, (or any combination) shall be decided by the city and dedicated or paid prior to city signing the final plat, or prior to final City Council approval of minor subdivisions.

- (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 the 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 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's 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's 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 division (B)(1) above 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 divisions (C)(3) and (D) below.

(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 the 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 its 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 division (D) below.

(4) Though the subject site may not be located in an area identified for future parkland, open space, trail or wildlife corridor or wildlife habitat area in the official park map and comprehensive park plan, the Planning Commission may recommend and the City Council may require that a reasonable portion of the land be dedicated to the city, at which time the subdivision will be sent to the Parks Committee for their review and recommendation as to the sites location. Reasonable portion of the land shall be defined as that portion of land in which could be purchased with the amount of park dedication fee payment owed by the subject subdivision per dwelling unit being proposed.

(D) *Cash park dedication fee.* The cash park dedication fee in lieu of land dedication shall be equivalent to 7.5% 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, the 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.

(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 and 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 M.S. §§ 462.35 and 471.1941.351, as they may be amended from time to time.

(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 dedicated property.

(H) *Lot and block number required.* Land dedication to the city shall be in the form of lots with approved lot and block number.

(I) *Right to challenge.*

(1) 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 the study shall be borne by the developer or applicant.

(2) If the developer or applicant request the preparation of a study, the request must be made at the time the development application is submitted.

(3) 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.

(Prior Code, § 12-1270) (Ord. 47-2004, passed 8-17-2004; Ord. 13-2005, passed 9-20-2005; Ord. 04-2012, passed 10-16-2012)

§ 160.020 CONFLICTING PROVISIONS.

In the event of conflicting provisions in the text of this chapter or between this chapter and other city ordinances, the more restrictive shall apply.

(Prior Code, § 12-1271)

PLATTING PROCEDURE

§ 160.035 SKETCH PLAN.

(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 chapter, 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 by 17-inch 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 county's 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:

- (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 two and one-half 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% or less; and
- (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 and Groundwater Commission. Upon review by the Natural Resources and Groundwater Commission, the subdivision sketch plan, with its recommendations, will be sent on to Parks, Recreation and Open Spaces Commission. The Natural Resources and Groundwater Commission shall also send its recommendations to the City Council. The Parks, Recreation and Open Spaces Commission will review the subdivision sketch plan and send its recommendations to the Planning Commission. The Park, Recreation and Open Spaces Commission shall also send its recommendations to the City Council; and

(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 the sketch plan shall not constitute formal filing of a Preliminary Plat. The Planning Commission will, on the basis of the 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 or she may proceed toward fulfilling the necessary steps for approval of the plat in accordance with the provisions of this chapter.

(E) A sketch plan and preliminary plat are required where land has the potential to be developed in stages.

(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 the hearing, published in the designated legal newspaper for the city. The 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.

(Prior Code, § 12-1326) (Ord. 1997-22, passed 6-15-1999)

Cross-reference:

Preparing and submitting the final plat, see § 160.039

§ 160.036 PREPARING AND SUBMITTING THE PRELIMINARY PLAT.

(A) When the subdivider feels he or she is ready to prepare the preliminary plat, he or she shall have his or her surveyor and/or planner draw one which is in conformity with the requirements of this chapter. See § 160.037 of this code.

(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 by 17-inch reduction of the plat; shall furnish the office of the County Surveyor with seven 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.

(Prior Code, § 12-1327) (Res. 1997-16, passed 6-17-1997; Ord. 1997-5, passed 3-17-1998)

§ 160.037 DATA REQUIRED FOR PRELIMINARY PLAT.

(A) Identification and description.

(1) Proposed name of subdivision, which name shall not duplicate or be similar in pronunciation to the name of any plat already recorded in the county;

(2) Legal description of property;

(3) Name and address of the record owner, any agent having control of the land, including contract purchasers, subdivider, land surveyor, engineer and designer of the plan;

(4) Map indicating graphic scale not less than one inch to 100 feet;

(5) North point and vicinity map of area showing well-known geographical points for orientation within a one-half mile radius;

(6) List of adjoining property owners within 500 feet of the proposed plat; and

(7) Date of preparation.

(B) Existing conditions.

(1) Boundary lines shall be shown clearly and to 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 ways, 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. 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 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% and slopes in excess of 18% 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's Soil and Water Conservation District office, a plan or statement indicating the soil conservation practice or practices to be used to overcome the 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; and

(14) The City Administrator and designees shall be permitted to inspect the land during review of the preliminary plat to ensure that there are no adverse conditions or harmful conditions upon the land. If these 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 are:

(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) (a) Location of house and detached accessory building on each lot. Required front, side and rear building set back lines.
(b) Driveway access shall be indicated on the preliminary plat in the graph that shows the size of each lot, contiguous buildable acres and the like.
(c) 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 the lots, at the time the plat is filed, restricting driveway access to the interior street;
- (5) Gradients of proposed street, plans and profiles showing locations and typical cross-sections of street pavement including curbs, gutters, sidewalks, drainage easements, servitude rights-of-way, 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) (a) Grading and drainage plan for entire subdivision. Details must include proposed ponding areas, ditches, culverts or storm sewer.
(b) Drainage calculations are also required. Arrows indicating the direction of the drainage shall be provided.
(c) If any fill or excavation is proposed in a wetland or lake, approval must be obtained from the state's 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% 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 the patterns and courses that would result from the subdivision and development of the 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 the subdivision; and
- (12) Other information as may be requested by the City Engineer, city planning staff, City Planning Commission or City Council.

(Prior Code, § 12-1328) (Res. 1997-16, passed 6-17-1997; Ord. 1997-5, passed 3-17-1998; Ord. 02-2009, passed 4-21-2009)

Cross-reference:

Minimum design standards, see §§ 160.055 through 160.066

§ 160.038 REVIEW OF THE PRELIMINARY PLAT.

- (A) The applicant shall provide 25 copies of the plat plus at least one 11 by 17-inch 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 county's 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 state's 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 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 seven days after the public hearing on the plan. If the Planning Commission fails to make a report, the Council shall proceed without a 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 this 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 chapter 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 or she 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 the scope as to constitute a new plat. If so, the plat shall be refiled.

(Prior Code, § 12-1329) (Res. 1997-16, passed 6-17-1997; Ord. 1997-5, passed 3-17-1998; Ord. 1997-13, passed 9-22-1998)

§ 160.039 PREPARING AND SUBMITTING THE FINAL PLAT.

(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) (1) 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 or she proposes to develop at this time, provided the portion conforms with all the requirements of the city.

(2) 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 Administrator 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.

(Prior Code, § 12-1330)

§ 160.040 DATA REQUIRED FOR FINAL PLAT.

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 chapter and the manual of standard procedures for platting in the county.

(Prior Code, § 12-1331)

§ 160.041 REVIEW OF THE FINAL PLAT.

(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 § 160.100(A) of this code. 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 the action shall be recorded in the official proceedings and transmitted to the subdivider.

(D) The final plat must be approved by the County Surveyor in accordance with the standard procedures for platting in the county.

(E) Upon receiving final plat approval by the City Council, the subdivider shall then record it with the County Recorder within 120 days or the approved plat shall be considered void.

(F) Upon receiving approval of the final plat for a portion of the approved plat, the subdivider shall not be required to request a continuation of the recognition of the plat so as to avoid automatic expiration of preliminary approval unless final plat approval is not obtained within 24 months following preliminary approval.

(Prior Code, § 12-1332)

MINIMUM DESIGN STANDARDS

§ 160.055 COMPREHENSIVE DEVELOPMENT PLAN.

The proposed subdivision shall conform to the comprehensive development plan and policies as adopted by the city.

(Prior Code, § 12-1376)

§ 160.056 LAND REQUIREMENTS.

(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 hazards have been eliminated or unless adequate safeguards against the 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's Soil and Water Conservation District office, shall be required on slopes with grades of 12% or steeper.

(D) Proposed subdivision shall be coordinated with existing nearby municipalities or neighborhoods so that the community as a whole may develop harmoniously.

(Prior Code, § 12-1377)

§ 160.057 STREET PLAN.

(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 the connection is not feasible. Access shall be defined as practical access. Reserved strips, and land-locked areas shall not be created.

(D) The arrangement of streets in new subdivisions shall make provisions for the appropriate continuation of the existing streets in adjoining areas.

(E) Where adjoining areas are not subdivided, but may be subdivided, the arrangement of streets in a new subdivision shall make provision for the proper projection of streets into adjoining areas by extending the new streets to the boundaries of the subdivision at appropriate locations. Streets must be constructed to the boundary according to city specifications or it shall be documented that it is feasible to build them to the boundary. Dedication of road right-of-way shall be required to the boundary even though the street is not constructed. It shall be the responsibility of the adjoining property owner, when his or her 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 the 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 the thoroughfare and right-of-way may be required for adequate protection of residential properties and separation of through and local traffic. The 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. The distances shall also be determined with due regard for the requirements of approach grades and future grade separations.

(L) The street arrangements shall not cause hardship to owners of adjoining property in platting their own land and providing convenient access to it.

(Prior Code, § 12-1378) Penalty, see § 160.999

Cross-reference:

Streets and sidewalks, see Ch. 151

§ 160.058 CUL-DE-SAC STREETS.

(A) (1) 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.

(2) 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) (1) 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.

(2) 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.

(Prior Code, § 12-1379) (Res. 1997-16, passed 6-17-1997)

Cross-reference:

Streets and sidewalks, see Ch. 151

§ 160.059 STREET DESIGN.

(A) *Minimum widths.*

(1) 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:

Type of Street	Right-of-way Width	Roadway Width Including Shoulders
Collector/commercial	5W	44 feet
Cul-de-sac	60 feet minimum turnaround radius	45 feet turnaround radius
Industrial	80 feet minimum	44 feet
Local street (rural)	60 feet minimum	24-foot wide paved surface with a four-foot wide aggregate shoulder
Local street (urban)	60 feet minimum	32 feet, measured from face of curb to face of curb
Minor arterial	120 feet minimum	As determined by traffic needs

(2) 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.

(3) 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% and grades shall not exceed 8%.

(H) *Vertical curves.* *The State Department of Transportation Road Design Manual* § 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.

(Prior Code, § 12-1380) Penalty, see § 160.999

§ 160.060 PRIVATE STREETS.

Private streets are not permitted.

(Prior Code, § 12-1381) Penalty, see § 160.999

§ 160.061 ALLEY DESIGN.

(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:

Classification	Right-of-way Width	Pavement
Industrial or commercial	24 feet	20 feet
Residential (one-way)	20 feet	6 feet
Residential (two-way)	20 feet	20 feet

(C) All centerline gradients shall be at least 0.5% and shall not exceed 8%.

(Prior Code, § 12-1382)

§ 160.062 DRAINAGE.

(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, 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 1%.

(1) Annual probability shall not exceed 1% means that a 100-year storm of appropriate duration should be used for design but that storms of lesser magnitude (e.g., two- 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 USDA Soil Conservation Service (S.C.S.) T R 20 computer program for a storm of critical duration.

(Prior Code, § 12-1383)

§ 160.063 EASEMENTS.

(A) *Provided for utilities.* Easements of at least 20 feet wide, centered on rear and other lot lines as required, shall be provided for utilities where necessary as recommended by the City Engineer. Where underground utilities are being installed, a ten-foot wide front or side yard easement may be required.

(B) *Provided for drainage.* Easements shall be provided along each side of the centerline of any watercourse or drainage

channel, whether or not shown on the Comprehensive Plan, to a sufficient width to provide proper maintenance and protection and to provide for stormwater runoff and installation and maintenance of storm sewers.

(C) *Dedication.* Utility and drainage easements shall be dedicated for the required use.

(D) *Trails.* Trail easements shall be provided as required by the City Council in compliance with the Comprehensive Plan.

(E) *Scenic easements.* Scenic easements shall be required on slopes of 18% and greater, wetlands, drainageways and other lands and soils judged to be fragile by the soil conservation service, with the exception of driveways over human-made slopes that were created by the construction of roads or related ditches, and that extend only perpendicular to the road for a horizontal distance of 30 feet or less. Scenic easements also shall be required on slopes greater than 12% if the land is unbuildable or heavily wooded and would be affected adversely by development. The 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 state's Department of Natural Resources, motorized vehicles, construction of any structure including driveways. The 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 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.

(Prior Code, § 12-1384) (Res. 1997-16, passed 6-17-1997; Ord. 1997-13, passed 9-22-1998) Penalty, see § 160.999

§ 160.064 STREET NAMES.

(A) 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.

(B) Street names shall conform to the county uniform street naming and property numbering system as applicable.

(Prior Code, § 12-1385)

§ 160.065 BLOCK DESIGN.

(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 Ch. 153 of this code, 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 these 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 Ch. 153 of this code, except adjoining a lake, stream, railroad or thoroughfare or where one tier of lots is necessary because of topographic conditions.

(Prior Code, § 12-1386)

§ 160.066 LOT REQUIREMENTS.

(A) Side lot lines shall be substantially at right angles to straight street lines or radial to curved street lines or radial to lake or stream shores unless topographic conditions necessitate a different arrangement.

(B) Each lot shall front upon an improved public street.

(C) No lot shall have less area or width than is required by zoning regulations.

(D) Lots designed for commercial or industrial purposes shall provide adequate off-the-street service, loading and parking facilities.

(E) Double frontage lots shall not be permitted.

(F) Lots abutting upon a watercourse, drainageway, channel or stream shall have an additional depth or width, as required to assure building sites that are not subject to flooding.

(G) Lots with lakeshore frontage shall be designed so that the lot lines extended shall maintain the closest approximation to riparian right.

(H) In the subdividing of any land, regard shall be shown for all natural features, such as tree growth, watercourses, historic spots or similar conditions, which if preserved will add attractiveness and stability to the proposed development.

(I) All remnants of lots below minimum size remaining after subdividing of a larger tract must be added to adjacent lots.

(J) Where a proposed plat is adjacent to a major or minor arterial, there shall be no direct vehicular access from individual lots to the 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, the temporary access permits shall become void. At the time the 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 the 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.

(Prior Code, § 12-1387)

ENGINEERING STANDARDS

§ 160.080 STREETS.

(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 2% 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 3%.

(B) *Street pavement.* The design of street pavement for all streets covered by this regulation shall be in accordance with the state's *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 one and one-half inches of bituminous base course and one and one-half inches of bituminous wear course. More stringent design may be required by the City Engineer based on soil borings provided by the developer. The final bituminous wear course shall be placed no sooner than one year after the date that the bituminous base course is placed. Immediately prior to the placement of the bituminous wear course, any roadway settlements or other pavement damage shall be repaired by the developer.

(C) *Street design.*

Street Classification	Pavement Design: Axle Load
Arterials, collector street needs	As determined by traffic
Local streets	7-ton minimum

(D) *Soil tests.* To determine subgrade soil classifications, soil samples shall be collected and analyzed by an independent, certified testing laboratory. Reports of the soil analysis shall be submitted to the engineer with the pavement plans. Soil samples shall be taken along the center line of the proposed road at intervals not exceeding 300 feet.

(E) *Curb and gutter.* Concrete curb and gutter 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's Department of Transportation 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.

(Prior Code, § 12-1427) (Ord. 2004-5, passed 6-15-2004; Ord. 03-2017, passed 3-21-2017) Penalty, see § 160.99

§ 160.081 UTILITIES.

(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.

(Prior Code, § 12-1427)

Cross-reference:

Utilities, see Table of Special Ordinances

§ 160.082 SANITATION, SEWER AND WATER RURAL AREAS.

(A) 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 Ch. 154 of this code. This does not mean that the installation of individual disposal devices shall be at the expense of the subdivider.

(B) 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 accommodate two adequate disposal systems to serve the residence for the estimated unsewered years, as determined by the City Council. The 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.

(C) 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.

(D) All on-site sewage disposal systems shall comply with the standards of Ch. 154 of this code, the state's Department of Health and the state's Pollution Control Agency.

(Prior Code, § 12-1428) Penalty, see § 160.999

Cross-reference:

Sewage, see Ch. 154

§ 160.083 STORMWATER DRAINAGE.

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. These 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 the easements or land is needed in the public interest for purposes of floodplain management, proper drainage, prevention of erosion, pedestrian access to waterbodies 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.

(Prior Code, § 12-1429) (Ord. 2004-5, passed 6-15-2004; Ord. 03-2017, passed 3-21-2017)

§ 160.084 STREET SIGNS.

All street signs shall be provided and installed by the city at the expense of the subdivider.

(Prior Code, § 12-1430)

Cross-reference:

Signs, see §§ 153.130 through 153.133

§ 160.085 INSPECTION.

All required improvements shall be inspected by the City Engineer during construction at the expense of the subdivider.

(Prior Code, § 12-1431)

SUPPLEMENTAL REGULATIONS

§ 160.100 IMPROVEMENTS.

(A) *Improvements required.* 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.

(1) *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.

(2) *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's Soil Conservation District and the City Engineer within 30 days of the completion of grading or disturbance of individual areas.

(3) *Pavement.* All street and alleys shall be improved with concrete or bituminous surface.

(4) *Curb and gutter.* Along both sides of an urban design street, concrete curb and gutter shall be installed.

(5) *Drainage facilities.* The facilities and easements shall be installed as will adequately provide for the drainage of surface waters; a storm sewer system may be required when the easements or land is needed in the public interest for purposes of floodplain management, proper drainage, prevention of erosion, pedestrian access to waterbodies, 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.

(6) *Miscellaneous facilities.* Tree planting, traffic control signs, oversized utility trunk lines, pedestrian ways and other improvements may be required.

(7) *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. These devices shall include but not be limited to: staging, grading operations, side slopes, silt fences, mulching, culverts, ponding areas, netting and the like. The 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.

(Prior Code, § 12-1471)

(B) *Payment for installation.*

(1) The required improvements as listed elsewhere are to be furnished and installed at the sole expense of the subdivider.

(2) 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 the construction or improvement as represents the benefit to the subdivided property using usual assessment apportionment practices.

(Prior Code, § 12-1472)

(C) *Agreement providing for the installation.*

(1) 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 the 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. The 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 the improvements; and shall contain other provisions as may be required by the City Council.

(a) 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% 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 the 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 the 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.

(b) 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 this 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.

(2) No subdivider shall be permitted to start work on any other subdivision without special approval of the City Council if he or she has previously defaulted on work or commitments.

(Prior Code, § 12-1473)

(D) *Financial guarantee.* The financial guarantee required as part of the division agreement shall be one of the following:

(1) *Escrow deposit.* A cash escrow deposit may be made with the City Administrator. The city shall be entitled to reimburse itself out of the deposit for any cost or expense incurred by the city for completion of the work in case of default of the breach thereof.

(2) *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:

(a) The creditor does guarantee funds in the required amount;

(b) 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, the funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter; and

(c) This letter of credit may not be withdrawn, or reduced in amount, until released by the City Council.

(Prior Code, § 12-1474)

(E) *Construction plans and inspections.*

(1) 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. The 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.

(2) 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.

(3) The subdivider shall obtain at his or her own expense, an "as built" plan which shall be submitted to the city upon completion of improvements and before the 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.

(Prior Code, § 12-1475)

(F) *Completion prior to approval of plat.* 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 or she is satisfied that the existing improvements conform to applicable standards.

(Prior Code, § 12-1476)

(Res. 1997-16, passed 6-17-1997; Ord. 10-2005, passed 6-21-2005) Penalty, see § 160.999

§ 160.101 PROTECTIVE COVENANTS REQUIRED FOR ALL MAJOR SUBDIVISIONS.

(A) Protective development covenants shall be required of all major subdivisions within the corporate boundaries of the city.

(Prior Code, § 12-1480)

(B) 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.

(Prior Code, § 12-1481)

(Ord. 10-2005, passed 6-21-2005)

§ 160.102 LOWER ST. CROIX RIVER SHORELAND MANAGEMENT.

(A) *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 suitability at a public hearing. Thereafter, the Council may affirm, modify or withdraw its determination of unsuitability.

(Prior Code, § 12-1496)

(B) *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 chapter for planned cluster developments, provided:

- (1) In Rural Districts of this chapter, 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;
- (2) In Urban Districts of this chapter and only where public sewer and water will be installed in the proposed cluster development, the number of dwelling units shall not exceed 50% 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;
- (3) Open space shall be preserved. At least 50% of the length of shoreland or bluffland frontage as viewed from the river shall be kept in its natural state;
- (4) Temporary docks, if allowed, shall be centralized and of a size not to exceed the needs of the residents of the development.

(Prior Code, § 12-1497)

Cross-reference:

Lower St. Croix River bluffland and shoreland management, see Ch. 157

§ 160.103 OPEN SPACE PRESERVATION USING SHARED DRIVEWAYS.

(A) *Purpose.* The purposes of this section are:

- (1) To encourage the preservation of open space and rural vistas through large lot development using shared driveways;
- (2) To preserve the natural resources of the site and to preserve wildlife habitat and corridors; and
- (3) To provide for long-term low density development and minimize the city's ongoing costs by allowing large lots to be accessed via shared driveways rather than public roads.

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

SHARED DRIVEWAY. A privately owned and maintained driveway that serves more than one lot.

SHARED DRIVEWAY MAINTENANCE AGREEMENT. An agreement between the owners of lots served by a shared driveway that includes the standards for maintenance of the shared driveway, who is responsible for the maintenance and how the costs of maintenance are to be allocated among the owners of the lots served by the shared driveway.

(C) *General standards for the use of shared driveways.*

(1) A conditional use permit shall be required for all subdivisions that use shared driveways. The city may approve the use of shared driveways for a subdivision if it finds that the subdivision satisfies all of the following standards.

- (a) A conservation easement that prohibits the future subdivision of all of the lots involved in the subdivision shall be jointly held by the Belwin Conservancy, or other third party approved by the city who will hold the easement for the long-term, and the city, and shall be recorded on the property along with the recording of the subdivision.
- (b) Shared driveways shall not be allowed on cul-de-sacs that were purposely created as part of a subdivision to provide access to the subdivision, and already contain the maximum allowed number of lots, and shared driveways shall not be allowed on a cul-de-sac serving a Preservation and Land Conservation Development (PLCD) and cannot be connected to property in a PLCD.
- (c) The minimum shared driveway width is 12 feet, but may be required to be wider based on the number of lots to be served and the recommendations from the Fire Department.
- (d) The tract of land required for the use of shared driveways is a minimum of 40 contiguous acres in size.
- (e) The minimum allowed size of lots served by a shared driveway is 20 acres.
- (f) Shared driveways are allowed in the Agricultural and Rural Residential Zoning Districts.
- (g) Because access is provided through shared driveways rather than through the construction of a new public road, the new lots served by the shared driveways are not required to meet the public street frontage requirement.
- (h) The lot from which a shared driveway serves a new lot shall have at least 60% of the required frontage on a public street, unless the lot is at the end of a dead-end public street that does not have a cul-de-sac. In this case, the following requirements shall be met.

1. A cul-de-sac bulb that meets the requirements of the Fire Department and that is subject to review and approval by the City Engineer shall be provided on the lot.
2. A public street easement shall be provided over the cul-de-sac.

3. A private driveway easement shall be provided from the cul-de-sac to the property to be served by the shared driveway, if there is not a public right-of-way easement beyond the dead-end that extends to the property to be served by the shared driveway.

(i) The location of shared driveways as they meet a public road, including the distance between driveways, shall be subject to review and approval by the City Engineer, to ensure traffic safety requirements are met.

(j) The lots on a shared driveway shall be addressed based on the public street from which the lots are accessed via the shared driveways and signage with the addresses of the lots shall be provided at the point where the shared driveways meet the public street right-of-way.

(k) While a shared driveway shall generally serve a maximum of two lots, a shared driveway that serves up to three lots could be considered if the property owner demonstrates the driveway would better achieve the purposes of this subchapter as set out in division (A) above than would a driveway serving two lots. This could include reducing the impact of the driveways on the open space areas by reducing the number of shared driveways needed and/or substantially reducing the total length of driveways needed.

(l) A shared driveway requires a multi-party shared driveway agreement that sets out how the shared driveway is to be maintained, repaired and improved, who is responsible for planning, coordinating and implementing the maintenance, repairs and improvements, as well as for planning the projected costs of these items, and how the costs of maintenance, repairs and improvements are to be allocated among the owners of the lots served by the driveway. The agreement shall provide for a dispute resolution process that does not include the city. The shared driveway agreement shall be executed for each driveway, subject to review and approval by the city, and shall be recorded against the property of each party

(Ord. 02-2021, passed 3-16-2021)

§ 160.999 PENALTY.

(A) Any person who violated any of the provisions of this chapter, or who sells, or offers for sale any lot, block or tract of land herewith regulated before all the requirements of this chapter 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.

(Prior Code, § 12-1269)

(B) Any owner or agent of the owner of land who conveys a lot or parcel in violation of the provisions of this chapter shall pay to the city a penalty (no criminal sanction) of not less than \$100 for each lot or parcel so conveyed. The city may enjoin the conveyance or may recover the penalty by a civil action in any court of competent jurisdiction.

(Prior Code, § 12-1269)

Statutory reference:

Authority to regulate the subdivision of land, see M.S. § 462.358

CHAPTER 161: HERITAGE PRESERVATION

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Cross-reference:

Building regulations, see Ch. 150

Heritage Preservation Commission, see Ch. 32

GENERAL PROVISIONS

§ 161.01 PUBLIC POLICY AND PURPOSE.

(A) 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.

(B) The purpose of this chapter is to:

- (1) 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;
- (2) Protect and enhance the city's appeal to residents, visitors and tourists, and serve as a support and stimulus to business and commerce;
- (3) Foster civic pride in the beauty and notable accomplishments of the past; and
- (4) Promote the preservation and continued use of historic sites and structures for the education and general welfare of the people of the city.

(Prior Code, § 12-1526)

§ 161.02 DEFINITIONS.

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

CERTIFICATE OF APPROVAL. The documentation provided by the Commission which evidences approval of activities proposed for a heritage preservation site.

COMMISSION. The Heritage Preservation Commission established in §§32.30 through 32.43 of this code.

DESIGN REVIEW GUIDELINES. Guidelines presented in this chapter and to be used in reviewing exterior alterations requiring a building permit for designated heritage preservation sites.

HERITAGE PRESERVATION SITE. 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 chapter.

SECRETARY OF THE INTERIOR STANDARDS. 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. The Village Historic Site District defined in §153.061 of this code, and for which design review is provided through the administrative permit process.

(Prior Code, § 12-1527)

§ 161.03 REVIEW OF ACTIVITIES.

The type of activities under this chapter to be reviewed are as follows:

- (A) Remodel, repair or change in any manner that will alter the exterior appearance of an existing building or site

including painting, signage, awnings, landscaping or permanent interior remodeling which affects the exterior appearance;

- (B) New construction including the expansion or enlargement of an existing building or site;
- (C) Moving of buildings;
- (D) Demolition in whole or part; or
- (E) Public improvement projects which directly or indirectly affect a heritage preservation site.

(Prior Code, § 12-1528) (Ord. 02-2009, passed 4-21-2009)

§ 161.04 ENFORCEMENT.

(A) No activity as defined by this chapter 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 chapter.

(B) Upon citing any violation of this chapter, 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. The notice shall specify the nature of the violation and possible means for rectifying the violation.

(2) The 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.

(Prior Code, § 12-1529) Penalty, see § 10.99

DESIGN REVIEW GUIDELINES

§ 161.15 PURPOSE AND INTENT.

(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) (1) The preface to the guidelines is based on the U.S. Secretary of the Interior's standard for rehabilitation.

(2) 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.

(3) They provide standards for considering the impact of exterior alterations on the individual building as well as on an entire district.

(C) (1) The guidelines are intended to be flexible, and the conditional use review will be conducted on a case-by-case basis.

(2) With regard to alterations to existing buildings, the expense of certain restoration techniques, the availability and expense of historic materials and economic hardship are among factors which should be considered by the Zoning Administrator, Design Review Committee to the Planning Commission and the Heritage Preservation Commission.

(Prior Code, § 12-1621)

§ 161.16 GENERAL PRINCIPLES.

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 a manner that if the 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.

(Prior Code, § 12-1622)

DESIGN; RESTORATION AND REHABILITATION

§ 161.30 MASONRY WALLS AND FOUNDATIONS.

Although most buildings in the district are of wood frame construction, there are a few brick, stucco and concrete block examples, and all rest on masonry foundations. Masonry must be cared for properly. Poor maintenance, cleaning or repair can result in extensive water damage and eventual structural failure.

(A) *Repair.* Deteriorated brick, stone, mortar and other materials should be replaced with material used in the original construction or with materials that resemble the appearance of the original as closely as possible. The advice of a skilled mason should be sought for major repair projects.

(B) *Cleaning.* Masonry cleaning should be conducted only to halt deterioration and by means such as low pressure water, soft brushes and/or appropriate chemical treatment. Sandblasting should not be used under any circumstances.

(C) *Repointing.* Original mortar joint size and profile should be retained and/or reduplicated in repointing. Mortar mixtures should duplicate the original in lime, sand and cement proportion and should duplicate the original mortar in color and texture.

(D) *Stucco resurfacing.* Repairs to stucco surfaces should duplicate the original in color and texture, if evidence exists. Smooth or heavy dashed surfaces should be avoided unless they were used on the original surface.

(E) *Painting.* The original color and texture of masonry surfaces should be retained and unpainted stone and brick surfaces should not be painted. The removal of paint from painted masonry surfaces should only be attempted if unpainted surfaces are historically appropriate and if removal can be accomplished without damage to the masonry.

(F) *Resurfacing.* Stucco, artificial stone, brick veneer or vinyl or aluminum products should not be applied over masonry surfaces.

(Prior Code, § 12-1666)

Cross-reference:

Chimney guidelines, see § 161.32

§ 161.31 WALLS; WOOD SIDED.

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.*

(1) Buildings originally clad in wooden siding should not be resurfaced with brick, stucco, artificial stone or brick veneer, hardboard or vinyl or aluminum siding.

(2) 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:

(a) 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;

(b) In the resurfacing of noncontributing buildings constructed after 1940; and

(c) In the resurfacing of existing or construction of new garages, particularly when the garage is inconspicuously sited.

(3) 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.

(Prior Code, § 12-1667)

§ 161.32 ROOFS AND CHIMNEYS.

The shape, texture and color of the roof are important design features of any building. Gable and hipped roofs are most common for residential construction, while flat roofs are found on some commercial buildings. Many of the early houses of the city were roofed in cedar shingles and later reroofed with asphalt shingles. Properly selected, modern asphalt roofing materials are compatible with the appearance of historic buildings.

(A) *Roofing materials.* New roofing material should be appropriate to the character of the building in composition, size, shape and texture. Dark brown, dark gray and “weathered wood” are among usually acceptable colors. Rolled roofing may be used only on flat or slightly sloped roofs which are not visible from the public way.

(B) *Alterations to roof shape; front.* The original roof type, slope and overhangs should be preserved. The roof shape at the front should not be altered except to restore it to the original documented appearance or to add architecturally compatible dormers. Documentation includes evidence of the former appearance of the building, or, in the case of pattern book houses, those of similar period and style. The shape of existing dormers should not be altered unless compatible with the original design.

(C) *Alterations to roof shape; rear.* Alterations to the roof shape at the sides or rear should be compatible with the architectural character of the building.

(D) *Skylights.* Wherever possible, skylights should not be installed on the front roof plane. They should be flat and as close to the roof plane as possible.

(E) *Rebuilt chimneys.* If rebuilding is necessary, original brick details such as decorative panels and coffers should be replicated. In the absence of evidence of the original appearance of the chimney, repair or rebuilding should be compatible with the building style or type.

(F) *Chimneys and stovepipes.* Wherever possible, new chimneys and stovepipes should not be installed on the front roof plane.

(Prior Code, § 12-1668)

§ 161.33 WINDOWS.

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.

(Prior Code, § 12-1669)

§ 161.34 ENTRIES.

The entry, including the door, door surround and sometimes sidelights and a transom, is usually the focal point of the facade. The size of the entry is directly related to the mass and scale of the building. As with windows, any alteration to size, shape or trim details can have a detrimental effect on exterior appearance.

(A) *Size and shape.* All historic entry components should be retained. Entry openings should not be enlarged or reduced to fit a new door. New entry openings should not be introduced into principal elevations.

(B) *Trim.* Original or historic features of the entry, including hoods, columns, sidelights and transoms should be retained. If replacement is necessary, historic trim details should be replicated.

(C) *Doors.* Wherever possible, historic paneled doors (and hardware) should be repaired and weather-stripped rather than replaced. If replacement of original or historic doors is necessary, the replacement should duplicate and be compatible with the material, design and hardware of the older door. Steel-covered hollow core doors should not be installed unless compatible with the appearance of the house. Historic trim should not be removed from the entry for the installation of steel doors.

(D) *Storm and screen doors.* Storm doors should be compatible with the inner door in shape and style.

(E) *Sliding glass doors.* Sliding glass doors should be confined to the rear of the building where not visible from the public way.

(Prior Code, § 12-1670)

§ 161.35 PORCHES AND STEPS.

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.

(Prior Code, § 12-1671)

§ 161.36 EXTERIOR TRIM AND ARCHITECTURAL FEATURES.

Exterior trim includes the decorative and sometimes functional elements of the exterior which contribute to the proportion, texture and detail of the building. A great variety of machine-made trim was added to even the simplest wooden houses and commercial buildings.

(A) *Conservation.* Exterior architectural features including finials, cornices, brackets, columns, balustrades, railings and window and door moldings should be retained.

(B) *Documentation.* Original trim details and other architectural features should be photographed or otherwise recorded before they are removed for repair or replacement. Deteriorated trim which is removed should be saved for use in making duplicates.

(C) *Repair and replacement.* New material used to repair or replace deteriorated trim or other features should match the original as closely as possible. Deteriorated trim which is unsalvageable should be replaced with trim identical or similar to the original design. Simplified trim should approximate the old in design and placement.

(D) *New trim.* Details should not be added in an effort to make the building look older. However, in the case of some pattern book houses, the addition of certain trim details such as those typical at the gable and porch may be acceptable if supported by historic photos or pattern book sources.

(Prior Code, § 12-1672)

§ 161.37 COMMERCIAL BUILDINGS; REHABILITATION AND RESTORATION.

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.*

(1) 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.

(2) 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.

(Prior Code, § 12-1673)

DESIGN; NEW CONSTRUCTIONS AND ADDITIONS

§ 161.50 GENERAL GUIDELINES.

The objective of guidelines for new construction is to encourage a high standard of historically compatible new design. New buildings and structures should be compatible with the size, scale, massing, height, rhythm, setback, color, material, building elements, site design and character of surrounding structures as well as the broad context of the district or area. Other applicable zoning regulations should be consulted before planning new construction.

(A) *Site evaluation.* Whenever possible, existing historic buildings and landscape features should be retained and rehabilitated in plans for redevelopment.

(B) *General character.* New construction should reinforce the historic architectural and visual character of the district; specifically, it should refer to the traditional one- and two-story dwelling and commercial building module and typical setbacks already established in the district.

(C) *Pedestrian circulation and parking.* New construction should be oriented toward streets which are inviting environments for pedestrians. Parking areas should be placed at the rear of buildings wherever possible, or screened with landscaping, low walls or appropriately detailed fences.

(D) *Views and vistas.* Wherever possible, distinctive views of the river and bluffs provided from the public way should not be obstructed by new buildings or structures.

(Prior Code, § 12-1711)

§ 161.51 NEW CONSTRUCTION.

(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.*

(a) 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.

(b) 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.

(Prior Code, § 12-1712)

§ 161.52 ADDITIONS TO PRINCIPAL BUILDINGS.

(A) *Massing and scale.* New construction should conform to the massing, volume, height, facade proportions and scale of surrounding structures and also comply with existing zoning regulations. The gross volume of any new structure should be visually compatible with the buildings and elements within the surrounding area. New dwellings and commercial buildings should be compatible with the height of existing adjacent buildings.

(B) *Materials and details.* Materials and details should relate to those of existing nearby buildings. Wood and masonry are preferable to vinyl, metal or hardboard siding. Imitative materials such as artificial stone or brick veneer should not be used. Materials will be reviewed to determine their appropriate use in relation to the overall design of the structure. The use of vinyl, metal or hardboard siding will be considered by the Zoning Administrator or Commission on a case-by-case basis.

(C) *Building elements.*

(1) *Roofs.* In new construction, the skyline or roof profile should relate to the predominant roof shape of nearby buildings. Highly visible secondary structure roofs should match the roof pitch of the main structure. The roofing materials used on new buildings should be appropriate to the design of the building and the visibility of the roof. Roof hardware such as skylights, vents and metal pipe chimneys should be placed on the front roof plane.

(2) *Windows and entries.* Vertically oriented, double-hung sash are the predominant historic window type in the city, although there are exceptions. The proportion, size, rhythm and detailing of windows and entries should be compatible with that of existing nearby buildings. The rhythm of solids to voids created by openings in the facade of the new structure should be visually compatible with surrounding structures.

(3) *Porches and decks.* Porches are a standard feature of many historic houses in the city and whether enclosed or unenclosed they are an important part of the streetscape. The front entry of new construction in residential areas should be articulated with a design element such as a porch, portico or landing which provides a transitional zone between the semipublic and public exterior zones and the private interior zone. This design element should be appropriately detailed and compatible with the size and scale of the building. Decks should be constructed at the rear of the building and should be integrated into the overall design. Decks should be appropriately detailed and should not be raised in a manner which makes them conspicuous.

(Prior Code, § 12-1713)

§ 161.53 ACCESSORY BUILDINGS.

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.

(Prior Code, § 12-1714)

§ 161.54 SITE CONSIDERATIONS.

(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.

(Prior Code, § 12-1715)

§ 161.55 PUBLIC IMPROVEMENTS.

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.

(Prior Code, § 12-1716)

§ 161.56 SIGNS.

Sign materials and design should complement the materials and design of the building and adjacent buildings.

(Prior Code, § 12-1717)

CHAPTER 162: MINING

Section

- 162.01 Purpose
- 162.02 Definitions
- 162.03 Nuisance abatement
- 162.04 Existing codes
- 162.05 Permits
- 162.06 Operating and land rehabilitation practices
- 162.07 Operating conditions

- 162.99 Penalty

§ 162.01 PURPOSE.

(A) 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.

(B) Other purposes include the following:

- (1) To provide for the economical availability of sand, gravel, rock, soil and other materials vital to the continued growth of the community;
- (2) 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;
- (3) To control noise, dust, hazards, effect on adjacent property and other factors related to the active mining or excavating operation;
- (4) 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; and
- (5) To control pollution by erosion or sedimentation.

(Prior Code, § 12-2301)

§ 162.02 DEFINITIONS.

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

ANNUAL MINING PERMIT. The **ANNUAL MINING PERMIT** issued pursuant to this chapter by the city. The **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 Ch. 153 of this code.

MINING.

(1) 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.

(2) **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.

(Prior Code, § 12-2302)

§ 162.03 NUISANCE ABATEMENT.

(A) Where unsafe conditions or conditions in violation of this chapter or the permit exist, the 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 this work may be taxed against the property and become a lien thereon.

(Prior Code, § 12-2303) Penalty, see § 162.99

Cross-reference:

Nuisances, see Ch. 90

§ 162.04 EXISTING CODES.

The provisions of the model Mining Regulation Code adopted in this chapter are in addition to and not in replacement of the provisions of Ch. 153 of this code. 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.

(Prior Code, § 12-2304)

§ 162.05 PERMITS.

(A) *Required.*

(1) 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 or her 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 chapter is in addition to the conditional use permit required for the land covering the expected use of the mine and as provided in Ch. 153 of this code.

(2) Persons conducting operations governed by this chapter and for which this chapter requires a permit may continue operations, but within 60 days of the effective date of the ordinance from which this chapter derives shall make application for a permit, and failure to do so shall be a violation of this chapter; 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.

(3) 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.

(4) A permit, when issued, shall be valid for one year unless terminated pursuant to division (B) below.

(Prior Code, § 12-2321)

(B) *Termination.*

(1) The Council may terminate a mining permit for violation of this chapter or a condition of the permit, or for other cause.

(2) 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.

(3) No mining shall take place after the permit is terminated pursuant to this section.

(Prior Code, § 12-2322)

(C) *Application.*

(1) The application for the permit required in division (A) above shall be filed with the City Administrator 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.

(2) The application shall contain:

- (a) The name and address of the operator and owner of the land;
- (b) The correct legal description of the property where the mining shall occur;
- (c) Names of adjacent landowners including all those within a one-half mile radius;

(d) A map of the property where the mining is to occur that clearly indicates the property lines and the limits of the proposed excavation. Topographic data, including contours at vertical intervals of not more than five feet except where the horizontal contour interval is 100 feet or more, a two-foot vertical interval shall be shown on this map. Watercourses, marshes, wooded areas, rock outcrops, power transmission poles and lines and other significant features shall also be

shown. U.S.G.S. datum shall be used for all topographic mapping where feasible;

(e) The purpose of the removal, storage or excavation;

(f) The estimated time required to complete the removal, storage or excavation;

(g) 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;

(h) The travel routes to and from the site;

(i) 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's Soil and Water Conservation District office;

(j) 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;

(k) 1. 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, the 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.

2. Where the Council deems it practical and necessary, the 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; and

(l) 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.

(Prior Code, § 12-2323) Penalty, see § 162.99

§ 162.06 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) Topsoil as required by division (A)(3) above shall be planted with trees, shrubs, legumes or grasses upon the parts of the 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) Grading or backfilling shall be made with nonnoxious, nonflammable and 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) The 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.

(5) The topsoil as required by division (B)(4) above shall be planted with trees, shrubs, legumes or grasses upon the parts of the 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.

(Prior Code, § 12-2324) Penalty, see § 162.99

§ 162.07 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 one and one-half feet or more in depth, all access to the collections of water may be ordered barred by appropriate means.

(2) Where excavation slopes steeper than one foot vertical to one and one-half feet horizontal exists for a period of five working days, access to these 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 a condition as not to be dangerous because of sliding or caving banks;

(C) *Setbacks.*

(1) Refrain from mining below grade closer than 30 feet to the boundary of any zone where these 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 the property is first secured in writing and filed with the City Administrator.

(2) 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 the 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.

(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. 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 a 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 material and conditioned further to comply with all the requirements of this chapter 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% 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 for any one person and \$300,000 for any occurrence including blasting insurance naming the city as an additional insured;

(H) *Noise.* Maintain and operate all equipment in a 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 a manner as to minimize dust conditions. All operations shall meet the standards of the state's 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 an 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 an operation; except that 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 other requirements as the Council from time to time may find necessary for the health, safety, welfare and prevention of nuisance in the area; and

(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.

(Prior Code, 12-2325)

§ 162.99 PENALTY.

Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to punishment in accordance with § 10.99 of this code.

(Prior Code, § 12-2305)

CHAPTER 163: RIGHT-TO-FARM

Section

- 163.01 Title
- 163.02 Definitions
- 163.03 Nuisance
- 163.04 Disclosure in development permits
- 163.05 Disclosure to buyers

§ 163.01 TITLE.

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

(Prior Code, § 10-111)

§ 163.02 DEFINITIONS.

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

AGRICULTURAL OPERATION. A facility and its appurtenances for the production of crops, livestock, poultry, dairy products or poultry products, but not a facility primarily engaged in processing agricultural products.

ESTABLISHED DATE OF OPERATION. The date on which the agricultural operation commenced. If the agricultural operation is subsequently expanded or significantly altered, the established date of operation for each expansion or alteration is deemed to be the date of commencement of the expanded or altered operation. As used in this definition, **EXPANDED OR SIGNIFICANTLY ALTERED** means:

(1) An expansion by at least 25% in the amount of a particular crop grown or the number of a particular kind of animal or livestock located on an agricultural operation; or

(2) A distinct change in the kind of agricultural operation, as in changing from one kind of crop, livestock, animal or product to another, but not merely a change from one generally accepted agricultural practice to another in producing the same crop or product.

(Prior Code, § 10-112)

§ 163.03 NUISANCE.

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

(B) An agricultural operation is operating according to generally accepted agricultural practices if it is located in an

agriculturally zoned area and complies with the provisions of all applicable federal and state statutes and rules or any issued permits for the operation.

(C) The provisions of this section do not apply:

(1) To a condition or injury which results from the negligent or improper operation of an agricultural operation or from operations contrary to commonly accepted agricultural practices or to applicable state or local laws, ordinances, rules or permits;

(2) When an agricultural operation causes injury or direct threat of injury to health or safety;

(3) To an animal feedlot facility with a swine capacity of 1,000 or more animal units as defined in the rules of the Pollution Control Agency for control of pollution from animal feedlots, or a cattle capacity of 2,500 animals or more; or

(4) To any prosecution for the crime of public nuisance as provided in section 609.74 or to an action by a public authority to abate a particular condition which is a public nuisance.

(Prior Code, § 10-113) Penalty, see § 10.99

§ 163.04 DISCLOSURE IN DEVELOPMENT PERMITS.

Prior to the issuance of any development permit for a use on agricultural land, the owner of the property shall be required to sign a statement of acknowledgment containing a right-to-farm disclosure, as set forth in § 163.05 of this code. The acknowledgment shall be on a form provided by the Zoning Administrator and made available to the public. The Zoning Administrator shall file development permit disclosure forms with the County Recorder.

(Prior Code, § 10-114)

§ 163.05 DISCLOSURE TO BUYERS.

Upon any transfer of real property, subject to the acknowledgment required in §163.04 of this code, by sale, exchange, installment and sale contract, lease with an option to purchase, any other option to purchase or ground lease coupled with improvements, the transferor shall deliver to the prospective transferee a right-to-farm disclosure statement signed by the transferee to be filed with the County Recorder in conjunction with the transfer instrument.

(Prior Code, § 10-115)

CHAPTER 164: AIRCRAFT

Section

164.01 Definitions

164.02 Restriction of take-offs and landings within the city

§ 164.01 DEFINITIONS.

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

AIRCRAFT. A vehicle for traveling through air, which is not either an **UNPOWERED VEHICLE** or **POWERED VEHICLE** as defined in this section.

POWERED VEHICLES. A powered ultra-light which has a maximum empty weight of 254 pounds; has a maximum fuel capacity of five U.S. gallons; is capable of less than 55 knots airspeed at full power in level flight; and has a power-off stall speed which does not exceed 24 knots (see FAA Advisory Circulars, AC 103-7).

UNPOWERED VEHICLES. An unpowered ultra-light under 155 pounds. Balloons and gliders are **UNPOWERED VEHICLES** (see FAA AC 103-7).

(Prior Code, § 22-180)

§ 164.02 RESTRICTION OF TAKE-OFFS AND LANDINGS WITHIN THE CITY.

The landing and taking-off of all aircraft is prohibited in all districts within the city limits except for the following:

(A) An unpowered or powered vehicle, which does not exceed the maximum noise levels as prescribed in §153.097 of this code, provided an annual permit is obtained from the City Administrator for the vehicle; and

(B) Emergency landings and take-offs of aircraft as allowed under FAA regulations.

(Prior Code, § 22-181) (Ord. 44-2004, passed 8-17-2004) Penalty, see § 10.99

CHAPTER 165: COMMUNICATIONS FACILITIES AND STRUCTURES

Section

165.01 Intent and purpose

165.02 Definitions

165.03 Permit and location requirements

165.04 Permit application requirements for conditional use permits for new and modified towers and administrative permits for additional antennas on existing mounts

165.05 Conditional use permits

§ 165.01 INTENT AND PURPOSE.

(A) 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 chapter 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.

(B) Goals in adopting this chapter are as follows:

(1) Accommodate the desire of residents, travelers and businesses to have high quality telecommunications technology without endangering public health, safety and welfare;

(2) 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;

(3) Minimize the adverse environmental effects of personal wireless communications facilities through careful design and siting standards; and

(4) Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements.

(Prior Code, § 12-2351) (Ord. 04-2009, passed 5-19-2009)

§ 165.02 DEFINITIONS.

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

CITY CO-LOCATION. The placement of wireless communication antennas by two or more service providers on a single tower, building or structure.

PERSONAL WIRELESS COMMUNICATIONS FACILITY. A facility for the provision of wireless communications services, as defined by the Telecommunications Act of 1996.

POWER TRANSMISSION LINE. Electrical lines designed for the bulk transfers of electrical power at or greater than 230kV.

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.

WIRELESS COMMUNICATION FACILITY. Hardware that provides wireless communication services including antennas, towers and all associated equipment.

(Prior Code, § 12-2352)

§ 165.03 PERMIT AND LOCATION REQUIREMENTS.

(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 ten feet higher than the structure at the point where it is attached; and

(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 the state 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 chapter;

(2) Applicable state or federal law; and

(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.

(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. These conditions may include, but are not limited to:

(1) Requiring co-location of proposed antennas 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; and

(8) Requiring design standards to protect the migratory patterns of birds or other wildlife.

(F) The use of any existing tower which becomes nonconforming as a result of this chapter 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) 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 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 30 days. These limits can be extended by the city for good cause shown; and

(3) Facilities, located in any zone, erected for sending and receiving amateur radio (also known as ham radio) signals.

(Prior Code, § 12-2353) (Ord. 11-2005, passed 7-19-2005) Penalty, see § 10.99

§ 165.04 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; and

(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; and

(3) Zoning district designation of proposed antenna location.

(C) *Site filing requirements.* A certified survey is required and includes the following:

(1) Property lines for the subject property;

(2) Property lines of all properties adjacent to the subject property within 100 feet;

(3) Proposed location of antenna, mount and equipment shelter(s);

(4) 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;

(5) Distances at grade from the proposed wireless communication service facilities to each building on the vicinity plan;

(6) All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways; and

(7) 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.*

(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); and

(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; and

(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 and the like). 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; and

(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 this test shall be:

(1) Advertised in the newspaper of general circulation serving the city;

(2) Sent by return receipt mail to the same governmental units determined in §165.03 of this code, 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; and

(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 and 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; and

(c) This statement shall be certified and signed by an acoustical engineer, stating that noise measurements are accurate and meet the noise standards of this chapter.

(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 90 days after the cessation of operations;

(4) A copy of an executed standard facility maintenance/removal agreement; and

(5) Evidence that the FCC has reviewed and approved the application for National Environmental Policy Act of 1969.

(Prior Code, § 12-2354) Penalty, see § 10.99

§ 165.05 CONDITIONAL USE PERMITS.

In addition to the submittal requirements required elsewhere in this chapter, 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; and

(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 M.S. § 13.37, as it may be amended from time to time, shall be classified as non-public data.

(Prior Code, § 12-2355)

CHAPTER 166: PRESERVATION AND LAND CONSERVATION DEVELOPMENTS

- 166.01 Scope
- 166.02 General provisions
- 166.03 Purpose
- 166.04 Permitted uses
- 166.05 General standards for approval
- 166.06 Density, frontage on a public street and length of cul-de-sac requirements
- 166.07 Coordination with subdivision regulations
- 166.08 Pre-application meeting
- 166.09 General development plan
- 166.10 Final development plan
- 166.11 Enforcement of development schedule
- 166.12 Conveyance and maintenance of undeveloped parcel
- 166.13 Standards for undeveloped parcel
- 166.14 Review and amendments

§ 166.01 SCOPE.

This chapter applies to Preservation and Land Conservation Developments (PLCD) in the Agricultural (AG) Zoning District.

(Prior Code, § 12-2371) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014)

§ 166.02 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 chapter.

(Prior Code, § 12-2372) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014) Penalty, see § 10.99

§ 166.03 PURPOSE.

The purposes of this chapter 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; and
- (E) To allow the transfer of development rights (density) within a subdivision in order to preserve agricultural land, open space, natural features and amenities.

(Prior Code, § 12-2373) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014)

§ 166.04 PERMITTED USES.

The permitted uses are:

- (A) Those uses that are permitted in the underlying zoning district; and
- (B) Subdivisions that require the construction of a new public street in the AG Zoning District.

(Prior Code, § 12-2374) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014)

§ 166.05 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.
 - (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. This includes working with the city regarding the layout of the open space parcel to protect sensitive natural resources and natural features and to make connections with adjacent open space with significant natural features, which could include natural and wildlife corridors.
 - (4) Pre-development seeding with a native prairie grass/wildflower mix shall be provided on all lots and on the undeveloped parcel.
 - (5) The developer shall enter into a developer's agreement with the city regarding the installation of required improvements, and shall provide financial guarantees as required in Ch. 160 of this code, including § 160.100 of this code. The developer's agreement shall include sufficient authority to enable the city to take timely enforcement action, such as an immediate cease and desist order, in addition to, or as part of, a declaration of default with default remedies.
 - (6) The homeowner's association restrictive covenants shall contain a provision that in the event the homeowner's association becomes insolvent or ceases operating control shall at its option be transferred to the city or another method of succession shall be dictated by the city.
 - (7) The homeowner's association documents shall contain a waiver of assessment appeal running in favor of the city.
 - (8) Any provisions in the homeowner's association restrictive covenants allowing changes in lots shall be in compliance with the city's requirements.
 - (9) Any covenant amendment provisions in the homeowner's restrictive covenants permitting changes after a certain number of years have passed shall be in compliance with restrictions on future subdivision of PLCD lots and other provisions of the city's ordinances.
 - (10) Any public walking paths shall be included in the final development plan.
 - (11) The city shall be a named insured on the homeowner association insurance policy and the policy shall cover those risks identified by the city, including but not limited to coverage for personal injuries and any other losses occurring as a result of the public use of the walking trails on the conservation area.
 - (12) The homeowner's association shall be required to indemnify and hold the city harmless from all losses incurred as a result of the public's use of the conservation area walking trails.
 - (13) Residential lots shall be subject to restrictive covenants in favor of the other lot owners in the development and the city requiring that 60% of each lot remain planted in native prairie, and forbs, shrubs and trees that fit the local eco-type, and appropriate language shall be inserted in the homeowners association documents to ensure enforcement of the maintenance of the lots in accordance with these requirements.
 - (14) The final plat application shall include estimated initial costs including but not limited to grading, surface water controls and roads and also a final cost estimate, both of which shall be subject to approval by the city's engineers.
 - (15) No final plat approval shall occur until both the developer's agreement and the tri-party conservation easement agreement between the developer, the city and the state's land trust has been executed by all parties.
 - (16) All new streets shall be named in accordance with the county's street naming conventions.
- (B) The tract is a minimum of 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 50% of the total tract is preserved as an undeveloped parcel.
- (D) A mandatory environmental assessment worksheet is required to be filed with the city.

(Prior Code, § 12-2375) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014; Ord. 01-2020, passed 1-21-2020)

§ 166.06 DENSITY, FRONTAGE ON A PUBLIC STREET AND LENGTH OF CUL-DE-SAC REQUIREMENTS.

(A) The average density over the proposed PLCD shall not exceed the maximum density permitted in the underlying zoning district. Although a PLCD allows a maximum of four lots per quarter-quarter section, a developer cannot independently include a portion of a quarter-quarter section in a PLCD unless the developer owns a minimum of 30 acres in the quarter-quarter section. Otherwise, either all property owners in a quarter-quarter section are required to make application for and sign an approved plat, or the developer is required to obtain and record a release from the other owner(s) allowing the subdivision of the developer's portion of the quarter-quarter section.

(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. This language does not allow a proportional addition to the number of lots allowed on a longer cul-de-sac.

(C) Reference § 160.006 of this code for the definition of a cul-de-sac street.

(Prior Code, § 12-2376) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014; Ord. 01-2020, passed 1-21-2020)

§ 166.07 COORDINATION WITH SUBDIVISION REGULATIONS.

(A) It is the intent of this chapter that subdivision review be carried out simultaneously with the review of a planned development under this chapter.

(B) The plans required under this chapter must be submitted in a form that will satisfy the requirements of §§160.035 through 160.041 of this code for the preliminary and final plats.

(C) Parcels which contain their maximum permitted density or have been previously subdivided to their permitted density may be included in a PLCD but may not be included in density calculations or land preservation minimum requirements. Parcels may be included in the PLCD if they allow for the best conservation design for the PLCD as determined by the city.

(D) Park dedication requirements shall be in addition to and not in lieu of the preservation of at least 50% of the total tract as an undeveloped parcel. The city may waive all or a portion of the park dedication requirement if the city finds that the waiver is in the city's interest.

(Prior Code, § 12-2377) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014; Ord. 01-2020, passed 1-21-2020)

§ 166.08 PRE-APPLICATION MEETING.

(A) Prior to the submission of any plan to the Planning Commission, the potential applicant is encouraged to meet with the City Administrator to discuss the contemplated project relative to community development objectives for the area in question and to learn the procedural steps and exhibits required. This includes the procedural steps for a conditional use permit and a preliminary plat.

(B) 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.

(C) The pre-application meeting process is entirely optional for the potential applicant and does not constitute an application within the meaning of this section.

(Prior Code, § 12-2378) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014; Ord. 01-2020, passed 1-21-2020)

§ 166.09 GENERAL DEVELOPMENT PLAN.

(A) An applicant shall make an application for a conditional use permit following the procedural steps as set forth in § 153.027 of this code.

(B) In addition to the criteria and standards set forth in §153.027 of this code for the granting of conditional use permits, the following additional findings shall be made before the approval of the outline development plan.

(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 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 conditional use 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 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 500 feet beyond;
- (5) Natural features maps or maps of the property and area 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; and
- (10) Twenty-five copies of all required information, as well as an electronic copy, shall be submitted.

(D) The applicant shall also submit a preliminary plat and all the necessary documentation as required under Ch. 160 of this code for all or that portion of the project to be platted. For purposes of administrative simplification, the public hearings required for the conditional use permit and preliminary plat may be combined into one hearing or may be held concurrently.

(Prior Code, § 12-2379) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014; Ord. 01-2020, passed 1-21-2020)

§ 166.10 FINAL DEVELOPMENT PLAN.

(A) Within 90 days following the approval of the general development plan with recommended modifications, if any, and the preliminary plat, the applicant shall file with the City Administrator a final development plan containing in final form the information required in the general development plan plus any changes recommended by the Planning Commission and the City Council as a result of the public hearing. The applicant shall also submit a final plat for that entire portion to be platted.

(B) The City Administrator shall submit the final development plan and the final plat to the Planning Commission for review.

(C) The final development plan and the final plat shall conform to the general development plan and preliminary plat plus any recommended changes by the Planning Commission or City Council to the general development plan and preliminary plat.

(D) The City Council shall review the final development plan and final plat. If the final development plan is approved by the City Council, the City Administrator shall issue a conditional use permit to the applicant.

(E) The applicant(s) shall grant a conservation easement which shall run with the land in perpetuity to the city, and the state's land trust (or similar independent third party approved by the city), which restricts the development rights on the undeveloped parcel(s), within the PLCD and the land cover and use approved by the city as a part of this PLCD.

(1) The conservation easement shall include the following elements:

- (a) The identification of the natural, scenic and open space qualities of the protected property that are to be protected as "conservation values";
- (b) A description of the conservation purpose of the easement;
- (c) A listing of specific restrictions on the use of the property; and
- (d) Habitat management according to a habitat management plan.

(2) The state's land trust (or similar independent third party approved by the city) shall review and approve the HOA covenants as they relate to the undeveloped parcel and shall provide a written statement that they will agree to the conservation easement over the land prior to final PLCD approval.

(Prior Code, § 12-2380) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014; Ord. 01-2020, passed 1-21-2020)

§ 166.11 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 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 or she 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 or she shall forward this information to the City Council, which may revoke the PLCD permit.

(Prior Code, § 12-2381) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014)

§ 166.12 CONVEYANCE AND MAINTENANCE OF UNDEVELOPED PARCEL.

(A) All land shown on the final development plan as an undeveloped parcel must be conveyed to a homeowners association or similar organization provided in an indenture establishing an association or similar organization for the maintenance of the planned development. The undeveloped parcel must be conveyed to the homeowners association or similar organization subject to covenants to be approved by the City Council which restrict the undeveloped parcel to the uses specified on the final development plan and which provide for the maintenance of the undeveloped parcel in a manner which assures its continuing use for its intended purpose. The undeveloped parcel shall also be subject to a conservation easement as described in § 166.10(E) of this code.

(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; and

(4) Specific listing of items owned in common including items as roads, recreation facilities, parking, common open space grounds and utilities.

(Prior Code, § 12-2382) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014; Ord. 01-2020, passed 1-21-2020)

§ 166.13 STANDARDS FOR UNDEVELOPED PARCEL.

No open area may be approved as common undeveloped parcel under the provisions of this chapter 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 undeveloped parcel and must conserve and enhance the amenities of the undeveloped parcel having regard to its topography and unimproved condition.

(D) Outlots are not permitted in subdivisions having cul-de-sac streets, with the exception of the undeveloped parcel required by a PLCD that is made subject to a conservation easement.

(Prior Code, § 12-2383) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014; Ord. 01-2020, passed 1-21-2020) Penalty, see § 10.99

§ 166.14 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 year after the original approval of the conditional use for the PLCD, the City Administrator may recommend that the City Council revoke the conditional use permit as set forth in § 153.027 of this code. 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 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 Conditional use permit as set forth in this chapter.

(F) The ordinance codified in this chapter shall be in full force and effect from the date of publication.

(Prior Code, § 12-2384) (Ord. 06-2008, passed 4-15-2008; Ord. 02-2014, passed 5-20-2014; Ord. 01-2020, passed 1-21-2020)