

CHAPTER 154: ZONING

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GENERAL PROVISIONS

§ 154.001 PURPOSE.

This Zoning Plan is adopted for the purpose of:

- (A) Protecting the public health, safety, morals, comfort, convenience, and general welfare;
- (B) Protecting and preserving the city's natural resources, ecological systems, and economic stability by fostering appropriate land use;
- (C) Dividing the city into zones and districts restricting and regulating therein the location, construction, reconstruction, alteration, and use of structures and land for agricultural, residential, business, commercial, industrial, and other specific uses;

(D) Promoting orderly development, redevelopment, growth, and renewal of the residential, business, industrial, recreational, and public areas;

(E) Providing adequate light, air, privacy, and convenience of access to property;

(F) Limiting congestion in the public rights-of-way and public streets and fostering public safety and convenience in travel and transportation;

(G) Preventing overcrowding of land and undue concentration of structures by regulating the use of land and buildings and the bulk of buildings in relation to the land and buildings surrounding them;

(H) Providing protection from fire, explosions, obnoxious fumes, and other hazards in the interest of public health, safety, and comfort;

(I) Providing for the compatibility of different land uses and the most appropriate use of land throughout the city;

(J) Providing for the administration of this Plan and amendments thereto;

(K) Defining the powers and duties of the administrative officers and bodies, as provided hereinafter;

(L) Prescribing penalties for the violation of the provisions of this code or any amendment thereto. (Ord. 1112.03, passed 8-25-03)

§ 154.002 DEFINITIONS.

(A) *Rules of construction.* The language set forth in the text of this code shall be interpreted in accordance with the following rules of construction:

(1) The singular number includes the plural and the plural the singular.

(2) The word *PERSON* includes an owner or representative of the owner, firm, association, organization, partnership, trust, company or corporation as well as an individual.

(3) The present tense includes the past and future tenses, and the future the present.

(4) The words *SHALL* and *MUST* are mandatory, and the word *MAY* is permissive.

(5) Whenever a word or term defined hereinafter appears in the text of this chapter, its meaning shall be construed as set forth in such definition thereof.

(6) For terminology not defined in this chapter or elsewhere in the city code, the Minnesota State Building Code or the Webster's Dictionary shall be used to define such terms.

(7) All measured distances expressed in feet shall be to the nearest 1/10 of a foot.

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

ABUTTING. Making direct contact with or immediately bordering.

ACCESSORY BUILDING, STRUCTURE, OR USE. A subordinate building, structure, or use, which is located on the same lot on which the principal building or use is situated and which is reasonably necessary, appropriate and incidental to the conduct of the primary use of such building or main use.

ACCESSORY USE OF STRUCTURE. A use of a structure or portion of a structure subordinate to and serving the principal use of a structure on the same lot and customarily incidental thereto.

ADJACENT. In close proximity to or neighboring, not necessarily abutting.

ADULT BUSINESSES. See Chapter 117.

AGRICULTURE. The art or science of cultivating the soil and incident activities; the growing of soil crops in the customary manner on open tracts of land; the accessory raising of livestock and poultry; farming. The term shall include the incidental retail selling by the producer of products raised on the premises, provided that space necessary for parking of motor vehicles of customers shall be furnished off the public right-of-way.

AIRCRAFT. Any contrivance not known or hereafter invented, used or designed for navigation of or manned flight in the air, including without limitation, airplanes, helicopters, and ultra lights.

AIRPORT (LANDING STRIP, HELIPORT, OR AIRCRAFT STOP). Any premises, land, or structure that is/are used or intended for use for the landing and takeoff of aircraft, and any appurtenant land or structure used or intended for use for port buildings or other port structures or rights-of-way; and any appurtenant areas that are used or intended for use of building incidental to aircraft services, together with all building structures thereon.

ALLEY. A public right-of-way that affords a secondary means of access to abutting property, and not intended for general traffic circulation.

ANIMAL FEEDLOT. A lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. Open lots used for feeding and rearing of poultry (poultry ranges) and barns, dairy farms, swine facilities, beef lots and barns, horse stalls, mink ranches and zoos, shall be considered to be animal feedlots. Pastures shall not be considered an animal feedlot.

ANIMAL IMPOUND. A not for profit organization whose primary purpose is to provide animals impounding services and adoption of impounding animals for the city and adjacent communities.

ANTENNA. A device consisting of metal, carbon fiber, or other electromagnetically conducive rods or elements, on a single supporting pole or other structure, and used for the transmission and reception of radio, television, or electromagnetic waves, and including the supporting structure thereof.

APARTMENT. A multi-use building arranged and intended as a place of residence of a single family or group of individuals living together as a single housekeeping unit. See also **DWELLING**.

APPLICANT. The owner, their agent or person having legal control, ownership and/or interest in land that the provisions of this chapter are being considered for or reviewed.

AUTOMOBILE AND TRUCK SERVICE STATION. A place where gasoline, kerosene, or any other motor fuel or lubricating oil or grease for operating motor vehicles is offered for sale to the public and deliveries are made directly into the motor vehicle.

AUTOMOBILE REDUCTION YARD. A lot or yard where two or more unlicensed motor vehicles or the remains thereof are kept for the purpose of dismantling, sale of parts, sale as scrap, storage, or abandonment. See also **JUNK YARD**.

AUTOMOBILE REPAIR (MAJOR). General repair, rebuilding, or reconditioning of engines, motor vehicles, or trailers, including body work, frame work, and major painting service.

AUTOMOBILE REPAIR (MINOR). Includes the replacement of any part or repair of any part that does not require the removal of the engine head or pan, engine, transmission, or differential; incidental body and fender work, and minor painting and upholstering service, when said service above-stated is applied to passenger automobiles and trucks not in excess of 7,000 pounds gross.

AUTOMOBILE, WASH (CAR WASH). A building or area that provides facilities for washing and cleaning motor vehicles, which may use production line methods with conveyor, blower, or other mechanical devices, and which may employ some hand labor.

AWNING. A roof-like cover that is temporary in nature and that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

BASEMENT. A portion of a building located partly underground having a floor to ceiling height of seven feet or more.

BED AND BREAKFAST ESTABLISHMENT. A single family dwelling in which four or fewer transient guest rooms are rented on a nightly basis for periods of less than one week and where at least one meal is offered in connection with the provision of sleeping accommodations only.

BOARDER. One that is provided with regular meals or regular meals and lodging.

BOARDINGHOUSE. A building other than a motel or hotel where, for compensation and by pre-arrangement for definite periods, meals or lodgings are provided for three or more persons not members of the principal family.

BUFFER. The use of land, topography, difference in elevation, space, fences, or landscape planting to screen or partially screen a use or property from the vision of another use or property, and thus reduce undesirable influences such as sight, noise, dust, and other external effects.

BUILDABLE AREA. The space remaining on a lot after the minimum setback and open space requirements of this chapter have been met.

BUILDING. Any structure having a roof that may provide shelter or enclosure of persons, animals, or chattel, and when said structures are divided by party walls without openings, each portion of such buildings so separated shall be deemed a separate building.

BUILDING HEIGHT. A distance to be measured from the mean curb level along the front lot line or from the mean ground level for all of that portion of the structure located on a public right-of-way, whichever is higher, to the top of the cornice of a flat roof, to the deck line of a mansard roof, to a point on the roof directly above the highest wall of a shed roof, to the uppermost point on a round or other arch-type roof, or to the mean distance of the highest gable on a pitched or hip roof.

BUILDING SETBACK. The minimum horizontal distance between the building and the specified lot line as prescribed in this chapter.

CAMPGROUND. An area upon which are located two or more sites for major recreational equipment for seasonal or temporary recreational occupancy.

CANOPY. Any accessory roof-like structure, movable or stationary, that is either attached to or detached from an allowable primary building; that is open on all sides, other than where attached; and, that is located over and designed to provide cover for entrances, exits, walkways, and approved off-street motor vehicle service areas.

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

CELLAR. That portion of the building partly below ground level other than a basement with a space with less than ½ its floor to ceiling height above the average finished grade of the adjoining ground or with a floor-to-ceiling height of less than 6 ½ feet.

CEMETERY. A parcel or tract of land used or intended to be used for the burial of the dead including columbaria, crematories, mausoleums, and mortuaries when operated within the boundaries of such cemetery.

CITY ATTORNEY. The person designated by the City Council to be the City Attorney for the city.

CITY BUILDING OFFICIAL. The person designated by the City Manager to be the City Building Official for the city.

CITY COUNCIL. The governing body for the city.

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

COMMERCIAL RECREATION. A business directed toward the general public, not requiring membership, that offers recreational entertainment such as bowling alleys, billiard halls, miniature golf, ballrooms, roller rinks, sports and health clubs and the like.

COMMON OPEN SPACE. Any privately owned open space including private parks, nature areas, playgrounds, and trails, including accessory recreational buildings and structures which are an integral part of a development.

COMPREHENSIVE PLAN. The policies, statements, goals and interrelated plans for public and private land and water use, transportation, and community facilities, including recommendations for planned execution, documented in texts, ordinances and maps that constitute the guide for future development of the community or any portion of the community.

CONDITIONAL USE. See *USE*.

CONDITIONAL USE PERMIT. A permit issued by the City Council in accordance with procedures specified in this chapter, as a flexible device to enable the City Council to assign dimensions to a proposed use or conditions surrounding it after consideration of adjacent uses and their functions and the special problems which the proposed use presents.

CREMATORY. A furnace or establishment used for cremating.

CURB LEVEL. The elevation of the established curb in front of a building measured at the center of such front.

DAY CARE FACILITY, STATE LICENSED. Any facility licensed by the State Department of Human Services or Department of Health, public or private, which for gain or otherwise regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation, or developmental guidance on a regular basis, for periods of less than 24 hours per day, in a place other than the person's own home. **DAY CARE FACILITIES** include but are not limited to: family day care homes, group family day care homes, day care centers, day nurseries, day time activity centers, day treatment programs and day services, nursery and preschools, as defined by M.S. Chapter 245A, as may be amended.

DECK. A horizontal, enclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site.

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.

DRIVE THROUGH BUSINESS. A business that by design, physical facilities, service or by packaging procedures encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles, excluding gasoline service stations as defined by this subchapter.

DRIVEWAY. A minor private way used by vehicles and pedestrians on an individual lot or parcel.

DUPLEX. A dwelling unit having two or more units being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

DWELLING. A building or a portion of a building designed or exclusively used for residential occupancy, including one-family, two-family, and multiple family dwelling units, but not including hotels, motels, boardinghouses, and lodging houses.

ATTACHED DWELLING. A dwelling that is joined to another dwelling.

DETACHED DWELLING. A dwelling that is entirely surrounded by open space on the same lot.

MULTIPLE-FAMILY DWELLING. A building or portion of a building designed for or intended for or containing three or more dwelling units.

SINGLE-FAMILY DWELLING. A one-family dwelling designed for and used for occupancy by one family and in which not more than two persons other than members of the family are lodged at any one time.

TWO-FAMILY DWELLING. A building designed or intended exclusively for occupancy by two families living independently of each other, duplex.

UNIT DWELLING. Two or more rooms in a dwelling or apartment designed for occupancy by one family for living purposes and having its own permanently installed cooking and sanitary facilities.

EARTH SHELTERED BUILDING. A building so constructed that 50% or more of the completed structure is covered with earth. Earth covering is measured from the lowest level of the livable space in residential units and of usable space in non-residential buildings. An earth sheltered building is a complete structure that does not serve just as a foundation or sub-structure for above grade construction. A partially covered building shall not be considered earth sheltered.

EASEMENT. A grant of one or more property rights by a property owner for use by the public, a corporation, or another person or entity.

ELECTRIC POWER GENERATION FACILITY. Any electric energy generating facility with generating capacity of ten megawatts or more, and any appurtenant buildings, structures, uses, or facilities thereto. For purposes of Chapter 154, the ***ELECTRIC POWER GENERATING FACILITY*** in its entirety shall be considered the primary building, and/or use. This definition for ***ELECTRIC POWER GENERATION FACILITY*** will only apply if said ***ELECTRIC POWER GENERATION FACILITY*** enters into a site plan review agreement pursuant to § 154.031 with the city; if said ***ELECTRIC POWER GENERATION FACILITY*** does not enter into a site plan review agreement with the city, the ***ELECTRIC POWER GENERATION FACILITY*** will be defined as ***MANUFACTURING, HEAVY*** as set forth below and all requirements for said ***MANUFACTURING, HEAVY*** set forth herein shall apply.

ESSENTIAL SERVICES. Underground or overhead gas, electrical, steam, or water transmission or distribution systems; collection, communications, supply, or disposal systems including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, or other similar equipment and accessories in conjunction therewith; but not including buildings.

EXISTING. Lots, buildings, structures, premises, or uses for which the ***START OF CONSTRUCTION*** has been reached and shall include all construction, repair, reconstruction, rehabilitation, alteration, or improvement according to the building permit.

EXTERIOR SALES. The sale of goods, materials, equipment, manufactured products and similar items not fully enclosed by a building.

EXTERIOR STORAGE. The storage of goods, materials, equipment, manufactured products and similar items not fully enclosed by a building.

FAMILY. An individual, or two or more persons each related by blood, marriage, or adoption, living together as a single housekeeping unit; or a group of not more than four persons not so related maintaining a common household and using common cooking and kitchen facilities.

FARM. An unplatted tract of land approximately ten acres or more, or two or more abutting parcels under the same ownership having an area of ten acres, measured from the centerline of abutting roads, usually with a house and barn and other buildings, and on which crops and often livestock are raised as a major source of livelihood.

FARMING. The process of operating a farm for the growing and harvesting of crops which shall include those necessary buildings, relating to operating the farm, and the keeping of common domestic farm animals.

FENCE. See § 154.017 for applicable definitions.

FLOOR AREA. The sum of the gross horizontal areas of the several floors of a building including interior balconies, mezzanines, basements, and attached accessory buildings, but excepting that area primarily devoted to window display, storage, fitting rooms, stairs, escalators, enclosed porches, detached accessory buildings utilized for dead storage, heating and utility rooms, and inside off-street parking or loading spaces. Measurements shall be made from the outside of exterior walls.

FOREST. A dense growth of trees and underbrush covering a large tract of land.

FRONTAGE. That boundary of a lot which abuts an existing or dedicated public street, watercourse or similar barrier.

FUNERAL HOME. An establishment for the preparation of the dead for burial or cremation, for viewing of the body, and for funerals.

GARAGE, PRIVATE. A detached accessory building or portion of the principal building, including a carport, which is used primarily for storing passenger motor vehicles, trailers, or one truck of a gross capacity not in excess of 7,000 pounds.

GARAGE, PUBLIC. Premises used for the storage or care of motor vehicles or premises where such motor vehicles are equipped, repaired or kept for remuneration, for hire or for sale. Sale of gasoline or oil and accessories are only incidental to the principal use.

GARAGE, REPAIR (COMMERCIAL). A building space for the commercial repair or maintenance of motor vehicles, but not including factory assembly of such motor vehicles, automobile wrecking establishments, or junk yards.

GARAGE, STORAGE (COMMERCIAL). Any premises, except those described as a private or public garage, used for storage.

GARBAGE. Animal and vegetable wastes and other wastes or putrescible matter including but not limited to grease, wrappings, shells, grounds, bones, entrails, and similar materials resulting from the handling, preparation, cooking, service, and consumption of food and other animal wastes.

GLARE. The effect produced by the intensity and direction of any artificial illumination sufficient to cause an impairment or temporary loss of vision.

GRADE (ADJACENT GROUND ELEVATION). The lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the property line, or when the property line is more than five feet from the building, between the building and a line five feet from the building.

GRADING. Changing the natural or existing topography of land.

GREENHOUSE. An enclosed building, permanent or portable, which is used for the growing of small plants.

GUIDE PLAN. A set of maps, documents, data, policy statements, goals, and standards on file with the Planning Commission. The ***GUIDE PLAN*** shall also mean “Comprehensive City Plan” or “City Plan.”

HOME OCCUPATION. Any occupation or profession conducted entirely within the dwelling pursuant to a conditional use permit, provided that the use is clearly incidental and secondary to the use of the dwelling for dwelling purposes.

HOTEL. A building containing eight or more guest rooms in which lodging is provided with or without meals for compensation and which is open to transient guests, permanent guests, or both, 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.

JUNK YARD. An area where used, wasted, discarded, or salvaged materials are bought, sold or exchanged, stored, baled, cleaned, packed, disassembled, or handled including but not limited to scrap iron and other metals, paper, rags, rubber products, bottles, and lumber. Storage of such material in conjunction with a permitted manufacturing process when within an enclosed area or building shall not be included. See also ***AUTOMOBILE REDUCTION YARD.***

KENNEL. Any person, partnership, or corporation engaged in the business of breeding, buying, selling, or boarding dogs; provided that such person, partnership, or corporation customarily owns or boards more than three dogs over six months of age.

KILOVOLT. A unit of electromotive force equal to 1,000 volts.

LAND RECLAMATION. The process of the re-establishment of acceptable topography (such as slopes), vegetative cover, soil stability and the establishment of safe conditions appropriate to the subsequent use of the land.

LANDSCAPING. Plantings such as trees, flowers, grass and shrubs and improvements directly related thereto.

LOADING SPACE (OFF-STREET). A formally delineated space, area, or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a motor vehicle or truck while loading or 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.

LODGINGHOUSE or ROOMINGHOUSE. A building containing at least one dwelling unit, wherein three or more persons, not members of the principal family, are provided lodging for compensation by prearrangement for definite periods.

LOT. A parcel or portion of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required.

LOT, AREA. The area of a lot in a horizontal plane bounded by the lot lines.

LOT, AREA PER FAMILY. The number of square feet of lot area required per dwelling unit.

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

LOT, DEPTH. The shortest horizontal distance between the front lot line and the rear lot line measured from a 90 degree angle from the street right-of-way within the lot boundaries.

LOT, FRONT LOT LINE. That boundary of a lot which abuts an existing or dedicated public street, and, in the case of a corner lot, it shall be the shortest dimension on a public street. If the dimensions of a corner lot are equal, the front lot line shall be designated by the owner and filed with the city. The Planning Commission shall determine the front lot line in business industrial districts based on the existing uses and yards in that area of the district involved.

LOT LINE. A lot line is located at the property bounding a lot, except that where any portion of a lot extends into the proposed public right-of-way, the line of such public right-of-way shall be the lot line for applying this code.

LOT OF RECORD. Any lot that is one unit of a plat heretofore duly approved and filed; or one unit of an auditor's subdivision or a registered land survey, or a parcel of land not so platted, subdivided, or registered, for which a deed, auditor's subdivision, or registered land survey has been recorded in the office of the Register of Deeds Or Registrar of Titles effective date of this chapter.

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

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

LOT, THROUGH. A lot which has a pair of opposite lot lines abutting two substantially parallel streets and which is not a corner lot. On a through lot, either street line or both street lines may be the front lot line for the lot provided that the overall pattern of setbacks in the area is in appeasement with the determination of the front lot line by the owner subject to review and approval of the Planning Commission.

LOT WIDTH. The maximum horizontal distance between the side lot lines.

MANUFACTURED HOME (MOBILE HOME). Any type of structure or vehicle requiring a state license or title card for use on highways which can be readily adapted to or does provide facilities for a person or persons to eat or sleep which is mounted on wheels, has provisions for wheels, or may be loaded on an ordinary flatbed truck such as a house trailer, converted bus or truck, tent or small building, or camp trailer.

MANUFACTURED HOME PARK (MOBILE HOME PARK). Any site, lot, field, or tract of land upon which two or more occupied manufactured homes are located, either free of charge or for compensation, and includes any building, structure, vehicle, or enclosure used or intended for use as part of the equipment of the manufactured home park.

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. Such uses include but are not limited to the following: sawmill, refineries, commercial feed lots, acid, cement, explosives, flour, feed, and grain milling or storage, meat packing, slaughterhouses, coal or tar asphalt distillation, rendering of fat, grease, lard or tallow, alcoholic beverages, poisons, exterminating agents, glue or size, lime, gypsum, plaster of paris, tanneries, automobile parts, paper and paper products, glass, chemicals, crude oil and petroleum products including storage, electric power generation facilities, vinegar works, junkyard, automobile reduction yard, foundry, forge, casting of metal products, rock, stone, and cement products.

MANUFACTURING, LIGHT. The compounding, processing, packaging, treatment, or assembly of products and materials provided such use will not generate offensive odors, glare, smoke, dust, noise, vibrations, or other effects which would be damaging to the environment. Such uses include but are not limited to the following: lumberyards, machine shops, products assembly, sheet metal shops, non-retail food and beverages, printing, publishing, fabricated metal parts, appliances, clothing, textiles, medical or dental services, wholesale greenhouse or nursery, truck terminals.

MEDICAL USES. Uses concerned with the diagnosis, treatment, and care of human beings. These include hospitals, dental services, medical services, clinics, nursing or convalescent homes, orphans' home, rest homes, or sanitariums.

MINING. All or part of the process involved in the extraction of minerals by removing the overburden and extracting directly from the mineral deposits thereby exposed.

MOTEL. A building or group of detached, semi-detached or attached buildings containing three or more guest rooms or units, each of which has a separate entrance directly from the outside of the building, or corridor, with garage or parking space conveniently located to each unit, and which is designed, used or intended to be used primarily for the accommodation of transient guests traveling by automobile.

MOTOR FREIGHT TERMINAL. A building or area in which freight brought by motor truck is assembled and/or stored for routing in intrastate or interstate shipment by motor truck.

MOTOR FUEL STATION. Any building or premises used for the dispensation, sale or offering for sale at retail of any motor fuels, oils or lubricants.

NATURE CENTER. An area of land used for preservation of open space, outdoor recreation, and nature education.

NON-CONFORMING STRUCTURE, USE, or LOT, ILLEGAL. A lot, building, structure, premises, or use illegally established when it was initiated, created, or constructed, which did not conform with the applicable conditions or provisions of this chapter for the district in which the structure or use is located.

NON-CONFORMING STRUCTURE, USE, or LOT, LEGAL. A lot, building, structure, premises, or use lawfully established when it was initiated, created, or constructed, which does not now conform with the applicable conditions or provisions of this chapter for the district in which the structure or use is located. See also **USE**.

NOXIOUS MATTER or MATERIAL. Material capable of causing injury to living organisms by chemical reaction, or is capable of causing detrimental effects on the physical or economic well being of individuals.

NURSERY. An enterprise that conducts the retail and wholesale sale of plants grown on site, as well as accessory items directly related to their care and maintenance. The accessory items normally sold include clay pots, potting soil, fertilizers, insecticides, hanging baskets, rakes, and shovels and the like, but do not include power equipment such as gas or electric lawnmowers and farm implements.

NURSERY, DAY CARE. See *DAY CARE FACILITY, STATE LICENSED.*

NURSING HOME. See *REST/NURSING HOME.*

OFFICE, PROFESSIONAL or COMMERCIAL. A building or portion of a building wherein services are performed involving predominately administrative, professional or clerical operations.

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

OPEN SPACE. Any open area not covered by structures, including but not limited to the following uses: required or established yard areas, sidewalks, trails, recreation areas, water bodies, shorelands, watercourses, wetlands, ground water recharge areas, floodplain, floodway, flood fringe, erodible slopes, woodland, and soils with severe limitation for development.

OPEN USE. See *USE.*

OUTLOT. A parcel of land, included in a plat, which is smaller than the minimum size permitted for lots and which is thereby declared unbuildable until combined with platting of additional land; or, a parcel of land which is included in a plat and which is designated for public or private open space, right-of-way, utilities, or other similar purposes.

OWNER. An individual, association, syndicate, partnership, corporation, trust or any other legal entity holding an equitable or legal ownership interest in land, buildings, structures, dwelling unit(s) or other property.

PARKING SPACE (OFF-STREET). An area of such shape and dimensions as provided by this chapter, enclosed in the principal building, in an accessory building, or enclosed, sufficient in size to store one motor vehicle, which has adequate access to a public street or alley and permitting satisfactory ingress and egress of an automobile.

PERFORMANCE STANDARD. Criterion established to control noise, odor, toxic or noxious matter, vibration, fire and explosive hazards, glare, heat, or other nuisance characteristics generated by or inherent in uses of land or buildings.

PERMITTED USE. See *USE.*

PERSON. Extends to and includes person, persons, firm, corporation, partnership, trustee, lessee, or receiver.

PLANNED UNIT DEVELOPMENT. A zoning designation that allows a mixing of buildings and uses which cannot be otherwise addressed under this section, and/or whereby internal site design standard deviations from this chapter may be allowed to improve site design and operation.

PLANNING COMMISSION. The City of Benson Planning Commission.

PLAT. A drawing or map of a subdivision, meeting all the requirements of the city and in such form as required by Swift County for purposes of recording.

PREMISES. A lot or plot with the required front, side and rear yards for a dwelling, structure, or other use as allowed under this chapter.

PRINCIPAL BUILDING, STRUCTURE, or USE. The primary building, structure, or use on a lot. See also *USE*.

PUBLICATION. Notice placed in the official city newspaper stating time, location and date of meeting and description of topic.

RECREATIONAL AREAS/FACILITIES. Accessory structures and/or uses that are customary and incidental to the principal use of the site, including swing sets, play structures, sand boxes, skate board ramps, tennis courts, sport courts, swimming pools, and their related aprons, and the like, intended for the enjoyment and convenience of the residents of the principal use and their occasional guests.

RESIDENTIAL FACILITY, STATE LICENSED. Any facility licensed by the Minnesota Department of Human Services, public or private, which for gain or otherwise regularly provides one or more persons with 24 hour per day substitute care, food, lodging, training, education, supervision, habilitation, rehabilitation, and treatment they need, but which for any reason cannot be furnished in the person's own home. Residential facilities include, but are not limited to, state institutions under the control of the Commissioner of Human Services, foster homes, halfway houses, residential treatment centers, maternity shelters, group homes, residential programs or schools for handicapped children with disabilities.

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 such structures being recreational in nature. Use may include grocery for guests only, fish and game cleaning house, marine services, boat landing and rental, recreational area and equipment, and similar uses normally associated with a resort operation.

REST/NURSING HOME. A state licensed facility or that part of a facility which provides nursing care pursuant to M.S. Chapter 144A.01.

RESTAURANT, DELIVERY or TAKEOUT. An establishment which by design of physical facilities, service or packaging procedures permits or encourages the purchase of prepared, ready-to-eat foods to either be picked up or delivered for off-premise consumption.

RESTAURANT, DRIVE IN. Any place or premises used for sale, dispensing or serving of food, refreshments or beverages on the premises, typically eaten in the customers motor vehicle on site.

RESTAURANT, DRIVE THROUGH. An establishment which by design of physical facilities, service or packaging procedures permits or encourages the purchase of prepared, ready-to-eat foods to be picked up by driving through facility for off-premise consumption.

RESTAURANT, EAT IN. An establishment that serves food in or on non-disposable dishes to be consumed primarily while seated at tables or booths within the building.

RETAIL BUSINESS. 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. This may also include boarding of horses, training of horses and riders, and similar uses and activities.

RIGHT-OF-WAY. Land acquired by reservation or dedication intended for public use, and intended to be occupied or which is occupied by a street, trail, railroad, utility lines, oil or gas pipeline, water line, sanitary sewer, storm sewer or other similar uses.

SCHOOL. A building used for the purpose of elementary or secondary education, which meets all the requirements of compulsory education laws of the State of Minnesota, and not providing residential accommodations.

SCHOOL, PRIVATE. Any building or group of buildings, not operated by a public agency or unit of government, the use of which meets compulsory education laws of the State of Minnesota, for elementary school, middle school (junior high school), secondary (senior high school), or higher education and which does not secure the major part of its funding from any governmental source.

SCHOOL, PUBLIC. Any building or group of buildings, operated by a public agency or unit of government, the use which meets compulsory education laws of the State of Minnesota, for elementary education, middle school (junior high), secondary school (senior high), or higher education which secures all of its major part of funding from governmental sources.

SECONDARY USE. See *USE*.

SERVICE STATION. See *AUTOMOBILE AND TRUCK SERVICE STATION*.

SETBACK. The minimum horizontal distance between a structure, and the lot line nearest thereto, except which if an outlot for a public trail separates such lot line from a street right-of-way, setback shall mean the minimal horizontal distance between a structure and the street right-of-way line.

SHOPPING CENTER. Any grouping of two or more principal retail uses whether on a single lot or an abutting lot under multiple or single ownership.

SIGN. See § 154.020.

SITE PLAN. A map drawn to scale depicting the development of a tract of land, including, but not limited to, the location and relationship of structures, streets, driveways, recreational areas, parking areas, easements, utilities, landscaping, and walkways, as related to a proposed development.

SKETCH PLAN. A rough sketch map and supportive text depicting the location, general purpose, general type of land use and circulation pattern, primary relationships between site elements and between the proposed development and surrounding development, proposed general schedule of development, and information on the proposed developer.

START OF CONSTRUCTION. The date the building permit was issued, provided actual start of construction, repair, reconstruction, rehabilitation, alteration, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not a part of the primary building, structure, or use. For an improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STORY. That portion of a building included between the surface of any floor and the surface of the floor next above it; or if there is no floor above, the space between the floor and the ceiling next above.

STREET. A public right-of-way not less than 50 feet in width which affords a primary means of access to abutting property.

STRUCTURE. Anything which is built, constructed, planted, or erected; an edifice or building of any kind; or any piece of work built up and/or composed of parts joined together in some definite manner whether temporary or permanent in character. Among other things, structures include but are not limited to buildings, gazebos, decks, retaining walls, walls, fences, hedges and swimming pools.

NON-CONFORMING STRUCTURE. See **NON-CONFORMING STRUCTURE, USE,** or **LOT ILLEGAL** and **NON-CONFORMING STRUCTURE, USE,** or **LOT, LEGAL.**

STRUCTURAL ALTERATION. Any change, other than incidental repairs, which would prolong the life of the supporting members of a building, such as bearing walls, columns, beams, girders, or foundations.

SWIMMING POOL. Any structure intended for swimming or recreational bathing that contains water over 24 inches deep. This includes in-ground, aboveground, and on-ground swimming pools, hot tubs, portable and non-portable spas and fixed in wading pools.

THEATRE. A building or area for showing motion pictures, plays, or other dramatic performances.

TOWNHOUSE. A single structure consisting of at least three but not more than eight dwelling units having the first story at or near the ground level with no other dwelling units or portions thereof directly above or below, and each unit having direct exterior access with no sharing of a common hallway for entry.

TOWNHOUSE GROUP. A structure containing three or more contiguous town house units.

TOWNHOUSE UNIT. One of a group of three or more one-family attached dwellings, commonly called row houses, patio houses, or court dwellings, having a wall or walls in common with other dwellings but which otherwise is designed to be and is separate from any other structure or structures except accessory buildings.

TOWNHOUSE UNIT BUILDING LOT. The lot on which there is built or is proposed to be built one townhouse unit. Each town house unit maybe located on a separate building lot. Such lot may be held in separate ownership and shall be separately recordable.

USE. The purpose or activity for which the land, structure, or building thereon is designed, arranged, or intended, or for which it is occupied or maintained.

USE, CONDITIONAL. Those occupations, vocations, skills, arts, businesses, professions, or uses specifically designated in each zoning district, which for the respective conduct or performance in such designated districts may require reasonable, but special, unusual or extraordinary limitations peculiar to the use for the protection, promotion, and preservation of the general public welfare, health, and safety, and the integrity of the City Comprehensive Plan for which a conditional use permit is required.

USE, NON-CONFORMING. A use of land, buildings, or structures lawfully existing at the time of adoption of this chapter which does not comply with all the regulations of this code or any use of land, building, or structure lawfully existing prior to the adoption of an amendment which would not comply with all regulations.

USE, OPEN. The use of a lot without a building or including a building incidental to the open use with a ground floor area equal to 5% or less of the area of the lot.

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. A **USE, PRINCIPAL** may be either permitted or conditional.

USE, SECONDARY. A use of land or of a building or a portion thereof which is subordinate to and does not constitute the primary use of the land or building.

VARIANCE. A modification of or variation from the provisions of this chapter consistent with the state enabling statute for municipalities, as applied to a specific property and granted pursuant to the standards and procedures of this chapter, except that a variance shall not be used for modification.

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

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

WIND ENERGY CONVERSION SYSTEM (WECS). Any device such as a wind charger, windmill, or wind turbine which converts wind energy to a form of usable energy.

YARD. A required open space on a lot which is unoccupied and unobstructed by a structure from its lowest ground level to the sky except as expressly permitted in this code. A yard shall extend along a lot line and at right angles to such lot line to a depth or width specified in the yard regulations for the district in which such lot is located. This shall also be known as the **BUILDING** or **STRUCTURE SETBACK REQUIREMENT**.

FRONT YARD. A yard extending along the full width of the front lot line between side lot lines and extending from the abutting front street right-of-way line to a depth required in the yard regulations for the district in which such lot is located.

REAR YARD. A yard extending the full width of the rear lot line between the side lot lines and then extending toward the front lot line for a depth as specified in the yard regulations for the district in which such lot is located.

SIDE YARD. A yard extending along a side lot line between the front and rear yards, having a width as specified in the yard regulations for the district in which such lot is located.

ZONING ADMINISTRATOR. The person designated by the City Manager to be the Zoning Administrator for the city.

ZONING AMENDMENT. A change authorized by the City Council either in the allowed use within a district or in the boundaries of the district.

ZONING DISTRICT. An area or areas of the city (as delineated on the Zoning Map) set aside for specific uses with specific regulations and provisions for use and development as defined by this chapter.

(C) *Illustration of certain defined terms.* A series of drawings shall be prepared by the Zoning Administrator to graphically show proper interpretation of the following defined terms: lot line, front lot line, rear lot line, side lot line, through lot, lot width, front yard, rear yard, and side yard. (Ord. 1112.03, passed 8-25-03; Am. Ord. 1115.05, passed 12-12-05)

§ 154.003 RULES FOR APPLICATION OF PROVISIONS.

(A) *Provisions as minimum standards.* In their interpretation and application, the provisions of this code shall be held to be the minimum requirements for the promotion of the public health, safety, morals, and welfare.

(B) *Most restrictive conditions prevail.* Where the conditions imposed by any provision of this code are either more restrictive or less restrictive than comparable conditions imposed in any other law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.

(C) *Compliance required.* Except as in this code specifically provided, no structure shall be erected, converted, enlarged, reconstructed, or altered, and no structure or land shall be used, for any purpose or in any manner, which is not in conformity with this chapter.
(Ord. 1112.03, passed 8-25-03)

§ 154.004 ADOPTION BY REFERENCE OF AIRPORT ZONING ORDINANCE.

The Airport Zoning Ordinance, adopted under authority of the City-County Zoning Board (the Planning Commission), a copy of which is on file in the City Hall, is hereby adopted by reference herein.
(Ord. 1112.03, passed 8-25-03)

REGULATIONS

§ 154.015 BED AND BREAKFASTS.

Conditional use permits for a bed and breakfast shall meet the following conditions:

- (A) The facility shall comply with all health, fire, safety rules and other regulations of the state and the city.
- (B) The maximum number of bedrooms shall be established at each facility.
- (C) Limitations of additional functions such as receptions or business meetings shall be established.
- (D) Exterior appearance and lighting shall be compatible with the neighborhood.
- (E) Identification signs shall meet the requirements of § 154.020.
- (F) The conditional use permit is restricted to the applicant and not the property.
- (G) All bedroom units shall be established within the principal residence.
- (H) Cooking facilities shall not be permitted in the guest rooms.

(I) Appropriate insurance including liability insurance shall be filed with the City Clerk;

(J) Other commercial enterprises shall not be operated in conjunction with this facility without a home occupation conditional use permit.

(K) The facility shall comply with initial and annual reports on building and housing code inspections.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.016 DAY CARE FACILITIES.

The purpose of this section is to establish standards and procedures by which day care facilities can be conducted within the city without jeopardizing the health, safety, and general welfare of the day care participants and/or surrounding neighborhood. This section establishes the city's minimum requirements for the establishment and operation of a day care facility which are not defined as permitted uses by state statute or which are located in uses other than single family homes. Day care facilities other than those defined as permitted uses by state statutes which operate in a single family dwelling as an accessory use shall be subject to § 154.018 and processed as a home occupation.

(A) *Application.* Day care facilities shall be allowed by conditional use permit within all residential and business districts of the city and shall be subject to the regulations and requirements of § 154.178. In addition to the city regulations, all day care facility operations shall comply with the minimum requirements of the Minnesota Department of Human Services, as may be amended.

(B) *Declaration of conditions.* The Planning Commission and City Council may impose such conditions on the granting of a day care facility conditional use permit as may be necessary to carry out the purpose and provisions of this section.

(C) *General provisions.* Day care facilities shall be allowed as a principal use or as an accessory use, provided that the day care facilities meet all the applicable provisions of this section.

(1) *Lot requirements and setbacks.* The proposed site for a day care facility as a principal use shall have a minimum lot area as set forth in the respective zoning district. The City Council may increase the required lot area in those cases where such an increase is considered necessary to ensure compatibility of activities and maintain the public health, safety and general welfare. The day care facility shall meet the setback requirements of the respective zoning district.

(2) *Sewer and water.* All day care facilities shall have access to municipal sewer and water or have adequate private sewer and water to protect the health and safety of all persons who occupy the facility.

(3) *Buffering.* Unless exempted by the Zoning Administrator, where an outdoor play area of a day care facility abuts any commercial or industrial use or zone, or public right-of-way, the day care facility shall provide screening along the shared boundary of such uses, zones, or public rights-of-way. All of the required fencing and screening shall comply with the fencing and screening requirements of § 154.017.

(4) *Parking.*

(a) There shall be adequate off-street parking, which shall be located separately from any outdoor play area and shall be in compliance with § 154.019.

(b) When a day care facility is an accessory use within the structure containing another principal use, parking for each use shall be calculated separately for determining the total off-street parking spaces required. An exception to this requirement may be granted by the Zoning Administrator in instances where no increase in off-street parking demands result.

(5) *Signage.* All signing and informational or visual communication devices shall be in compliance with § 154.020.

(6) *Compliance with state requirements.* The structure and operation of daycare facilities shall be in compliance with State of Minnesota Department of Human Services regulations and shall be licensed accordingly.

(7) *Inspection.* The city hereby reserves the right upon issuing any day care facility conditional use permits to inspect the premises in which the occupation is being conducted to insure compliance with the provisions of this section or any conditions additionally imposed.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.017 FENCES/SCREENING.

(A) *Purpose.* The purpose of this section is to provide for the regulation of fences in the city, to prevent fences from being built which would be a hazard to the public, to prevent unreasonable interference with the uses and enjoyment of neighboring property, and to provide compatibility with existing uses, other zoning restrictions and drainageways.

(B) *Definitions.* For the purpose of this subsection, the following definitions apply:

FENCES. Any linear structure used to prevent access by persons or animals or to prevent visual or sound interference, including hedges.

HEDGES. A row of bushes or shrubs.

(C) *Permitted use of fences in yards.* Fences may be permitted in all yards, subject to the following:

- (1) All fences shall be located entirely upon the private property of the owner. It shall be the responsibility of the owner of the private property to ensure that the fence is constructed on private property.
- (2) Where the property line is not clearly defined, a certificate of survey may be required by the Zoning Administrator to establish the property line.
- (3) No fence shall be permitted on any public property, right-of-way, or easement without the express authorization from the public agency having jurisdiction over the property or right-of-way.
- (4) In residential districts, fences located in the side yard and rear yard shall not exceed six feet in height.
- (5) In residential districts, fences located in the front yard beyond the building line shall not exceed 42 inches in height.
- (6) In business districts, fences shall not exceed eight feet in height in the rear yard unless a conditional use permit is issued pursuant to § 154.178.
- (7) In business districts, fences shall not exceed 42 inches in height in the front and side yards unless a conditional use permit is issued pursuant to § 154.178.
- (8) In industrial districts, fences shall not exceed eight feet in height unless a conditional use permit is issued pursuant to § 154.178.
- (9) In industrial districts, fences that abut rear yard(s) in residential districts shall not exceed six feet in height, and fences that abut front and side yard(s) in residential districts shall not exceed 42 inches in height.
- (10) The height shall be measured from the ground level to the top of the fence. In the case where a fence has variable heights or where the ground slopes, the height of the fence shall be the average height, but in no case shall the height of any one point exceed six inches above the maximum allowed by this section. Fence posts may exceed eight inches above the maximum allowed by this section.
- (11) The finished side or face shall face abutting property, and the structural support side shall face the fence owner's property.
- (12) Both sides of the fence shall be maintained in a condition of good repair and appearance by its owner and shall not be allowed to become and remain in a condition of disrepair or danger, or constitute a nuisance, public or private.

(13) No physical damage of any kind shall occur to abutting property during installation of fences unless it is allowed under agreement with the adjacent property owners.

(14) Any fence that is potentially dangerous to the public safety or health by reason of construction or sharp projections or protrusions shall be removed or repaired.

(15) No fence may be erected on either street side of a corner lot that will obstruct or impede the clear view of an intersection by approaching traffic.

(16) No fence shall be erected where it will impede a drainageway or drainage easement.

(17) No fence shall be erected before all lots within a drainage system or platted block have had the final grade established and approved and all lots within the system or platted block have had turf established with grass seed or sod.

(D) *Along property lines.*

(1) Fences that require continuing maintenance such as wooden privacy fences or hedges shall not be erected or planted within one foot of a property line.

(2) Fences in business or industrial districts may be erected on the lot line to the height of eight feet.

(E) *Prohibited fences.*

(1) Electrical fences.

(2) Barbed wire fences unless used by certain agricultural, industrial or public service users for health and safety purposes and a conditional use permit is issued pursuant to § 154.178.

(F) *Existing.* No existing fence in violation of this section will be allowed to be replaced or rebuilt. Should an existing fence be replaced or rebuilt, it must come under the regulations of this section.

(G) *Required buffering and screening.*

(1) *Purpose.* Buffering and screening serves to soften the outline of buildings, to screen glare and noise, and to create a visual and/or physical barrier between conflicting land uses. Buffering and screening are required between specific lots in different zoning districts and between land developments and along existing streets. The extent of buffering and screening required shall be determined by the type of use proposed and the adjacent uses and/or zoning surrounding the proposed development. The impact of the proposed use on adjoining properties is the basis for establishing buffering and screening standards.

(2) *Multiple family uses.*

(a) Where any townhouse, manor home, manufactured home park or apartment dwelling structure abuts property zoned for less dense residential use, the higher density residential use shall provide screening along all off-street parking or formal outdoor recreational activity areas to mitigate possible adverse impacts. Housing of similar types and densities shall not be subject to special screening requirements for formal outdoor recreational activity areas.

(b) Along boundaries where parking or formal outdoor recreational activity areas exist, all the fencing and screening specifically required by this chapter shall be subject to § 154.017 and shall consist of either fence or a green belt planting strip as provided below.

1. A green belt planting strip shall consist of evergreen trees and/or deciduous trees and plants and shall be of sufficient width and density to provide an effective visual buffer. This planting strip shall be designed to provide complete visual screening to a minimum height of six feet. Alternatively, earth mounding or berms may be used to achieve all or a portion of the required buffer. The screening plan including type of planting and berming shall require the approval of the city.

2. A required screening fence shall be constructed of masonry, brick, wood, metal, or a hedge. Such fence shall provide a solid screening effect of six feet in height. The design and materials used in constructing a required screening fence shall be subject to the approval of the city pursuant to this section. The City Council may also require planting of shrubs or trees in association with required fencing.

(3) *Non-residential uses.* Where any non-residential use abuts property zoned for residential use, the non-residential use shall provide screening along its boundary with the residential property. Screening shall also be provided where a non-residential use is across the street from a residential zone, but not on that side of a non-residential use considered to be the front as determined by the Zoning Administrator.

(H) *Violations.* Violations of this section may be enforced by injunction, and the city shall be entitled to the remedy of abatement in order that a fence erected in violation of this section may be removed.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.018 HOME OCCUPATIONS.

(A) The purpose of this section is to maintain the character and integrity of residential areas and to provide a means through the establishment of specific standards and procedures by which home occupation can be conducted in residential neighborhoods without jeopardizing the health, safety, and general welfare of the surrounding neighborhood.

(B) No conditional use permit for a home occupation shall be granted or renewed unless the Planning Commission makes a finding that all of the following criteria are met:

(1) Additional employees who live outside of the dwelling may be permitted. The number of employees shall be stated in the application. If additional employees are necessary for the home occupation, the property owner shall be required to request a new conditional use permit.

(2) Any home occupation shall be clearly incidental and secondary to the residential use of the premises, shall not change the residential character thereof, and shall result in no incompatibility or disturbance to the surrounding residential uses.

(3) No interior or exterior alterations shall be made to the principal structure for business purposes and the use shall occupy no more than two rooms.

(4) Said use shall not create odor, dust, noise, electrical disturbances, glare, vibrations, or other hazards or nuisances noticeable outside the dwelling.

(5) Uses shall not involve the use of commercial motor vehicles for delivery of materials to and from the premises more than once a week unless a conditional use permit is issued by the city.

(6) One non-illuminated nameplate, which is not more than one square foot in area that is attached to the building entrance shall be allowed for a home occupation, along with the signs allowed in a residential area pursuant to § 154.020.

(7) There shall be no exterior storage of materials or equipment or display of merchandise.

(8) Commodities may be sold as part of the home occupation but shall be only a minor and insubstantial part of the total home occupation.

(9) The home occupation shall meet all applicable fire and building codes.

(10) No home occupation shall be conducted between the hours of 10:00 p.m. and 7:00 a.m., unless a conditional use permit is issued.

(11) Parking shall be controlled such that no on-street parking will occur and all off-street parking shall require no more than two additional parking spaces located on the current driveway or adjacent side yard and not in front of any part of the principal building, except the garage or an attached porch.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.019 OFF-STREET PARKING AND LOADING.

(A) *Purpose.* The regulation of off-street parking spaces in these zoning regulations is intended to alleviate or prevent congestion of the public right-of-way and to promote the safety and general welfare of the public by establishing minimum requirements for off-street parking of motor vehicles in accordance with the intensity of utilization of the various parcels of land or structures.

(B) *Scope of regulations.* The off-street parking requirements of this section shall apply within all zoning districts for uses and structures, except as hereinafter provided. The off-street parking and loading requirements of this section may be modified by obtaining a conditional use permit pursuant to § 154.178.

(C) *General provisions.*

(1) *Application.* For the purpose of this chapter, the off-street parking of this section shall apply to all motor vehicles including, but not limited to, passenger automobiles, trucks, vans, and motorcycles, unless otherwise specified herein.

(2) *Site plans.* All site plans submitted for a structure requiring parking spaces and/or facilities shall show or designate the parking and/or loading area(s), number of parking spaces, and type of surfacing, screening, drainage, curbing, sidewalks, and other improvements that may be required to be installed. Said plan shall be a part of the building permit for any such structure, and except for one and two family dwellings, no final certificate of occupancy shall be issued until all items shown on the plan for parking or loading facilities have been completed, unless an agreement supported by a financial security is provided for the completion of said plan. For lots of record established after January 1, 2003, all site plans for single family homes must provide for location of at least one stall garage, whether or not construction is intended.

(3) *Change in land use.* When the site intensity or use of a building and/or property is increased with consequential effect upon the parking requirements as prescribed in this section, the parking requirements as prescribed herein shall be used to provide for such increase in the site intensity and/or use.

(4) *Reduction of existing of street parking space or lot area.* Off-street parking spaces and loading spaces or lot area devoted to parking or loading space existing upon the effective date of this chapter shall not be reduced in number or size unless said number or size exceeds the requirements set forth herein for a similar new use.

(5) *Handicap parking.* Handicapped parking spaces shall be provided as applicable pursuant to M.S. § 168.021, as may be amended.

(6) *Screening.* Where any business or industrial use or parking lot containing more than six parking spaces is adjacent to developed property zoned for residential use, that business, industry, or parking lot shall provide screening along the boundary of the residential property. The screening required shall consist of a fence, wall, green planting, or other material of a type and design approved by the Zoning Administrator based upon advice from the Planning Commission. See also § 154.017.

(D) *Off-site parking.* When parking is provided on a site other than the lot or tract upon which a principal use is located, said parking area shall be in the ownership of and remain in the possession of the owner of the principal use for which it is designated. No authorization for separate parking facilities shall be given until such time as the City Council is reasonably certain that the ownership and use of the parking area will continue and that the site will be well maintained. Off-site parking facilities may only be allowed by a conditional use permit and shall be subject to the following:

(1) *Ordinance compliance.* Off-site parking shall be developed and maintained in compliance with all requirements and standards of this chapter.

(2) *Access.* Reasonable access from off-street parking facilities to the use being serviced shall be provided as determined by the Zoning Administrator.

(3) *Proximity to multiple family dwelling.* The furthest space of an off-site parking lot for multiple family dwellings shall not be located more than 300 feet (excluding public right-of-way) from any normally used entrance of the principal use serviced.

(4) *Proximity for non-residential uses.* The furthest space of an off-site lot for non-residential uses shall not be located more than 300 feet (excluding public rights-of-way) from the main entrance of the principal use being served.

(E) *Off-street parking.*

(1) Trucks with gross vehicle weight of 12,000 pounds or more, or greater than 30 feet in length, as well as contracting or excavating equipment, storage trailers, and mobile storage compartments shall not be parked, stored or otherwise located in any "R" district within the city unless being used in conjunction with a temporary service benefitting the premises.

(2) Junked or inoperable vehicles may not be parked, stored or otherwise located on any property within the city for a period greater than 96 hours unless placed completely within an enclosed building or garage.

(3) Required off-street parking spaces shall not be utilized for open storage goods or for the storage of vehicles, which are inoperable, or for sale or rent.

(4) Parking shall not be allowed in areas that are not designated for off-street parking.

(5) No motor vehicle repair work of any kind shall be permitted in conjunction with exposed off-street parking facilities, except for minor repairs of motor vehicles owned by the occupant or resident of the principal use for which the parking space is intended. No exterior storage of car parts is allowed at any time.

(6) It shall be the joint and several responsibilities of the operator and owner of the principal use, uses, and/or building to maintain, in a neat and adequate manner, the parking space, accessways, and landscaping.

(7) A parking space shall not be less than 300 square feet per motor vehicle of standing and maneuvering area. Parking spaces shall be a minimum of nine feet by 20 feet, with a 25 foot wide minimum driveway.

(8) Off-street parking requirements for the various uses shall be as follows:

USE	NUMBER OF PARKING SPACES REQUIRED
<i>Subd. 1. Residential:</i>	
Single Family Dwellings	Two spaces
Two Family Dwellings	Two spaces per family unit
Multiple Family Dwellings, Townhouses, Manor Homes	Two spaces per family unit
Housing for Elderly	1.5 spaces for each dwelling unit

USE	NUMBER OF PARKING SPACES REQUIRED
<i>Subd. 2. Institutional/Educational/Cultural:</i>	
Auditoriums, Theaters, Religious Institutions, Sports Arenas	One space for each four permanent seats based on the design capacity of the main assembly hall. Facilities as may be provided in conjunction with such buildings or uses shall be subject to additional requirements which are imposed by this section.
Community Center, Physical Culture Studio, Libraries, Museums	One space for each 300 square feet of floor area.
Nursing Homes, Rest Homes	One space for each four beds.
Private or Private Nonprofit Baseball Fields	One space for each eight seats of design capacity.
Schools (Public or Private)	Three spaces for each classroom. This requirement may be increased or reduced at the Zoning Administrator's discretion to reflect facility use and/or parking policy. Adequate space shall be allowed for the dropping off and/or picking up of students as determined by the Zoning Administrator.
<i>Subd. 3. Non-Residential:</i>	
Animal Hospitals or Kennels	Five spaces plus one space for each 500 square feet of floor area over 1,000 square feet.
Automobile Washes	Shall be determined by the type of automobile wash as listed below.
Automatic Drive Through Service	Five spaces or one per employee on maximum shift, whichever is greater.
Self Service Car Wash	One space per bay.
Motor Fuel Station Automobile Washes	One space in addition to that required for the station.
Beauty or Barber Shops	Two spaces for each beauty or barber chair.
Bowling Alleys	Five spaces for each lane or alley, plus additional spaces as may be required herein for related uses contained within the principal structure.

USE	NUMBER OF PARKING SPACES REQUIRED
Day Care Facilities	One space for each employee, plus one space for each six children of licensed capacity.
Drive In Convenience Food Establishment	One space for each 2.5 seats plus one space for each 15 square feet of public service and counter area.
Furniture Sales	One space for each 400 square feet of floor area for the first 25,000 square feet, plus one space for each 600 square feet thereafter.
Manufacturing	One space for each employee on the major shift or one space for each 350 square feet, whichever is greater, plus one space for each company motor vehicle on the premises.
Medical, Chiropractic, or Dental Offices or Clinics	One space for every 200 feet of floor area.
Motels, Hotels, Lodging or Boarding Houses	One space per sleeping unit, plus one space per day shift employee plus one space for each 40 square feet devoted to meeting or banquet rooms.
Motor Fuel Stations	Four spaces plus two spaces for each service stall. Those facilities designed for sale of other items than strictly automobile products, parts or service shall be required to provide additional parking in compliance with other applicable sections of this section.
Office Buildings and Professional Offices, Other than any area for Doctors, Chiropractors, or Dentists; Banks without Drive Up Tellers, Public Administration Offices	One Space for each 250 square feet of floor area.
Restaurants, Private Clubs, Lodges, Food Dispensing Establishments (Except Drive In Restaurants)	One space for each 40 square feet of floor area of dining and bar area and one space for each 80 square feet of kitchen area.
Retail Commercial Uses, Except as Prescribed Herein	One space for each 200 square feet of floor area.

USE	NUMBER OF PARKING SPACES REQUIRED
Retail Sales and Service Business with 50% or More of Gross Floor Area Devoted to Storage, Warehouses, and/or Industry	Eight spaces or one space for each 200 square feet devoted to public sales or service plus one space for each 500 square feet of storage area, whichever is greater.
Shopping Center	One space for each 200 square feet of leasable floor area.
Truck Wash	Three spaces plus one space per bay.
Warehousing	One space for each two employees of the largest shift or one space for each 2,000 square feet of floor area, whichever is greater.
Subd. 4. Non-Specified Uses:	
For uses not specifically listed above, off-street parking requirements shall be computed by the Zoning Administrator on the same basis as required for the most similar listed uses. In such cases, the Zoning Administrator shall also conduct off-street parking reference materials including, but not limited to, manuals prepared by the American Planning Association, and Institute of Transportation Engineers	

(F) *Off-street loading space, design and maintenance; dimensional requirements.*

(1) *Residential uses.* Required off-street truck loading or unloading spaces for residential uses shall be at least 12 feet in width and 32 feet in length. Where a loading space parallel to a building is to be utilized, such area shall not be less than 12 feet in width nor less than 40 feet in length. In no instance shall any designated side loading space encroach upon a fire lane or driving aisle or parking spaces.

(2) *Non-residential uses.* Required off-street truck loading or unloading spaces for non-residential uses shall be at least 12 feet in width, 14 feet in height, and 60 feet in length. Where a loading space parallel to a building is to be utilized, such area shall not be less than 12 feet in width nor less than 65 feet in length. In no instance shall any designated side loading space encroach upon a fire lane or driving aisle or parking spaces.

(3) *Reductions.* Reductions to loading space size may be granted by the Zoning Administrator upon the demonstration of facility need.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.020 SIGNS.*(A) Purpose.*

(1) The purpose of this section is intended to establish an effective means of communication in the city, to maintain and enhance the aesthetic environment and the city's ability to attract sources of economic development and growth, to improve pedestrian and traffic safety, to minimize the possible adverse effects of signs on nearby public and private property, and to enable fair and consistent enforcement of these sign regulations. It is the intent of this section to protect and promote the health, safety, general welfare, aesthetics, and image of the community by regulating signs that are intended to communicate to the public, and to use signs which meet the city's goals;

(2) Establish standards which permit businesses a reasonable and equitable opportunity to advertise their name and service;

(3) Ensure that signs do not create safety hazards;

(4) Ensure that signs are designed, constructed, installed, and maintained in a manner that does not adversely impact safety and unduly distract motorists;

(5) Preserve and protect property values;

(6) Ensure that signs are in proportion to the scale of, and are architecturally compatible with the principal structures;

(7) Limit temporary commercial signs and advertising displays which provide an opportunity for grand opening and occasional sale events while restricting signs that create continuous visual clutter and hazards at public rights-of-way.

(B) Findings. The city finds it necessary for the promotion and preservation of the public health, safety, welfare, and aesthetics of the community that the construction, location, size, and maintenance of signs be controlled. Further, the city finds:

(1) Permanent and temporary signs have direct impact on, and a relationship to, the image of the community;

- (2) The manner of installation, location and maintenance of signs affects the public health, safety, welfare, and aesthetics of the community;
- (3) An opportunity for a viable identification of community businesses and institutions must be established;
- (4) The safety of motorists, cyclists, pedestrians, and other users of public streets and property is affected by the number, size, location and appearance of signs that unduly divert the attention of drivers;
- (5) Installation of signs suspended from, projecting over, or placed on top of buildings, walks or other structures may constitute a hazard during periods of high winds and an obstacle to effective fire fighting and emergency service;
- (6) Uncontrolled and unlimited signs adversely impact the image and aesthetic attractiveness of the community and thereby undermines economic value and growth;
- (7) Uncontrolled and unlimited signs, particularly temporary signs, which are commonly located adjacent to public rights-of-way, or are, located at driveway/street intersections, result in roadside clutter and obstruction of views of oncoming traffic. This creates a hazard to drivers and pedestrians and also adversely impacts a logical flow of information.

(C) *Definitions.* As used in this section, the following words and phrases shall have the meaning indicated:

BUILDING CANOPY* or *AWNING. A roof-like structure projecting from the building over an entrance or window that provides weather protection for the entry or window and may include the immediately adjacent area. ***BUILDING CANOPIES*** shall be considered part of the wall area and thus shall not warrant additional sign area.

SIGN. An illustration, which directs attention to an object, product, place, activity, person, institution, organization or business.

SIGN, ADVERTISING BILLBOARD. A sign that directs attention to a business or profession or to a commodity, service or entertainment not sold or offered upon the premises, where such sign is located or to which it is attached.

SIGN, AREA. The entire area within a continuous perimeter enclosing the extreme limits of such sign. However, such perimeter shall not include any structural elements lying outside of such sign and not forming an integral part or border of the sign. The maximum square footage of multi-faced signs shall not exceed two times the allowed square footage of a single-faced sign.

SIGN, AWNING. A sign placed on an awning.

SIGN, BANNER. Any sign made of strip of cloth or similar material not exceeding 15 square feet 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; in no event, however, shall such sign be placed on any lot or parcel of land for a period to exceed 30 days out of any 12 month period.

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 such sign is located or to which it is attached.

SIGN, CONSTRUCTION. A sign which displays information announcing the approved construction or development of the site on which it is displayed.

SIGN, FLASHING. An illuminated sign, which has a light source not constant in intensity or color at all times while such sign is in use.

SIGN, FREESTANDING. A self-supported sign not affixed to another structure.

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.

SIGN, MOTION. A sign that has revolving parts or signs that produce moving effects through the use of illumination.

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. Nameplate signs shall be surface-mounted on the wall of the building of the property.

SIGN, OFF-PREMISES SPONSORSHIP. A sign which displays advertisement for sponsors of any event or facility, such as an athletic event or field, on the location where the sign is located.

SIGN, POLE. A sign wholly supported by a sign structure in the ground.

SIGN, PORTABLE. An unlighted sign not affixed to the ground or building and easily carried or moved.

SIGN, PROJECTING. A wall sign which protrudes horizontally more than one foot from the wall to which it is attached.

SIGN, RAILROAD. A sign, which instructs, regulates, or warns automobile drivers, pedestrians, and the public of the railroad and is obviously not intended, for advertising purposes.

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, means the support, uprights, braces and framework of the sign.

SIGN, TEMPORARY. Any sign, except a banner sign, not exceeding ten square feet placed in such a manner as not to be solidly affixed to any building, structure, or land and advertising an event such as a bazaar, special sale, sporting event, or similar situation; in no event, however, shall such sign be placed on any lot or parcel of land for a period to exceed 30 days out of any 12 month period.

SIGN, TRAFFIC. A sign, which instructs, regulates, or warns automobile drivers, pedestrians, and the public using the streets, roads, and highways and is obviously not intended, for advertising purposes.

SIGN, WALL. A sign attached to or erected against the wall of a building with the exposed face of the sign parallel to such wall.

SIGN, WARNING. A sign, which warns the public of danger or hazard in the immediate vicinity and is obviously not intended, for advertising purposes.

(D) *Regulations and restrictions.* The following standards shall apply to all signs in all districts by this subdivision unless specifically set forth otherwise by this section. Determination as to the applicability of the standards to any given sign shall rest with the Zoning Administrator subject to the administrative appeal procedures set forth in this section.

(E) *General regulations and restrictions.*

(1) *Conformity with law.* All signs hereafter created or maintained, except for official traffic and public street signs, shall conform with the provisions of this section; with other applicable ordinances and regulations of the city; and, relative to all federal and state highways, with the Minnesota Outdoor Advertising Control Act, M.S. § 173.01, as amended. The construction of all signs permitted by this section shall be in accordance with the Minnesota State Building Code, and with the current edition of the Uniform Sign Code published by the International Conference of Building Officials, which is hereby adopted by reference as part of this section, a copy of which shall be maintained by the Zoning Administrator.

(2) *Awning/canopy sign.* The sign area on an awning or canopy shall be deducted from the sign area from any other permitted sign on the property. The lowest point of the awning or canopy must be at least eight feet above the sidewalk, or, if no existing sidewalk, then measured from the average grade at the base of the sign.

(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 non-combustible facing materials.

(b) The bottom of the facing of every ground sign shall be at least 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 greater than that of the frost line.

(4) *Hazardous signs.* No sign shall be allowed that prevents egress from or ingress to 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.

(5) *Indecent or offensive signs.* No sign shall contain any indecent or offensive picture or written material.

(6) *Multi-faced signs.* Multi-faced signs shall not exceed two times the allowed square footage of single faced signs, except for advertising signs which shall be limited to single facing.

(7) *Non-commercial speech signs.* Non-commercial speech signs are permitted anywhere that other signs are permitted subject to the same general regulations and restrictions applicable to such signs.

(8) *Obsolete signs.* Any sign for which no permit has been issued 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.

(9) *Projection signs.* Projection signs shall only be allowable in industrial districts. 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.

(10) *Public right-of-way signs.* Signs shall not be permitted within the public right-of-way, or within dedicated public easements except the following:

(a) Public announcement signs for city-wide and free community events by civic groups;

(b) Directional real estate signs for community-wide annual events;

(c) Street, warning, directional and other official non-commercial signs erected by a government agency;

(d) 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.

(11) *Required marking on signs.* After the effective date of the ordinance from which this article was derived, 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.

(12) *Sign location.* All signs shall direct primary attention to the business, commodity, service activity, or entertainment conducted, sold or offered on the premises where the sign is located, except as otherwise specified and allowed.

(13) *Sign maintenance.* The owner, lessee, or manager of any sign, and the owner of the land upon which the sign is located, is responsible for keeping the grass and other vegetation cut and for keeping debris and rubbish cleaned up and removed from the property where the sign is located. Further, the same parties shall be responsible for assuring that every sign, including which may be specifically exempt from this section relative to permits and permit fees, shall be maintained in good structural condition at all times. All signs shall be kept neatly painted, including all metal parts and supports thereof that are not galvanized or of must resistant material

(14) *Sign repair or removal.* Signs which, by reason of deterioration, may become unsafe or unsightly, shall be repaired or removed by the licensee, sign owner, or owner of property upon which the sign stands upon written notice of the City Zoning Administrator.

(15) *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 City Zoning Administrator.

(16) *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 3/8 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.

(17) *Property owner consent.* Signs shall not be placed on any property without approval of the property owner(s).

(18) *Vehicle signs.* A vehicle may not be used as a sign or as the base for a sign where the primary purpose of the vehicle in that location is its use as a sign.

(F) *Regulations and restrictions for specific signs.*

(1) *Advertising signs/billboards.* No advertising sign/billboard shall be allowed within the city's boundary.

(2) *Banner signs.* Banner signs shall conform to the provisions of this article just as permanently affixed signs.

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

(4) *Electrically illuminated signs.* No electrically illuminated sign shall be permitted in a residential or agricultural zoning district.

(a) The light source shall not be directly visible and shall be arranged to reflect away from adjoining premises.

(b) The illuminated source shall not be placed so as to cause confusion or hazard to traffic, or to conflict with traffic control signs or lights.

(c) All applications for signs which are to be illuminated shall indicate the level of illumination, in foot candles.

(d) Illuminated signs may be permitted, but flashing signs, except ones giving time, date, temperature, weather or similar public service information, shall be prohibited. Signs giving off intermittent, rotating or direction lights are prohibited.

(e) 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. 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, not withstanding more restrictive portions of this section.

(f) The city may specify the hours any sign may be illuminated. The hours of illumination may be specified on the permit or any time during the life of the sign. Illuminated signs shall have a shielded light source.

(5) *Home occupation signs.* One non-illuminated nameplate, which is not more than one square foot in area that is attached to the building entrance shall be permitted in conjunction with any home occupation or interim home occupation.

(6) *Moving signs.* No sign which revolves, rotates, or has any visibly moving parts shall be permitted, except that signs alternately displaying time and temperature and barber poles may be allowed.

(7) *Mounting of signs.* Signs shall not be placed or mounted on a fence, tree, stone or other natural growth nor on any utility pole or structure.

(8) *Painted wall signs.* Signs shall not be painted directly on the outside wall of a building.

(9) *Political signs.* Political signs are allowed in any zoning district, on private property, with the consent of the owner of the property. Such signs must be removed within seven days following the date of the election or elections to which they apply.

(10) *Portable signs.* A portable sign shall only give the name and nature of the business and hours of operation.

(a) There will be no more than one portable sign per business.

(b) Portable signs shall not be larger than 30 inches by 30 inches 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.

(c) A sign permit shall be required for all portable signs.

(d) 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.

(e) Portable signs and mobile signs on wheels shall be in place only during the hours the business is open.

(f) Inflatable signs are not permitted.

(g) 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.

(11) *Real estate signs.*

(a) On-premises real estate signs advertising the sale, rental or lease of real estate subject to the following conditions:

1. One non-illuminated sign is permitted per street frontage;

2. Sign display area shall not exceed 16 square feet per sign on property containing less than ten acres in area, and 32 square feet per sign on property containing ten or more acres;

3. No such sign shall exceed ten feet in overall height, nor be located less than ten feet from any property line;

4. All temporary real estate signs shall be removed within seven days following sale, lease, or rental of the property.

(b) Off-premises real estate signs advertising the sale, rental or lease of business and industrial buildings:

1. One non-illuminated sign is permitted per building.
2. Such signs shall only be permitted in business and industrial districts, and on property located within the same subdivision or development as the building being advertised.
3. Such signs shall not be located closer than 100 feet from any other such sign located on the same side of the street.
4. Sign display area shall not exceed 32 square feet, and the height of such signs shall not exceed ten feet.
5. Such signs shall be setback at least ten feet from any property line.
6. Such signs shall be removed within seven days following lease or sale of the building floor space which it is advertising.
7. Provide written permission of property owner.

(c) Real estate development project signs may be erected for the purpose of selling or promoting a single family residential project of ten or more dwelling units provided:

1. Such signs shall not exceed 32 square feet in area and shall require a sign permit;
2. Only one such sign shall be erected on each road frontage with a maximum of three signs per project;
3. Such signs shall be removed when the project is 80% completed or within six months or when sold or leased, whichever comes first;
4. Such signs shall not be located closer than 100 feet to any existing residence.

(12) *Roof signs.* Roof signs are prohibited in all zoning districts; signs or other signs attached to a building projecting above the roof line or parapet of the building to which it is attached shall constitute a roof sign as defined by this section.

(13) *Temporary signs.*

(a) Signs for nonprofit organizations, city-sponsored events, fairs, and the like, are permitted.

(b) The total square feet of all signs shall not exceed 60 square feet unless in a zoning district in which a religious organization is located providing additional square footage.

(c) Signs advertising businesses are permitted.

(d) The maximum size of temporary signs is 100 square feet of total advertising area.

(e) Temporary signs of rigid material shall not exceed 24 square feet in area, or six feet in height, nor shall any such sign be fastened to the ground.

(f) The setback required for temporary signs in agricultural and residential districts is ten feet from the property line or right-of-way; in business and industrial districts, two feet from the property line.

(g) No more than two temporary signs are allowed per parcel.

(h) A temporary sign permit is required.

(i) No temporary or permanent sign shall be tacked, or otherwise attached to trees, fences, utility poles, or other such structures or supports, unless expressly permitted by this section or other law.

(j) Temporary signs may remain in place for a period not exceeding 30 days.

(14) *Traffic signs.*

(a) 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.

(b) 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.

(c) Private traffic circulation signs and traffic warning signs in alleys, parking lots, or in other hazardous situations may be allowed on private property, provided that such signs do not exceed three square feet and are used exclusively for traffic control purposes.

(G) *Permit required.*

(1) Except as otherwise provided in this article, no sign shall be erected, constructed, altered, rebuilt, reconstructed, structurally altered, enlarged, or relocated until a sign permit for the sign has been issued by the city.

(2) The following information for a sign permit shall be supplied by an applicant if requested by the city:

- (a) Name, address, and telephone number of person making application;
- (b) A site plan drawn to scale showing the location of the lot lines, building structures, parking areas, existing and proposed signs and any other physical feature;
- (c) Plans, location, specifications, materials, method of construction and attachment to the buildings or placement method in the ground;
- (d) Written consent of the owner or lessee of any site on which the sign is to be erected;
- (e) Any electrical permit required and issued for the sign;
- (f) Such other information as the city shall require to show full compliance with this chapter and all other laws and ordinances of the city. Information may include such items as color and material samples;
- (g) Receipt of sign permit fee.

(H) *Signs allowed without a permit.* No sign permit will be required under this section for the following signs:

- (1) Real estate signs as set forth herein.
- (2) Flags, badges, or insignia of any government or government agency, or of any civic, religious, fraternal, or professional organization. Commercial and industrial establishments may display on a single flag or on a single awning or on a single canopy, the official corporate seal or insignia as identification of the individual establishment. Advertising or promotion of specific products or services is prohibited unless approved in conjunction with an administrative or conditional use permit as provided by this chapter.
- (3) Temporary signs for non-commercial announcements for civic groups and for political campaigns. However, the sign must contain the name of the person responsible for such sign, and that person shall be responsible for its removal, and these signs are not permitted on the public right-of-way. Said signs shall also comply with the Fair Campaign Practices Act pursuant to M.S. § 211B.045. The city shall have the right to remove and destroy signs not conforming with this division.
- (4) Warning signs that do not exceed five square feet in area.
- (5) Street, warning, directional and other official non-commercial signs erected by a government agency.
- (6) Railroad signs.

(7) Public notices defined as notices placed or authorized by the city which are located on private property with the permission of the landowner, or on public property or right-of-way.

(8) Address letters and numerals required by and in conformance with the city code. Included are related signs, not to exceed two square feet, displayed strictly for the convenience of the public such as identification signs for rest rooms, waste receptacles, door bells, mailboxes, reserved parking spaces, loading zones, or primary building entrances.

(9) Nameplate signs two square feet per building and does not include multitenant names.

(10) Rummage (garage) sale signs shall be removed within two days after the end of the sale and shall not exceed four square feet. Rummage sale signs shall not be located in any public-right-of way. The city shall have the right to remove and destroy signs not conforming to this division.

(I) *Enforcement.* All signs shall be subject to inspection by the Zoning Administrator or authorized designee who is hereby authorized to enter upon any property or premises to ascertain whether these regulations are being met. Such entrance shall be made during normal business hours, unless a clear and present emergency exists. The Zoning Administrator may order, in writing, the removal of any sign that is not maintained in accordance with the standards or maintenance requirements of this section. Continued violations of this section shall be administered and prosecuted in accordance with the city code.

(J) *Exception.* The regulations contained in this section do not apply to signs attached by adhesive or otherwise attached directly to or visible through windows and glass portions of doors.

(K) *Regulations by zoning districts.*

(1) *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.

(2) *Signs by sign permit.* Where a use is permitted in a zoning district by a sign permit, the sign for which use shall require a sign permit unless the sign is otherwise provided for in this article.

(3) *Agricultural zoning district.* No sign shall be permitted in an "A" zoning district except the following signs if authorized by a permit or as provided in this article:

(a) Banner, business, nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning signs are allowed.

(b) Off-premises sponsorship signs are also allowed on city property. Individual signs shall be mounted on an outfield fence, backstop or scoreboard. Off-premises sponsorship signs mounted on

an outfield fence shall be a dimension of three feet by six feet in size and shall face the playing field. Off-premises sponsorship signs mounted on a scoreboard shall be a maximum area of 32 square feet.

(c) The size of signs may be no more than a total of 16 square feet, with a four foot maximum for any dimension, except as otherwise restricted in this section. The total square feet of all signs shall not exceed 32 square feet.

(d) No sign shall be constructed as to have more than two surfaces.

(e) 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 and religious organizations where four signs will be permitted.

(f) The height of the top of the sign shall not exceed eight feet above the average grade.

(g) Any sign over two square feet shall be setback at least ten feet from any lot line or right-of-way.

(4) *Residential zoning districts.* No sign shall be permitted in an “R” zoning district except the following signs if authorized by a permit or as provided in this article:

(a) Nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning signs are allowed.

(b) Off-premises sponsorship signs are also allowed on city property. Individual signs shall be mounted on an outfield fence, backstop or scoreboard. Off-premises sponsorship signs mounted on an outfield fence shall be a dimension of three feet by six feet in size and shall face the playing field. Off-premises sponsorship signs mounted on a scoreboard shall be a maximum area of 32 square feet.

(c) 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 restricted in this section. The total square feet of all signs shall not exceed 32 square feet per lot.

(d) No sign shall be so constructed as to have more than two surfaces.

(e) 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 and religious organizations where four will be permitted.

(f) The height of the top of the sign shall not exceed five feet above the average grade.

(g) All signs shall be setback at least ten feet from any lot line or right-of-way.

(5) *Business zoning districts.* No sign shall be permitted in a "B-1" or "B-2" zoning district except the following signs if authorized by a permit or as provided in this article:

(a) The types of signs allowed are: banner, business, illuminated, nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning. All applications for a sign permit shall be reviewed by the Zoning Administrator.

(b) Off-premises sponsorship signs are also allowed on city property. Individual signs shall be mounted on an outfield fence, backstop or scoreboard. Off-premises sponsorship signs mounted on an outfield fence shall be a dimension of three feet by six feet in size and shall face the playing field. Off-premises sponsorship signs mounted on a scoreboard shall be a maximum area of 32 square feet.

(c) Total area of signs shall not exceed 60 square feet.

(d) The height of the top of the sign shall not exceed 15 feet above the average grade.

(e) In no case shall any part of a sign be closer than two feet to a vertical line drawn at the property line.

(6) *Business zoning districts.* No sign shall be permitted in a "B-3" zoning district except the following signs if authorized by a permit or as provided in this division:

(a) The types of signs allowed are: banner, business, freestanding, ground, illuminated, nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning. All applications for a sign permit shall be reviewed by the Zoning Administrator.

(b) Off-premises sponsorship signs are also allowed on city property. Individual signs shall be mounted on an outfield fence, backstop or scoreboard. Off-premises sponsorship signs mounted on an outfield fence shall be a dimension of three feet by six feet in size and shall face the playing field. Off-premises sponsorship signs mounted on a scoreboard shall be a maximum area of 32 square feet.

(c) Total area of signs shall not exceed 80 square feet.

(d) The height of the top of the sign shall not exceed 15 feet above the average grade.

(e) In no case shall any part of a sign be closer than two feet to a vertical line drawn at the property line.

(7) *Industrial zoning districts.*

(a) The type of signs allowed are: banner, business, freestanding, ground, illuminated, nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning.

(b) Off-premises sponsorship signs are also allowed on city property. Individual signs shall be mounted on an outfield fence, backstop or scoreboard. Off-premises sponsorship signs mounted on an outfield fence shall be a dimension of three feet by six feet in size and shall face the playing field. Off-premises sponsorship signs mounted on a scoreboard shall be a maximum area of 32 square feet.

(c) Total area of signs shall not exceed 100 square feet.

(d) No business sign shall face a residential zoning district.

(e) The height of the top of the sign shall not exceed 20 feet above the average grade.

(f) All signs shall be setback at least 100 feet from any residential or agricultural zoning district.

(Ord. 1112.03, passed 8-25-03; Am. Ord. 1121.06, passed 8-14-06; Am. Ord. 1133.10, passed 3-1-10)
Penalty, see § 10.99

§ 154.021 ESSENTIAL SERVICES.

(A) *Purpose.* The purpose of this section is to provide for the installation of essential services such as telephone lines, pipelines, electric transmission lines, substations, and accessories therewith in such a manner that the health, safety, and welfare of the city will not be adversely affected. Essential services shall also be installed in recognition of existing and projected demands for such services.

(B) *Special permit required.* All communication lines, pipelines for distribution to individual properties within the city, and all underground electric transmission lines, overhead utility lines, radio receivers and transmitters, electric transmission lines, and substations less than 33 kilovolts, when installed in any location in the city, shall require a permit subject to the recommendation of the Planning Commission and approval of the City Council and shall be processed according to the following:

(1) Prior to the installation of any of the essential services defined above, the owner of such service shall file with the city all maps and other pertinent information as deemed necessary to review the proposed project.

(2) The City Council shall document in writing, after receipt of the Planning Commission's recommendation, the findings as to the compliance of the proposed project with the Comprehensive Plan and City Code provisions.

(3) In considering applications for the placement of essential services, as regulated in this section, the Planning Commission and City Council shall consider the effect of the proposed project upon the Comprehensive Plan. Additionally, radio transmitters and receivers accessory to an essential service

may be located on existing utility poles or light standards within public right-of-way provided the radio transmitters and receivers comply with the following standards:

(a) Radio transmitters and receivers located on a utility pole/tower or light standard shall be at least 15 feet above grade.

(b) Radio transmitters and receiver devices shall not exceed 18 inches in length or width, or extend more than 18 inches from the pole. Antennas may not extend more than 24 inches from the equipment.

(c) The applicant shall submit a map prior to issuance of a permit showing the location of all proposed radio transmitters and receivers. The map shall be accompanied by a list of all sites referenced by the closest street address or property identification number. The list of sites must also describe the type of pole to be used.

(d) The applicant shall notify the city of any changes to the approved list prior to erecting or placing any additional equipment in the right-of-way.

(e) The applicant shall notify the city, at the time of permit application, of any obstructions that would cause traffic to be rerouted or stopped.

(f) In addition to receiving the necessary permits and approvals, the city may require the applicant to enter into an encroachment agreement.

(4) Upon approval of the City Council, a permit for the installation and operation of the applicant's essential services shall be issued. If the City Council denies the permit, the applicant may appeal said decision under the rules and procedures set forth in § 154.181.

(5) The City Council may deny a permit or attach conditions to the permit approval to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The City Council may consider one or more of the following factors:

- (a) The extent of which right-of-way space where the permit is sought is available;
 - (b) The competing demands for the particular space in the right-of-way;
 - (c) The availability of other locations in the right-of-way or in other rights-of-way for the equipment of the permit application;
 - (d) The applicability of ordinance or other regulations of the right-of-way that affect location of equipment in the right-of-way.
- (6) The permittee shall notify the City Council upon completion of the work specified in the permit.

(C) *Conditional use permit required.* The following require a conditional use permit based upon procedures set forth in and regulated by § 154.178.

- (1) All transmission pipelines (such as pipelines not required for the city local distribution network), and overhead and underground transmission and substation lines in excess of 33 kilovolts.
- (2) All poles and towers used exclusively for the placement of radio receivers and transmitters. (Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.022 LAND RECLAMATION.

Under this code **LAND RECLAMATION** is the reclaiming of land by depositing of material so as to elevate the grade. Land reclamation shall be permitted in all districts only by conditional use permit. Any lot or parcel upon which 4,000 cubic yards or more of fill is to be deposited shall be land reclamation. The permit shall include as a condition thereof: a finished grade plan which will not adversely affect the adjacent land; as conditions thereof shall regulate, the type of fill permitted; a program for rodent control; a plan for fire control and general maintenance of the site; controls of vehicular ingress and egress; and control of material dispersed from wind or the hauling of materials to or from the site.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.023 MINING.

The extraction and incidental processing of sand, gravel, or other material from the site in the amount of 4,000 cubic yards or more and removal thereof from the site shall be *MINING*. In "I-2" and "I-3" districts the conduct of mining shall be permitted only upon issuance of a conditional use permit. Such permit shall include, as a condition thereof, a plan for a finished grade which will not adversely affect the surrounding land or the development of the site on which the mining is being conducted, and the route of trucks moving to and from the site.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.024 WIND ENERGY CONVERSION SYSTEM (WECS).

(A) *Purpose and intent.* The purpose of this section is to establish predictable and balanced regulations for the establishment of commercial and non-commercial WECS in the locations and circumstances under which the use may be established without detriment to the public health, safety, and welfare of neighboring property owners or occupants.

(B) *General standards.* The following shall apply to all WECS:

- (1) No more than one WECS shall be permitted per lot.
- (2) The height of WECS shall be determined by calculating the height from the base of the tower at grade to the highest possible extension of the blades.
- (3) The setback shall not exceed the following distances:
 - (a) From the nearest dwelling, school, business or other habitable structure: 300 feet or the height of the WECS, whichever is greater;
 - (b) From the nearest public right-of-way: 300 feet or the height of the WECS, whichever is greater;
 - (c) From the nearest property line: 300 feet or the height of the WECS, whichever is greater;
 - (d) From recreational fields: 300 feet or the height of the WECS, whichever is greater;

(e) No portion of the WECS, including the full arc area created by any blades used in the system, shall extend over any recreational field, including the full arc area created by any blades used in the system.

(4) Blade arcs created by the WECS shall have a minimum of 30 feet of clearance over any accessory structure or tree within the full arc area created by any blades used in the system.

(5) The WECS shall be equipped with both a manual and an automatic braking device capable of stopping the WECS operation in high winds.

(6) The WECS, including the blades, shall be grounded and shielded to protect against natural lightning strikes in conformance with the National Electrical Code.

(7) The WECS shall not include a tower-climbing apparatus within 12 feet of the ground.

(8) The WECS shall display a sign posted at the base of the tower, not to exceed two square feet in area. The sign shall contain the following information:

- (a) A warning of high voltage;
- (b) The manufacturer's name;
- (c) An emergency telephone number;
- (d) The emergency shutdown procedures.

(9) Additional signs may be required on the basis of individual applications as safety needs dictate.

(10) No WECS shall have affixed or attached lights, reflectors, flashers or any other illumination, except for those devices required by the Federal Aviation Administration.

(11) The WECS shall be filtered, shielded, or otherwise designed and constructed so as not to cause electrical, radio frequency, television, and other communication signal interference.

(12) The WECS shall be constructed in a monopole design of tubular steel and shall be self-supporting without the use of guy wires or other similar features. Towers under 200 feet in height shall be painted a non-contrasting color consistent with the surrounding area such as pale gray or white or have a galvanized finish to reduce visual impact. Towers over 200 feet shall follow the above requirements unless otherwise directed by the Federal Aviation Administration.

(13) All obsolete and unused towers and equipment shall be removed within 12 months of cessation of operation at the site, unless an exemption is granted by the Zoning Administrator.

(C) *Temporary meteorological equipment.* Temporary meteorological equipment located upon a temporary mobile tower used on an interim basis to gather wind and meteorological data to determine feasibility of the WECS shall require the processing of an administrative permit and shall comply with the following standards:

(1) The tower shall be placed on property for no longer than 18 months from the date of administrative permit issuance. Any abandoned or obsolete temporary mobile tower shall be removed within 30 days from the cessation of operation at the site.

(2) The tower shall be temporary by nature and shall not have permanent foundations. Guy wires may be used as long as the connections to the ground are temporary and the wires are designed to support the wind and ice load of the tower.

(3) The tower shall meet the minimum wind and ice load design required by the Uniform Building Code.

(4) The tower and guy wires shall be protected against unauthorized climbing.

(D) *Additional submittal requirements.* In addition to the information required elsewhere in this code, development applications for WECS and temporary towers for meteorological equipment shall include the following supplemental information:

(1) A letter or copy of the review response from the Federal Aviation Administration concerning the development application and their requirements for warning device, height restrictions, and the like.

(2) A certified survey for the property verifying the location, dimensions, types and uses of existing structures, proposed accessory structures, above-ground utility lines, property lines, height of all significant trees, drainage and utility easements, public rights-of-way and the proposed location for the WECS.

(3) The technical specifications of the WECS including, but not limited to, the type, height, blade length, operating parameters, the anticipated sound level at the property line, and lightning protection.

(4) Clearance distances between the farthest extension of the WECS blades to the property lines.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.025 ACCESSORY BUILDINGS, STRUCTURES AND USES.*(A) Residential uses.*

(1) No accessory building or structure in “R” districts shall be constructed nor any use conducted on any lot prior to the time of construction of the principal building to which it is accessory except as provided herein.

(2) No accessory building, structure, or use shall be allowed within a front yard in an “R” district, except that an accessory use, building, or structure may be allowed within a front yard which qualifies as an equivalent rear or side yard as defined by this chapter, provided it meets the minimum front yard setback specified for the principal building on the lot.

(3) Within an “R” district, an attached garage not exceeding 1,000 square feet shall be considered an integral part of the principal building and such garages are exempt from the provisions of this section. Attached private garages in excess of 1,000 square feet are not permitted, except by conditional use permit.

(4) Within an “R” district, a conditional use permit is required for construction of more than one detached accessory building in excess of 120 square feet in gross floor area.

(5) In addition to the other accessory buildings, one building not to exceed 120 square feet in gross floor area shall be permitted.

(6) No building permit shall be required for buildings containing 120 square feet in gross floor area or less, however, such buildings shall comply with all applicable regulations set forth in this chapter.

(7) An accessory building shall be considered for purposes of applying this chapter to be an integral part of the principal building unless it is six feet or more from the principal building.

(8) No detached accessory building shall be less than 60 feet from the public right-of-way bordering the designated front yard(s) unless it conforms to the side yard requirements of the principal building. Those accessory buildings located 60 feet or more to the rear of a right-of-way line shall have a side yard of three feet or more and a rear yard of three feet or more.

(B) Garages with alley access. Private garages having direct access onto an alley shall be setback 20 feet from the alley lot line. In cases where reasonable difficulty is encountered in meeting this requirement, the Zoning Administrator may approve deviations to the setback standard.

(C) *Size.*

(1) In “R” districts, no accessory building, including a detached private garage for a single family dwelling, shall equal more than 30 percent of the area of the rear yard or 1,000 square feet in gross floor area, whichever is less, except that in “R” districts, an accessory building may exceed 1,000 square feet in gross floor area upon issuance of a conditional use permit. Furthermore, the gross floor area of an accessory building shall not exceed the gross floor area of the principal building, except by conditional use permit.

(2) Except in cases of single family detached dwellings, accessory buildings for all other uses shall not exceed 30% of the gross floor area of the principal buildings. In those cases where the standards are exceeded, a conditional use permit shall be required.

(3) The maximum height of accessory buildings and structures shall be prescribed in the applicable district, provided that the height of an accessory building or structure shall not exceed the height of the principal structure, except as otherwise provided in this chapter.

(D) *Conditional use permits.* Application for a conditional use permit under this section shall be regulated by § 154.178. Such a conditional use permit for an accessory structure may be granted provided that:

(1) There is a demonstrated need and potential for continued use for the structure for the purpose stated.

(2) In the case of residential uses, no commercial or home occupation activities are conducted on the property.

(3) The accessory building shall be maintained in a manner that is compatible with the adjacent residential uses and does not present a hazard to public health, safety, and general welfare.

(E) *Setbacks.* Accessory buildings shall be setback from adjoining lots as prescribed in the applicable district and shall not be located within a drainage or utility easement.

(F) *Time of construction.* No accessory building or structure shall be constructed on any lot prior to the time of construction of the principal building to which it is accessory.

(G) *Building materials.*

(1) All accessory buildings in excess of 120 square feet shall be constructed with a design consistent with the general character of the principal structure on the lot.

(2) Accessory buildings constructed primarily of canvas, plastic fabric, or other similar non-permanent building materials shall be prohibited.

(H) *Trash receptacles.* Except as otherwise provided, all buildings having exterior trash receptacles shall provide an enclosed area in conformance with the following:

(1) Exterior wall treatment shall be similar and/or complement the principal building.

(2) The enclosed trash receptacle area shall be located in the rear or side yard and shall comply with the setback requirements of § 154.059.

(3) The trash enclosure shall be in an accessible location for servicing motor vehicles and shall not conflict with site circulation.

(4) The trash receptacles shall be fully screened from view of adjacent properties and the public right-of-way.

(5) The design and construction of the trash enclosure shall be subject to the approval of the Building Official.

(6) Recycling space shall be provided as required by the Minnesota State Building Code.

(I) *Drive through businesses.*

(1) The facility shall be located on a site having direct access to a minor arterial street, collector or service road.

(2) All portions of the business with drive through facilities established after January 1, 2003, including but not limited to, the building in which they are located, service windows and stacking spaces, shall be located across an arterial or collector street from residentially zoned or guided property, or shall be setback at least 300 feet from residentially zoned or guided property.

(3) The facility's public audio system shall not be heard from any adjacent residentially zoned or guided property.

(4) Businesses with one drive through lane shall provide stacking space for at least six motor vehicles, as measured from and including the last pick up station, window, or the like. Stacking space shall not interfere with parking spaces or traffic circulation.

(5) The applicant shall demonstrate that such use will not significantly lower the existing level of service on streets and intersections.

(6) Alcoholic beverages shall not be sold or served.
(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.026 GENERAL BUILDING AND PERFORMANCE STANDARDS.

(A) *Purpose.* The purpose of this section is to establish general development performance standards. These standards are intended and designed to assure compatibility of uses, to prevent urban blight, deterioration and decay, and to enhance the health, safety and general welfare of the residents of the community.

(B) *Dwelling unit restriction.*

(1) No model home, garage, tent, accessory building, or recreational camping vehicle shall at any time be used as living quarters, temporary or permanent, except as may be approved in emergency cases by the Zoning Administrator as an administrative permit.

(2) Tents, play houses or similar structures may be used for play or recreational purposes.

(3) Basements and cellars may be used as living quarters or rooms as a portion of the principal residential dwelling.

(4) Energy conservation designs in housing, including earth sheltered residential dwellings, are not prohibited by this section, provided that a conditional use permit is approved by the City Council and the structure complies with standards imposed by the state and the Minnesota State Building Code.

(C) *Platted and unplatted property.*

(1) Any person desiring to improve property shall submit to the Building Official a survey of said premises and information on the location and dimension of existing and proposed buildings, location of easements within the property, encroachments, and any other information which may be necessary to evaluate conformance with city ordinances.

(2) All buildings shall be so placed so that they will not obstruct future streets, which may be constructed by the city and be in conformity with existing streets, adopted plans, and according to the system and standards employed by the city.

(3) No more than one principal building shall be on a single family residential lot. Except by conditional use permit, no more than one principal building shall be located on a multiple family residential lot or non-residential lot.

(4) When a development is proposed which is to be located on two or more lots, and such lots are required to meet the minimum district area and frontage requirement and/or required to accommodate the use, the lots shall be combined in accordance with Chapter 153, prior to issuing of a building permit.

(5) Except as may be allowed pursuant to Chapter 153, when two or more lots are located in the same zoning district, one or more of which lack adequate area or dimensions to qualify for use under current ordinance requirements and are contiguous and held in one ownership, they shall be combined for use in order to meet the lot requirements by subdividing the property in accordance with Chapter 153.

(6) Outlots are deemed unbuildable and no building permit shall be issued for such properties.

(7) Except as otherwise allowed by property subdivision, each lot shall have frontage and access directly onto an abutting, improved and city-accepted public street. An existing lot of record, vacant or for redevelopment, that does not have frontage and access directly onto an abutting, improved city accepted public street shall require approval of a conditional use permit prior to issuance of any building permits.

(D) *Grading and drainage.* No land shall be developed and no use shall be permitted in the city that results in water runoff causing flooding, erosion, or deposit of sediment on adjacent properties which is inconsistent with the grading and erosion control plan of the city.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.027 NON-CONFORMING USES AND STRUCTURES.

(A) Any structure or use lawfully existing upon the effective date of this chapter may be continued; provided, however, that no such non-conforming use be enlarged or increased, nor shall any such non-conforming use be expanded to occupy a greater area of land than that occupied by such use at the time of the adoption of this chapter, nor shall any such non-conforming use be moved to any other part of land upon which the same was conducted at the time of adoption of this chapter.

(B) Nothing in this code shall prevent the city from declaring a non-conforming use to be a nuisance if said use poses a danger and/or threat to the health, safety, and general welfare of the community.

(1) The termination/correction time schedule shall be based upon, but not limited to factors such as the initial investment and the degree of threat or danger being posed.

(2) The acceptability of the time schedule shall be determined by the City Council with right of appeal.

(3) In no case shall a time schedule exceed two years.

(C) When any lawful non-conforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to any non-conforming use.

(D) A lawful non-conforming use of a structure or parcel of land may be changed to lessen the non-conformity of use. Once a non-conforming structure or parcel of land has been changed, it shall not thereafter be so altered to increase the non-conformity.

(E) Whenever a building or structure in which a non-conforming use is located shall have been damaged by fire, flood, explosion, earthquake, war, or riot, it may be reconstructed and used as before if it be reconstructed within 12 months after such calamity, unless the damage to the building or structure is 50% or more of its fair market value, in which case the reconstruction shall be for a use in accordance with the provisions of this code.

(F) Whenever a lawful non-conforming use of any building, structure, or land is discontinued for a period of six months, any future use of said building, structure, or land shall be in conformity with the provisions of this code.

(G) Normal maintenance of a building or other structure containing or related to a lawful non-conforming use is permitted, including necessary non-structural repairs and incidental alterations, which do not extend or intensify the non-conforming use.

(H) A lawful non-conforming use may be changed only to a use of the same or more restrictive classification.

(I) Alterations may be made to a structure or building containing lawful non-conforming residential units when they will improve the livability thereof, provided they will not increase the number of dwelling units.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.028 OPERATION STANDARDS.

In I-2 or I-3 districts, the operation standards of this section may be modified by obtaining a conditional use permit pursuant to § 154.178.

(A) *Noise.* Any use established shall be so operated that no noise resulting from the use is noticeable beyond the boundaries of the lot line of the site on which such use is located. This standard shall not apply to incidental traffic, parking, loading, construction, or maintenance operations.

(B) *Smoke and particulate matters.* Any use established, enlarged, or remodeled after the effective date of this code shall be so operated as to control the emission of smoke or particulate matter to such degree that it is not detrimental or dangerous to the public health, safety, comfort, or general welfare. For the purpose of determining when the degree of smoke is unsatisfactory, the Ringlemann Chart published and used by the United States Bureau of Mines shall be employed. The emission of smoke shall not be of a density greater than No. 2 in the Ringlemann Chart.

(C) *Toxic or noxious matter.* Any use established shall be so operated as not to discharge across the boundaries of the lot or through percolation into the subsoil beyond the boundaries of the lot wherein such use is located any toxic or noxious matter in such concentration as to be readily detectable or to endanger the public health, safety, comfort, or welfare, or cause injury or damage to property or business.

(D) *Odors.* Any use established, enlarged, or remodeled shall be so operated as to prevent the emission of odorous matter in such qualities as to be readily detectable at any point beyond the lot line of the site in which such use is located.

(E) *Vibration.* Any use creating periodic earthshaking vibrations, such as may be created from a drop forge, shall be prohibited if such vibrations are perceptible beyond the lot line of the site on which the use is located.

(F) *Glare or heat.* Any use requiring an operation producing an intense heat or light transmission shall be performed with the necessary shielding to prevent the heat or light from being detectable at the lot line of the site on which the use is located.

(G) *Explosives.* Any use requiring the storage, utilization, or manufacturing of products which would decompose by detonation shall be located not less than 400 feet from the "R" district line.

(H) *Waste material.* Waste material shall not be washed into the public storm sewer system or the sanitary sewer system without a permit to do so first having been received from the city. If the permit is not granted, a method of disposal shall be devised which will not require continuous land acquisition for permanent operation and will not cause a detrimental effect to the adjacent land. Should the waste be of a solid form rather than a fluid, the storage area shall be so located behind fences as to be removed from public view.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.029 PUBLIC PROPERTY/RIGHTS-OF-WAY.

The erection and/or placement of any structure in the public right-of-way or on city property by any person, or group other than the City of Benson, County of Swift, or State of Minnesota, or franchised utility shall require the processing of a conditional use permit in accordance with § 154.178. Exceptions to this provision include newsstands, essential services, radio receivers and transmitters as an accessory use to essential services, and personal wireless communication antennas located on existing lattice electrical transmission towers, provided that the use and equipment comply with the applicable requirements of this chapter.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.030 RELOCATION OF BUILDINGS.

(A) It shall be the stated policy of the city to maintain a harmonious and high standard of development in all the designated districts and to protect the districts from deleterious effects through insuring that a building or structure relocated from a permanent foundation located within or outside of the city to another location within the city shall meet specified requirements. Such relocations of buildings or structures as stated above must conform to all regulations of the Minnesota State Building Code and shall be permitted in the zoning district where all necessary specifications as to lot sizes, setbacks, type of use, height regulations, and all other conditions as laid down in this code are met.

(B) In addition, such relocations shall require a conditional use permit from the City Council wherein the following provisions shall be met:

(1) Application in the form of a building permit shall be made on forms provided by the City Clerk.

(2) A fee as may be adopted from time to time as adopted by City Council resolution or ordinance plus any necessary public costs will be made to the Treasurer, and a receipt for the same shall be attached to the application and submitted to the Clerk with proof of the mover's financial responsibility.

(3) The application shall be referred to the City Council, which shall set a time and place for a public hearing giving at least ten days' public notice of such hearing.

(4) At least ten days before such hearing, the City Council shall mail a notice of said hearing to property owners within 300 feet of the premises on which the building is to be relocated. Failure of the City Council to mail the notice or failure of the titleholder to receive the notice shall not invalidate the proceedings.

(5) The Building Official shall make a report to the City Council before or at the public hearing. The City Council may refer the petition to the Planning Commission for its recommendation.

(6) The City Council shall make a finding and declare whether or not the structure to be moved is architecturally and otherwise compatible.

(7) An administrative permit shall also be required in accordance with the provisions of § 154.176.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.031 SITE PLAN REVIEW.

(A) *Purpose.* The purpose of this section is to establish a formal site plan review procedure and provide regulations pertaining to the enforcement of site design standards consistent with the requirements of this chapter.

(B) *Sketch plan.* Prior to the formulation of a site plan, applicants may present a sketch plan to the Zoning Administrator prior to filing for a formal application. The plan shall be conceptual but shall be drawn to scale and may include the following:

(1) The proposed site with reference to existing development on adjacent properties at least to within 200 feet;

(2) General location of the proposed structures;

(3) Tentative street arrangement, both public and private;

(4) Amenities to be provided such as recreational areas, open spaces, walkways, and the like;

(5) General location of parking areas;

(6) Proposed public sanitary sewer, water and storm drainage;

(7) A statement showing the proposed density of the project with the method of calculating said density also shown.

(C) *Evaluation criteria.* The Planning Commission and City Council shall evaluate the effects of the proposed site plans. This review shall be based upon, but not limited to, compliance with the City Comprehensive Plan and provisions of this chapter.

(D) *Information requirement.* The information required for site plan applications generally consists of the following items, and such items shall be submitted when requested and as specified by the Zoning Administrator.

(1) *Site plan.*

- (a) Name and address of developer/owner.
- (b) Name and address of architect/designer.
- (c) Date of plan preparation.
- (d) Dates and description of all revisions.
- (e) Name of project or development.
- (f) Scale of plan (engineering scale only, at one inch equals 50 feet or less).
- (g) North point indication.
- (h) Lot dimension and area.
- (i) Required and proposed setbacks.
- (j) Location, setback and dimension of all buildings on the lot including both existing and proposed structures.
- (k) Contours, streets, utilities, and structures located within 100 feet of the exterior boundaries of the property in question.
- (l) Location, number, and dimensions of existing and proposed parking spaces.
- (m) Location, number, and dimensions of proposed loading spaces.
- (n) Curb cuts, driveways.
- (o) Vehicle circulation.
- (p) Sidewalks, walkways.
- (q) Location and type of all proposed lighting.

- (r) Location of recreational and service areas.
- (s) Location of rooftop equipment and proposed screening.
- (t) Provisions for storage and disposal of waste, garbage, and recyclables.
- (u) Location, sizing, and type of water and sewer system mains and proposed service connections.

(2) *Grading/storm water drainage plan.*

- (a) Existing contours at two foot intervals.
- (b) Proposed grade elevations, two foot maximum intervals.
- (c) Drainage plan including configuration of drainage area and calculations.
- (d) Storm sewer, catch basins, invert elevations, type of castings, and type of materials.
- (e) Spot elevations.
- (f) Proposed driveway grades.
- (g) Surface water ponding and treatment areas.
- (h) Erosion control measures.

(3) *Landscape plan.*

- (a) Planting schedule containing:
 - 1. Symbols;
 - 2. Quantities;
 - 3. Common names;
 - 4. Botanical names;
 - 5. Size of plant material;

6. Root specification (bare root, balled and burlapped, potted, and the like);

7. Special planting instructions.

(b) Tree preservation plan and reforestation plan.

(c) Notes indicating how disturbed soil areas will be restored through the use of sodding, seeding, or other techniques.

(d) Other existing or proposed conditions that could be expected to affect landscaping.

(4) *Other plans and information.*

(a) Legal description of property under consideration.

(b) Proof of ownership of the land for which a site plan approval has been requested.

(c) Architectural elevations of all principal and accessory buildings (type, color, and materials used in all external surfaces).

(d) Floor plan and room plan.

(e) Fire protection plan.

(f) Type, location and size (area and height) of all signs to be erected upon the property in question.

(g) Certification that all property taxes, special assessments, interest, or city utility fees due upon the parcel of land to which the application relates have been paid.

(h) Certified survey by a registered land surveyor.

(i) Any other information relevant to the site plan requested by the city.

(E) *Lapse of approval.*

(1) Unless otherwise specified by the City Council, the site plan approval shall become null and void one year after the date of approval, unless the property owner or applicant has substantially started the construction of any building, structure, addition or alteration, or use requested as part of the approved plan. The property owner or applicant shall have the right to submit an application for time extension in accordance with this section.

(2) An application to extend the approval of a site plan for up to an additional one year shall be submitted to the Zoning Administrator not less than 30 days before the expiration of said approval. Such application shall state the facts of the request, showing a good faith attempt to utilize the site plan approval, and it shall state the additional time being requested to begin the proposed construction. The request shall be heard and decided by the Planning Commission prior to the lapse of approval of the original request.

(3) In making its determination on whether an applicant has made a good faith attempt to utilize the site plan approval, the City Council shall consider such factors as type, design, and size of the proposed construction, any applicable restrictions on financing, or special and/or unique circumstances beyond the control of the applicant which have caused the delay.

(F) *Site improvement performance agreement and financial guarantee.* Following the approval of the site plan required by this chapter and before issuance of a building permit, the applicant, as may be applicable, shall guarantee to the city the completion of all private exterior amenities as shown on the approved site plan and as required by the site plan approval. This guarantee shall be made by means of a site improvement performance agreement and a financial guarantee as provided below:

(1) The applicant shall execute the site improvement performance agreement in forms provided by the city. The agreement shall be approved as to form and content by the City Attorney and shall define the required work and reflect the terms of this section as to the required guarantee for the performance of the work by the applicant.

(2) The required work includes, but is not limited to, private exterior amenities such as landscaping, private driveways, parking areas, recreational field structures or buildings, drainage systems, water quality ponds, wetland mitigation, wetland buffers, erosion control, curbing, fences and screening, and other similar facilities. The required work shall also include all aspects of a tree preservation plan and reforestation plan, if applicable.

(3) A financial guarantee shall be submitted with the executed site performance agreement as provided herein:

(a) Financial guarantees acceptable to the city include cash escrow; an irrevocable letter of credit; or other financial instruments which provide equivalent assurance to the city and which are approved by the Zoning Administrator.

(b) The term of the financial guarantee shall be for the life of the site improvement performance agreement, and it shall be the responsibility of the applicant to ensure that a submitted financial guarantee shall continue in full force and effect until the Zoning Administrator shall have approved and accepted all of the work undertaken to be done and shall thereby have released the guarantee or reduced the amount of the guarantee as provided in this section.

(c) The amount of the financial guarantee shall be established by the Zoning Administrator based upon an itemized estimate of the cost of all required work. A cash deposit or irrevocable letter of credit shall be in the amount of 100% of the approved estimated cost. The amount of any other approved financial instrument shall be determined by the Zoning Administrator.

(d) The applicant shall submit a separate financial guarantee for that portion of the required work consisting solely of landscaping improvements with another financial guarantee for all other exterior amenities and improvements which comprise the work.

(4) The time allowed for completion of the required improvements shall be set out in the site improvement performance agreement. The agreement and the financial guarantee shall provide for forfeiture to the city to cure the defect or reimburse the city the cost of enforcement measures. As various portions of such required work are completed by the applicant and approved by the city, the Zoning Administrator may release such portion of the financial guarantee as is attributable to such completed work. Landscaping improvements shall not be deemed complete until the city has verified survivability of all required plantings through one winter season, which is defined for the purpose of this section as the period October 31 through April 30.

(5) The applicant shall notify the city in writing when all or a portion of the required improvements have been completed with the approved plan and may be inspected. Upon receipt of such notice, the Zoning Administrator shall be responsible for the inspection and the improvements to determine the useful life of all work performed meets the average standards for the particular industry, profession, or material use in the performance of the work. Any required work failing to meet such standards shall not be deemed to be complete and the applicant shall be notified in writing as to required corrections. Upon determination that the work has been completed, including the winter season survivability of landscape improvements, a notice of the date of actual completion shall be given to the applicant and appropriate action, to release and reduce the amount of the financial guarantee shall be taken by the Zoning Administrator.

(G) *Minnesota State Building Code.* In addition to the site plan review process established under this section, review and approval of site improvements pursuant to the requirements of the city adopted building and fire codes shall also be required. The site plan approval process does not imply compliance with the requirements of these building and fire codes.

(H) *Plan agreements.* All site and construction plans officially submitted to the city shall be treated as a formal agreement between the building contractor and the city. Once approved, no changes, modifications or alterations shall be made to any plan detail, standard, or specification without prior submission of a plan modification request to the Zoning Administrator for review and approval.

(I) *Enforcement.* The Zoning Administrator shall have authority to order the stopping of any and all site improvement activities, when and where a violation of the provisions of this section has been officially documented by the Building Official. See also Chapter 153 and § 154.040. (Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.032 SWIMMING POOLS.

(A) *Purpose.* The purpose of this section is to establish regulations and procedures for the construction and maintenance of swimming pools within the city with the goal of protecting the health, safety, and welfare of the citizens of the city.

(B) *Definitions.*

(1) *Swimming pool.* Any structure intended for swimming or recreational bathing that contains water over 24 inches deep. This includes in-ground, above-ground, and on-ground swimming pools, hot tubs, portable and non-portable spas, and fixed in wading pools.

(C) *Construction and maintenance.*

(1) No swimming pool may be constructed beneath overhead utility lines of any type or above underground utility lines of any type.

(2) No swimming pool may be built within ten feet of any side or rear lot line.

(3) Construction of a swimming pool may not be started without having the same fully enclosed with a fence, which may be temporary and portable, not less than four feet in height.

(4) No swimming pool may be constructed within 20 feet of any on-site sewer system facility.

(5) No swimming pool may be finished without completely enclosing it with a permanent wall or fence of the non-climbing type so as to be impenetrable by toddlers, affording not external hand holds or foot holds, and a minimum of four feet in height. All such enclosures shall be equipped with a self-locking and self-closing gate. The locking device shall be located within 12 inches of the top of the fence. The opening between the bottom of the fence or gate and the ground or other surface shall be no more than three inches.

(6) No swimming pool may be constructed or altered within the city without a building permit.

(7) No hot tub, portable or non-portable spa, or fixed in wading pool shall be constructed or maintained which is not enclosed with a fence or wall as described herein or a latchable cover. The cover shall be construed of a material which cannot be penetrated by toddlers.

(8) No outdoor swimming pool lighting may be maintained which is permitted to spill or shine upon properties adjacent thereto which are not under the same ownership.

(9) All swimming pools constructed or altered prior to the effective date of this section shall substantially comply with this section within 60 days from the effective date hereof. Owners of swimming pools constructed prior to the effective date of this section may make a written request for an exception. Also, owners of swimming pools may make a written request for an exception to the fencing and latchable cover requirements set forth herein if the owner of the swimming pool can provide a safe and reasonable alternative to these requirements.

(Ord. 1112.03, passed 8-25-03)

PLANNED UNIT DEVELOPMENT DISTRICT

§ 154.040 PURPOSE.

(A) The purpose of the Planned Unit Development District is to provide a comprehensive procedure intended to allow greater flexibility in the development of residential areas or non-residential areas that would not be possible under a conventional zoning district. The decision to zone property to PUD is a public policy decision for the City Council to make in its legislative capacity.

(B) The intent of this section is to:

(1) Provide for the establishment of Planned Unit Development (PUD) zoning districts in appropriate settings and situations, to create or maintain a development pattern that complies with the city's Comprehensive Plan;

(2) Allow for the mixing of land uses within a development when such mixing of land uses could not otherwise be accomplished under other districts;

(3) Provide for variations to the strict application of the land use regulations in this chapter in order to improve site design and operation, while at the same time incorporating design elements (such as construction materials, landscaping, lighting, and the like) that exceed the city's standards to offset the effect of any variations;

(4) Promote a more creative and efficient approach to land use within the city, while at the same time protecting and promoting the health, safety, comfort, aesthetics, economic viability, and general welfare of the city;

(5) Preserve and enhance natural features and open spaces;

(6) Maintain or improve the efficiency of public streets and utilities;

(7) Ensure the establishment of appropriate transitions between differing land uses.

(Ord. 1112.03, passed 8-25-03)

§ 154.041 ALLOWED USES.

Uses within the PUD may include only those uses generally considered associated with the general use category shown for the area on the official Comprehensive Plan. However, in some unique situations, the PUD may allow the approval of use or uses that are not listed as either permitted or conditional uses in any underlying zoning district. The specific allowed uses and performance standards for each PUD shall be delineated in an ordinance approving the PUD, a PUD agreement executed between the city and developer, and approved PUD development plan. The PUD development plan shall identify all the proposed land uses and those uses shall become permitted uses when the PUD agreement and final development plan is approved. Any change in list of uses presented in the development plan will be considered an amendment to the PUD and will follow the procedures specified in this article for revisions or changes.

(Ord. 1112.03, passed 8-25-03)

§ 154.042 REQUIRED STANDARDS.

The city shall consider the proposed PUD from the point of view of all standards and purposes of the comprehensive land use plan to achieve a maximum coordination between the proposed development and the surrounding uses, the conservation of woodlands and wetlands, the protection of health, safety and welfare of the community and residents of the PUD. To these ends, the City Council shall consider the location of the buildings, compatibility, parking areas and other features with respect to the topography of the area and existing natural features such as streams and large trees; the efficiency, adequacy and safety of the proposed layout of internal streets and driveways; the adequacy and location of green areas; the adequacy, location and screening of parking areas; and such other matters as the City Council may find to have a material bearing upon the stated standards and objectives of the comprehensive land use plan.

(Ord. 1112.03, passed 8-25-03)

§ 154.043 COORDINATION WITH SUBDIVISION REGULATIONS.

Subdivision review under the subdivision regulations shall be carried out simultaneously with the review of the PUD. The plans required under this article shall be submitted in a form that will satisfy the requirements of Chapter 153 for the preliminary and final plat.
(Ord. 1112.03, passed 8-25-03)

§ 154.044 REVISIONS AND/OR CHANGES.

(A) Minor changes such as the location, placement and height of structures may be authorized by the staff development review committee if required by engineering or other circumstances not foreseen at the time the final plan was approved and filed with the City Council.

(B) Changes in uses, significant changes in location, size, or height of structures, any rearrangement of lots, blocks and building tracts, changes in provision of common open spaces and all other changes to the approved final development plan may be made only after a public hearing conducted by the City Council. Upon determination by the staff development review committee that a major change has been proposed, the applicant shall apply for an amended PUD. The application to amend the PUD shall be treated as a new zoning application. Upon acceptance of a complete application, the Planning Commission shall hold a hearing and make a recommendation to the City Council. Any changes shall be recorded as amendments to the recorded copy of the final development plan.

(C) All of the provisions of the article applicable to the original district within which the planned unit development district is established shall apply to the amended PUD district except as otherwise provided in approval of the PUD agreement and final development plan. The effective date of the PUD shall be after:

- (1) Approval of the PUD zoning amendment, and
- (2) Publication of the ordinance approving the PUD.

(D) If substantial development has not occurred within one year after approval of the PUD zoning district, the City Council may instruct the Planning Commission to initiate rezoning to the original zoning district. It shall not be necessary for the City Council to find that the rezoning was in error.

(E) Within the PUD agreement, the city may authorize the scheduling of periodic reviews, to occur upon the determination of the City Administrator that a need for review exists, to ascertain that actual development on the site meets the conditions of the approved PUD.
(Ord. 1112.03, passed 8-25-03)

§ 154.045 PHASING AND GUARANTEE OF PERFORMANCE.

(A) The Planning Commission shall compare the actual development accomplished in the various PUD zones with the approved development schedule.

(B) Upon recommendation of the Planning Commission and for good cause shown by the property owner, the City Council may extend the limits of the development schedule.

(C) The construction and provision of all of the common open space and public and recreational facilities, which are shown on the final development plan must proceed at the same rate as the construction of dwelling units, if any. The staff development review committee shall review all of the building permits issued for the PUD and examine the construction that has taken place on the site. If they find that the rate of construction of dwelling units is greater than the rate at which common open spaces and public and recreational facilities have been constructed and provided, they shall forward this information to the City Council for action.

(D) A performance bond or letter of credit may be required to guarantee performance by the developer. The amount of this bond or letter of credit and the specific elements of the development program that it is intended to guarantee will be stipulated in the PUD agreement.

(Ord. 1112.03, passed 8-25-03)

§ 154.046 CONTROL OF PUD FOLLOWING COMPLETION.

(A) After the certificate of occupancy has been issued, the use of the land and the construction, modification or alteration of any buildings or structures within the planned development shall be governed by the final development plan.

(B) After the certificate of occupancy has been issued, no changes shall be made in the approved final development plan except upon application as provided below.

(1) Any minor extensions, alterations or modifications of existing buildings or structures may be authorized by the staff development review committee if they are consistent with the purposes and intent of the final plan.

(2) Any building or structure that is totally or substantially destroyed may be reconstructed only in compliance with the final development plan unless an amendment to the final development plan is approved.

(3) Changes in the use of the common open spaces may be authorized by an amendment to the final development plan after a public hearing by the Planning Commission and recommendation to the City Council.

(4) Any other changes in the final development plan must be authorized by an amendment of the final development plan.

(Ord. 1112.03, passed 8-25-03)

§ 154.047 PROCEDURE FOR PROCESSING A PUD.

(A) *Application conference.* Before filing of an application for a PUD, the applicant of the proposed PUD shall arrange for and attend a conference with the staff development review committee. The primary purpose of the conference shall be to provide the applicant with an opportunity to gather information and obtain guidance as to the general suitability of the applicant's proposal for the area for which it is proposed and its conformity to the provisions of this article before incurring substantial expense in the preparation of plans, surveys and other data.

(B) *Sketch plan.* The sketch plan provides an opportunity for an applicant to submit an informal plan to the city showing the applicant's basic intent and general nature of the development. The sketch plan is optional and is intended to provide feedback from the Planning Commission before the applicant incurs substantial cost in the preparation of formal plans. The sketch plan shall be considered a partial, incomplete application prior to formal submittal of the complete application and scheduling of hearings.

(C) *Preliminary development plan.* The purpose of a preliminary development plan is to formally present a planned unit development and preliminary plat application in a public hearing before the Planning Commission. The plan shall include the following:

- (1) A description of proposed land uses for the PUD;
- (2) Overall maximum PUD density range;
- (3) General location of major streets and pedestrian ways;
- (4) General location and extent of public and common and open space;
- (5) General location of residential and non-residential land uses with approximate type of intensities;
- (6) Staging and time schedule of development;
- (7) Other special criteria for development, which may include, but is not limited to, preliminary landscape plans and conceptual architectural plans.

(D) *Schedule.*

(1) The developer shall meet with the staff development review committee to discuss the proposed preliminary development plan.

(2) The applicant shall file the preliminary development plan application and preliminary plat, together with all supporting data.

(3) Within 30 days after verification by the staff development review committee that the required plan and supporting data is adequate, the Planning Commission shall hold a public hearing.

(4) The Planning Commission shall conduct the hearing and report its findings and make recommendations to the City Council. Notice of the hearing shall consist of a legal property description, description of request, and be published in the official newspaper at least ten days prior to the hearing and written notification of the hearing shall be mailed at least ten days prior thereto to owners of land within 350 feet of the boundary of the property in question.

(5) The city may request additional information from the applicant concerning operational factors or retain expert testimony at the expense of the applicant.

(6) The City Council may hold a public hearing after the receipt of the report and recommendations from the Planning Commission. If the Planning Commission fails to make a report within 60 days after the receipt of the application, then the City Council may proceed without the report. The City Council may approve the preliminary development plan and attach such additional conditions as it deems reasonable. Approval shall require a majority vote of the entire City Council.

(7) After the preliminary development plan approval by the City Council, the PUD zoning ordinance map amendment shall be published, with reference made to the PUD agreement text. The city shall be responsible for recording the ordinance and PUD agreement with the County Recorder's office, with all associated fees and costs to be incurred by the applicant, prior to issuance of any building permit or within 60 days, whichever is less. The official PUD ordinance and agreement shall also be filed in the City Clerk's office.

(E) *Applications.* Ten copies of the following exhibits, analyses and plans shall be submitted to the city (preliminary development plan):

(1) Preliminary plat and information required by Chapter 153.

(2) General information:

(a) The landowner's name and address and the landowner's interest in the subject property.

(b) The applicant's name and address if different from the landowner.

(c) The names and addresses of all professional consultants who have contributed to the development of the PUD plan being submitted, including attorney, land planner, engineer and surveyor.

(d) Evidence that the applicant has sufficient control over the subject property to effectuate the proposed PUD, including a statement of all legal, beneficial, tenancy and contractual interests held in or affecting the subject property and including an up-to-date certified abstract of title or registered property report and such other evidence as the City Attorney may require to show the status of title or control of the subject property.

(3) Present status:

(a) The address and legal description of the property.

(b) The existing zoning classification and present use of the subject property and all lands within 1,000 feet of the property.

(c) A map depicting the existing development of the property and all land within 1,000 feet of such property and indicating the location of existing streets, property lines, easements, water mains and storm and sanitary sewers, with invert elevations on and within 100 feet of the property.

(d) A written statement generally describing the proposed PUD and the market which it is intended to serve and its demand showing its relationship to the city's Comprehensive Plan and how the proposed PUD is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with the applicable regulations of the city.

(e) Site conditions. Graphic reproductions of the existing site conditions at a scale of one inch equals 100 feet.

1. Contours; minimum two foot intervals.
2. Location, type and extent of tree cover.
3. Slope analysis.
4. Location and extent of water bodies, wetlands, streams, and floodplains within 300 feet of the property.
5. Significant rock outcroppings.
6. Existing drainage patterns.
7. Vistas and significant views.

8. Soil conditions as they affect development. All of the graphics should be the same scale as the final plan to allow easy cross reference.

(4) Proposed status:

(a) Schematic drawing of the proposed development concept including, but not limited to, the general location of major circulation elements, public and common open space, residential and other land uses.

(b) A statement of the estimated total number of dwelling units proposed for the PUD and a tabulation of the proposed approximate allocations of land use expressed in acres and as a percent of the total project area, which shall include at least the following:

1. Area devoted to residential use by building type;
2. Area devoted to common open space;
3. Area devoted to public open space;
4. Approximate area devoted to streets;
5. Approximate area devoted to, and number of, off-street parking and loading spaces and related access;
6. Approximate area and floor area devoted to industrial or office use;
7. Total area of the property.

(c) When the PUD is to be constructed in stages during a period of time extending beyond a single construction season, a schedule for the development of such stages or units shall be submitted stating the approximate beginning and completion date for each stage or unit and the proportion of the total PUD public or common open space and dwelling units to be provided or constructed during each stage and overall chronology of development to be followed from stage to stage.

(d) When the proposed PUD includes provisions for public or common open space or service facilities, a statement describing the provision that is to be made for the care and maintenance of such open space or service facilities.

(e) Any restrictive covenants that are to be recorded with respect to property included in the proposed PUD.

(f) Schematic utility plans indicating placement of water, sanitary and storm sewers.

(g) The city may excuse an applicant from submitting any specific item of information or document required in this stage that it finds to be unnecessary to the consideration of the specific proposal.

(h) The city may require the submission of any additional information or documentation that it may find necessary.

(F) *Final development plan.*

(1) Following preliminary development plan approval, if given, the applicant shall submit the final development plan application and final plat. The application shall proceed and be acted upon in accordance with procedures for final plat review and approval. If appropriate, because of the limited scale of the proposal, the preliminary development plan stage and final development plan stages may proceed simultaneously.

(2) Final development plan submission should depict and outline the proposed implementations of the approved preliminary development plan and PUD agreement. Information from the preliminary development plan may be included for background and to provide a basis for the submitted plan. The final development plan submissions shall include, but not be limited to:

(a) A final plat and information required by Chapter 153;

(b) Ten sets of preliminary plans drawn to a scale of not less than one inch equals 100 feet (or scale requested by the Zoning Administrator) containing at least the following information:

1. Proposed name of the development (which shall not duplicate nor be similar in pronunciation to the name of any plat previously recorded in the county where the subject property is situated);

2. Property boundary lines and dimensions of the property and any significant topographical or physical features of the property;

3. The location, size, use, and arrangement including height in stories and feet and total square feet of ground area coverage and floor area of proposed buildings, including mobile homes, and existing buildings which will remain, if any;

4. Location, dimensions of all driveways, entrances, curb cuts, parking stalls, loading spaces and access aisles, and all other circulation elements including bike and pedestrian; and the total site coverage of all circulation elements;

5. Location, designation, and total area of all common open space;

6. Location, designation and total area proposed to be conveyed or dedicated for public open space, including parks, playgrounds, school sites and recreational facilities;

7. Proposed lots and blocks, if any, and numbering system;
8. The location, use and size of structures and other land uses on adjacent properties;
9. Detailed sketches and provisions of proposed landscaping;
10. General grading and drainage plans for the developed PUD;

11. Any other information that may have been required by the Planning Commission or City Council in conjunction with the approval of the preliminary development plan.

(c) An accurate legal description of the entire area within the PUD for which final development plan approval is sought.

(d) A tabulation indicating the number of residential dwelling units and expected population.

(e) A tabulation indicating the gross square footage, if any, of commercial and industrial floor space by type of activity (such as drug store, dry cleaning, supermarket).

(f) Architectural “typical” plans indicating use, floor, plan, elevations and exterior wall finishes of proposed buildings, including mobile homes.

(g) A detailed site plan, suitable for recording, showing the physical layout, design and purpose of all streets, easements, rights of way, utility lines and facilities, lots, blocks, public and common open space, general landscaping plan, structure, including mobile homes, and uses.

(h) Preliminary grading and site alteration plan illustrating changes to existing topography and natural site vegetation. The plan should clearly reflect the site treatment and its conformance with the approved preliminary development plan.

(i) A preliminary plat prepared in accordance with Chapter 153.

(j) A soil erosion control plan acceptable to watershed districts, department of natural resources, soil conservation service, or any other agency with review authority clearly illustrating erosion control measures to be used during construction and as permanent measures.

(G) *Fees*. Fees associated with the PUD application shall be set by resolution of the City Council. (Ord. 1112.03, passed 8-25-03)

ZONING DISTRICTS; ZONING MAP**§ 154.055 ZONING DISTRICTS.**

In order to carry out the purpose and provisions of this code, the city is hereby divided into the following zoning districts and groups of districts:

(A) *“A” Agricultural District.* The “A” Agricultural District preserves the land for agricultural or undeveloped uses until development requires that such land be released and rezoned for purposes of controlled and orderly growth according to the Comprehensive Plan pending proper timing and allowance for the economic provisions of urban services.

(B) *“R” Residential Districts.*

(1) The “R-1” One and Two Family Residential District intends to create, preserve and enhance residential areas for one and two family attached dwellings.

(2) The “R-2” Multiple Family Residential District intends to create, preserve and enhance residential areas for multiple family use at low to medium densities (up to four dwelling units) for families and singles. It is typically appropriate for as a transition area between low-density residential districts and high-density residential districts.

(3) The “R-3” High Density Residential District intends to create, preserve and enhance residential areas for multiple family use at high densities (over four dwelling units per structure) for families and singles. It is typically appropriate in areas of good accessibility to thoroughfares, open space, public transportation, public community centers, libraries, education institutions and commercial centers.

(C) *“B” Business Districts.*

(1) The “B-1” Central Business District intends to preserve and enhance the city’s central business district as the prime center for offices, government offices, shopping, and cultural activities.

(2) The “B-2” General Business District intends to permit selected businesses in areas adjacent to residential neighborhoods where analysis of the population demonstrates that such establishments are required and desirable.

(3) The “B-3” Highway Business District intends to permit service and retail businesses primarily orientated towards motorists and requiring high volumes of traffic and visibility from major roads.

(D) *"I" Industrial Districts.*

(1) The "I-1" Limited Industrial District provides a location for non-nuisance type manufacturing and/or less intensive commercial uses such as wholesale activities, with incidental outside storage.

(2) The "I-2" General Industrial District provides a location for heavier industrial and manufacturing activities, without encroachment by incompatible use areas.

(3) The "I-3" Special Industrial District provides a location for industries that could use recycled products from the recycling center and industries that could benefit from railroad access and heavy truck traffic.

(Ord. 1112.03, passed 8-25-03)

§ 154.056 USES.

(A) Uses in the various districts shall be as follows:

- (1) P = Permitted Use
- (2) A = Permitted Accessory Use
- (3) C = Conditional Use Permit Required
- (4) N = Not Allowed

(B) The list of uses in the various districts stated in this section is not exhaustive; for uses not specifically listed below, said uses shall be classified as a conditional use whereby a conditional use permit is required pursuant to § 154.178 before said use shall be permitted in any of the below referenced districts.

(C) Outlined on the Zoning Map is the Drinking Water Source Management Area (DWSMA) for the Benson Municipal Wells. The DWSMA is the visible boundary outlining the area which supplies all water to the Benson Municipal Wells. The aquifer which supplies water to the Benson Municipal Wells has been classified as “moderately vulnerable” by the Minnesota Department of Health. For the purpose of ensuring the protection of the municipal water supply, conditional use permits will be required for any land use within the DWSMA which requires the installation of wells, installation of aboveground or underground storage tanks over 500 gallons, all industrial uses, and any permitted agricultural uses. The conditional use permit requirement will allow the city to assess potential risks involved with any new permitted uses within the DWSMA prior to issuing a permit.

(Ord. 1112.03, passed 8-25-03)

§ 154.057 ZONING MAP.

The boundaries of the above districts are hereby established on that certain map entitled the “Zoning Map of Benson, Minnesota.” The map is properly approved and in the office of the Zoning Administrator in the City Hall, and is hereinafter referred to as the “Zoning Map.” This map and all of the notations, references, and other information shown thereon shall have the same force and effect as if fully set forth and described herein.

(Ord. 1112.03, passed 8-25-03)

§ 154.058 DISTRICT BOUNDARY LINES; APPEALS.

District boundary lines as indicated on the Zoning Map follow lot lines, the center lines of streets, alleys, or railroads, the center lines of streets or alleys projected, the center of watercourses, or the corporate limit lines, all as they exist upon the effective date of this code or thereto. If district boundary lines do not follow any of the abovedescribed lines, the district boundary lines are established as drawn on the Zoning Map. Where a district boundary line divides a lot of record, which was in single ownership at the time of enactment of this code and places portions of such lot of record in two or more use districts, any portion of such lot within 50 feet on either side of such a dividing district boundary line may be used for any use of either use districts; provided, however, if any portion of such lot shall extend beyond the 50 foot limitation, the district line as shown shall prevail. Appeals from the Zoning Administrator's determination and questions of doubt concerning the exact location of district boundary lines shall be heard by the Board of Appeals. See also § 154.181.
(Ord. 1112.03, passed 8-25-03)

§ 154.059 HEIGHT LIMITATIONS, AREA, FRONTAGE, AND YARD REQUIREMENTS.

(A) *Height limitations.*

(1) Height limitations as set forth elsewhere in this code may be increased by 50% when applied to the following:

- (a) Church spires;
- (b) Belfries;
- (c) Water towers;
- (d) Flagpoles;
- (e) Smokestacks;
- (f) Cooling towers;
- (g) Elevators;
- (h) Elevator penthouses.

(2) Heights in excess of those allowed under this section shall be permitted only by a conditional use permit granted by resolution of the City Council determining that such structure would not be dangerous and would not adversely affect the adjoining or adjacent property.

(B) *Front yards.*

(1) In any "R" district, where the average front yard of lots with existing buildings within 200 feet of the lot in question and in the same block is less than the minimum required by this code, the minimum front yard shall, for the lot in question, be 90% percent of the average of the existing front yards. However, no front yard shall be less than the smallest front yard existing nor shall any front yard be less than 20 feet.

(2) The front yard in any "R" district may be varied in any single block and the minimum front yard may be less than the minimum prescribed by this chapter, but in no event less than 20 feet, if there is an overall design to the variation and the overall design is approved by action of the City Council upon the advice from the Planning Commission.

(3) Along thoroughfares as designated in the Guide Plan, the minimum front setback may be varied by action of the City Council upon advice from the Planning Commission.

(C) *Frontage.* No lot shall contain any building used as a dwelling unless it abuts at least 20 feet on a public right-of-way 50 feet or more in width.

(D) *Side yards.* A building may be excluded from side setback requirements if party walls are used and if the adjacent buildings are constructed as an integral unit. If party walls (fire resistant) or integral construction is planned, the structure shall be located along the side lot line.

(E) *Lot requirements.* A lot or parcel of land for which a deed has been recorded in the office of the County Recorder upon or prior to the effective date of this code shall be deemed a buildable lot provided it has frontage on a public right-of-way and space requirements for the district in which it is located can be maintained or adjusted to conform as follows:

(1) A lot or parcel of land recorded upon the effective date of this chapter which is in a residential district and that does not meet the requirements of this code as to area, width, or yard space may be utilized for dwelling purposes providing that the requirements for front yard setback remain the same and that each side yard be not less than 12% of the lot width, or in any event less than six feet, except that the street side of corner lots shall have a minimum of ten foot side yards. No building permit may be granted for lots of record whose measurements are less than 60% of the area, width, or yard space required by this code.

(2) In all districts there shall be no more than one principal building on one lot except as provided for in § 154.178.

(F) *Yard and open space requirements.*

(1) No yard or other open space shall be reduced in area or dimension by sale or other means so as to make such yard or other open space less than the minimum required by this code, and if the existing yard or other open space as existing is less than the minimum required, it shall not be further reduced.

(2) No required yard or other open space allocated to a building or dwelling group shall be used to satisfy minimum lot area requirements for any other building.

(3) The following shall not be considered as encroachments on required yards:

(a) Chimneys, flues, belt courses, leaders, sills, pilasters, lintels, ornamental features, cornices, eaves, gutters, and the like, provided they do not extend more than 1 ½ feet into a yard;

(b) Fences that do not exceed 3 ½ feet in height; terraces, steps, uncovered porches, stoops, or similar structures that do not extend above the height of the ground floor level of the principal building and do not extend to a distance less than two feet from any lot line; yard lights and nameplate signs in “R” districts; trees, shrubs, and plants; floodlights or other sources of light illuminating authorized illuminated signs; light standards for illuminating parking 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; except as § 154.020 applies;

(c) Rear yard only: balconies, breezeways, detached outdoor picnic shelters, and recreational equipment, except as regulated hereinafter.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.060 MANUFACTURED HOME PARKS (MOBILE HOME PARKS).

Manufactured home parks including manufactured single family housing units, office limited to administration of the park, recreational buildings and structures, storm shelters, and other directly related complementary uses are conditional uses subject to a site plan review and approval, pursuant to § 154.031, and/or planned unit development (PUD) agreement and final development plan, pursuant to §§ 154.040 - 154.047; and, in addition, in accordance with the following standards:

(A) *General provisions for all manufactured home parks.*

(1) *Area.* All land area shall be:

- (a) Adequately drained;
- (b) Landscaped to control dust;
- (c) Clean and free from refuse, garbage, rubbish or debris.

(2) *Outdoor camping.* There shall not be outdoor camping anywhere in a manufactured home park.

(3) *Public access.* Public access to manufactured housing parks shall be as approved by the city.

(4) *Building permit.* All structures (fences, storage, decks, and the like) shall require a building permit from the Building Official.

(5) *Foundation enclosure.* The area beneath a manufactured home shall be enclosed except that such enclosure must have access for inspection.

(6) *Emergency storm protections.* Manufactured home parks shall comply with emergency storm protections as required by Minnesota Statutes. Additionally, all emergency storm protection measures shall be subject to the approval of the city.

(B) *Lot setbacks.* In manufactured home parks created after January 1, 2003, no manufactured home shall be located closer than ten feet to a side or rear lot line. The front yard setback shall be at least 30 feet from the street surface. On corner lots, the side yard setback shall be at least 20 feet from the street surface. No manufactured home shall be located closer than 30 feet from the periphery lot line of the manufactured home park.

(C) *Permitted encroachments.* Attached steps, uncovered stoops, and landings may encroach up to five feet into a side yard setback, provided that they do not exceed 20 square feet in area or extend closer than ten feet to a structure on an adjacent lot; an eave or overhang may encroach up to one foot into a front, side, and rear setback.

(D) *Building height requirements.* No structure shall exceed one story or 30 feet, whichever is less.

(E) *Utilities.*

(1) All manufactured home parks shall be connected to a public water and sanitary sewer system.

(2) All installations for disposal of surface storm water must be approved by the city.

(3) All utility connections shall be as approved by the city.

(4) The source of fuel for cooking, heating, or other purposes at each manufactured home site shall be as approved by the city.

(5) All utilities shall be underground; there shall be no overhead wires or supporting poles except those essential for street lighting or other lighting purposes.

(6) No obstruction shall be permitted that impedes the inspection of plumbing, electrical facilities, and related manufactured home equipment.

(7) The method of garbage, waste, and trash disposal must be approved by the city.

(8) The owner shall pay any required sewer and water connection fees to the city.

(9) The owner shall pay inspection and testing fees for utility service to the city.

(F) *Accessory buildings.*

(1) *Limit.* Accessory buildings including garages shall be limited to one per manufactured home lot. Maximum allowable floor area shall not exceed 6% of the lot size in manufactured home parks where lot size is delineated by site plan or lot markers.

(2) *Maximum building height.* The maximum building height shall be no higher than 80% of the principal building.

(G) *Location.* The manufactured home park site plan shall designate the locations proposed for the development of garages and/or accessory buildings on each manufactured lot. Said accessory buildings shall comply with the following setback requirements:

- (1) An accessory building shall only be located in side or rear yards;
- (2) Accessory buildings shall not be located within any utility easements;

(3) In manufactured home parks and on manufactured home parks lots established after January 1, 2003, all accessory buildings located on individual manufactured home unit lots shall be owned, constructed, and maintained by the manufactured home park owner. All accessory structures shall be established as part of a predetermined site plan and subject to the approval of the City Council.

(H) *Building type and construction.* Any building addition shall either be manufactured or custom built of materials that are consistent or compatible to the design of the principal building. "Compatible" means that the exterior appearance of an accessory building is not at variance with the principal building from an aesthetic and architectural standpoint to cause:

- (1) A difference to a degree to cause incongruity with the principal building;
- (2) A deviation from the general character of the neighborhood;
- (3) A depreciation of neighborhood value or adjacent property values;
- (4) A nuisance. Types of nuisance characteristics include, but are not limited to noise, dust, odors, glare and unsightly building exterior.

(I) *Design requirements for manufactured home parks created after January 1, 2003.*

(1) *Park size.* The minimum area required for a manufactured home park designation shall be ten acres.

(2) *Lot size:* Individual manufactured home lots:

- (a) *Lot width.* Not less than 65 feet.
- (b) *Lot depth.* Not less than 120 feet.

(c) Changes to lot width and lot depth requirements may be allowed by conditional use permit as regulated by § 154.178.

(d) Each manufactured home shall have a frontage on an approved roadway and the corners of each manufactured home lot shall be marked and each lot shall be numbered.

(J) *Parking.*

- (1) Each manufactured home lot shall have off-street parking space for two passenger motor vehicles.
- (2) All parking spaces shall be hard surfaced according to specifications established by the city.

(K) *Internal roads and streets.*

- (1) All streets shall be private streets and shall be developed with a roadbed of not less than 28 feet in width and shall meet city design specifications.
- (2) The park shall have a street lighting plan approved by the city.

(L) *Recreation.* All manufactured home parks shall have at least 10% of the land area developed for recreational use (tennis courts, children's play equipment, swimming pool, golf green, and the like) The recreational use shall be developed and maintained at the owner/operator's expense.

(M) *Operational standards for manufactured home parks.*

(1) *Maintenance.* The operator of any manufactured home park, or a duly authorized attendant and/or caretaker shall be responsible at all times for keeping the manufactured home park, its facilities and equipment, in a clean, orderly, operable, and sanitary condition. The attendant or caretaker shall be answerable, along with said operator, for the violation of any provisions of these regulations to which said operator is subject.

(2) *Inspections prior to sale.* Prior to the sale of a manufactured home within a manufactured home park, the operator of a manufactured home park or the duly authorized attendant and/or caretaker must inform the Building Official of the prospective sale and provide him or her with confirming documentation from the Commissioner of compliance with the Manufactured Home Building Code required by M.S. § 327.32.

(3) *Permits.* Prior to a manufactured home being moved into a lot, the owner shall apply for and obtain a building permit for the (foundation) blocking and a permit for connection to public sewer and water. The application for permits shall be accompanied by a site plan, drawn to scale, detailing the unit placement, accessory structures, and setbacks. See § 154.031 and §§ 154.040 - 154.047.

(4) *Upgrading.* Prior to locating a manufactured home housing unit constructed prior to July 1, 1997, on a lot within a manufactured home park within the city, said unit shall be upgraded to current life safety codes and subject to the approval of the Building Official.

(5) *Street maintenance.* All private internal streets in manufactured home parks shall be maintained by the park owner in a good state of repair, free from obstructions, encumbrances, depressions, pot holes, and break ups. Snow shall be promptly plowed and removed from streets and adjacent mail boxes and fire hydrants, so that snow or snow plows do not constitute a safety hazard to motorists and pedestrians, or constitute an obstruction to emergency service vehicles. Icy streets and areas adjacent to mail boxes shall be promptly sanded. "Promptly" shall mean no later than 24 hours after the end of a snowfall or in the case of ice within 24 hours after it was formed.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.061 TEMPORARY ZONING OF ANNEXED LAND.

When land is proposed to be annexed to the city, the Planning Commission shall hold a public hearing to determine the zoning of said land. The results of the hearing, along with a recommendation, shall be presented to the City Council. In the event of annexation proceedings becoming final before the permanent zoning is determined, the annexed area shall be placed in the agricultural district "A" and such classification shall be considered as an interim step pending permanent classification.

(Ord. 1112.03, passed 8-25-03)

ADMINISTRATION AND ENFORCEMENT

§ 154.175 ZONING ADMINISTRATOR; DUTIES.

(A) The City Manager shall appoint a Zoning Administrator who shall have the duty and responsibility of enforcing and administering this code.

(B) The Zoning Administrator shall enforce this code and in addition thereto and in furtherance of that authority he or she shall:

(1) Conduct inspections of buildings and use of land to determine compliance with the terms of this code;

(2) Notify, in writing, any person responsible for violating a provision of this chapter, indicating the nature of the violation and ordering the action necessary to correct it;

(3) Order discontinuance of illegal use of land, buildings, or structures; order removal of illegal buildings, structures, additions or alterations; order discontinuance of illegal work being done; or take any other action authorized by this chapter to insure compliance with or to prevent violation of its provisions, including cooperation with the City Attorney in the prosecution of complaints;

(4) Maintain permanent and current records of this code, including but not limited to all maps, amendments, conditional uses, variances, appeals, and applications thereto;

(5) Receive, file, and forward all applications for amendments, variances, conditional uses, development plans or other matters to the Planning Commission and City Council;

(6) Provide clerical and technical assistance to the Planning Commission and Board of Zoning Adjustments and Appeals;

(7) Have additional duties as may be provided by the City Council.
(Ord. 1112.03, passed 8-25-03)

§ 154.176 ADMINISTRATIVE PERMITS.

(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 matters requiring the approval of the Zoning Administrator with the goal of protecting the health, safety, and welfare of the citizens of the city.

(B) *Procedure.*

(1) Application for an administrative permit shall be filed by the property owner or designated agent with the Zoning Administrator on forms to be provided by the city.

(2) The application may be accompanied by a non-refundable fee as set forth in the city code for administrative permit applications.

(3) The Zoning Administrator shall review the application and related materials and shall determine whether the proposal is in compliance with all applicable evaluation criteria, codes, ordinances, and applicable performance standards set forth in this chapter.

(4) The Zoning Administrator shall consider possible adverse effects of the proposed events or activity. Judgment shall be based upon (but not limited to) the following factors:

(a) Compliance with and effect upon the Comprehensive Plan and public facilities plans.

(b) The establishment, maintenance or operation of the use, event or activity will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals, or comfort.

(c) The use, event, or activity will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.

(d) The establishment of the use, event, or activity will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

(e) Adequate public facilities and services are available or can be reasonably provided to accommodate the use, event or activity that is proposed.

(f) The use, event or activity shall, in all other respects, conform to the applicable regulations of the district in which it is located.

(g) The use, event or activity and site conform to the performance standards as outlined in all applicable provisions of this chapter.

(h) 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.

(i) A written permit 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.

(j) Determination of non-compliance with applicable codes, ordinances, and the standards in this division shall be communicated to the applicant in writing and the application for the permit shall be considered denied; unless, within ten days of the date of such notice, the applicant submits revised plans and/or information with which the Zoning Administrator is able to determine compliance.

(k) Unresolved disputes as to administrative application of the requirements of this division shall be subject to appeal as defined by § 154.181.

(C) *Information requirement.* The information required for all administrative permit applications shall include:

(1) A concise statement describing the proposed use, event, or activity, including the purpose, type of merchandise involved, dates and times of operation, number of employees involved, provisions for on-site security, provisions for on-site parking, and other pertinent information required by the Zoning Administrator to fully evaluate the application;

(2) A copy of the approved site plan for the property or an “as built” survey that accurately represents existing conditions on the site, including entrances and exits, bona fide parking and driving areas, and that accurately indicates any proposed temporary structures, including tents, stands, and signs;

(3) An accurate floor plan, when in the judgment of the Zoning Administrator, such a plan is necessary to properly evaluate the location of the event and the effectiveness of the available entrances and exits;

(4) A copy of the current sales tax certificate issued by the State of Minnesota, if applicable.

(D) *Performance standards.* All uses, events or activities allowed by administrative permit shall conform to the applicable standards outlined in the zoning district in which such use, event or activity is proposed.

(E) *Administration and enforcement.*

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

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

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

(F) *Certification of taxes paid.* Prior to approving an application for an administrative permit, the applicant shall provide certification to the city that there are no delinquent property taxes, special assessments, interest, or city utility fees due upon the parcel of land to which the administrative permit application relates.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.177 VARIANCES.

(A) *Generally.*

(1) The City Council may grant variances from the strict application of the provisions of this code and impose conditions and safeguards in the variances so granted when it is in the public interest to grant such a variance, the variance is in harmony with the general purposes and intent of the ordinance, and the variance is consistent with the comprehensive plan.

(2) Variances may only be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

(a) ***PRACTICAL DIFFICULTIES***, as used in connection with the granting of a variance, means that:

1. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;

2. The plight of the landowner is due to circumstances unique to the property not created by the landowner; and

3. The variance, if granted, will not alter the essential character of the locality.

(b) Practical difficulties include, but are not limited to, the following:

1. Narrowness, shallowness, or odd size or shape of the lot;

2. Exceptional topographic conditions, water conditions, or other extraordinary and exceptional conditions of the lot;

3. The owner can show that the strict compliance with the zoning regulations is unreasonable.

(3) The Planning Commission and City Council may take into consideration the present and possible future use of the property and possible benefits that may inure to the city.

(B) *Applications.* Applications for variances shall be filed with the Zoning Administrator and shall state the exceptional conditions of the lot and the peculiar and practical difficulties claimed as a basis for a variance.

(C) *Referral to Planning Commission.* All applications for variances shall be referred to the Planning Commission that shall hear the applicant, or a representative thereof, at its next regular meeting after the filing of the application or at some other specified time. The Planning Commission shall recommend such conditions relating to the granting of a variance as it deems necessary to adjust the hardship or special situation so as to carry out the intent and purpose of this code or it may deny the request.

(D) *Action by City Council.* Upon receiving the recommendation of the Planning Commission or within 60 days after referral of the application for a variance to the Planning Commission if no recommendation has been transmitted, the City Council shall place the request on the agenda for its next regular meeting. The City Council shall reach a decision upon the request within 60 days after the date of the above meeting.

(E) *Variance for use.* No variance shall be granted for the purpose of allowing a use that is not eligible in a district. Variances in use of land shall require a conditional use permit.

(F) *Granting of variance.* In considering all requests and in taking subsequent action, the Planning Commission and the City Council shall make a finding of fact that the proposed action will not impair an adequate supply of light and air to adjacent property, increase the danger of fire, endanger the public safety, unreasonably increase the congestion in the public streets, unreasonably diminish or impair established property values within the neighborhood, or in any way be contrary to the intent of this code before any such variance may be granted.

(Ord. 1112.03, passed 8-25-03; Ord. 1137.11, passed 9-6-11) Penalty, see § 10.99

§ 154.178 CONDITIONAL USE PERMIT.

(A) *Purpose.* The purpose of a conditional use permit is to authorize and regulate uses that may be beneficial in a specific instance to the general welfare of the community, yet ensure that such uses are not detrimental to surrounding property, and are consistent with the stated purpose of the zoning district in that such uses are located regarding conditions of operation, location, arrangement, and construction.

(B) *Procedure.* Pursuant to M.S. § 15.99, an application for a conditional use permit shall be approved or denied within 60 days from the date of its official and complete submission unless extended pursuant to statute or a time waiver is granted by the applicant. If applicable, processing of the application through required state or federal agencies shall extend the review and decision-making period an additional 60 days unless this limitation is waived by the applicant. Additional city requirements are as follows:

(1) Request for conditional use permits, as provided within this chapter, shall be filed with the Zoning Administrator on an official application form. Such application shall also be accompanied by detailed written and graphic materials, the number and size as prescribed by the Zoning Administrator, fully explaining the proposed change, development, or use and list of property owners located within 350 feet of the subject property in a format prescribed by the Zoning Administrator. The application shall be considered as being fully submitted and complete when the applicant has complied with all the specified information requirements.

(2) Upon receipt of a complete application, as determined by staff review, and following preliminary staff analysis of the application and request, the Zoning Administrator, when appropriate, shall set a public hearing following proper hearing notification. The Planning Commission shall conduct the hearing, and report its finding and make recommendations to the City Council. Notice of said hearing shall consist of a legal property description, a description of request, and a map detailing property location and shall be mailed to all owners of property within 350 feet of the boundary of the property in question.

(3) Failure of a property owner to receive said notice shall not invalidate any such proceeding as set forth within this chapter.

(4) The Planning Commission shall consider possible adverse effects of the proposed conditional uses. Its judgment shall be based upon, but not limited to, the following factors:

(a) Compliance with and effect upon the Comprehensive Plan, including public facilities and capital improvement plans;

(b) The establishment, maintenance or operation of the conditional use will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort;

(c) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood;

(d) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district;

(e) The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located;

(f) The conditional use complies with the general and specific performance standards as specified by this section and this chapter.

(5) The Planning Commission and city staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information is to be declared necessary to establish performance conditions in relation to all pertinent sections of this chapter.

(6) The applicant or a representative thereof may appear before the Planning Commission in order to present information and answer questions concerning the proposed request.

(7) The Planning Commission shall make a finding of fact and make a recommendation on such actions or conditions relating to the request as they deem necessary to carry out the intent and purpose of this chapter. Such recommendation shall be in writing.

(8) The City Council shall not grant a conditional use permit until they have received a report and recommendation from the Planning Commission, or until 60 days after the first regular Planning Commission meeting at which the request was considered.

(9) Upon receiving the report and recommendation of the Planning Commission, the City Manager shall schedule the application for consideration by the City Council. Such reports and recommendations shall be entered in and made part of the permanent record of the City Council meeting.

(10) Upon receiving the report and recommendation of the Planning Commission, 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 and may impose any condition they consider necessary to protect the public health, safety and welfare.

(11) If upon receiving said reports and recommendations of the Planning Commission, the City Council finds that specific inconsistencies exist in the review process and thus the final recommendations of the City Council will differ from that of the Planning Commission, the City Council may, before taking final action, refer the matter back to the Planning Commission for further consideration. This procedure shall be followed only one time on a singular action.

(12) Approval of a request shall require passage by a majority vote of the entire City Council.

(13) Whenever an application for a conditional use permit has been considered and denied by the City Council, a similar application for a conditional use permit affecting substantially 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; and a subsequent application affecting substantially the same property shall likewise not be considered again by the Planning Commission or City Council for an additional six months from the date of the second denial unless a decision to reconsider such matter is made by a majority vote of the full City Council.

(C) *Granting of permit.* In considering applications for conditional use permits under this code, the City Council shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety, and welfare of occupants of surrounding lands, existing and anticipated traffic conditions, including parking facilities on adjacent streets, and the effect on values of property in the surrounding area, and the effect of the proposed use on the Comprehensive City Plan. If it shall determine by resolution that the proposed use will not be detrimental to the health, safety, or general welfare of the community nor will cause serious traffic congestion or hazards, nor will seriously depreciate surrounding property values, and that the same is in harmony with the general purpose and intent of this chapter and the Comprehensive City Plan, the City Council may grant such permits and may impose safeguards and conditions therein. Any conditional use permit shall apply only to the use stated on the permit.

(D) *Denial.* Conditional use permits may be denied by motion of the City Council and such motion shall constitute a finding and determination by the City Council that the conditions required for approval do not exist.

(E) *Conditional use permits for home occupations.* Conditional use permits for home occupations shall be issued for a term of one year and for consecutive periods of one year thereafter if upon review by the Planning Commission a determination is made that the criteria of § 154.018 are still met. A public hearing as provided in division (B) is not required to renew a conditional use permit, but is required to terminate a conditional use permit.

(Ord. 1112.03, passed 8-25-03) Penalty, see § 10.99

§ 154.179 FEES.

Fees shall be payable at the time the applications are filed with the Zoning Administrator and are not refundable unless the application is withdrawn prior to referral to the Planning Commission or the City Council. There may be no fee in the case of applications initiated in the public interest by members of the City Council or by the Planning Commission. The City Council may establish revision of fees contained in this section by resolution of the City Council, published in the official newspaper. (Ord. 1112.03, passed 8-25-03)

§ 154.180 AMENDMENTS TO CODE.

(A) *Authorization.* In accordance with the provisions of the Minnesota Statutes, the City Council may, from time to time, adopt amendments to this chapter.

(B) *Initiation of amendment.* The City Council or the Planning Commission may, upon its own motion, initiate a request to amend the text or the districting map of this chapter. Any person, persons, firm, or corporation owning real estate may initiate a request to amend the district boundaries so as to affect the said real estate or a larger parcel that shall include said real estate. Any resident or owner of real estate in the city may initiate a request to amend the text of this chapter.

(C) *Application for amendment.* All applications for amendments that are initiated by the petition of owners of property or residents shall be filed with the Zoning Administrator. When the application involves the changing of zoning districts and boundaries thereof it shall be accompanied by a map or plan showing the lands proposed to be changed and all lands within 350 feet of the boundaries of the property proposed to be rezoned, together with the names and addresses of the owners of the lands in such area.

(D) *Referral to Planning Commission.* All petitions for amendments shall be referred to the Planning Commission which shall hold an official public hearing.

(E) *Hearing.* At the time and place specified in such notice, the Planning Commission shall meet and conduct a public hearing upon the proposed zoning code amendment.

(F) *Action by Planning Commission.* If the request is for a district change, notices shall be mailed to all owners of property according to the submitted list of owners within 350 feet of the parcel included in the request not less than ten days nor more than 30 days prior to the hearing. Failure of a property owner to receive the notice shall not invalidate any such proceedings as set forth within this chapter. The Planning Commission shall reach a decision and make its recommendation to the City Council within 60 days of filing of the request unless the applicant has granted a deferment of action in writing, and if so, the City Council shall be so notified.

(G) *Action by City Council.* The City Council shall, upon receiving the recommendation of the Planning Commission, place such request on the agenda of its next regular meeting and decide the issue within 30 days. Notification to the applicant shall be made of the City Council's action. (Ord. 1112.03, passed 8-25-03)

§ 154.181 APPEALS FROM DECISIONS OF ZONING ADMINISTRATOR.

(A) *Board designation.* The Planning Commission shall serve as the Board of Adjustments and Appeals.

(B) *Applicability.* An appeal shall only be applicable to an interpretation of legislative intent of provisions of this chapter. Opinions and evaluations as they pertain to the impact or result of a request are not subject to the appeal procedure.

(C) *Filing.* An appeal from the ruling of an administrative officer of the city shall be filed by the property owner or their agent with the Zoning Administrator within 30 days after the making of the order being appealed.

(D) *Stay of proceedings.* An appeal stays all proceedings and the furtherance of the action being appealed unless it is certified to the Board of Adjustments and Appeals, after the notice of appeal is filed, that by reason of facts stated in the certificate a stay would cause imminent peril to life and property. In such case, the proceedings shall not be stayed other than by a restraining order that may be granted by a court of record on application, and upon subsequent notice to the city.

(E) *Procedure.* The procedure for making such an appeal shall be as follows:

(1) The property owner or their agent shall file with the Zoning Administrator a notice of appeal stating the specific grounds upon which the appeal is made. Said application may be accompanied by a reasonable fee as set by the City Council.

(2) The Zoning Administrator shall instruct the appropriate staff person to prepare technical reports when appropriate and shall provide general assistance in preparing a recommendation on the action of the Board of Adjustments and Appeals.

(3) The Board of Adjustments and Appeals shall make its decision by resolution within 60 days from the date on which a completed application is filed.

(4) The Zoning Administrator shall serve a copy of the final order of the Board upon the petitioner by mail.

(F) *Appeals from the Board of Adjustments and Appeals.* Any person or persons, any private or public board, or taxpayer of the city aggrieved by any decision of the Board of Adjustments and Appeals shall have the right to seek review of the decision with the City Council, and any private or public board, or taxpayer of the city aggrieved by any decision of the City Council shall have the right to seek review of the decision with a court of record in the manner provided by the laws of the State of Minnesota, and particularly M.S. Chapter 462, as such statutes may be from time to time amended, supplemented, or replaced.

(Ord. 1112.03, passed 8-25-03)

FLOOD PLAIN MANAGEMENT

§ 154.195 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE.

(A) *Statutory authorization.* The legislature of the State of Minnesota has, in M.S. Chapter 103F and Chapter 462 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the City Council does ordain as follows:

(B) *Findings of fact.*

(1) 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.

(2) *Methods used to analyze flood hazards.* This subchapter is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.

(3) *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 Code of Federal Regulations Parts 59-78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

(C) *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 § 154.195(B)(1) by provisions contained herein.

(Ord. 1114.05, passed 10-24-05)

§ 154.196 GENERAL PROVISIONS.

(A) *Lands to which subchapter applies.* This subchapter 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 Districts, or General Flood Plain Districts.

(B) *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 subchapter. The attached material shall include the Flood Insurance Study for Swift County, Minnesota And Incorporated Areas and the Flood Insurance Rate Map panels numbered 27151C0264 C, 27151C0272 C, 27151C0278 C, 27151C0280 C, 27151C0285 C, and 27151C0286 C, all dated February 16, 2006, and as developed by the Federal Emergency Management Agency.

(C) *Anticipation of future annexations.* The Flood Insurance Rate Map panels adopted by reference into § 154.196(B) above may include floodplain areas that lie outside of the corporate boundaries of the city at the time of adoption of this subchapter. If any of these floodplain land areas are annexed into the city after the date of adoption of this subchapter, the newly annexed floodplain lands shall be subject to the provisions of this subchapter immediately upon the date of annexation into the city.

(D) *Regulatory flood protection elevation.* The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

(E) *Interpretation.*

(1) 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.

(2) 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, 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.

(F) *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.

(G) *Warning and disclaimer of liability.* This chapter does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This chapter shall not create liability on the part of 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.

(H) *Severability.* If any section, clause, provision, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

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

ACCESSORY USE OR STRUCTURE. See definition in § 154.002 for ***ACCESSORY USE OF STRUCTURE.***

BASEMENT. Means any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

CONDITIONAL USE. See definition in § 154.002 for Use, Conditional.

EQUAL DEGREE OF ENCROACHMENT. A method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

FLOOD. A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

FLOOD 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 flood plain outside of the floodway. ***FLOOD FRINGE*** is synonymous with the term ***FLOODWAY FRINGE*** used in the Flood Insurance Study for Swift County Minnesota And Incorporated Areas.

FLOOD PLAIN. The beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

FLOOD PROOFING. A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

FLOODWAY. The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.

LOWEST FLOOR. The **LOWEST FLOOR** of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.

MANUFACTURED HOME. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term **MANUFACTURED HOME** does not include the term **RECREATIONAL VEHICLE**.

OBSTRUCTION. Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

PRINCIPAL USE OR STRUCTURE. See § 154.002 for definition of Use, Principal.

REACH. A hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a **REACH**.

RECREATIONAL VEHICLE. A vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light 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 purpose 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 Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. **REGIONAL FLOOD** is synonymous with the term **BASE FLOOD** used in a flood insurance study.

REGULATORY FLOOD PROTECTION ELEVATION. The **REGULATORY FLOOD PROTECTION ELEVATION** shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

STRUCTURE. See § 154.002 for definition of **STRUCTURE**; recreational vehicles not meeting the exemption criteria specified in § 154.203(C)(1) of this chapter and other similar items.

SUBSTANTIAL DAMAGE. Means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which 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. 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.

(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 subchapter, historic structure shall be defined in Code of Federal Regulations, Part 59.1.

VARIANCE. Means a modification of a specific permitted development standard required in an official control including this subchapter 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 hardship, practical difficulty or unique circumstances as defined and elaborated upon in a community's respective planning and zoning enabling legislation.

(Ord. 1114.05, passed 10-24-05)

§ 154.197 ESTABLISHMENT OF ZONING DISTRICTS.

(A) *Districts.*

(1) *Floodway District.* The Floodway District shall include those areas designated as floodway on the Flood Insurance Rate Map adopted in § 154.196(B).

(2) *Flood Fringe District.* The Flood Fringe District shall include those areas shown on the Flood Insurance Rate Map adopted in § 154.196(B) as being within Zone AE but being located outside the floodway.

(3) *General Flood Plain District.* The General Flood Plain District shall include those areas designated as Zone A or Zones AE, Zone AO, or Zone AH without a floodway on the flood insurance rate map adopted in § 154.196(B).

(B) *Compliance.* No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this subchapter and other applicable regulations which apply to uses within the jurisdiction of this subchapter. Within the Floodway, Flood Fringe, and General Flood Plain Districts, all uses not listed as permitted uses or conditional uses in §§ 154.198 through 154.200 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 subject to the general provisions of this subchapter and specifically § 154.203.

(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 § 154.205.

(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 registered professional engineer or architect as specified in the general provisions of this chapter and specifically as stated in § 154.204 of this chapter.

(Ord. 1114.05, passed 10-24-05)

§ 154.198 FLOODWAY DISTRICT (FW).

(A) *Permitted uses.*

(1) General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.

(2) Industrial-commercial loading areas, parking areas, and airport landing strips.

(3) Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.

(4) Residential lawns, gardens, parking areas, and play areas.

(B) *Standards for floodway permitted uses.*

(1) The use shall have a low flood damage potential.

(2) The use shall be permissible in the underlying zoning district if one exists.

(3) 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.

(C) *Conditional uses.*

(1) Structures accessory to the uses listed in § 154.198(A) above and the uses listed in §§ 154.198(C)(2) through 154.198(C)(8).

(2) Extraction and storage of sand, gravel, and other materials.

(3) Marinas, boat rentals, docks, piers, wharves, and water control structures.

(4) Railroads, streets, bridges, utility transmission lines, and pipelines.

(5) Storage yards for equipment, machinery, or materials.

(6) Placement of fill or construction of fences.

(7) Recreational vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of § 154.203(C).

(8) 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.

(D) *Standards for floodway conditional uses.*

(1) *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.

(2) All floodway conditional uses shall be subject to the procedures and standards contained in § 154.204(D).

(3) The conditional use shall be permissible in the underlying zoning district if one exists.

(4) Fill.

(a) Fill, dredge spoil, and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.

(b) Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.

(c) As an alternative, and consistent with division (b), immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the governing body has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The conditional use permit must be title registered with the property in the office of the county recorder.

(5) *Accessory structures.*

(a) Accessory structures shall not be designed for human habitation.

(b) Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:

1. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and

2. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.

(c) Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the state building code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size at its largest projection, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards:

1. The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;

2. Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly flood proofed; and

3. To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

(6) *Storage of materials and equipment.*

(a) 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.

(b) 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.

(7) 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. Chapter 103G. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.

(8) 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.

(Ord. 1114.05, passed 10-24-05)

§ 154.199 FLOOD FRINGE DISTRICT (FF).

(A) *Permitted uses.* Permitted uses shall be those uses of land or structures listed as permitted uses in the underlying zoning use districts(s). If no pre-existing, underlying zoning use districts exist, then any residential or non residential structure or use of a structure or land shall be permitted use in the Flood Fringe District provided such use does not constitute a public nuisance. All permitted uses shall comply with the standards for Flood Fringe District “Permitted Uses” listed in § 154.199(B) and the “Standards for all Flood Fringe Uses” listed in § 154.199(E).

(B) *Standards for flood fringe permitted uses.*

(1) 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 at such elevation at least 15 feet beyond the outside limits of the structure erected thereon.

(2) 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 § 154.198(D)(5)(c).

(3) 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 said fill is specifically intended to elevate a structure in accordance with § 154.199(B)(1).

(4) The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.

(5) The provisions of § 154.199(E) shall apply.

(C) *Conditional uses.* Any structure that is not elevated on fill or flood proofed in accordance with § 154.199(B)(1) and (2) and or any use of land that does not comply with the standards in § 154.199(B)(3) and (4) 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 §§ 154.199(D) and (E) and 154.204(D).

(D) *Standards for flood fringe conditional uses.*

(1) (a) Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if:

1. The enclosed area is above-grade on at least one side of the structure;
 2. It is designed to internally flood and is constructed with flood resistant materials;
- and
3. It is used solely for parking of vehicles, building access or storage.

(b) The above-noted alternative elevation methods are subject to the following additional standards:

1. *Design and certification.* The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the state building code, and specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.

2. *Specific standards for above-grade, enclosed areas.* Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:

a. A minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one-foot above grade. The automatic

openings shall have a minimum net area of not less than one square inch for every square foot 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 food waters without any form of human intervention; and

b. That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the state building code and shall be used solely for building access, parking of vehicles or storage.

(2) Basements, as defined by § 154.196(H), shall be subject to the following:

(a) Residential basement construction shall not be allowed below the regulatory flood protection elevation.

(b) Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry flood proofed in accordance with § 154.199(D)(3).

(3) All areas of non-residential structures including basements to be placed below the regulatory flood protection elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the state building code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the state building code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted.

(4) When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the governing body. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.

(5) *Storage of materials and equipment.*

(a) 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.

(b) 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.

(6) The provisions of § 154.199(E) shall also apply.

(E) *Standards for all flood fringe uses.*

(1) 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.

(2) *Commercial uses.* Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four upon occurrence of the regional flood.

(3) *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 § 154.199(E)(2) above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.

(4) 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.

(5) Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the official zoning map.

(6) Standards for recreational vehicles are contained in § 154.203(C).

(7) All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

(Ord. 1114.05, passed 10-24-05)

§ 154.200 GENERAL FLOOD PLAIN DISTRICT.*(A) Permissible uses.*

(1) The uses listed in § 154.198(A) shall be permitted uses.

(2) All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to §§ 154.200(B), 154.198 shall apply if the proposed use in the Floodway District and § 154.199 shall apply if the proposed use is in the Flood Fringe District.

(B) Procedures for floodway and flood fringe determinations within the General Flood Plain District.

(1) Upon receipt of an application for a permit or other approval within the General Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the Floodway or Flood Fringe District.

(a) 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.

(b) 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 elevation of streets.

(c) Photographs showing existing land uses, vegetation upstream and downstream, and soil types.

(d) 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.

(2) The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the Floodway or Flood Fringe District and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:

(a) Estimate the peak discharge of the regional flood.

(b) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.

(c) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than 0.5 foot 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.

(3) 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 §§ 154.198 and 154.199.

(Ord. 1114.05, passed 10-24-05)

§ 154.201 SUBDIVISIONS.

(A) *Review criteria.* No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this subchapter and have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation. For all subdivisions in the flood plain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

(B) *Floodway/flood fringe determinations in the General Flood Plain District.* In the General Flood Plain District, applicants shall provide the information required in § 154.200(B) to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.

(C) *Removal of special flood hazard area designation.* The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot

developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

(Ord. 1114.05, passed 10-24-05)

§ 154.202 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES.

(A) *Public utilities.* All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood proofed in accordance with the State Building Code or elevated to above the regulatory flood protection elevation.

(B) *Public transportation facilities.* Railroad tracks, roads, and bridges to be located within the flood plain shall comply with §§ 154.198 and 154.199. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

(C) *On-site sewage treatment and water supply systems.* Where public utilities are not provided:

(1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and

(2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the state's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this section.

(Ord. 1114.05, passed 10-24-05)

§ 154.203 MANUFACTURED HOMES AND MANUFACTURED HOME PARKS AND PLACEMENT OF RECREATIONAL VEHICLES.

(A) New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by § 154.201.

(B) The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in flood plain districts will be treated as a new structure and may be placed only if elevated in compliance with § 154.199. If vehicular road access for pre-existing manufactured home parks is not provided in accordance with § 154.199(E)(1), then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the governing body.

(1) All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

(C) Recreational vehicles that do not meet the exemption criteria specified in § 154.203(C)(1) below shall be subject to the provisions of this subchapter and as specifically spelled out in § 154.203(C)(3) and (4) below.

(1) *Exemption.* Recreational vehicles are exempt from the provisions of this subchapter if they are placed in any of the areas listed in § 154.203(C)(2) below and further they meet the following criteria:

(a) Have current licenses required for highway use.

(b) Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks and the recreational vehicle has no permanent structural type additions attached to it.

(c) The recreational vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.

(2) *Areas exempted for placement of recreational vehicles.*

(a) Individual lots or parcels of record.

(b) Existing commercial recreational vehicle parks or campgrounds.

(c) Existing condominium type associations.

(3) Recreational vehicle exempted in § 154.203(C)(1) lose this exemption when development occurs on the parcel exceeding \$500 for a structural addition to the recreational vehicle or exceeding \$500 for an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and the use of land restrictions specified in §§ 154.198 and 154.199. There shall be no development or improvement on the parcel or attachment to the recreational vehicle that hinders the removal of the recreational vehicle to a flood free location should flooding occur.

(4) New commercial recreational vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five units or dwelling sites shall be subject to the following:

(a) Any new or replacement recreational vehicle will be allowed in the Floodway or Flood Fringe Districts provided said recreational vehicle and its contents are placed on fill above the regulatory flood protection elevation and proper elevated road access to the site exists in accordance with § 154.199(E)(1). No fill placed in the floodway to meet the requirements of this section shall increase flood stages of the 100-year or regional flood.

(b) All new or replacement recreational vehicles not meeting the criteria of division (a) above may, as an alternative, be allowed as a conditional use if in accordance with the following provisions and the provisions of § 154.204(D). The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100 year flood. Said plan shall be prepared by a registered engineer or other qualified individual, shall demonstrate that adequate time and personnel exist to carry out the evacuation, and shall demonstrate the provisions of § 154.203(C)(1)(a) and (b) will be met. All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with § 154.202(C).

(Ord. 1114.05, passed 10-24-05)

§ 154.204 ADMINISTRATION.

(A) *Zoning Administrator.* A Zoning Administrator or other official designated by the governing body shall administer and enforce this subchapter. If the Zoning Administrator finds a violation of the provisions of this subchapter the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in § 154.999.

(B) *Permit requirements.*

(1) *Permit required.* A permit issued by the Zoning Administrator in conformity with the provisions of this subchapter shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system; prior to the change or extension of a nonconforming use; prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.

(2) *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.

(3) *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.

(4) *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 subchapter.

(5) *Construction and use to be as provided on applications, plans, permits, variances and certificates of zoning compliance.* Permits, conditional use permits, or certificates of zoning compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this subchapter, and punishable as provided by § 154.999.

(6) *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 subchapter. Flood proofing measures shall be certified by a registered professional engineer or registered architect.

(7) *Record of first floor elevation.* The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures or alterations and additions to structures are flood proofed.

(8) *Notifications for watercourse alterations.* The Zoning Administrator shall notify, in riverine situations, adjacent communities and the Commissioner of the Department of Natural Resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

(9) *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 of such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

(C) Board of Adjustment.

(1) *Rules.* The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by State law.

(2) *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 subchapter.

(3) *Variances.* The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this subchapter as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this subchapter, 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:

(a) 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.

(b) Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) *Hearings.* Upon filing 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.

(5) *Decisions.* The Board of Adjustment shall arrive at a decision on such appeal or variance within 60 days from the date a completed application is filed. In passing upon an appeal, the Board of Adjustment may, so long as such action is in conformity with the provisions of this subchapter, 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 § 154.204(D)(6), which are in conformity with the purposes of this subchapter. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this subchapter punishable under § 154.999. A copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten days of such action.

(6) *Appeals.* Appeals from any decision of the Board of Adjustment may be made, and as specified in this community's official controls and also by Minnesota Statutes.

(7) *Flood insurance notice and record keeping.* The Zoning Administrator shall notify the applicant for a variance that:

(a) 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

(b) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

(D) *Conditional uses.* The Planning Commission shall make a finding of fact and make a recommendation to the City Council, and then the City Council shall hear and decide applications for conditional uses permissible under this subchapter. Applications shall be submitted to the Zoning Administrator who shall forward the application to the Planning Commission for initial consideration and recommendation and then forwarded to the City Council.

(1) *Hearings.* Upon filing with the city an application for a conditional use permit, the city 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.

(2) *Decisions.* The City Council shall arrive at a decision on a conditional use within 60 days sixty from the date a completed application is filed. In granting a conditional use permit the City Council shall prescribe appropriate conditions and safeguards, in addition to those specified in § 154.204(D)(6), which are in conformity with the purposes of this subchapter. Violations of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this subchapter punishable under § 154.999. A copy of all decisions granting conditional use permits shall be forwarded by mail to the Commissioner of Natural Resources within ten days of such action.

(3) Procedures to be followed by the City Council in passing on conditional use permit applications within all flood plain districts.

(a) Require the applicant to furnish such of the following information and additional information as deemed necessary by the Planning Commission and the City Council for determining the suitability of the particular site for the proposed use:

1. 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

2. Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.

(b) Transmit one copy of the information described in subsection (a) to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.

(c) Based upon the technical evaluation of the designated engineer or expert, the Planning Commission shall examine and recommend and the City Council shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

(4) *Factors upon which the decision of the City Council shall be based.* In passing upon conditional use applications, the City Council shall consider all relevant factors specified in other sections of this 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 such damage on the individual owner.

(e) The importance of the services provided by the proposed facility to the community.

(f) The requirements of the facility for a waterfront location.

(g) The availability of alternative locations not subject to flooding for the proposed use.

(h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

(i) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.

(j) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

(l) Such other factors which are relevant to the purposes of this subchapter.

(5) *Time for acting on application.* The City Council shall act on an application in the manner described above within 60 days from receiving a completed application, except that where additional information is required pursuant to § 154.204(D)(3). The City Council render a written decision within 60 days from the receipt of such additional information.

(6) *Conditions attached to conditional use permits.* Upon consideration of the factors listed above and the purpose of this subchapter, the City Council shall attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this subchapter. Such conditions may include, but are not limited to, the following:

(a) Modification of waste treatment and water supply facilities.

(b) Limitations on period of use, occupancy, and operation.

(c) Imposition of operational controls, sureties, and deed restrictions.

(d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.

(e) Flood proofing measures, in accordance with the State Building Code and this 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.

(Ord. 1114.05, passed 10-24-05)

§ 154.205 NONCONFORMING USES.

(A) A structure or the use of a structure or premises which was lawful before the passage or amendment of this subchapter but which is not in conformity with the provisions of this subchapter may be continued subject to the following conditions. Historic structures, as defined in § 154.196(H) of this subchapter, shall be subject to the provisions of § 154.205(A)(1)-(5) of this subchapter.

(1) No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity.

(2) Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e. FP-1 thru FP-4 flood proofing classifications) allowable in the State Building Code, except as further restricted in § 154.205(A)(3) and (6) below.

(3) The cost of any 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 constructed since the adoption of the community's initial flood plain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50% of the current market value of the structure, then the structure must meet the standards of §§ 154.198 and 154.199 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 subchapter. The Assessor shall notify the Zoning Administrator in writing if 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 § 154.196(H), it shall not be reconstructed except in conformity with the provisions of this subchapter. The applicable provisions for establishing new uses or new structures in §§ 154.198, 154.199 or 154.200 will apply depending upon whether the use or structure is in the Floodway, Flood Fringe or General Flood Plain District, respectively.

(6) If a substantial improvement occurs, as defined in § 154.196(H), from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition (as required by § 154.205(A)(2) above) and the existing nonconforming building must meet the requirements of §§ 154.198 or 154.199 for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.
(Ord. 1114.05, passed 10-24-05)

§ 154.206 AMENDMENTS.

(A) The flood plain designation on the Official Zoning Map shall not be removed from flood plain 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 flood plain. 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 Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior to 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 chapter amendment or technical study under consideration.

(Ord. 1114.05, passed 10-24-05)

§ 154.999 PENALTY.

(A) Violation of the provisions of this subchapter 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 such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:

(1) In responding to a suspected ordinance violation, the Zoning Administrator and local government may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The community must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

(2) When an ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources' and Federal Emergency Management Agency Regional Office along with the Community's plan of action to correct the violation to the degree possible.

(3) The Zoning Administrator shall notify the suspected party of the requirements of this subchapter 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 subchapter 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 subchapter.

(Ord. 1114.05, passed 10-24-05)

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