# CITY OF LEXINGTON CODE OF ORDINANCES

**SECOND SERIES**

**This Code constitutes a recodification of the general and permanent ordinances of the City of Lexington, Minnesota.**

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# CITY OF LEXINGTON
# CODE BOOK

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# CHAPTER 1

## GENERAL PROVISIONS AND DEFINITIONS APPLICABLE TO THE ENTIRE CITY CODE INCLUDING PENALTY FOR VIOLATION

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# CHAPTER 1

## GENERAL PROVISIONS AND DEFINITIONS APPLICABLE TO THE ENTIRE CITY CODE INCLUDING PENALTY FOR VIOLATION

***SECTION 1.01. APPLICATION.*** The provisions of this Chapter shall be applicable to all the chapters, sections, subdivisions, paragraphs and provisions in the City Code and the City Code shall apply to all persons and property within the City of Lexington, Minnesota, and within such adjacent area as may be stated in specific provisions.

***SECTION 1.02. DEFINITIONS.*** Unless the language or content clearly indicates that a different meaning is intended, the following words, terms and phrases, for the purpose of every chapter, section, subdivision, paragraph and provision of this City Code, shall have the following meanings and inclusions.

A. **"City"** - means the City of Lexington, Minnesota, acting by or through its duly authorized representative.

B. **"Council and City Council"** - means the City Council of the City of Lexington, Minnesota.

C. **"City Clerk"** - means the person duly appointed by the City Council and acting in such capacity. The City Council may choose to designate the City Clerk as "City Manager", "City Administrator", "City Coordinator", or any other designation fitting of the position and its function. The City Clerk will serve at the will of the City Council.

D. **"Person"** - includes all firms, partnerships, associations, corporations and natural persons.

E. **"Written" and "In Writing"** - mean any mode of representing words and letters in the English language.

F. **"Street"** - means the entire area dedicated to public use, or contained in an easement or other conveyance or grant to the City, and shall include, but not be limited to, roadways, boulevards, sidewalks, alleys, and other public property between lateral property lines in which a roadway lies.

G. **"Public Property" and "Public Place"** - mean any place, property or premises dedicated to public use, owned by the City, occupied by the City as a lessee, or occupied by the City as a street by reason of an easement, including, but not limited to, streets, parks or parking lots so owned or occupied.

H. **"Private Property"** - means all property not included within the definition of public property or public place.

I. **"Intersection"** - means the area embraced within the prolongation or connection of the lateral curb line or, if no curb, then the lateral boundary lines of the roadways or streets which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict.

J. **"Roadway"** - means that portion of a street improved, designed, or ordinarily used for vehicular travel. In the event a street includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

K. **"Police Officer" and "Peace Officer"** - mean every officer, including special police, authorized to direct or regulate traffic, keeping the peace, and appointed or employed for the purpose of law enforcement.

L. **"Ordinance"** - means an ordinance duly adopted by the City Council of Lexington, Minnesota.

M. **"Ex Officio Member"** - means a person who is not counted for the purpose of determining a quorum, and has no right to vote, but shall have the right and obligation to speak to any question coming before the board, commission or other deliberative body of which that individual is a member.

N. **"May"** - is permissive.

O. **"Shall"** - is mandatory.

P. **"Violate"** - includes failure to comply with.

Q. **"Premises"** - means any lot, piece or parcel of land within a continuous boundary whether publicly or privately owned, occupied or possessed.

R. **"City Code"** – a term referring to the complied Ordinances of the City of Lexington. This term is interchangeable with "City Ordinance(s)."

***SECTION 1.03. CODE BOOK VIOLATIONS.***

**Subd. 1. Performance Standards**. The following sets procedures for the recognition, notification and enforcement of those types of violations that the City, by its Code, is obligated to regulate.

A. Complaint of code violation received.

1) precipitated by city employee

2) precipitated by resident (requires verification)

3) precipitated by public safety employee

B. Complaint form filled out by City Hall employee taking complaint.

C. Letter from City Administrator or designee identifying code violation, directing corrective action and imposing a 14-day deadline.

D. Violation observed/investigated by appropriate person as requested by City Administrator or designee one day after deadline imposed on 1st letter.

E. If no appreciable progress is being made a second letter prepared by the City Administrator or designee will be delivered by the Police Department setting absolute deadline of 14 days for corrective action before citation is issued.

F. Violation observed/investigated by the Police Department one day after deadline imposed on 2nd letter.

G. If no appreciable progress is being made a citation will be issued by the Police Dept. for violation of City Code.

**Subd. 2**. **Violation a Misdemeanor or Petty Misdemeanor**. Every person who violates a provision of this City Code shall be punished for a misdemeanor offense, except as otherwise stated in specific provisions herein.

***SECTION 1.04. OTHERWISE UNLAWFUL***. The City Code does not authorize an act or omission otherwise prohibited by law.

***SECTION 1.05. SEVERABILITY.*** Every chapter, section, subdivision, paragraph or provision of the City Code shall be, and is hereby declared, severable from every other such chapter, section, subdivision, paragraph or provision and if any part of portion of any of them shall be held invalid, it shall not affect or invalidate any other chapter, section, subdivision, paragraph or provision.

***SECTION 1.06. PAYMENT INTO CITY TREASURY OF FINES AND PENALTIES.*** The Court or officer thereof receiving such monies shall pay all fines, forfeitures and penalties recovered for the violation of any ordinance, charter, rule or regulation of the City into the City Treasury. Payment shall be made in the manner, at the time, and in the proportion provided by law.

***SECTION 1.07. MEANINGS.*** As used in this City Code, words of the male gender shall include the female and neuter, and the singular shall include the plural and the plural shall include the singular.

***SECTION 1.08. PENALTIES FOR EACH OFFENSE***. When a penalty or forfeiture is provided for the violation of a chapter, section, subdivision, paragraph or provision of this City Code, such penalty or forfeiture shall be construed to be for each such violation. Each day a violation occurs is a separate offense and therefore subject to a separate penalty or forfeiture.

***SECTION 1.09 TITLES.*** A title or caption to or in any chapter, section, subdivision, subparagraph or other provision of the City Code is for convenience only and shall not limit, expand, or otherwise alter or control the content, wording or interpretation thereof. Any chapter, section, subdivision, subparagraph or other provision contained in this Code of Ordinances shall constitute and be designated as "The Code of Ordinances of the City of Lexington," and may be so cited. This code may also be cited as the "Lexington City Code." Internal references to the Lexington City Code may be made as "this code" or "the code." All references and citations to this code shall be deemed to include all additions and amendments to the code. All references to chapters or sections are to the chapters and sections of this code unless otherwise specified.

***SECTION 1.10. ADDITIONS.*** New ordinances proposing amendments or additions to the code shall be incorporated into the code as of their effective date. Reference or citation to the code shall be deemed to include such amendments and additions. When an ordinance is integrated into the code, there may be omitted from the ordinance the title, enacting clause, section numbers, definitions of terms identical to those contained in this code, the clause indicating date of adoption, and validating signatures and dates. In integrating ordinances into the code, the City Administrator, in cooperation with the City Attorney, may correct obvious grammatical, punctuation and spelling errors; change reference numbers to conform with sections, articles and chapters; substitute figures for written words and vice versa; substitute dates for the words "the effective date of this ordinance"; and perform like actions to insure a uniform code of ordinances without, however, altering the meaning of the ordinances enacted. For editorial and cataloging purposes, the date of adoption, amendment or repeal shall be placed at the end of each section of the code.

***SECTION 1.11. ORDINANCES UNAFFECTED.*** All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

***SECTION 1.12. EFFECTIVE DATE OF ORDINANCES.*** Whenever any ordinance or part of an ordinance adopted by the City Council requires publication, that ordinance shall take effect from and after the due publication thereof, unless otherwise expressly provided. All other ordinances or parts thereof are effective upon adoption by the City Council.

***SECTION 1.13. REPEAL OR MODIFICATION OF ORDINANCES***. Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the publication of the ordinance repealing or modifying it when publication is required to give effect to it, unless otherwise expressly provided.

***SECTION 1.14. NUMERICAL ASSIGNMENT AND CONSTRUCTION OF AMENDMENTS.*** Each newly adopted ordinance shall be arraigned as follows:

**Subd. 1. Numbering.** Each section number of this code consists of two component parts separated by a decimal. The first digit of the number refers to the chapter number and the digits after the period refer to the position of the section within the chapter. If the chapter is divided into parts, the figure immediately to the left of the decimal corresponds to the part number.

**Subd. 2. Code Amendments.** Amendment to any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

**Subd. 3. Code Supplements.** Any ordinance which adds a new chapter or section to the existing code shall be assigned a new and unique number. In addition, a caption or title shall be shown in concise form above the code.

**Subd. 4. Repealed Code Numbers**. Once a chapter number or section number has been assigned and its subject matter repealed, that number shall not be used again in the code.

***SECTION 1.15 THROUGH 1.99, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

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# CHAPTER 2

# ADMINISTRATION AND GENERAL GOVERNMENT

***SECTION 2.01. AUTHORITY AND PURPOSE***. Pursuant to authority granted by Statute, this Chapter of the City Code is enacted so as to set down for enforcement the government and good order of the City by and through the Council.

***SECTION 2.02. COUNCIL MEETINGS – TIME AND PLACE.*** Regular meetings of the Council shall be held in the City Hall on the first and third Thursdays of each month at 7:00 o'clock P.M. Special and adjourned meetings shall also be held in the City Hall. In the event that any regular meeting falls on a holiday, then the meeting may be held on the next business day at the same time, or at another time as determined by the Council.

***SECTION 2.03. SPECIAL MEETINGS.*** Special meetings of the Council may be called by the Mayor or by any two members of the Council in writing filed with the Clerk. At least one day before the meeting the Clerk shall notify each member of the time, place and purpose of the meeting by causing written notice thereof to be mailed or personally served. Similar written notice shall be posted upon the bulletin board at City Hall or on the door of the City Council chambers. Written notice shall be mailed at least three days before the meeting date to those who have requested notice of such special meetings. Special meetings may be held without prior written notice when all Council members are present at the meeting or consent in writing thereto.

Such consent shall be filed with the Clerk prior to the beginning of the meeting. Any special meeting attended by all Council members shall be a valid meeting for the transaction of any business that may come before the meeting.

Emergency meetings of the Council may be called by the Mayor or any two members of the Council when circumstances require the immediate consideration of the Council. Notice may be in writing personally delivered to Council members or may be in the form of personal telephone communication. Notice must include the date, time, place and subject of such meeting. Where practicable, the Clerk shall make an effort to contact newsgathering organizations that have filed a request to receive notice of special meetings.

***SECTION 2.04. COUNCIL PROCEDURE AT REGULAR MEETINGS.*** The Clerk shall prepare the following items: an agenda for the forthcoming meeting; a report from the Clerk, department heads and/or liaison on activities that took place during the preceding month; a compiled list of all claimants who have filed verified accounts claiming payment for goods or services rendered the City, such list to be called the "Payment Requests"; a copy of all minutes to be considered; and copies of such other proposals, communications, or other documents as the City Clerk deems necessary or proper for advance consideration by the Council. The City Clerk

shall forthwith cause to be mailed or delivered to each member of the Council copies of all said documents. Roberts' Rules of Order (Newly Revised) shall govern all Council meetings as to procedural matters not set forth in the City Code.

The order of business at regular meetings shall be set by the City Clerk and approved, in advance, by the Council.

Matters inappropriate for consideration at a meeting shall not be considered except (1) with the unanimous consent of the members of the Council, or (2) scheduled public hearings or bid lettings at the time stated in the notice. All claims for payment must be filed at or before 12:00 o'clock noon on the Thursday prior to the regular Council meeting at which it is to be considered.

***SECTION 2.05. CITY SEAL***. All contracts to which the City is a party shall be sealed with the City Seal. Said Seal shall be kept in the custody of the Clerk and affixed by him/her. The official City Seal shall be a circular disc having engraved thereupon "CITY OF LEXINGTON" and such other words, figures or emblems as the Council may, by resolution, designate.

***SECTION 2.06. RIGHT TO ADMINISTRATIVE APPEAL***. If any person shall be aggrieved by any administrative decision of the Clerk or any other City official, or any Board or Commission not having within its structure an appellate procedure, such aggrieved person is entitled to a full hearing before the Council upon serving a written request therefore upon the Mayor and Clerk at least five (5) days prior to any regular council meeting. Such request shall contain a general statement setting forth the administrative decision to be challenged by the appellant. At such hearing the appellant may present any evidence he deems pertinent to the appeal, but the City shall not be required to keep a verbatim record of the proceedings. The Mayor, or other officer presiding at the hearing, may, in the interest of justice or to comply with time requirements and on his/her own motion or the motion of the appellant, the Clerk, or a member of the Council, adjourn the hearing to a more convenient time or place, but such time or place shall be fixed and determined before adjournment so as to avoid the necessity for formal notice of reconvening.

***SECTION 2.07. RULES OF PROCEDURE FOR APPEALS AND OTHER HEARINGS***. Unless superseded by State law, the Council may adopt by resolution certain written rules of procedure to be followed in all administrative appeals and other hearings to be held before the Council or other bodies authorized to hold hearings and determine questions therein presented. Such rules of procedure shall be effective thirty (30) days after adoption and shall be for the purpose of establishing and maintaining order and decorum in the proceedings.

***SECTION 2.08. FACSIMILE SIGNATURES***. The Mayor is hereby authorized to request a depository of City funds to honor an order for payment when such instrument bears a facsimile of his/her signature, and to charge the same to the account designated thereon or upon which it is drawn, as effectively as though it

were his/her manually written signature. Such authority is granted only for the purpose of permitting such officer an economy of time and effort.

***SECTION 2.09. CITY CLERK.***

**Subd. 1. Position Established**. The position of City Clerk is hereby established. The City Council may choose to designate the City Clerk as City Manager, City Administrator, City Coordinator or any other designation fitting of the position and its function. The City Clerk will serve at the will of the City Council.

**Subd. 2. Appointment and Removal**. The Council shall appoint the "City Clerk" for an indefinite term. He/she shall not be removed except by affirmative action taken by the entire Council twice at two regular meetings held within sixty days. The action taken at the first such meeting shall be an expression of intent to vote thereon at the second such regular meeting not to be held sooner than ten days thereafter. If, at any time after he/she has completed six months of continuous service, the Council takes such action the Clerk may within thirty days after written notice of removal, request a public hearing which the Council must grant and which must be commenced within thirty days after the request.

**Subd. 3. Qualifications**. The City Clerk shall be selected solely on the basis of his/her executive and administrative qualifications with special reference both to his/her experience and formal education, as well as his/her knowledge of accepted practices pertaining to the duties of his/her office.

**Subd. 4. Duties**. The Clerk shall be the chief administrative officer of the City and he/she shall be responsible to the Council for the proper administration of all affairs of the City and to that end shall have the power and shall be required to:

A. Supervise the administration of all Departments, offices and divisions of the City except as otherwise provided by law and carry out any other responsibilities placed under his/her jurisdiction by this Chapter or by subsequent Council action. He/she shall interview and screen all prospective City employees as permitted by law and shall make recommendations for terminating and suspending employees and may suspend any employee until the next Council meeting when the affirm modify or rescind the suspension.

B. Develop and issue all administrative rules, regulations and procedures necessary to insure the proper functioning of all departments and offices under his/her jurisdiction as permitted by law and Council direction.

C. Prepare and submit an annual budget to the Council and keep the Council advised of the financial condition of the City and make such recommendations as he/she may from time to time determine desirable and necessary.

D. Attend and participate in discussions at all meetings of the Council and other official bodies as directed by the Council. The Clerk shall also represent the City at all official or semi-official functions as may be directed by the Council and not in conflict with the prerogatives of the Mayor. He/she shall be entitled to notice of all regular and special meetings of the Council.

E. See that all laws and provisions of the City Code are duly enforced.

F. Make or let purchases and contracts when the amount thereof does not exceed statutory limits not requiring sealed bids and to receive estimates, quotations, sealed bids, purchases or contracts in excess of statutory amounts requiring sealed bids and present them to the Council for official action.

G. Recommend from time to time the adoption of such measures, as he/she may deem necessary or expedient for the health, safety and welfare of the community or for the improvement of the administration.

H. Occupy the position and perform the statutory duties of City Clerk.

I. Within broad policy guidelines, coordinate, administer, and follow through in regard to a wide variety of requests and problems of City concern; research and assist in developing and recommending solutions; interpret ordinances and directives for other departments, other agencies, and the general public.

J. Represent the City in regard to local, regional, state and federal activities of concern to the City, with Council approval.

K. Prepare agendas for Council meetings, supervise and participate in the development of supporting information, attend Council and other meetings as required, and serve as advisory member of the Planning Commission.

L. Provide effective upward and downward communication, and insure that the Council is kept aware of current problems and progress of the City as well as the economic and legislative climate which affects the City.

M. Serve as the City's public information representative and confer with media.

N. Perform such other duties as may be required by the Council and consistent with Minnesota Statutes and the City Code.

O. Delegate those duties of office as he/she deems appropriate.

***SECTION 2.10. INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 2.11. INTERIM EMERGENCY SUCCESSION***

**Subd. 1. Purpose**. Due to the existing possibility of an attack or natural disaster requiring a declaration of a state of emergency where it is found urgent and necessary to insure the continuity of duly elected and lawful leadership of the City to provide for the continuity of the government and the emergency interim succession of key governmental officials by providing a method for temporary emergency appointments to their offices.

**Subd. 2. Succession to Local Offices.** In the event of an attack upon the United States or a natural disaster requiring a declaration of a state of emergency affecting the vicinity of the City, the Mayor, Council and City Clerk shall be forthwith notified by any one of said persons and by any means available to gather at the City Hall.

In the event that safety or convenience dictates, an alternative place of meeting may be designated. Those gathered shall proceed as follows:

A. By majority vote of those persons present, regardless of number, they shall elect a Chairperson and Secretary to preside and keep minutes, respectively.

B. They shall review and record specific facts relating to the situation and record injuries to persons or damage to property already done, or the imminence thereof.

C. They may, based on such facts, declare a state of emergency.

D. By majority vote of those persons present, regardless of number, they shall fill all positions on the council, (including the office of the Mayor) of those persons upon whom notice could not be served or who are unable to be present.

E. Such interim successors shall serve until such time as the fully elected official is again available and returns to his/her position, or the state of emergency has passed and a successor is designated and qualifies as required by law, whichever shall occur first.

**Subd. 3. Duties of Interim Emergency Council.** The Interim Emergency Council shall exercise the powers and duties of their offices, and appoint other key government officials to serve during the emergency.

***SECTION 2.12. SALARIES OF MAYOR AND COUNCILPERSONS***. Salaries of the Mayor and Council are hereby fixed as follows, which amounts are deemed reasonable:

**Subd. 1. Mayor's Salary**. The monthly salary of the Mayor shall be $425.00 including two regular meetings and one workshop meeting per month, $35.00 per

meeting up to eight additional meetings per month and $75.00 for a meeting during regular working hours, effective January 2nd, 2017.

**Subd. 2. Councilperson's Salary.** The monthly salary of each Councilperson shall be $350.00 including two regular meetings and one workshop meeting per month, $35.00 per meeting up to six additional meetings per month and $75.00 for a meeting during regular working hours, effective January 2nd, 2017.

***SECTION 2.13. WORKER'S COMPENSATION***. All officers of the City elected or appointed for a regular term of office or to complete the unexpired portion of any such regular term shall be included in the definition of "employee" as defined in Minnesota Statures relating to coverage for purposes of worker's compensation entitlement.

***SECTION 2.14. COUNCIL COMPOSITION AND ELECTION***. The Council shall be composed of a Mayor and four Council members who shall be qualified electors and who shall be elected at large. Council members shall serve for a term of four years and/or until a successor is elected and qualifies. The Mayor shall serve for a term of two years and/or until a successor is elected and qualifies.

***SECTION 2.15. BIENNIEL ELECTIONS***.

**Subd. 1. Date of Biennial Elections**. A regular city election for the election of city officers shall be held on the first Tuesday after the first Monday in November in each even numbered year.

***SECTION 2.16 THROUGH 2.19, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 2.20. DEPARTMENTS GENERALLY***.

**Subd. 1. Appointment.** All Department Heads shall be approved by the Council, and shall report to the City Clerk. Their appointment or employment shall be for an indeterminate term unless otherwise stipulated in a written agreement or by a term set in this code.

**Subd. 2. Compensation**. All wage and salary scales shall be fixed and determined by the Council.

**Subd. 3. Budgetary Information**. The heads of all Departments shall, in a timely manner established by the Clerk; file with the Clerk the projected financial needs of his/her Department for the ensuing year. Such projections shall include information as to maintenance and operation of equipment, new equipment, personnel, and such other information as may be requested by the City.

***SECTION 2.21. POLICE DEPARTMENT***. A Police Department is hereby established. The Head of this Department shall be known as the Chief of Police, and the number of additional members and employees of the Police Department shall be determined by the Joint Powers Governing Board which may be changed from time to time. The Chief of Police and all members of the Police Department shall have the power and authority of police officers generally and shall perform such duties as are required of them by the Council or by law. The Chief of Police shall be the general superintendent of the Police Department and custody of all property used and maintained for the purposes of said Department. The Chief of Police shall make reports as requested by the City Administrator or the Council. This section shall apply to the Police Department except as otherwise provided in any joint powers with another City, in which case such agreement shall take precedence.

***SECTION 2.22. FIRE DEPARTMENT.*** A Fire Department under the control of the Council is hereby established. The size, composition and remuneration shall all be established by resolution of the Council, which may be changed from time to time, by subsequent resolution. The Council shall also establish written rules and regulations of the Department, a copy of which shall be distributed to each of its members. The Council shall approve the hiring of a Chief of the Fire Department. The Chief shall be the general superintendent of the Fire Department and the custody (custodian??) of all property used and maintained for the purposes of said Department. He/she shall see that the same are kept in proper order and that all rules and regulations and all provisions of the laws of the state and ordinances of the City relative to a Fire Department and to the prevention and extinguishing of fires are duly observed. He/she shall superintend the preservation of all property endangered by fire and shall have control and direction of all persons engaged in preserving such property. In case of the absence or disability of the Chief for any cause, the Assistant Chief shall exercise all the powers, perform all the duties and be subject to all the responsibilities of the Chief The Chief of the Fire Department shall make reports as requested by the City Administrator or the Council.

***SECTION 2.23. CITY ATTORNEY***. The Council shall appoint a qualified Attorney, who shall, together with such assistants as may be necessary, serve at the pleasure of the Council. The City Attorney shall perform such duties as are required of him/her by law or referred to him/her by the Council, the City Administrator, or their designee. It shall be the official duty of the City Attorney to act as “Reviser of Ordinances”.

***SECTION 2.24. CITY ENGINEER.*** The Council shall appoint a qualified Engineer, who shall, together with such assistants as may be necessary, serve at the pleasure of the Council. The City Engineer shall perform such duties as are required of him/her by law or referred to him/her by the Council, the City Administrator, or their designee.

***SECTION 2.25. CITY AUDITOR***. The Council shall appoint a qualified Auditor, who shall, together with such assistants as may be necessary, serves at the pleasure of the Council. The City Auditor shall perform such duties as are required of him/her by law or referred to him/her by the Council, the City Administrator, or their designee.

***SECTION 2.26. PUBLIC WORKS DEPARTMENT***. A Public Works Department is hereby established. The Head of such Department shall be the Public Works Director. The city water, sewerage systems, streets and parks shall be under the direct supervision of the Director and he/she shall be responsible for and have custody of all property of such Department. It is also the duty of the Public Works Director, on or before the date of the first regular Council meeting in each month, to file with the Clerk a report as to any recommendations as to repairs or improvements he/she deems advisable, together with a report of the activities of his/her Department during the preceding month. The Director shall also make and file such other reports as may be requested by the Council. The City Administrator shall serve as the Head of this Department unless the Council specifically approves the hiring of another individual for this purpose.

***SECTION 2.27. BUILDING INSPECTOR***. The Council shall appoint a qualified Building Inspector, who shall, together with such assistants as may be necessary, serve at the pleasure of the Council. The Building Inspector shall perform such duties as are required of him/her by law or referred to him/her by the Council, the City Administrator, or their designee.

***SECTION 2.28 THROUGH 2.29, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 2.30. BOARDS AND COMMISSIONS GENERALLY***. All Boards and Commission appointments authorized by ordinance or resolution shall be made by the Mayor, and such appointment confirmed by the Council at the first regular meeting in January of each year. The term of each appointee shall be established and stated at the time of his/her appointment and terms of present Board and Commission members may be reestablished and changed so as to give effect to this Section. New appointees shall assume office on January 1, December 31 being the date of expiration of terms. Provided, however, that all appointees to Boards and Commissions shall hold office until their successor is appointed and qualified. All vacancies shall be filled in the same manner as for an expired term, but the appointment shall be effective immediately when made and only for the unexpired term. The monthly salary of the Chair of Park Board and Chair Planning Commission shall be $35.00. The per diem expense shall be $15.00 per special meeting or activity. The monthly salary of the Park Board and Planning Commission members shall be $30.00. The per diem expense shall be $15.00 per special meeting or activity. The Chairperson shall be chosen from and by the Board or Commission membership, and the Secretary chosen may, but need not, be one of its members, at its first regular meeting in January of each year to serve for the next calendar

year. Preferably that no Chairperson shall be elected who has not completed at least one year as a member of the Board or Commission. Any Board or Commission member may be removed for misfeasance, malfeasance or nonfeasance in office by a two-thirds vote of the entire Council, but such member shall be entitled to a public hearing before such vote is taken. In addition, the Council, according to the rules adopted by the Board or Commission and approved by the Council, may remove any member for non-attendance at Board or Commission meetings without action. The position shall then be filled as for any other vacancy. The Chairperson shall notify the City Manager of any vacancies. The City Manager shall coordinate activities of the Board or Commission toward filling the vacancy, including recruiting, interviewing and recommending candidates. Whenever possible appointments to any Board or Commission should be made and confirmed within thirty days. Each Board and Commission shall hold its regular meeting at a time established and approved by the Council. Ex-officio members may be appointed for annual terms, provided that membership on the Board or Commission shall terminate with the office from which ex-officio membership is derived, to serve at the pleasure of the Council or as otherwise appropriate. Except as otherwise provided, this Section shall apply to all Boards and Commissions.

***SECTION 2.31. BOARDS OF ADJUSTMENTS AND APPEALS.*** (Note: The Board of Adjustments and Appeals is provided for in Chapter 11 of the City Code.)

***SECTION 2.32. PLANNING COMMISSION***. (Note: The Planning Commission is provided for in Chapter 11 of the City Code.)

***SECTION 2.33. PARK BOARD***.

**Subd. 1. Establishment and Composition**. A Park Board is hereby established. The Board shall be composed of five (5) members who shall serve staggered three-year terms. In addition, one member from the Council and one member from the City administrative staff may be appointed ex-officio.

**Subd. 2. Duties.** The Park Board shall have the responsibility to recommend expansion and plans for the maintenance and development of the park system to the Council, through the City Manager's office. The Board is authorized to receive and accept, in the name of the City, gifts or devises of real or personal property to be used for park purposes.

**Subd. 3. Written Communication** All written communication from or through the Park Board will be routed through City Staff. City staff will prepare minutes of Park Board meetings and all outgoing communications.

***SECTION 2.34. REPEALED.***

***SECTION 2.35. PERSONNEL COMMITTEE***

**Subd. 1. Establishment and Composition**. A Personnel Committee is hereby established and shall consist of the Mayor, City Clerk, City Attorney, and one member of the City Council. The Board shall convene only when necessary to fulfill its duties.

**Subd. 2. Duties**. The Personnel Committee shall have the responsibility to make recommendations to the Council for the hiring, termination or suspension of any Department Head. The Committee may take interim action to suspend any Department Head for violating the law, dereliction of duty, or other employment infractions effective until the next Council meeting when they may affirm, modify or rescind the suspension.

***SECTION 2.36 THROUGH 2.39, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 2.40. FRANCHISES***.

**Subd. 1. Definition**. The term "franchise" as used in this Section shall be construed to mean any special privileges granted to any person in, over, upon, or under any of the streets or public places of the City, whether such privileges has heretofore been granted by it or by the State of Minnesota, or shall hereafter be granted by the City or by the State of Minnesota.

**Subd. 2. Franchise Ordinances**. The Council may grant franchises by ordinance. Franchise rights shall always be subject to the superior right of the public to the use of streets and public places. All persons desiring to make any burdensome use of the streets or public places, inconsistent with the public's right in such places, or desiring the privilege of placing in, over, upon, or under any street or public place any permanent or semi-permanent fixtures for the purpose of constructing or operating railways, telegraphing, or transmitting electricity, or transporting by pneumatic tubes, or for furnishing to the City or its inhabitants or any portion thereof, transportation facilities, water, light, heat, power, gas, or any other such utility, or for any other purpose, shall be required to obtain a franchise before proceeding to make such use of the streets or public places or before proceeding to place such fixtures in such places.

**Subd. 3. Power of Regulation Reserved**. The City shall have the right and power to regulate and control the exercise by any person, of any franchise however acquired, and whether such franchise has been heretofore granted by it or by the State of Minnesota.

**Subd. 4. Conditions in Every Franchise**. All conditions specified in this Section shall be a part of every franchise even though they may not be expressly contained in the franchise:

A. That the grantee shall be subject to and will perform on its part all the terms of this Section and will comply with all pertinent provisions of the City Code, as the same may from time to time be amended.

B. That the grantee shall in no case claim or pretend to exercise any power to fix fares, rates, and charges; but that such fares, rates, and charges shall at all times be just, fair and reasonable for the services rendered and shall in all cases be fixed and from time to time changed, unless regulated by an agency of the State of Minnesota, in the manner following:

   1) A reasonable rate shall be construed to be one which will, with efficient management, normally yield above all operating expenses and depreciation, a fair return upon all money invested.

   2) If possible, maximum rates and charges shall be arrived at by direct negotiation with the Council.

   3) If direct negotiations fail to produce agreement, the Council shall, not less than thirty days before the expiration of any existing rate schedule or agreement, appoint an expert as its representative, the franchisee shall likewise appoint an expert as its representative and the two of them shall appoint a third person, preferably an expert, and the three of them shall constitute a board of arbitration. The board shall report its findings as soon as possible and the rates and charges it shall agree upon by majority vote shall be legal and binding, subject only to review by a court of competent jurisdiction upon application of one of the parties.

C. That the Council shall have the right to require reasonable extensions of any public service system from time to time and to make such rules and regulations as may be required to secure adequate and proper service and to provide sufficient accommodations for the public.

D. That the grantee shall not issue any capital stock on account of the franchise or the value thereof, and that the grantee shall have no right to receive upon condemnation proceedings brought by the City to acquire the public utility exercising such franchise, any return on account of the franchise or its value.

E. That no sale or lease of said franchise shall be effective until the assignee or lessee shall have filed with the City an instrument, duly executed, reciting the facts of such sale or lease, accepting the terms of the franchise, and agreeing to perform all the conditions required of the grantee there under.

F. That every grant in said franchise contained of permission for the erection of poles, masts, or other fixtures in the streets and for the attachment of wires thereto, or for the laying of tracks in, or of pipes or conduits under the streets or public places, or for the placing in the streets or other public places of any

permanent or semi-permanent fixtures whatsoever, shall be subject to the conditions that the Council shall have the power to require such alterations therein, or relocation or reroute thereof, as the Council may at any time deem necessary for the safety, health, or convenience of the public, and particularly that it shall have the power to require the removal of poles, masts, and other fixtures bearing wires and the placing underground of all facilities for whatsoever purpose used.

G. Every franchise shall contain a provision granting the City the right to acquire the same in accordance with statute.

H. That the franchisee may be obligated by the City to pay the City fees to raise revenue or defray increased costs accruing as a result of utility operations, or both, including, but not limited to, a sum of money based upon gross operating revenues or gross earnings from its operations in the City.

**Subd. 5. Further Provisions of Franchises**. The enumeration and specification of particular matters which must be included in every franchise or renewal or extension thereof, shall not be construed as impairing the right of the City to insert in any such franchise or renewal or extension thereof such other and further conditions and restrictions as the Council may deem proper to protect the City's interests, nor shall anything contained in this section limit any right or power possessed by the City over existing franchises.

Editors Notes: The following are non-coded ordinances on file in the office of the City Clerk and be open to inspection during regular business hours.

Ordinance No. 02-09, adopted September 19, 2002, grants the cable television franchise to MeadiaOne North Central Communications Corp. d/b/a AT&T Broadband.

Ordinance adopted December 3, 2009 grants the gas franchise to Centerpoint Energy.

Ordinance No. 11-05, adopted October 6, 2011, grants electric franchise to Northern States Power Co. d/b/a Xcel Energy.

Ordinance No. 12-06, adopted August 2, 2012, modifies electric franchise to collect franchise fees from Northern States Power Co. d/b/a Xcel Energy. (Revised in 16-04, 12/13/16)

Ordinance No. 12-07, adopted December 20, 2012, grants the electric franchise to Connexus Energy. (Revised in 16-04, 12/13/16)

Ordinance No. 13-01, adopted January 10, 2013, modifies the electric franchise to collect franchise fees from Connexus Energy. (Revised in 16-04, 12/13/16)

***SECTION 2.41 THROUGH 2.49, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 2.50. AUTHORIZING BACKGROUND CHECKS***. The purpose of this section is to authorize the City acting through a Police Department or City Attorney to access through the Bureau of Criminal Apprehension computerized criminal history data, the Department of Public Safety driver's license history data, and other government and private entities to perform background checks on employees, applicants for employment, volunteers and applicants for City licenses related to businesses, landlords, and construction. The City may conduct comprehensive background investigations, including but not limited to accessing data through other automated and non-automated sources and contacting references. The City may periodically conduct a driver's license inquiry upon employees or volunteers where possession of a valid driver's license is an essential qualification of the position. Before the investigation is undertaken, the person must authorize the Police Department or City Attorney in writing to undertake the investigation and to release the information to the City Administrator, and other City staff as appropriate. If a questioned identity situation occurs, fingerprint verification shall be obtained. Should the City reject an applicant's request for employment, volunteerism, or license due, partially or solely to the applicant's prior conviction of a crime, subject to the exception set forth in Minnesota Statutes Section 364.09 the City Administrator shall notify the applicant in writing of the following:

A. The grounds and reason for the denial;

B. The applicable complain and grievance procedure set forth in Minnesota Statutes Section 364.06;

C. The earliest date the applicant may reapply for employment; and

D. All competent evidence of rehabilitation will be considered upon reapplication.

***SECTION 2.51 THROUGH 2.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 2.99. VIOLATION A MISDEMEANOR***. Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

# CHAPTER 3

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# CHAPTER 3

# MUNICIPAL UTILITIES - RULES AND REGULATIONS,RATES, CHARGES AND COLLECTIONS

***SECTION 3.01. DEFINITIONS.*** As used in this Chapter, the following words and terms shall have the meanings stated:

A. **"Utility"** - means all utility services, whether the same be public City-Owned facilities or furnished by public utility companies.

B. **"Municipal Utility"** - means any City-owned utility system, including, but not by way of limitation, water and sewerage service.

C. **"Company", "Grantee", and "Franchisee"** - means any public utility system to which a franchise has been granted by the City.

D. **"Consumer" and "Customer"** - means any user of a utility.

E. **"Service"** - means providing a particular utility to a customer or consumer.

***SECTION 3.02. FIXING RATES AND CHARGES FOR MUNICIPAL UTILITIES***. All rates and charges for municipal utilities, including, but not by way of limitation, rates for service, permit fees, deposit, inspection fees, water prepayment fees, connection and meter testing fees, disconnection fees, reconnection fees including penalties for non-payment if any, shall be fixed, determined and amended by the Council and adopted by resolution. Such resolution, containing the effective date thereof, shall be kept on file and open to inspection in the office of the Clerk and shall be uniformly enforced. For the purpose of fixing such rates and charges, the Council may categorize and classify under the various types of service, provided, that such categorization and classification shall be included in the resolution authorized by this Section.

***SECTION 3.03. CONTRACTUAL CONTENTS***. Provisions of this Chapter relating to municipal utilities shall constitute portions of the contract between the City and all consumers of municipal utility services, and every such consumer shall be deemed to assent to the same. All contracts between franchisees and consumers of utility services other than municipal shall be in strict accord with the provisions of this chapter.

***SECTION 3.04. RULES AND REGULATIONS RELATING TO MUNICIPAL UTILITIES.***

**Subd. 1. Billing, Payment and Delinquency**. All municipal utilities shall be billed quarterly and a utilities statement or statements shall be mailed to each property owner each quarter, unless the owner of the property has made

arrangements in writing with the City to bill a tenant or tenants. All utilities charges shall be delinquent and the responsibility of the property owner if they are unpaid forty-five (45) days after the end of the quarter; provided, that if the 45th day shall fall on a Saturday, Sunday or legal holiday, the time shall be extended to the close of business on the next succeeding day on which business is normally transacted. A quarterly penalty as adopted by City Council resolution at their first regular meeting in January of each year and adjusted from time to time shall be added to, and become part of, all delinquent utility bills. If service is suspended due to delinquency it shall not be restored at that location until a reconnection charge has been paid for each utility reconnected in addition to amounts owed for service and penalties.

**Subd. 2. Application, Connection and Sale of Service**. Application for municipal utility services shall be made upon forms supplied by the City, and strictly in accordance therewith. No connection shall be made until consent has been received from the City to make the same, and all fees, charges and assessments required by this Chapter have been paid in full. All municipal utilities shall be sold and delivered to consumers under the then applicable rate applied to the amount of such utilities taken as metered or ascertained in connection with such rates.

**Subd. 3. Discontinuance of Service.** All municipal utilities may be shut off or discontinued, any time between any Monday at 9:00 o'clock A.M. and the following Friday at 9:00 o'clock A.M., whenever it is found that:

A. The owner or occupant of the premises served, or any person working on any connection with the municipal utility systems, has violated any requirement of the City Code relative thereof, or any connection therewith, or,

B. Any charge for a municipal utility service, or any other utility-related financial obligation imposed on the present owner or occupant of the premises served, is unpaid after due notice thereof, or,

C. There is fraud or misrepresentation by the owner or occupant in connection with any application for service or delivery or charges therefore.

**Subd. 4. Ownership of Municipal Utilities**. Ownership of all municipal utilities, plants, lines, mains, extensions and appurtenances thereto, shall be and remain in the City and no person shall own any part or portion thereof. Provided, however, that private facilities and appurtenances constructed on private property are not intended to be included in municipal ownership.

**Subd. 5. Right of Entry**. The City has the right to enter in and upon private property, including buildings and dwelling houses, in or upon which is installed a municipal utility, or connection therewith, at all times reasonable under the circumstances, for the purpose of reading utility meters, for the purpose of inspection and repair of meters or a utility system, or any part thereof, and for the purpose of connection and disconnecting service.

**Subd. 6. Meter Accuracy**. All water utilities service shall be supplied through a meter which shall accurately measure the amount thereof supplied to any consumer. The consumer shall supply a safe and proper place for the installation of such meters. Meters shall be tested for accuracy by the City upon the request of any consumer who believes his meter to be inaccurate. If, upon test, it appears that such meter overruns to the extent of three percent (3%) or more, the City shall pay the cost of such tests and shall make a refund for overcharges collected since the last known date of accuracy but for not longer than six months, on the basis of the extent of the inaccuracy found to exist at the time of the tests. If, upon test, it appears that such meter is a low to the extent of three percent (3%) or more, the consumer shall pay for undercharges since the last known date of accuracy but for not longer than six months on the basis of the extent of the inaccuracy found to exist at the time of the test. If, when any meter is tested upon the demand of a consumer, it is found to be accurate or slow or less than three percent (3%) fast, the consumer shall pay the reasonable cost of such testing.

**Subd. 7. Unlawful Acts**.

A. It is unlawful for any person to willfully or carelessly break, injure, mar, deface, disturb, or in any way interfere with any buildings, attachments, machinery, apparatus, equipment, fixture, or appurtenance of any municipal utility or municipal utility system, or commit any act tending to obstruct or impair the use of any municipal utility.

B. It is unlawful for any person to make any connection with, opening into, use, or alter in any way any municipal utility system without first having applied for and received written permission to do so from the City.

C. It is unlawful for any person to turn on or connect a utility when the same has been turned off or disconnected by the City for non-payment of a bill, or for any other reason, without first having obtained a permit to do so from the City.

D. It is unlawful for any person to “jumper” or by any means or device fully or partially circumvent a municipal utility meter, or to knowingly use or consume unmetered utilities or use the services of any utility system, the use of which the proper billing authorities have no knowledge.

**Subd. 8. Municipal Utility Services and Charges a Lien.**

A. Payment for all municipal utility (as that term is defined in City Code, Section 3.01) service and charges shall be the primary responsibility of the owner of the premises served and shall be billed to the owner unless otherwise contracted for and authorized in writing by the owner and the tenant, as agent for the owner, and consented to by the City of Lexington, Minnesota. The City

may collect the same in a civil action or, in the alternative and at the option of the City, as otherwise provided in this Subdivision.

B. Each such account is hereby made a lien upon the premises served. All such accounts which are more than forty-five days past due may, when authorized by resolution of the Council, be certified by the Clerk of the City of Lexington, Minnesota to the County Auditor, and the Clerk in so certifying shall specify the amount thereof, the description of the premises served, and name of the owner thereof. A penalty as adopted by City Council resolution at their first regular meeting in January of each year and adjusted from time to time shall be added to and become part all delinquent bills to be certified. The amount so certified shall be extended by the Auditor on the tax rolls against such premises in the same manner as other taxes, and collected by the County Treasurer, and paid to the City along with other taxes.

**Subd. 9. Damage to Municipal Utility Equipment**. It is unlawful for any person to intentionally cause any damage to any municipal utility equipment or appurtenance, including, but not limited to, meters, street lights, water hydrants and curb cocks. Anyone causing such damage shall pay the reasonable value thereof to the City, including labor for renewal and installation of any equipment and shall be, in effect, an insurer of any equipment in his possession or with which he/she comes in contact.

***SECTION 3.05 THROUGH 3.19, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 3.20. RULES AND REGULATIONS RELATING TO WATER SERVICE.***

**Subd. 1. Deficiency of Water and Shutting Off Water.** The City is not liable for any deficiency or failure in the supply of water to customers whether occasioned by shutting the water off for the purpose of making repairs or connections or by any other cause whatever. In case of fire, or alarm of fire, water may be shut off to insure a supply for firefighting. In making repairs or construction of new works, water may be shut off at any time and kept off so long as may be necessary.

**Subd. 2. Repair of Leaks.** It is the responsibility of the consumer or owner to maintain the service pipe from the curb stop into the house or other building. In case of failure upon the part of any consumer or owner to repair any leak occurring in his/her service pipe within twenty-four (24) hours after oral or written notice has been given the owner or occupant of the premises, the water may be shut off and will not be turned on until a reconnection charge has been paid and the water service has been repaired. When the waste of water is great or when damage is likely to result from the leak, the water will be turned off if the repair is not proceeded with immediately.

**Subd. 3. Abandoned Services Penalties**. All service installations connected to the water system that have been abandoned or, for any reason, have become useless for further service shall be disconnected at the main. The owner of the premises, served by this service, shall pay the cost of the excavation. The City shall perform the actual disconnection and all pipe and appurtenances removed from the street right-of-way shall become the property of the City. When new buildings are erected on the site of old ones, and it is desired to increase the old water service, a new permit shall be taken out and the regular tapping charge shall be made as if this were a new service. It is unlawful for any person to cause or allow any service pipe to be hammered or squeezed together at the ends to stop the flow of water, or to save expense in improperly removing such pipe from the main. Also, such improper disposition thereof shall be corrected by the City and the cost incurred shall be borne by the person causing or allowing such work to be performed.

**Subd. 4. Service Pipes**. Every service pipe must be laid in such manner as to prevent rupture by settlement. The service pipe shall be placed not less than seven feet below the surface in all cases so arranged as to prevent rupture and stoppage by freezing. Frozen service pipes between the curb stop and the building shall be the responsibility of the owner. Service pipes must extend from the curb stops to the inside of the building; or if not taken into a building then to the hydrant or other fixtures which they are intended to supply. A valve, the same size as the service pipe, shall be placed close to the inside wall of the building, ahead of the meter and well protected from freezing. Joints on copper tubing shall be flared and kept to a minimum. Not more than one joint shall be used for a service up to seventy feet in length. All joints shall be left uncovered until inspected. Minimum size connection with the water mains shall be 3/4 inch in diameter.

**Subd. 5. Private Water Supplies**. No water pipe of the city water system shall be connected with any pump, well, pipe, tank or any device that is connected with any other source of water supply and when such are found, the City shall notify the owner or occupant to disconnect the same and, if not immediately done, the city water shall be turned off. Before any new connections to the city system are permitted, the City shall ascertain that no cross -connections will exist when the new connection is made. When a building is connected to "City Water" the private water supply may be used only for such purposes as the City may allow. Property served by a private water or private sewer system shall immediately connect to public sewer and public water whenever a private sewer or private water system fails, falls into disrepair, or creates a nuisance or health hazard. A system “falls into disrepair” when the cost of the repair exceeds $500.00.

**Subd. 6. Lexington Sprinkling Ban**. As part of the City’s water conservation efforts law sprinkling restrictions shall be implemented automatically as follows: (The following restrictions apply to all water sources, City and private well)

A. TIER I: May through September Odd/Even Days. All properties with addresses that are an odd number can sprinkle on the odd number days. All

properties with addresses that are an even number can sprinkle on the even days.

B. TIER II: Odd/Even Days and No Watering Between 10:00 a.m. and 7:00 p.m. In addition to the above Tier I Odd/Even Days restriction, sprinkling is prohibited by all properties between the hours of 10:00 a.m. to 7:00 p.m.

C. TIER III: All sprinkling is banned.

D. EXEMPTIONS: New Sod or Seed. Thirty (30) day Exemption Notice obtained at City Hall. Notice will be posted in window or door.

E. VIOLATIONS: Public Works/City Staff will leave a warning "Reminder Notice" at residence. 2nd Offense: Ticket $25.00. 3rd Offense or Non-Payment of 2nd Offense: Citation to appear at Anoka County Court.

When the City determines it necessary to move to Tier II and/or III public announcements will be made.

**Subd. 7. Private Fire Hose Connections**. Owners of structures with self-contained fire protection systems may apply for and obtain permission to connect the street mains with hydrants, large pipes, and hose couplings, for use in case of fire only, at their own installation expense and at such rates as the Council may adopt by resolution as herein provided.

**Subd. 8. Opening Hydrants.** It is unlawful for any person, other than members of the Fire Department or other person duly authorized by the City, in pursuance of lawful purpose, to open any fire hydrant or attempt to draw water from the same or in any manner interfere therewith. It is also unlawful for any person so authorized to deliver or suffer to be delivered to any other person any hydrant key or wrench, except for the purposes strictly pertaining to their lawful use.

***SECTION 3.21 THROUGH 3.29, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 3.30. RULES AND REGULATIONS RELATING TO SEWERAGE SERVICE.***

**Subd. 1. Definitions**. The following terms, as used in this Section, shall have the meanings stated:

A. **"Sewage" -** means water-carried waste products from residences, public buildings, institutions or other buildings or premises, including the excrement or other discharge from the premises, including the excrement or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present.

B. **“Industrial Waste”** - means any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing, trade or business, or from development of any natural resources.

C. **“Sewerage System”** - includes all street lateral, main and intersecting sewers and structures by which sewage or industrial wastes are collected, transported, treated and disposed of; provided that this shall not include plumbing inside or a part of a building or premises served, or service sewers from a building to the street lateral.

D. **“Sewerage Service”** - means the use of and benefit from the sewerage system, including the collection, transportation, pumping, treatment and final disposal of sewage.

**Subd. 2. Metered Water Not Discharged**. If a portion of the water furnished to any premises is not directly or indirectly discharged into the sewerage system, the quantity of such water shall be deducted in computing the sewerage service charge or rental, provided a separate meter shall be installed and operated to register the quantity so not discharged into the sewerage system. Provided also, that where it is not practicable to meter the portion of the water not discharged into the sewerage system, such adjustment may be made as shall be fair and equitable in order to determine the amount of such service charge or rental; but until such adjustment shall be effected that water consumption basis hereinbefore prescribed shall remain in full force and effect.

**Subd. 3. Classification of Industrial Wastes**. The City shall have the power to classify the industrial wastes from any lot, parcel of land, building or premises discharged there from into the sewerage system of the City, taking into consideration the quantity of sewage produced and its concentration, strength of pollution qualities in general and of any other factors entering into the cost of its disposal, for the purpose of fixing and prescribing a distinct rate of rental or use charge. Should it be found that as to such sewer uses the water basis consumption does not provide a practicable method in the premises, but until so determined and such distinct rate fixed, the water consumption basis hereinbefore prescribed shall remain in full force and effect as to such commercial or industrial users. The City may require and prescribe pretreatment on the consumer's premises.

**Subd. 4. Deleterious Substances**. No sewage including industrial wastes shall contain any substance which is deemed deleterious by the City to the operation of the sewerage system or to any plant or facilities used in the treatment or disposal of such sewage. If a user of the sewerage system discharges excessive loads or any deleterious substances therein which are likely to retard or injuriously affect sewerage operations, he/she shall discontinue such practice and such practice is hereby declared to be a violation of this Section. Each day of such violation

continuing after having been notified in writing by the Clerk to discontinue such practice shall be deemed a separate violation.

**Subd. 5. Types of Wastes Prohibited**.

A. It is unlawful to discharge any of the following described waters or wastes into the municipal sanitary sewer system:

1) Liquids having a temperature higher than 150 Fahrenheit.

2) Water or waste which contains more than 100 ppm. by weight of fat, oil or grease.

3) Gasoline, benzene, naphtha, fuel oil or other inflammable or explosive liquid, solid or gas.

4) Garbage, except such as has been properly shredded.

5) Ashes, cinders, shavings, feathers, tar or other liquid or viscous substance capable of causing obstruction to the flow in sewerage system or other interference with the proper operation of the system.

6) Water or waste having a pH lower than 6.0 or higher than 9.0 or having any other property to corrode or abrade, cause materials to be deposited or attached to the walls of sewers, or having any other property capable of causing damage or hazard to structures, equipment, and personnel of the system.

7) Water or waste containing a toxic, poisonous or radioactive substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals or create any hazard in the sewage treatment plant.

8) Water or waste containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.

9) Noxious or malodorous substances capable of creating a public nuisance.

10) Roof water, ground water, or any other natural precipitation.

**Subd. 6. Unmetered Water Supply**. If any premises discharge normal sewage or industrial waste into the sanitary sewerage system, either directly or indirectly, obtain part or all of the water used thereon from sources other than the City, and the water so obtained is not measured by a meter of equivalent specifications to the meters used by the City, then in such case the City shall permit

the discharge of normal sewage or industrial waste into its sanitary sewerage system only when the owner of such premises or some other interested party shall at his/her own expense install a meter of equivalent specifications to those installed by the City in connection with the City water system. Each water meter shall be installed to measure all water received on such premises and the above charges and rates shall be applied to the quantity of water received as measured by such meter. If, because of the nature of the source of the water supply, the City deems it impracticable to thus meter the water on any premises, the Council may by resolution establish a flat charge per month in accordance with the estimated use of water on such premises.

**Subd. 7. Sewer Construction Requirements.**

A. Materials. All pipe shall be Cast Iron Soil Pipe, (A.S.T.M. Standard Specification A-74-62); Vitrified Glazed Clay Sewer Pipe, (A.S.T.M. Standard Specification C-13-57T); Asbestos Cement Building Sewer Pipe, conforming to specifications of "Transite" Asbestos Cement Sewer Pipe; Polyvinyl Chloride Pipe, Type I, Grade I (A.S.T.M. Standard Specification D-1784); or E.S. Solid Wall Pipe, TYPE I OR IV< (A.S.T.M. Standard Specification D-1788-62T). All pipe used shall be at least four-inch diameter pipe, except that when Vitrified Glazed Clay Sewer Pipe is used, it shall be at least six-inch diameter pipe.

B. Minnesota Plumbing Code Amendment. All sanitary sewer and water construction and material shall be in accordance with the provisions of the Minnesota Plumbing Code, except as follows: All references to bituminized fiber pipe in said Code are deleted.

C. Joints and Connections.

1) Cast Iron Soil Pipe. Joints for Cast Iron Pipe shall be made by first inserting a roll of hemp or jute and thoroughly caulking it into place; this shall be followed by pure molten lead well-caulked not less than one inch deep, or by driving into place an approved mechanical joint.

2) Vitrified Glazed Clay Sewer Pipe. In joining Vitrified Glazed Clay Sewer Pipe, the spigot of one pipe shall be carefully centered in the bell of the next pipe. Joints shall be formed by means of a hot poured compound using a preparation of “JC 60” or equal; and applied according to the manufacturer's recommendations. Jointing compound shall be completely resistant to any acid or alkaline condition found in ordinary sewage and shall be immune to attack by any chemicals found in natural soils or by any soil bacteria. Care shall be exercised in placing the runner or snake to assure non-leakage during pouring and it shall not be removed until the compound is sufficiently cooled to be permanently set. Joints may also be formed by means of a cold troweling material using a preparation of

"Kalkite", "Sewerite", "Elastic-77" or their equal. The jointing material shall be heated until it has become quite thin, thus causing it to pour freely and smoothly. The compound shall be poured continuously until the joint is completely filled, leaving no air bubble in the solidified mass. The use of clay pipe joints conforming to A.S.T.M. Specification Designation C425-58T, Types I and III, for joints with materials having resilient properties, will be permitted.

3) Extra Strength Unglazed Clay Pipe. The use of Extra Strength Unglazed Clay Pipe conforming to A.S.T.M. Designation C278-60T will be permitted in this construction.

4) Asbestos Cement Sewer Pipe. Joints for Asbestos Cement Sewer Pipe shall be made by use of the manufacturer's joint, which shall include an asbestos cement sleeve, together with rubber rings which shall form a tight and flexible joint.

D. Grades. Unless otherwise authorized, all house sewers shall have a grade of not less than 1/8 inch per foot. A grade of 1/4 inch per foot should be used wherever practical. The person to whom the permit is issued shall check grades before construction proceeds. Wherever possible, the connecting sewer shall join the building at an elevation which is below the basement floor of such building.

E. Alignment. No connecting sewer shall contain bends or a combination of bends which at any point shall be greater than forty-five degrees, and no more than two bends, regardless of angle, shall be permitted in any single sewer connection, except where cleanouts are constructed at such points and in manner as directed by the Public Works Director. No connecting sewer shall be laid parallel to any bearing wall or footing unless further distance than three feet from any such bearing wall or footing. No connecting sewer shall be laid within twenty feet of any existing well, excepting manner specifically approved by the Public Works Director.

F. Trenching and Backfilling. All excavations shall be open-trench work unless otherwise authorized by the Public Works Director. The foundation in the trench shall be formed in such manner as to prevent any subsequent settling of the pipes. If the foundation is good firm earth, the earth shall be pared or molded to give a full support to the lower third of each pipe. Bell holes shall be dug to provide ample space for pouring joints. Care must be exercised in backfilling below the centerline of the pipe in order to give it proper support. Backfilling shall be placed in layers and solidly tamped or packed up to one foot above the pipe. Backfilling shall not be done until the section to be backfilled has been inspected and approved by the Public Works Director. All excavation work must be done in such a manner as to protect workmen from cave-ins.

G. Use of Old House Sewers. Old house sewers or portions thereof may be approved for use by the Public Works Director. The Public Works Director may request that the old sewer be excavated for the purpose of facilitating inspection. No cesspool or septic tank shall be connected to any sewer connections. If any portion of a house sewer is laid across or over the existing cesspool or septic tank, such cesspool or septic tank shall first be pumped clean and filled with earth to the surrounding ground level. Where a connecting sewer is laid across or over any existing cesspool or septic tank, only Cast Iron Soil Pipe, conforming to the A.S.T.M. Standard Specification A-74-42, shall be used for that portion of the connecting sewer which is laid across or over the existing cesspool or septic tank.

H. Existing Septic Tanks to be Filled. Upon applying for a permit to connect to the municipal sanitary sewer system, the applicant shall agree when applicable to pump out the contents of any cesspool or septic tank then located on this property and to refill same with noncombustible and non-deteriorating fill to the lot level. The owner or his/her agent shall have such septic tank and/or cesspool completely pumped and filled at the time said sewer connection is completed.

I. Connections at "Y" Only. Every connecting sewer shall be connected to the municipal sewer system at the "Y" or sewer connection stubs designated for the property served by the connection, except where otherwise expressly authorized by the Public Works Director which authorization shall be in writing. Connections so authorized by the Public Works Director shall be made only under his/her direct supervision and in such manner as he/she may direct.

J. Tunneling. Tunneling for distances of not more than six feet is permissible in yards, courts or driveways of any building site.

K. Independent Systems. The drainage and plumbing system of each new building and of new work installed in an existing building shall be separate from, and independent of, that of any other building. Where one existing building stands to the rear of another building on an interior lot, and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building drain from the front building may be extended to the rear building and the whole will be considered as one building drain. Where such a building drain is extended, a cleanout shall be provided immediately inside the rear wall of the front building.

L. Independent Systems-of-Way. No connection to the municipal sanitary sewer system shall be finally approved until all streets, pavements, curbs and

boulevards or other public improvements thereon have been restored to their former condition to the satisfaction of the Public Works Director.

***SECTIONS 3.31 THROUGH 3.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 3.99. VIOLATION A MISDEMEANOR.*** Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

# CHAPTER 4

## CONSTRUCTION LICENSING - PERMITS AND REGULATIONS

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# CHAPTER 4

# CONSTRUCTION LICENSING - PERMITS AND REGULATIONS

## *SECTION 4.01 BUILDING CODE ADOPTED.*

**Subd. 1. Building Code Adopted.** The Minnesota State Building Code, as adopted by the Commissioner of Labor and Industry pursuant to Minnesota Statutes chapter 326B, including all of the amendments, rules and regulations established, adopted and published from time to time by the Minnesota Commissioner of Labor and Industry, through the Building Codes and Standards Unit, is hereby adopted by reference with the exception of the optional chapters, unless specifically adopted in this ordnance. The Minnesota State Building Code is hereby incorporated in this ordinance as if fully set out herein.

This ordinance also repeals all ordinances and parts of ordinances that conflict therewith. This ordinance shall perpetually include the most current edition of the Minnesota State Building Code with the exception of the optional appendix chapters, optional appendix chapters shall not apply unless specifically adopted.

**Subd. 2. Application, Administration and Enforcement.** The application, administration, and enforcement of the code shall be in accordance with Minnesota State Building Code. The code shall be enforced within the extraterritorial limits permitted by Minnesota Statutes, 326B.121, Subd. 2(d), when so established by this ordinance.

This code shall be enforced by the Minnesota Certified Building Official designated by this Municipality to administer the code in accordance with Minnesota Statutes 326B.133, Subdivision 1.

**Subd. 3. Permits and Fees.** The issuance of permits and the collection of fees shall be as authorized in Minnesota Rules Chapter 1300. Permit fees shall be assessed for work governed by this code in accordance with the fee schedule adopted by the municipality. In addition, a surcharge fee shall be collected on all permits issued for work governed by this code in accordance with Minnesota Statutes 326B.148.

**Subd. 4. Violations and Penalties.** A violation of the code is a misdemeanor (Minnesota Statutes 326B.082, Subd. 16).

**Subd. 5. Building Code Optional Chapters.**

A. Minnesota State Building Code, Chapter 1300 allows the city to adopt by reference and enforce certain optional chapters of the most current edition of the Minnesota State Building Code. The Minnesota Building Code includes the following chapters of Minnesota Rules:

1. Chapter 1300, Administration of the Minnesota State Building Code;
2. Chapter 1301, Building Official Certification;
3. Chapter 1302, State Building Code Construction Approvals;
4. Chapter 1303, Minnesota Provisions;
5. Chapter 1305, Adoption of the 2006 International Building Code;
6. Chapter 1306, Special Fire Protection Systems;
7. Chapter 1307, Elevators and Related Devices;
8. Chapter 1309, Adoption of the 2006 International Residential Guide;
9. Chapter 1311, Adoption of the 2002 Guidelines for the Rehabilitation of Existing Buildings;
10. Chapter 1315, Adoption of the 2006 National Electrical Code;
11. Chapter 1325, Solar Energy Systems;
12. Chapter 1330, Fallout Shelters;
13. Chapter 1335, Floodproofing Regulations;
14. Chapter 1341, Minnesota Accessibility Code;
15. Chapter 1346, Adoption of the Minnesota State Mechanical Code;
16. Chapter 1350, Manufactured Homes;
17. Chapter 1360, Prefabricated Structures;
18. Chapter 1361, Industrialized/Modular Buildings;
19. Chapter 1370, Storm Shelters (Manufactured Home Parks);
20. Chapter 4715, Minnesota Plumbing Code; and
21. Chapters 7670, 7672, 7674 and 7678, Minnesota Energy Code.

B. The following optional provisions identified in the most current edition of the Minnesota State Building Code are hereby adopted and incorporated as part of the building code for the city:

1. Minn. Rules Chapter 1306, Special Fire Sprinkler Regulations, 1306.0020, Subd. 2.

2. Minn. Rules Chapter 1335, Floodproofing Regulations, parts 1335.0600 to 1335.1200.

***SECTION 4.02. BUILDING PERMIT REQUIRED***. It is unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure, or any part or portion thereof, including, but not limited to, the plumbing, electrical, ventilating, heating or air conditioning systems therein, or cause the same to be done, without first obtaining a separate building or mechanical permit for each such building, structure or mechanical components from the City.

***SECTION 4.03 FIRE CODE ADOPTED.***

**Subd. 1. Fire Code Adopted.** The Minnesota State Fire Code, as adopted pursuant to Minnesota Statutes, section 299F.011, and as modified by Minnesota Rules, Chapter 7511, including all of the amendments, rules and regulations established, adopted and published from time to time is hereby adopted by reference with the exception of the optional chapters, unless specifically adopted in this Code. The Minnesota State Fire Code is hereby incorporated in this ordinance as if fully set out herein.

This ordinance also repeals all ordinances and parts of ordinances that conflict therewith. This ordinance shall perpetually include the most current edition of the Minnesota State Fire Code with the exception of the optional appendix chapters, optional appendix chapters shall not apply unless specifically adopted.

**Subd. 2. Definitions.**

A. Wherever the word 'jurisdiction" is used in the Minnesota State Fire Code, it shall mean the City of Lexington.

B. Whenever the term 'this code" is used in the Minnesota State Fire Code or this ordinance, it shall mean the code adopted pursuant to this ordinance.

**Subd. 3. Enforcement.**

A. The Chief of the Fire Department is authorized to enforce the provisions of the Minnesota State Fire Code and this ordinance.

B. The Fire Chief may detail such members of the fire department or other qualified persons as may be necessary to administer and enforce the provisions of this ordinance.

**Subd. 4. Penalties.** A person who violates the provisions of the Minnesota State Fire Code or this ordinance after being given written notice shall be guilty of a misdemeanor. Each day's violation after notice thereof shall constitute a separate offense.

***SECTIONS 4.04 THROUGH 4.09, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 4.10. PERMITS AND SPECIAL REQUIREMENTS FOR MOVING BUILDINGS***.

**Subd. 1. Definitions**. The following terms, as used in this Section, shall have the meanings stated:

A. **"Highway"** - means a public thoroughfare for vehicular traffic which is a State trunk highway, County State-aid highway, or County road.

B. **"Street"** - means a public thoroughfare for vehicular traffic which is not a State trunk highway, County State-aid highway or County Road.

C. **"Moving Permit"** - means a document allowing the use of a street of highway for the purpose of moving a building.

D. **"Highway Moving Permit"** - means a permit to move a building on a highway for which a fee is charged which does not include route approval, but does include regulation of activities which do not involve the use of the highway; which activities include, but are not limited to, repairs or alterations to a municipal utility required by reason of such movement.

E. **"Street Moving Permit"** - means a permit to move a building on a street for which a fee is charged which does include route approval, together with use of the street and activities including, but not limited to, repairs or alterations to a municipal utility required by reason of such movement.

F. **"Combined Moving Permit"** - means a permit to move a building on both a street and a highway.

**Subd. 2. Application**. The application for a moving permit shall state the dimensions, weight, and approximate loaded height of the structure or building proposed to be moved, the places from which and to which it is to be moved, the route to be followed, the dates and times of moving and parking, the name and address of the mover, and municipal utility and public property repairs or alterations

that will be required by reason of such movement. In the case of a street moving permit or combined moving permit the application shall also state the size and weight of the structure or building proposed to be moved and the street alterations or repairs that will be required by reason of such movement. All applications shall be referred to the Public Works Department. All applications for street and combined moving permits shall also be referred to the Police Department and no such permits shall be issued until route approval has been obtained from such Departments.

**Subd. 3. Permit and Fee**. The moving permit shall state date or dates of moving, hours, routing, movement and parking. Permits shall be issued only for moving buildings by building movers licensed by the State of Minnesota, except that a permit may be issued to a person moving his/her own building, or a person moving a building which does not exceed 12 feet in width, 25 feet in length, or 16 feet in loaded height. Fees to be charged shall be separate for each of the following: (1) a moving permit fee to cover use of streets and route approval, and (2) a fee equal to the anticipated amount required to compensate the City for any municipal utility and public property (other than streets) repairs or alterations occasioned by such movement. All permit fees shall be paid in advance of issuance.

**Subd. 4. Building Permit and Code Compliance**. Before any building is moved from one location to another within the City, or from a point of origin without the City to a destination within the City, regardless of the route of movement, it shall be inspected and a building permit shall have been issued for at least the work necessary to bring it into full compliance with the State Building Code.

**Subd. 5. Unlawful Acts.**

A. It is unlawful for any person to move a building on any street without a moving permit from the City.

B. It is unlawful to move any building (including a manufactured home) if the point of origin or destination (or both) is within the City, and regardless of the route of movement, without having paid in full all real and personal property taxes, special assessments and municipal utility charges due on the premises of origin and filing written proof of such payment with the City.

(NOTE: Also see Chapter 11 of the City Code for additional provisions.)

***SECTIONS 4.11 THROUGH 4.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 4.99. VIOLATION A MISDEMEANOR.*** Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, or performs an act prohibited or declared unlawful or fails to act when such failure is prohibited or declared unlawful by a Code

adopted by reference by this Chapter, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

# CHAPTER 5

## BEER, WINE AND LIQUOR LICENSING AND REGULATION

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# CHAPTER 5

# BEER, WINE AND LIQUOR LICENSING AND REGULATION

***SECTION 5.01. DEFINITIONS.*** As used in this Chapter, unless otherwise stated in specific sections, the following words and terms shall have the meanings stated:

A. **"Alcoholic Beverage"** - means any beverage containing more than one-half of one percent alcohol by volume, including, but not limited to, beer, wine and liquor as defined in this section.

B. **"Applicant"** - means any person making an application for a license under this Chapter.

C. **"Application"** - means a form with blanks or spaces thereon, to be filled in and completed by the applicant as his/her request for a license, furnished by the City and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

D. **"Beer"** - means malt liquor containing not less than one-half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight. (This definition includes so-called "malt coolers" with the alcoholic content limits stated herein.)

E. **"Brewer"** - means a person who manufactures beer for sale.

F. **"Club"** - means an incorporated organization organized under the laws of the State for civic, fraternal, social, or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization, which: (1) has more than fifty members; (2) has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members; (3) is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body. Such club or congressionally chartered veterans' organization must have been in existence for at least three years.

G. **"Commissioner"** - means the Minnesota Commissioner of Public Safety.

H. **“License”** - means a document, issued by the City, to an applicant, permitting that person to carry on and transact the business stated therein.

I. **“Licensee”** - means an applicant who, pursuant to his/her approved application, holds a valid, current license, which has neither been revoked nor is then under suspension, from the City for carrying on the business stated therein.

J. **“License Fee”** - means the money paid to the City pursuant to an application and prior to issuance of a license to transact and carry on the business stated therein.

K. **“Licensed Premises”** - means the premises described in the issued license.

L. **“Liquor”** - means ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol by weight. (This definition includes so-called “wine coolers” and “malt coolers” with the alcoholic content limits stated herein.)

M. **“Malt Liquor”** - means any beer, ale, or other beverage made from malt by fermentation and containing not less than one-half of one percent alcohol by volume.

N. **“Manufacturer”** - means every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending, or by the combination of different materials, prepares or produces alcoholic beverages for sale.

O. **“Minor”** - means any natural person who has not attained the age of twenty-one (21) years.

P. **“Off-Sale”** - means the sale of alcoholic beverages in original packages for consumption off the licensed premises only.

Q. **On-Sale”** - means the sale of alcoholic beverages for consumption on the licensed premises only.

R. **Package” and “Original Package”** - means any container or receptacle holding alcoholic beverages, which container or receptacle is corked, capped or sealed by a manufacturer or wholesaler.

S. **Sale”, “Sell” and “Sold”** - mean all barters and all manners or means of furnishing beer, wine or liquor to persons, including such furnishing in violation of law.

T. **"Wholesaler"** - means any person engaged in the business of selling liquor, wine or beer to retail dealers.

U. **"Restaurant"** - means any establishment, other than a hotel, under the control of a single proprietor or manager, having appropriate facilities for the serving of meals, and where, in consideration of payment thereof, meals are regularly served at tables to the general public, which employs an adequate staff to provide the usual and suitable service to its guests, and which shall have seating facilities for seating not less than eighty guests at one time.

V. **"Hotel" and "Motel"** - means and includes any establishment having a resident proprietor or manager, where, in consideration of payment therefore, food and lodging are regularly furnished to transients, and which contains not less than ten guest rooms with bedding and other suitable and necessary furnishings in each room, and which is provided with a suitable lobby, desk and office for the registration of its guests at the main entrance and on the ground floor, which employs an adequate staff to provide suitable and usual service, and which maintains under the same management and control as the rest of the establishment and has, as an integral part thereof, a dining room with appropriate facilities for seating not less than eighty guests at one time, where the general public is, in consideration of payment therefore, served with meals at tables

W. **"Wine"** - means a beverage made without rectification or fortification by the fermentation of sound ripe grapes, grape juice, other fruits, or honey, and also carbonated wine, wine made from condensed grape must, wine made from other agricultural products, limitation wine, compounds sold as wine, vermouth, cider, perry and sake, containing not less than one-half of one percent nor more than fourteen percent alcohol by volume. (This definition includes so-called "wine coolers" with the alcoholic content limits stated herein.)

***SECTION 5.02. APPLICATIONS AND LICENSES UNDER THIS CHAPTER – PROCEDURE AND ADMINISTRATION.***

**Subd. 1. Application.** All applications shall be made at the office of the City Clerk upon forms prescribed by the City, or if by the State of Minnesota, then together with such additional information as the Council may desire. Information required may vary with the type of business organization making application. All questions asked or information required by the application forms shall be answered fully and completely by the applicant.

**Subd. 2. False Statements.** It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form shall, upon discovery of such falsehood, work an automatic refusal

of license, or if already issued, shall render any license issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this Chapter, or any part thereof.

**Subd. 3. Application and Investigation Fees**. At the time of the initial application, an applicant for an on-sale liquor license shall pay to the City the sum of $100.00 an applicant for a beer license, and an applicant for an on-sale wine license shall pay to the City the sum of $100.00 which fee shall be considered an application and investigation fee, not refundable to applicant, to cover the costs of the City in processing the application and the investigation thereof. No such fee shall be required of an applicant for a temporary beer license. Should the Council or the Bureau of Criminal Apprehension determine that a comprehensive background investigation of the applicant for an on-sale liquor license is necessary, then the applicant shall pay to the City an investigation fee of $500.00 if the investigation is conducted within the State or the actual cost of the investigation not to exceed $10,000.00 if the investigation is required outside the State.

**Subd. 4. Action**.

A. Granting. The Council may approve any application for the period of the remainder of the then current license year or for the entire ensuing license year. All applications including proposed license periods must be consistent with this Chapter. Prior to consideration of any application for a license, the applicant shall pay the license fee, and if applicable, pay the investigation fee. Upon rejection of any application for a license, or upon withdrawal of an application before approval of the issuance by the Council, the license fee shall be refunded to the applicant. Failure to pay any portion of a fee when due shall be cause for revocation.

B. Issuing. If an application is approved, the City Clerk shall forthwith issue a license pursuant thereto in the form prescribed by the City or the proper agency of the State of Minnesota, as the case may be. All licenses shall be on a fiscal year basis, July 1 to June 30. For licenses issued and which are to become effective other than on the first day of the licensed year, the fee to be paid with the application shall be valid only at one location and on the premises therein described.

C. Refundment. A pro-rata share of an annual license fee for a license to sell liquor or beer, either on-sale or off-sale, may be refunded to the licensee, or to his/her estate, if: (1) the business ceases to operate because of destruction or damage; (2) the licensee dies; or (3) the business ceases to be lawful for a reason other than a license revocation or suspension.

D. Transfer. A license shall be transferable between persons upon consent of the Council and payment of the investigation fee. No license shall be transferable to a different location without prior consent of the Council and

payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this Subparagraph.

E. Refusal and Termination. The council may, in its sole discretion and for any reasonable cause, refuse to grant any application. No license shall be granted to a person of questionable moral character or business reputation. Licenses shall terminate only by expirations or revocation.

F. Revocation or Suspension. The Council may, in its sole discretion and for any reasonable cause, revoke, or suspend for a period not to exceed sixty days, any license granted under the provisions of this chapter. The Council shall revoke the license upon conviction of any licensee or agent or employee of a licensee for violation any law relating to the sale or possession of beer, wine or liquor upon the premises of the licensee, or if such revocation is mandatory by Statute. If it shall be made to appear at the hearing thereon that such violation was not willful, the Council may order suspension; provided that revocation shall be ordered upon the third such violation or offense. No suspension or revocation shall take effect until the licensee has afforded an opportunity for a hearing before the Council, a committee of the Council, or a hearing examiner, as may be determined by the Council in action calling the hearing. Such hearing shall be called by the Council upon written notice to the licensee served in person or by certified mail not less than fifteen nor more than thirty days prior to the hearing date, stating the time, place and purpose thereof. As additional restrictions or regulations on licensees under this Chapter, and in addition to grounds for revocation or suspension stated in the City Code or Statute, the following shall also be grounds for such action: (1) that the licensee suffered or permitted illegal acts upon licensed premises unrelated to the sale of beer, wine or liquor; (2) that the licensee had knowledge of such illegal acts upon licensed premises, but failed to report the same to the police; (3) that the licensee failed or refused to cooperate fully with the police in investigating such alleged illegal acts upon licensed premises; or, (4) that the activities of the licensee created a serious danger to public health, safety, or welfare.

G. Corporate Applicants and Licensees. A corporate applicant, at the time of application, shall furnish the City with a list of all persons that have an interest in such corporation and the extent of such interest. The list shall name all shareholders and show the number of shares held by each, either individually or beneficially for others. It is the duty of each corporate licensee to notify the Clerk of any change in legal ownership, or beneficial interest in such corporation or in such shares. Any change in the ownership or beneficial interest in the share entitled to be voted at a meeting of the shareholders of a corporate licensee, which results in the change of voting control of the corporation by the persons owning the share therein, shall be deemed equivalent to a transfer of the license issued to the corporation, and any such license shall be revoked thirty days after any such change in ownership or

beneficial interest of shares unless the Council has been notified of the change in writing and has approved it by appropriate action. The Council, or any officer of the City designated by it, may at any reasonable time examine the stock transfer records and minute books of any corporate licensee in order to verify and identify the shareholders, and the Council or its designated officer may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The Council may revoke any license issued upon its determine that a change of ownership of shares in a corporate licensee or any change of ownership of any interest in the business of any other licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the Council on notice to the licensee.

H. Public Interest. No license under this Chapter may be issued, transferred, or renewed if the results of any investigation show, to the satisfaction of the Council, that such issuance, transfer, or renewal would not be in the public interest.

**Subd. 5. Duplicate Licenses.** Duplicates of all original licenses under this Chapter may be issued by the Clerk without action by the Council, upon licensee's affidavit that the original has been lost, and upon payment of a fee of $25.00 for issuance of the duplicate. All duplicate licenses shall be clearly marked DUPLICATE.

**Subd. 6. Posting**. All licenses shall conspicuously post their licenses in their places of business.

**Subd. 7. Resident Manager or Agent**. Before a license is issued under an individual whether or not they are residents of the City, or to a corporation, partnership, or association, the applicant or applicants shall appoint in writing a natural person who is a resident of the City as its manager or agent. Such resident manager or agent shall, by the terms of his/her written consent, (1) take full responsibility for the conduct of the licensed premises, and, (2) serve as agent for service of the notices and other process relating to the license. Such manager or agent must be a person who, by reason of age, character, reputation, and other attributes, could qualify individually as a licensee. If such manager or agent ceases to be a resident of the City or ceases to act in such capacity for the licensee without appointment of a successor, the license issued pursuant to such appoint shall be subject to revocation or suspension.

**Subd. 8. Persons Disqualified**.

A. No license under this Chapter may be issued to: (1) a person not a citizen of the United States or a resident alien; (2) a person under twenty-one years of

age; (3) a person who within five years of the license application has been convicted of a willful violation of the Federal or State law, or local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution, of alcoholic beverages; (4) a person who has had an alcoholic beverage license revoked within five years of the license application, or to any person who at the time of the violation owns any interest, whether as a holder of more than five percent of the capital stock of a corporate licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business, or firm in which any such person is in any manner interested; or, (5) a person not of good moral character and repute.

B. No person holding a license from the Commissioner as a manufacturer, brewer wholesaler may have any ownership, in whole or in part, in a business holding an alcoholic beverage license from the City.

***SECTION 5.03. RENEWAL OF LICENSES.*** Applications for renewal of all licenses under this Chapter shall be made at least sixty (60) days prior to the date of expiration of the license, and shall contain such information as is required by the City. This time requirement may be waived by the Council for good and sufficient cause.

***SECTION 5.04. DELINQUENT TAXES AND CHARGES***. No license under this Chapter shall be granted for operation on any premises upon which taxes, assessments, or installments thereof, or other financial claims of a government entity, are owed and are delinquent and unpaid; or if the licensed establishment has failed to comply with other necessary permitting or licensing requirements of a government entity. Compliance with this section is an ongoing condition of a license issued under this Chapter.

***SECTION 5.05. LIMITATION ON OWNERSHIP***. No person shall be granted beer, liquor or wine licenses at more than one location. For the purpose of this Chapter, any person owning an interest of five percent, or more of the entity to which the license is issued, or such ownership by a member of his/her immediate family, shall be deemed to be a licensee.

***SECTION 5.06. CONDITIONAL LICENSES***. Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefore, place such special conditions and restrictions, in addition to those stated in this Chapter, upon any license as it, in its discretion, may deem reasonable and justified.

***SECTION 5.07. PREMISES LICENSED***. Unless expressly stated therein, a license issued under the provisions of this Chapter shall be valid only in the compact and contiguous building or structure situated on the premises described in the license, and all transactions relating to a sale under such license must take place within such building or structure.

***SECTION 5.08. UNLAWFUL ACTS***.

**Subd. 1. Consumption**. It is unlawful for any person to consume, or any licensee to permit consumption of, beer, wine or liquor on licensed premises more than thirty (30) minutes after the hour when a sale thereof can legally be made.

**Subd. 2. Removal of Containers**. It is unlawful for any on-sale licensee to permit any glass, bottle or other container, containing beer, wine or liquor in any quantity, to remain upon any table, bar, stool or other place where customers are served, more than thirty (30) minutes after the hour when a sale thereof can legally be made.

**Subd. 3. Closing.** It is unlawful for any person, other than an on-sale licensee or his/her bona fide employee actually engaged in the performance of his/her duties, to be on premises licensed under this Chapter more than thirty (30) minutes after the legal time for making licensed sales. Provided, however, that this Subdivision shall not apply to licensees, employees of licensees and patrons on licensed premises for the sole purpose of preparing, serving or consuming food or beverages other than beer, wine or liquor.

***SECTION 5.09. CONDUCT ON LICENSED PREMISES***. Except as herein provided, every licensee under this Chapter shall be responsible for the conduct of his/her place of business and shall maintain conditions of sobriety and order therein.

***SECTION 5.10. SALE BY EMPLOYEE***. Any sale of beer, wine or liquor in or from any premises licensed under this Chapter by any employee authorized to make such sale in or from such place is the act of the employer as well as the person actually making the sale; and every such employer is liable to all of the penalties provided by law for such sale, equally with the person actually making the sale.

***SECTION 5.11. LICENSE CONDITION AND UNLAWFUL ACT***.

**Subd. 1. Inspection**. All premises licensed under this Chapter shall at all times be open to inspection by any police officer to determine whether or not this Chapter and all other laws are being observed. All persons, as a condition to be issued such license, consent to such inspection by such officers and without a warrant for searches or seizures.

**Subd. 2. Hindrance of Inspection**. It is unlawful for any licensee, or agent or employee of a licensee, to hinder or prevent a police officer from making such inspection.

***SECTION 5.12. INSURANCE CERTIFICATE REQUIREMENTS***. Whenever an insurance certificate is required by this Chapter the applicant shall file with the Clerk a certificate of insurance showing: (1) that the limits are at least as high as

required, (2) that coverage is effective for at least the license term approved, and (3) that such insurance will not be cancelled or terminated without thirty days' written notice served upon the Clerk. Cancellation or termination of such coverage shall be grounds for license revocation.

***SECTION 5.13. FINANCIAL RESPONSIBILITY OF LICENSES***.

**Subd. 1. Proof of Financial Responsibility**. No beer, wine or liquor license shall be issued or renewed unless and until the applicant has provided proof of financial responsibility imposed by Minnesota Statutes by filing with the City a certificate that there is in effect an insurance policy or pool providing minimum coverage's of (1) $1,000,000 because of bodily injury to any one person in any one occurrence, and, subject to the limit for one person, in the amount of $300,000.00 because of bodily injury to two or more persons in any one occurrence, and in the amount of $10,000.00 because of injury to or destruction of property of others in any one occurrence, and (2) $50,000.00 for loss of means of support of any one person in any one occurrence, and, subject to the limit for one person, $100,000.00 for loss of means of support of two or more persons in any one occurrence.

**Subd. 2. Documents Submitted to Commissioner**. All proofs of financial responsibility and exemption affidavits filed with the City under this Section shall be submitted by the City to the Minnesota Commissioner of Public Safety.

***SECTION 5.14. MINORS AS DEFINED IN SECTION 5.01. UNLAWFUL ACTS.***

**Subd. 1. Consumption**. It is unlawful for any:

A. Licensee to permit any minor to consume alcoholic beverages on licensed premises.

B. Minor to consume alcoholic beverages except in the household of the minor's parent or guardian, and then only with the consent of such parent or guardian.

**Subd. 2. Purchasing**. It is unlawful for any person:

A. To sell, barter, furnish, or give alcoholic beverages to a minor unless such person is the parent or guardian of the minor, and then only for consumption in the household of such parent or guardian.

B. Minor to purchase or attempt to purchase any alcoholic beverage.

C. To induce a minor to purchase or procure any alcoholic beverage.

**Subd. 3. Possession**. It is unlawful for a minor to possess any alcoholic beverage with the intent to consume it at a place other than the household of the

minor's parent or guardian. Possession of an alcoholic beverage by a minor at a place other than the household of the parent or guardian is prima fascia evidence of intent to consume it at a place other than the household of his/her parent or guardian.

**Subd. 4. Entering Licensed Premises**. It is unlawful for a minor to enter licensed premises or the municipal dispensary for the purpose of purchasing or having served or delivered to him/her any alcoholic beverage.

**Subd. 5. Misrepresentation of Age.** It is unlawful for a minor to misrepresent his/her age for the purpose of purchasing an alcoholic beverage.

**Subd. 6. Proof of Age**. Proof of age for purchasing or consuming alcoholic beverages may be established only by a valid driver's license, a Minnesota identification card, or, in the case of a foreign national, by a valid passport.

***SECTION 5.15. REPEALED.***

***SECTION 5.16. CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES ON STREETS, PUBLIC PROPERTY, AND PRIVATE PARKING LOTS TO WHICH THE PUBLIC HAS ACCESS***. It is unlawful for any person to consume, or possess in any unsealed container, any alcoholic beverage on any (1) City park, (2) street, (3) public property, or (4) private parking lot to which the public has access, except on such premises when and where permission has been specifically granted or licensed by the Council. Provided, that this Section shall not apply to the possession of an unsealed container in a motor vehicle when the container is kept in the trunk of such vehicle if it is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. For the purpose of this Section, a utility or glove compartment shall be deemed to be within the area occupied by the driver or passengers.

***SECTION 5.17. ALCOHOLIC BEVERAGES IN CERTAIN BUILDINGS AND GROUNDS***. It is unlawful for any person to introduce upon, or have in his/her possession upon, or in, any school ground, or any school house or school building, any alcoholic beverage, except for experiments in laboratories and except for those organizations who have been issued temporary licenses to sell beer, and for any person to possess beer as a result of a purchase from those organizations holding temporary licenses.

***SECTIONS 5.18 THROUGH 5.29, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.30. BEER LICENSE REQUIRED***. It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of beer as part of a commercial transaction, without a license

therefore from the City. This Section shall not apply (1) to sales by manufacturers to wholesalers (2) to sales by wholesalers to persons holding beer licenses from the City, or (3) to sales by on-sale beer licensees on days and during hours when on-sale beer sales are permitted.

**Subd. 1. Issuance of On Sale Beer License.** Annual on-sale beer licenses may be issued only to persons, firms or corporations engaged in the business of conducting a food and beverage service establishment. Any person licensed to sell liquor at on-sale shall not be required to obtain an on-sale beer license, and may sell beer on-sale without an additional license.

**Subd. 2. Additional Requirements**. With the approval of the City Council, annual on-sale beer licenses may be issued. In addition to the other requirements of state law or this chapter, the following regulations are applicable to on-sale beer licenses:

A. Number of Licenses. The Council may issue the number of licenses from time to time as it may, in its discretion, deem proper.

B. Use of License. If a license is not used within one year, the license shall automatically terminate.

C. Any product sold under this Subdivision shall be sold for consumption on the premises only.

D. Considerations. In addition to the other requirements of this Chapter and applicable State law in determining whether or not to issue an on-sale license for a particular premises, the City Council may consider all relevant factors relating to the health, safety and welfare of the citizens of the City such as, but not limited to, effect on market value of neighboring properties, proximity to churches and schools and effect on traffic and parking.

***SECTION 5.31. BEER LICENSE FEES***.

**Subd. 1. Fees**. All fees for beer licenses shall be fixed and determined by the City Council, and adopted by resolution. Such license fees may, from time to time, be amended by City Council resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Clerk and be open to inspection during regular business hours.

***SECTION 5.32. TEMPORARY BEER LICENSE***.

**Subd. 1. Applicant.** A club or charitable, religious, or non-profit organization, duly incorporated as a non-profit or religious corporation under the laws of the State of Minnesota, and having its registered office and principal place of activity within the

City, shall qualify for a temporary on-sale beer license, for serving beer on and off school grounds, and in and out of school buildings.

**Subd. 2. Conditions**.

A. An application for a temporary license shall state the exact dates and place of proposed temporary sale.

B. No applicant shall qualify for a temporary license for more than a total of seven (7) days in any calendar year.

C. The Council may, but at no time shall it be under any obligation whatsoever to, grant a temporary beer license on premises owned or controlled by the City. Any such license may be conditioned, qualified or restricted as the Council sees fit.

***SECTION 5.33. HOURS AND DAYS OF BEER SALES***.

Pursuant to Minnesota State Statute 340A.504 HOURS AND DAYS OF SALE.

***SECTION 5.34. BEER LICENSE RESTRICTIONS, REGULATIONS AND UNLAWFUL ACTS***. It is unlawful for any:

**Subd. 1. Employment of Minors**. Person who has not attained the age of eighteen (18) years to be employed to sell or serve beer in any on-sale establishment.

**Subd. 2. Illegal Sale or Purchase.** Person to knowingly induce another to make an illegal sale or purchase of beer.

**Subd. 3. Obviously Intoxicated.** Licensee to sell or serve beer to any person who is obviously intoxicated.

**Subd. 4. Proof of Age**. Licensee to fail, when doubt could exist, to require adequate proof of age of a person upon licensed premises.

**Subd. 5. Non Permitted Sales**. Licensee to sell beer on any day, or during any hour, when such sales are not permitted by law.

**Subd. 6. Non Permitted Consumption**. Licensee to allow consumption of beer on licensed premises on any day when sales of beer are not permitted by law.

**Subd. 7. Non Permitted Purchase**. Person to purchase beer on any day, or during any hour, when sales of beer are not permitted by law.

***SECTIONS 5.35 THROUGH 5.49, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.50. LIQUOR LICENSE REQUIRED***. It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of liquor, as part of a commercial transaction, without a license therefore from the City. This Section shall not apply (1) to such potable liquors as are intended for therapeutic purposes and not as a beverage, (2) to industrial alcohol and its compounds not prepared or used for beverage purposes, (3) to wine in the possession of a person duly licensed under this Chapter as an on-sale wine licensee, (4) to sales by manufacturers to wholesalers duly licensed as such by the Commissioner, or (5) to sales by wholesalers to persons holding liquor licenses from the City, or (6) to the municipal dispensary. The voters of the City having authorized such issuance at a special election called for that purpose, the City may issue on-sale liquor licenses to (1) hotels; (2) motels and (3) restaurants. Any person licensed to sell liquor at on-sale shall not be required to obtain an on-sale beer license, and may sell beer on-sale without an additional license.

**Subd. 1. Considerations**. In addition to the other requirements of this Chapter and applicable State law in determining whether or not to issue an on-sale license for a particular premises, the City Council may consider all relevant factors relating to the health, safety and welfare of the citizens of the City such as, but not limited to, effect on market value of neighboring properties, proximity to churches and schools and effect on traffic and parking.

***SECTION 5.51. LIQUOR LICENSE FEE***. All fees for liquor licenses shall be fixed and determined by the City Council and adopted by resolution. Such license fees may, from time to time, be amended by City Council resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Clerk and be open to inspection during regular business hours.

***SECTION 5.52. TEMPORARY LIQUOR LICENSE***.

**Subd. 1. License Authorized**. Notwithstanding any provision of the City Code to the contrary, the Council may issue a license for the temporary on-sale of liquor in connection with a social event sponsored by the licensee. Such license may provide that the licensee may contract with the holder of a full-year on-sale license, issued by the City, for liquor catering services.

**Subd. 2. Applicant.** The applicant for a license under this Section must be a club or charitable, religious, or other non-profit organization in existence for at least three years.

**Subd. 3. Terms and Conditions License**.

A. No license is valid until approved by the Commissioner.

B. No license shall be issued for more than three consecutive days.

C. All licenses and licensees are subject to all provisions of statutes and the City Code relating to liquor sale and licensing except those relating to financial responsibility and insurance, and except those which by their nature are not applicable.

D. Licenses may authorize sale on premises other than those owned or permanently occupied by the licensee.

**Subd. 4. Insurance Required**. The Council may, but at no time shall it be under any obligation whatsoever to, grant a temporary liquor license on premises owned or controlled by the City. Any such license may be conditioned, qualified or restricted as the Council sees fit. If the premises to be licensed are owned or under the control of the City, the applicant shall file with the City, prior to the issuance of the license, a certificate of liability insurance coverage in at least the sum of $100,000.00 for injury to any one person, $300,000.00 for injury to more than one person, and $10,000.00 for property damage, naming the City as an insured during the license period.

***SECTIONS 5.53. HOURS AND DAYS OF LIQUOR SALES.***

Pursuant to Minnesota State Statute 340A.504 HOURS AND DAYS OF SALE.

***SECTIONS 5.54 THROUGH 5.59, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.60. ON-SALE WINE LICENSE REQUIRED***. It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of wine as part of a commercial transaction, without a license therefore from the City. This Section shall not apply (1) to sales by manufacturers to wholesalers duly licensed as such by the Commissioner, (2) to sales by wholesalers to persons holding on-sale liquor licenses from the City, (3) to sales by wholesalers to persons holding on-sale wine licenses from the City, or (4) to sales by on-sale liquor licensees on days and during hours when on-sale liquor sales are permitted, or (5) to the municipal dispensary.

**Subd. 1. Considerations**. In addition to the other requirements of this Chapter and applicable State law in determining whether or not to issue an on-sale license for a particular premises, the City Council may consider all relevant factors relating to the health, safety and welfare of the citizens of the City such as, but not limited to, effect on market value of neighboring properties, proximity to churches and schools and effect on traffic and parking.

**Subd. 2. Additional License**. The City Council may authorize a holder of an on-sale wine license, who is also licensed to sell beer on-sale, and whose gross receipts are at least 60 percent attributable to the sale of food, to sell intoxicating malt liquors at on-sale without an additional license.

***SECTION 5.61. ON-SALE WINE LICENSE FEE***. All fees for wine licenses and 3.2 Beer and/or Intoxicating Malt Beverages combination licenses shall be fixed and determined by the City Council and adopted by resolution. Such license fees may, from time to time, be amended by City Council resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Clerk and be open to inspection during regular business hours.

***SECTION 5.62. HOURS AND DAYS OF SALES BY ON-SALE WINE LICENSEES***.

Pursuant to Minnesota State Statute 340A.504 HOURS AND DAYS OF SALE.

***SECTIONS 5.63 THROUGH 5.69, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.70. LIQUOR AND ON-SALE WINE LICENSE RESTRICTIONS, REGULATIONS AND UNLAWFUL ACTS***.

**Subd. 1. Bonding**. Prior to issuance of any license the applicant shall file with the clerk a bond with a corporate surety, cash, or United States government bonds in the sum of $3,000.00 for an on-sale liquor or wine license. A bond filed under this Subdivision must be conditional on the licensee obeying all laws governing the business and paying all taxes, fees, penalties, and other charges, and must provide that the bond is forfeited to the City issuing the license on a violation of law.

**Subd. 2. Licenses in Connection with Premises of Another**. A license may not be issued to a person in connection with the premises of another to whom a license could not be issued under the provisions of this Chapter. The Subdivision does not prevent the granting of a license to a proper lessee because the person has leased the premises of a minor, a non-citizen who is not a resident alien, or a person who has been convicted of a crime other than a violation of this Chapter.

**Subd. 3. Employment of Minors**. No person under twenty-one (21) years of age may be employed in a place where liquor is sold for consumption on the premises, except persons under twenty-one years of age may be employed as musicians or in bussing or washing dishes in a restaurant or hotel that is licensed to sell liquor and may be employed as waiters or waitresses at a restaurant or hotel where only wine is sold, provided that the person under the age of twenty-one may not serve or sell any wine.

**Subd. 4. On-sale Wine Licenses**. Shall be granted only to restaurants as defined in this Chapter. Provided, however, for purposes of this Section, such restaurant shall have appropriate facilities for seating not less than twenty-five guests at one time.

**Subd. 5. Number of Licenses**. The Council may issue the number of licenses authorized by statute or restrict such number from time to time as it may, in its discretion, deem proper.

**Subd. 6. Unlawful Acts**. It is unlawful for any:

A. Licensee to sell, offer for sale, or keep for sale, liquor in any original package which has been refilled or partly refilled.

B. Licensee to display liquor to the public during hours when the sale of liquor is prohibited.

C. Person to hold more than one license. For the purpose of this Subparagraph, any person owning a beneficial interest of five percent, or more, of any licensed establishment shall be considered a licensee.

D. Person to knowingly induce another to make an illegal sale or purchase of liquor or wine.

E. Licensee to sell liquor or wine on any day, or during any hour, when sales of liquor or wine are not permitted by law.

F. Person to purchase liquor or wine on any day, or during any hour, when sales of liquor or wine are not permitted by law.

G. Licensee to sell or serve liquor or wine to any person who is obviously intoxicated.

***SECTIONS 5.71 THROUGH 5.79, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.80. CONSUMPTION AND DISPLAY***.

**Subd. 1. Consumption and Display License Required**. It is unlawful for any business establishment or club, not holding an on-sale liquor license to directly or indirectly, or on any pretense or by any device, sell, barter, keep for sale, or otherwise dispose of any liquid for the purpose of mixing the same with liquor, or permit its members to bring and keep a personal supply of liquor in lockers assigned to such members, without a license therefore from the City.

**Subd. 2. Fees.** All fees for consumption and display licenses shall be fixed and determined by the City Council and adopted by resolution. Such license fees may, from time to time, be amended by City Council resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Clerk and be open to inspection during regular business hours.

**Subd. 3. Consumption and Display Restrictions and Regulations.**

A. Eligible Licenses. If the applicant is otherwise eligible, licenses may be issued only to (1) persons who have not, within five years prior to application, been convicted of a felony or of violating provisions of this Chapter or other law relating to the sale or furnishing of alcoholic beverages; (2) a restaurant; (3) a hotel; (4) a beer licensee; (5) a resort as defined by statute; or, (6) a club or an unincorporated club otherwise meeting the definition of a club, provided, that no license may be issued to a club holding an on-sale liquor license.

B. Unlawful Act. It is unlawful to sell liquor on licensed premises.

C. License Expiration. In order to coordinate the expiration of a consumption and display license with a State permit, all licenses shall expire on June 30 of each year.

D. State Permit Required. Licenses shall be issued only to holders of a consumption and display permit from the Commissioner.

E. Lockers. A club to which a license is issued under this Section may allow members to bring and keep a personal supply of liquor in lockers on the club's premises. All bottles kept on the premises must have attached labels signed by the member. No minor may keep a supply of liquor on club premises.

F. Pursuant to Minnesota State Statute 340A.504 HOURS AND DAYS OF SALE.

**Subd. 4. License Restrictions**.

A. No license shall be granted for any premises not zoned commercial.

B. No license shall be granted for any premises within 400 feet of any church or school.

C. No license shall be granted to any club which has members who are minors.

D. No license shall be granted to a person who is a manufacturer or wholesaler of beer or liquor or who has an interest in any place where beer or liquor is manufactured or sold.

***SECTIONS 5.81 THROUGH 5.109, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.110. LEGALIZED GAMBLING***.

**Subd. 1. Definitions**. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. ***"Gambling"*** - means any activity or device prohibited by Minn. Stat. §§ 609.75, 609.755 and 609.76, and shall further include any activity, event, or contrivance that simulates any such activity or device when in or on any commercial establishment or property, except as otherwise allowed pursuant to City ordinances or state statutes, or rules adopted pursuant to authority contained therein. Prohibited gambling and gambling simulations include, but are not limited to, sports bookmaking, poker, blackjack, slot machines, and other similar activities, events and contrivances normally associated with gambling and gambling locations.

The terms used in this article which are defined in Minn. Stat. §§ 349.11--349.60, inclusive, and are defined in rules adopted pursuant to the authority contained in such statutes shall have the meanings set forth in such statutes and rules.

***SECTION 5.111. LAWFUL GAMBLING.*** It is unlawful for any licensee to keep possess, or operate, or permit the keeping, possession, or operation licensed premises of dice or any other gambling device, or permit raffles to be conducted, except such as are authorized by Statute or the City Code. There shall be no gambling in the City of Lexington except bingo, raffle games, and pull-tabs, duly licensed or otherwise allowed pursuant to the provision of this article, Minn. Stat. §§ 349.11--349.60, inclusive, and rules adopted pursuant to the authority contained in said statutes, and the state lottery authorized pursuant to Minn. Stat. Ch. 349A, inclusive.

A. No permit shall be required for the conduct of gambling exempt from licensing under Minn. Stat. § 349.166.

B. Nothing in this Section of the Lexington Code shall be deemed to be an automatic approval of a premises permit or bingo license applied for with the gambling control board. A licensed organization may not conduct lawful gambling in the City of Lexington unless a premises permit or bingo license is approved by City Council resolution. A premises permit shall be valid for a period of two years, unless revoked pursuant to this article or state statute.

***SECTION 5.112. ADDITIONAL REGULATIONS***. In addition to the requirements of Minn. Stat. §§ 349.11--349.60, inclusive, and rules adopted pursuant to the authority contained in the said statutes, lawful gambling shall be subject to the regulations set forth in the following paragraphs:

A. It is unlawful to make side bets or other wagers in connection with the conduct of lawful gambling.

B. A duly licensed pull-tab distribution, bingo or raffle game must be under the supervision of a gambling manager licensed under Minn. Stat. § 349.167. In order to qualify as a gambling manager, an individual must have been a member of the organization for at least two years.

C. No person who is under the age of 21 years shall operate or assist in operating a pull-tab distribution or bingo or raffle game in Lexington.

D. No organization may maintain more than four lawful gambling locations in the City at one time.

E. No premises permit or bingo hall license will be approved for:

1) Any organization to conduct lawful gambling on any premises other than a church, the premises of a fraternal, veterans or other nonprofit organization, or the premises of an on-sale liquor licensee licensed pursuant to the applicable sections of the Lexington Code.

2) Any organization or local subdivision thereof unless all of the following requirements are met:

(a) The activities of the organization or its local subdivision directly or primarily benefit citizens of Lexington.

(b) The organization or the local subdivision must have had a principal business or operations location in Anoka County for a continuous period of at least two years immediately preceding the permit request and maintain such a location as long as the organization operates lawful gambling activities in the City. The organization must have been in continuous existence holding meetings for at least two years prior to the approval of the license.

(c) The organization or the local subdivision may be granted a waiver of operational requirement if the Council determines the organization has significant community involvement and such a waiver would have to be granted per location up to the four-location limit.

3) The simultaneous conducting of lawful gambling by more than one organization on authorized premises.

F. It is unlawful to sell, give or otherwise transfer in the City of Lexington, any raffle ticket, paddle ticket or any other opportunity to participate in any gambling event not approved by the City of Lexington pursuant to the provisions of the Minnesota Statutes and rules adopted by reference herein.

G. Copies of the reports, which must be filed with the gambling control board, as required by Minn. Stat. § 349.19, shall be filed simultaneously with the City.

H. A licensed organization conducting lawful gambling within the City shall contribute ten percent of its net profits derived from lawful gambling to a fund administered and regulated by the City without cost to the fund, for disbursement by the City of the receipts for lawful purposes as defined in Minn. Stat. § 349.12. For the purposes of this requirement, "net profits" are defined as gross profit less sums actually expended for allowable expenses as reported to the Minnesota Department of Revenue. Such contributions shall be made to the City within 30 days of the end of each calendar quarter. This subsection shall be effective after adoption and upon issuance of a new license or renewed license for any licensed organization.

I. A premises permit or bingo hall license approved by the City may be suspended or revoked for violations of this chapter, or Minn. Stat. Ch. 349, or for failure to meet the qualifications set out in this chapter, or Minn. Stat. Ch. 349, or for the failure to comply, for any reason, with any provision, guaranty or claim made in the applicant's original license application to either the City or the State of Minnesota.

J. No license or permit approved by the City, including any bingo hall license, grants the licensee a property right or entitlement to a license or permit. The City may refuse to issue, renew or may revoke the license or permit for any reason and will not incur liability for any damages including, but not limited to, direct, consequential or incidental damages, deprivation of property, loss of income, loss of profits, or loss of livelihood.

***SECTION 5.113. ADOPTION OF STATE LAW BY REFERENCE.*** Except where supersede by this Section, Minn. Stat. Ch. 349, inclusive, and rules adopted pursuant to the authority contained therein are hereby adopted by reference and are incorporated in this article as completely as if set forth in full.

***SECTIONS 5.114 THROUGH 5.199, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.200. RESTRICTIONS ON PURCHASE AND CONSUMPTION OF LIQUOR***. No person shall mix or prepare liquor for consumption in any public

place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. § 340A.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place.

***SECTION 5.201. ADOPTION OF STATE LAW BY REFERENCE***. The provisions of M.S. § 340A, as they may be amended from time to time, with reference to the definition of the term, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this Ordinance as if set out in full. It is in the intention of the City Council that future amendments to M.S. Ch. § 340A are hereby adopted by reference or referenced as if they had been in existence at the time this Ordinances is adopted.

***SECTION 5.202. CITY MAY BE MORE RESTRICTIVE THAN STATE LAW***. The Council is authorized by the provisions of M.S. § 340A.509, as it may be amended from time to time, to impose, and has imposed in this ordinance, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M.S. Ch. § 340A, as it may be amended from time to time.

***SECTION 5.203. DEFINITIONS.*** In addition to the definitions contained in M.S. § 340A.101, as it may be amended from time to time, the following terms are defined for purposes of this Section:

A. **"RESTAURANT"** – an eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises and served to the general public, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this section, an establishment shall have a license from the state as required by M.S. § 157.16, as it may be amended from time to time, and have a minimum seating capacity for guests of no less than 30 seats. A restaurant shall derive a significant portion of its gross sales revenue from food.

***SECTION 5.204 THROUGH 5.209, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.210. NUMBER OF LICENSES WHICH MAY BE ISSUED.***

**Subd. 1. On-Sale Intoxicating Liquor Licenses**. The City shall no longer issue new licenses for on-sale intoxicating liquor under Minn. Stat. Chapter 340A.413, subd. 1, and shall only grant new licenses for on-sale intoxicating liquor

subject to the provisions for licenses under Minn. Stat. Chapter 340A.413, subd. 4, and as defined in this ordinance. Licenses for on-sale intoxicating liquor under Minn. Stat. Chapter 340A.413, subd. 1, shall only be renewed to licensees who possessed such a license. Once a license has been revoked or cancelled, new licenses shall only be granted for on-sale intoxicating liquor to restaurants or other entities provided under Minn. Stat. Chapter 340A.413, subd. 4. Accordingly, the City designates that it shall no longer issue new on-sale intoxicating liquor licenses against its permissible total licenses under Minn. Stat. Chapter 304A.413, subd. 1., and as each such existing license for on-sale intoxicating liquor expires without renewal, or has been revoked or cancelled, the number of licenses available within the City is reduced accordingly until the number of on-sale intoxicating liquor licenses issued under Minn. Stat. Chapter 340A.413, subd. 1, shall equal zero.

The intent of this subdivision is to transition all establishments serving alcoholic beverages within the City to serve food and to reduce the amount of over-serving of alcohol, which can be associated with bars that do not promote regular table service of food.

**Subd. 2. Restaurant Licenses.** The City shall not restrict the number of on-sale intoxicating liquor licenses issued to restaurants, theaters, hotels, clubs, veteran's organizations, or bowling centers as regulated under Minn. Stat. Chapter 340A.413, subd. 4.

**Subd. 3. Establishments Existing at Time of Ordinance Adoption**. Notwithstanding subdivision one (above), establishments holding a license under Minn. Stat. Chapter 340A.413, subd. 1, at the time this subdivision is adopted on April 7, 2011, shall be granted a conditional right related to licensure for on-sale intoxicating liquor under Minn. Stat. Chapter 340A.413, subd. 1. As long as the licensee owning such an establishment continues to qualify for licensure under Minn. Stat. Chapter 340A.413, subd. 1, the licensee, or a future owner or transferee of the establishment shall have the right to obtain a license for on-sale intoxicating liquor under Minn. Stat. Chapter 340A.413, subd. 1, if they so qualify. Whenever the license of such an establishment expires without renewal, or such a license has been revoked or cancelled, thereafter the right to apply for a license for on-sale intoxicating liquor under Minn. Stat. Chapter 340A.413, subd. 1, shall be prohibited.

***SECTION 5.211. TERM AND EXPIRATION OF LICENSES.*** Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on June 30 of each year. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Any license or permit issued by the Commissioner of Public Safety, and the accompanying city consent, shall expire on a date set by State law or regulation.

***SECTION 5.212. KINDS OF LIQUOR LICENSES.*** The City may issue the follow type of license:

**Subd. 1. 3.2 Percent Malt Liquor On-Sale Licenses.** May be issued only to golf courses, restaurants, hotels, clubs, bowling centers, and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.

**Subd. 2. 3.2 Percent Malt Liquor Off-Sale License**. Off-sale intoxicating liquor license may not be issued to a place where 3.2 percent malt liquor is sold for consumption on the premises.

**Subd. 3. Temporary 3.2 Percent Malt Liquor Licenses.** May be issued only to a club, charitable, religious, or nonprofit organization.

**Subd. 4. On-Sale Intoxicating Liquor Licenses**. May be issued to the following establishments as defined by M.S. § 340A.101, as it may be amended from time to time, and this ordinance: hotels, restaurants, bowling centers, theaters, clubs or congressionally chartered veteran's organizations, and theaters. The City shall issue the following classes of on-sale intoxicating liquor licenses:

A. General, On-Sale Intoxicating Liquor Licenses. No license issued pursuant to Minn. Stat. Chapter 340A.413, subd. 1, is valid unless the establishment serves liquor only in conjunction with the service of food.

B. Restaurant, On-Sale Intoxicating Liquor Licenses. No licenses issued pursuant to Minn. Stat. Chapter 340A.413, subd. 4, is valid unless the establishment serves liquor only in conjunction with the service of food, and the establishment receives at least 60% of gross receipts from the sale of food and not more that 40% of gross receipts from the sale of liquor.

C. Special, On-Sale Intoxicating Liquor Licenses. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council shall not exceed the amounts provided for in M.S. § 340A.408, subd. 2b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of M.S. § 340A.404, subd. 4b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports convention, or cultural facility owned by the city, under the provisions of M.S. § 340A.404, subd. 4a, as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.

**Subd. 5. Sunday On-Sale Intoxicating Liquor Licenses**. Sunday on-sale intoxicating liquor licenses may be issued to a restaurant, club, bowling center, hotel,

which has a seating capacity of at least 30 persons, or other establishments which hold a valid on-sale intoxicating liquor license and which serves intoxicating liquor only in conjunction with the service of food. This Sunday on-sale intoxicating liquor license shall be subject to the same requirements as the class of on-sale intoxicating liquor license held by the licensee.

**Subd. 6. Temporary On-Sale Intoxicating Liquor Licenses.** With the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year.

**Subd. 7. On-Sale Wine Licenses**. With the approval of the Commissioner of Public Safety to: theaters, restaurants, bed and breakfast facilities the fee for an on-sale wine license established by the Council shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license, who also holds an on-sale 3.2 percent malt liquor license, is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.

**Subd. 8. One Day Consumption and Display Permits**. With the approval of the Commissioner of Public Safety to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization.

**Subd. 9. Approval of the Issuance of a Consumption and Display Permit by the Commissioner of Public Safety.** The Commissioner of Public Safety may issue a consumption and display permit. Consumption and display permits shall expire on March 31 of each year, or according to their terms.

**Subd. 10. Culinary Class Limited On-Sale Licenses**. May be issued to a business establishment not otherwise eligible for an on-sale intoxicating liquor license that, as part of its business, conducts culinary or cooking classes for which payment is made by each participant or advance reservation required. The license authorizes the licensee to furnish to each participant in each class, at no additional cost to the participant, up to a maximum of six ounces of wine or 12 ounces of intoxicating malt liquor, during and as part of the class, for consumption on the licensed premises only.

**Subd. 11. Brew Pub On-Sale Intoxicating Liquor or On-Sale 3.2 Percent Malt Liquor Licenses**. With the approval of the Commissioner of Public Safety, may be issued to brewers who operate a restaurant in their place of manufacture and who meet the criteria established at M.S. §340A.301 subd. 6(d) and 7(b), as it may be amended from time to time. Sales under this license at on-sale may not exceed 3,500 barrels per year.

***SECTION 5.213. LICENSE FEES.***

A. No license or other fee established by the City shall exceed any limit established by M.S. Ch. 340A, as it may be amended from time to time, for a liquor license.

B. The Council may establish from time to time the fees for the liquor licenses it is authorized to issue. The license fee shall be in compliance with M.S. §340A.408, subd. 2.

C. All license fees shall be paid in full at the time the application is filed with the City. If the application is denied, license fees in excess of the base fee established by the City shall be returned to the applicant less any outstanding costs for the application fee and/or background investigation.

***SECTION 5.214 THROUGH 5.219, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.220. APPLICATION FOR LICENSE.***

**Subd. 1. Form.** Every application for a license issued under this ordinance shall be on a form provided by the City. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. The form shall be verified and filed with the City. No person shall make a false statement in an application.

**Subd. 2. Financial Responsibility**. Prior to the issuance of any license under this ordinance, the applicant shall demonstrate proof of financial responsibility as defined in M.S. § 340A.409, as it may be amended from time to time, with regard to liability under M.S. § 340A.801, as it may be amended from time to time. This proof will be filed with the City and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to M.S. § 340A.409, as it may be amended from time to time. It is a condition of the license that this proof will be filed and valid with the City and Commissioner of Public Safety. Operation of a business which is required to be licensed by this chapter without having on file with the City at all times proof of financial responsibility to include liquor liability/dram shop, general liability and workers compensation insurance coverage is a cause for revocation of the license. Proof of financial responsibility shall be provided as follows:

A. Dram Shop. A certificate that there is in effect an annual aggregate insurance policy for dram shop insurance of not less than statutory requirements per policy year to cover each person, each occurrence, property damage each occurrence, loss of means of support per person, loss of means of support each occurrence and policy aggregate.

B. General Liability. Proof of financial responsibility shall be given by filing a certificate that there is in effect for the license period an insurance policy or pool providing at least double the coverage minimums set forth in Minn. Stat. Section 340A.409, subd. 1. The aggregate limits for loss or injury to multiple persons required herein shall be increased based on the occupancy of the licensed establishment. These aggregate limits shall double for each 100 persons of occupancy of the licensed establishment.

C. Workers' Compensation Insurance. The policy limits for workers' compensation insurance shall be as provided for by state law.

D. Additional Requirements. The liability insurance required by this section must provide that the City is named on the policy as an 'other insured' and that the policy may not be canceled for any cause by either the insured or the insurer unless the canceling party has first given ten-days' notice in writing to the City of intent to cancel the policy. Notice must be sent to the City pursuant to Minn. Stat. Section 340A.409. Notice of cancellation of any insurance or surety serves as notice of revocation of the City's license, and said license is revoked effective at the same data and time when insurance or surety is not effective. Under this provision the licensee shall not receive a hearing or notice of a hearing from the City before revocation unless so timely requested by the licensee to occur during a regularly scheduled meeting of the Council or at other time as it shall see fit.

***SECTION 5.221. DESCRIPTION OF PREMISES.*** The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed. The description shall include any parking lot or sidewalk, and shall include the occupancy as approved by the Fire Department.

***SECTION 5.222. APPLICATIONS FOR RENEWAL.*** At least 60 days before a license issued under this ordinance is to be renewed, an application for renewal shall be filed with the City. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

***SECTION 5.223. TRANSFER OF LICENSE.*** No license issued under this ordinance may be transferred without the approval of the Council. Any transfer of ownership, beneficial interest, or stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a

ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this ordinance applying to applications for a license shall apply.

***SECTION 5.224. INVESTIGATION***.

**Subd. 1. Preliminary Background and Financial Investigation.** On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of $500 which shall be in addition to any license fee. If the cost of the investigation appears to exceed $500 the applicant shall post the cost of the investigation as estimated by the City, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

**Subd. 2. Comprehensive Background and Financial Investigation**. If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be $500, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and $10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license. Each person or business named in or as part of this application shall execute a written authorization allowing the City and/or the Chief of Police to verify all information disclosed as part of the application.

***SECTION 5.225. HEARING AND ISSUANCE***. The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

***SECTION 5.226. RESTRICTIONS ON ISSUANCE***. Each condition below must be satisfied before the City can issue a new or renewed license. Failure of a licensee to meet any one of the conditions of the license specified below during the license period shall result in a suspension of the license until the condition is met, and is grounds for the City to revoke the license.

A. Each license shall be issued only to the applicant for the premises described in the application.

B. Not more than one license shall be directly or indirectly issued within the City to any one person. For the purpose of this Section, any person owning an interest of more than five percent of the entity to which the license is issued, or such ownership by a member of his/her immediate family, shall be deemed to be a licensee.

C. No license shall be issued for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the City or other governmental units are delinquent and unpaid.

D. No license shall be issued for any place or any business ineligible for a license under state law.

E. No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, ownership shall be subject to the requirements set forth in section 6.02. The provisions of this division (E) shall not apply to any license existing on the effective date of this ordinance or to the renewal of an existing license.

F. No license shall be granted pursuant to Minn. Stat. Chapter 340A.413, subd. 1, to any establishment within 400 feet of any school, daycare, or church. The distance is to be measured from the closest side of the school, daycare, or church to the closest side of the structure on the premises within which liquor is to be sold.

G. No license may be issued to a person who is disqualified. A disqualified person includes, but is not limited to: (1) a person not a citizen of the United States or a resident alien; (2) a person under twenty-one years of age; (3) a person who within five years of the license application has been convicted of a violation of the Federal or State law, or local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution, of alcoholic beverages; (4) a person convicted of a felony, or a crime involving dishonesty, assault, controlled substances or substance abuse; (5) a person whom a medical professional determined to be chemically dependent or has suffered from substance abuse; (6) a person who has had an alcoholic beverage license revoked within five years of the license application; or, (7) a person not of good moral character and repute. A disqualified person is also:

(1) any person who at the time of one of the violations stated above owns any interest, whether as a holder of more than five percent of the capital stock of a corporate licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, limited liability corporation, business, or firm in which any such person is in any manner interested; or, (2) the spouse of a disqualified person, or such other person who, in the judgment of the City Council, is not the real party in interest or beneficial owner of the business to be operated under the license.

H. No license shall be issued until the premise has passed inspection by the City Building Inspector and Fire Department, or unless such inspections have been waived by the City.

***SECTION 5.227. COUNCIL DISCRETION TO GRANT OR DENY A LICENSE***. The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this ordinance.

***SECTIONS 5.228 THROUGH 5.229, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.230. CONDITIONS OF LICENSE***. The failure of a licensee to meet any one of the conditions of the license specified below shall result in a suspension of the license until the condition is met, and is grounds for the City to revoke the license.

**Subd. 1. Employee Training**. Within 30 days after employment, every person selling or serving liquor, or supervising such persons, in an establishment which has an on-sale license shall receive training regarding the selling or serving of liquor to customers. Proof of training shall be provided by the licensee to the City on an annual basis, or when so requested by the City.

**Subd. 2. Licensee As Responsible Party**. Every licensee and the responsible party named in the license application shall be responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee and the responsible party, and the licensee and the responsible party shall be liable for all penalties provided by this ordinance and the law equally with the employee. In particular, every licensee is responsible for the conduct of the place of business and the conditions of sobriety of each person and order in it.

**Subd. 3. Compliance and Inspection**. Every licensee shall allow any peace officer, health officer, City employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect, and search the premises of the licensee during business hours and after business hours at any time a person remains on the premises without a warrant. The licensee shall provide the

City with business records, tax records or other data as requested, and shall provide a copy of periodic and annual sales tax returns to the City within 14 days of their due date to the State. The licensee shall reply to any data request by the City within 14 days.

**Subd. 4. No Display of Liquor**. No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

**Subd. 5. Financial Responsibility**. Compliance with financial responsibility requirements of state law and of this ordinance is a continuing condition of any license.

**Subd. 6. Food Service**. Any establishment holding an on-sale liquor license must provide food service to its patrons anywhere on the premises where alcohol is present or served. For the purpose of this section "food service" means a licensed restaurant which shall provide sandwiches, pizza, hamburgers, hot dogs, chicken wings or other principal food items, as approved by the City. Food items such as popcorn, peanuts, chips, pretzels, and other snack foods would not be considered food items.

**Subd. 7. Promotions**. Any establishment holding an on-sale liquor license may not have promotional sales or “specials” for the sale of intoxicating beverages after 10:00 p.m. After 10:00 p.m., each intoxicating beverage offered for sale by the licensee must be sold at the same established price each day of the week. Prohibited promotional activities include but are not limited to discounting the price of a beverage, increasing the quantity of a beverage sold for a given price, increasing the number of beverages sold at a given price, “two-for-one,” “happy-hour,” birthday specials or other promotional activity related to changing the price per quantity of intoxicating beverage sold. The prohibitions in this subdivision are intended to reduce over-serving intoxicating beverages to patrons and are not intended to interfere with the licensee’s right to set an established price for its products based on normal market forces such as cost of supply, labor or overhead.

**Subd. 8. Unlawful Activity**. Gambling or games of chance which dictate the price or quantity of a beverage are otherwise barred by law.

**Subd. 9. Restricted Persons**. Any establishment holding a general on-sale intoxicating liquor license may not allow the following persons to consume alcohol:

A. No person may consume alcohol until an employee of the establishment actually views valid age identification showing that they may legally consume alcohol. The licensed establishment may not serve alcohol to a person of any age who does not have valid age identification in their possession.

B. No person may provide alcohol for consumption to an obviously intoxicated person. A person is presumed to be obviously intoxicated when they have a

blood alcohol content of 0.20 or greater within two hours of consuming alcohol at the licensed establishment, or leaving the licensed establishment, whichever period is longer. It is not a defense to this condition that the obviously intoxicated person consumed alcohol before arriving at the licensed establishment. It is not a defense to this condition that alcohol was provided to the obviously intoxicated person by someone other than the licensee or employee of the licensee.

C. Any person who has a driver's license restricting the licensee from any use or consumption of alcohol.

D. Any person who has been ordered by a court to refrain from the use, possession or consumption of alcohol, or has been ordered to refrain from entering an establishment which serves alcoholic beverages.

E. The licensed establishment is presumed to know the status of such restricted persons set forth in subparagraphs (C) and (D) (above) when written notice has been sent to the licensee by the City, City Attorney, Police or other competent government official. The licensed establishment is required to post such notice(s) received pursuant to this paragraph in a conspicuous place such that all employees of the establishment may read the notice. Notice sent to the licensee via first class mail, email or fax is deemed sufficient notice under this paragraph.

**Subd. 10. Reporting Crime**. Any establishment holding a general on-sale liquor license is required to immediately report all crimes occurring on, or in the general vicinity of the licensed premises to law enforcement personnel.

**Subd. 11. Maintain Order.** Any establishment holding an on-sale liquor license is required to keep the peace and provide for the security of all persons and property on the premises of the establishment, and for all persons in the general vicinity of the establishment who have left the premises

**Subd. 12. Security**. Any establishment holding a general on-sale intoxicating liquor license must have dedicated and licensed trained security personnel on the premises.

A. Standards for Security. The licensee must provide for security of their establishment in a manner approved by the City. Unless otherwise approved by the City, the licensee must have security personnel on the premises from 5:00 p.m. until one-hour after the close of the establishment, and on the premises at such other times as necessary to keep the peace and provide security.

1) There shall be no less than one security guard on duty beginning at 5:00 p.m. Monday, Tuesday, Wednesday, and Sunday.

2) There shall be no less than two security guards on duty beginning at 5:00 p.m. Thursday, Friday and Saturday.

3) Notwithstanding the requirements above, there shall be no less than two security personnel on duty during any special event whereby it would be reasonably necessary to keep the peace and provide security. (i.e. Football games, bachelor parties, etc.)

B. These provisions are a minimum requirement and are subject to change by the City at any time during the license period as may be reasonable and prudent based on citizen complaints, or events or calls for emergency services related to the operation of the licensed establishment. The licensee shall be notified in writing of any change to these minimum requirements and shall have the right to demand a hearing before the Council related to any such changes.

C. Qualifications for Security Personnel. Unless otherwise approved by the City, security personnel must be a licensed Protective Agent or Private Detective pursuant to Minn. Stat. Section 326.338. Security personnel must not be an employee of the licensee and must be bonded and/or insured in the same manner as the licensee as set forth in this Chapter.

**Subd. 13. Transportation of Impaired Persons**. Any establishment holding a general on-sale intoxicating liquor license must provide transportation for any patron who has consumed alcohol on the premises, or who appears intoxicated. Unless conducted pursuant to a transportation plan approved by the City, the licensed establishment must arraign for transportation by an unimpaired driver and must pay for the transportation in an amount up to $10.00.

***SECTION 5.231. HOURS AND DAYS OF SALE.***

A. The hours of operation and days of sale shall be those set by M.S. § 340A.504, as it may be amended from time to time, except that the City Council may, by resolution or ordinance, provide for more restrictive hours than state law allows.

B. No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

C. No on-sale licensee shall permit any glass, bottle, or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool, or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.

D. No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

E. Any violation of any condition of this section may be grounds for revocation or suspension of the license.

***SECTION 5.232. MINORS ON PREMISES.***

A. No person under the age of 18 years shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person, host or dishwashing services in places defined as a restaurant, hotel, motel or other multi-purpose building serving food in rooms in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale.

B. No person under the age of 18 years may enter any room in a licensed establishment constituting the place in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale after 9:00 p.m., except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the premises where liquor is not sold.

***SECTION 5.233. CONTESTS OF PUGILISM PROHIBITED.***

**Subd. 1. Findings**. The City Council finds that it is in the best interests of public health, safety and general welfare of the people of the City that Boxing, Ultimate Fighting or more generally, contests involving pugilism or battery are prohibited as provided in this section within any licensed premises regulated under this chapter. This is to protect and assist the owner, operators and employees of the establishment, as well as patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol and violence. The Council especially intends to prevent any endorsement of assaultive behavior or activities likely to lead to the possibility of various criminal conduct, including assault, battery, threatening behavior, disorderly conduct, or public nuisance. The Council also finds that the prohibition of contests involving pugilism or battery on the premises of any establishment licensed under this chapter reflects the prevailing community standards of the City. The City Council finds that it is in the best interests of enforcing its liquor ordinances and policing establishments which can serve intoxicating beverages that this prohibition shall also apply to non-alcoholic events occurring within a licensed premises regulated under this chapter.

**Subd. 2. Unlawful Acts**. It shall be unlawful for any contest or act of pugilism, battery or Ultimate Fighting to occur within a licensed premises regulated under this chapter.

**Subd. 3. Violations**. A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or beer license, or the imposition of a civil penalty under the provisions of this chapter.

***SECTION 5.234. NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.***

A. The City Council finds that it is in the best interests of the public health, safety, and general welfare of the people of the city that nudity is prohibited as provided in this section on the premises of any establishment licensed under this ordinance. This is to protect and assist the owners, operators, and employees of the establishment, as well as patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Council especially intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct, including prostitution, sexual assault, and disorderly conduct. The Council also finds that the prohibition of nudity on the premises of any establishment licensed under this ordinance, as set forth in this section, reflects the prevailing community standards of the city.

B. It is unlawful for any licensee to permit or allow any person or persons on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material. It is unlawful for any person to be on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material.

C. A violation of this Chapter is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or any other license issued under this Chapter. Penalties associated with criminal prosecution are separate and distinct from any license action which may be taken by the City.

***SECTION 5.235. RAFFLES, SILENT AUCTIONS AND FUND RAISING EVENTS FOR CHARITABLE PURPOSES OF WINE, BEER OR INTOXICATING LIQUORS.*** No person shall conduct a silent auction, raffle of other fund raising event pursuant to Minn. Stat. § 340A.707 with prizes or awards of wine, beer or intoxicating liquors without notifying the City Clerk of the event at least ten days prior to the occurrence of the event. The event holder shall provide the City with the following information: the person or organization holding the event, the date, time and location of the event, type of fund raising event (silent auction, raffle or otherwise), type and amount of wine, beer, intoxicating liquor to be awarded as prizes, and the charitable purposes to which the event proceeds will be donated.

***SECTION 5.236 THROUGH 5.239, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.240. CONSUMPTION IN PUBLIC PLACES***. No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley where the public has access, or in any public place other than on the premises of an establishment licensed under this ordinance, or where the consumption and display of liquor is lawfully permitted.

***SECTION 5.241 THROUGH 5.259, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.260. PENALTIES***.

**Subd. 1**. The Council shall sanction the licensee upon finding the licensee failed to comply with any applicable statute, regulation, or provision of this ordinance relating to liquor. The sanctions available to the Council include revocation of the license, suspension of the license for up to sixty-days, and/or a civil penalty of up to $2,000.00. The Council may also impose additional restrictions or conditions on a license. Except in cases of lapse of proof of financial responsibility or conditions which immediately void a license, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. §§ 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

**Subd. 2**. The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this Chapter or M.S. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time:

A. For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of the prohibitions against nudity on the licensed premises, the license shall be revoked.

B. A finding that the licensee has failed to comply with any applicable statute, rule, or provision of this ordinance will subject the licensee to the following administrative penalties:

| Type of License | 1st Violation | 2nd Violation | 3rd Violation | 4th Violation |
|---|---|---|---|---|
| On-sale intoxicating | $1000 and up to 3 days | $1500 and up to 5 days | $2000 and up to 10 days | Revocation |
| On-sale restaurant | $500 and up to 3 days | $1000 and up to 5 days | $1500 and up to 10 days | Revocation |
| On-sale beer, wine, or brew pub | $250 and up to 3 days | $500 and up to 5 days | $1000 and up to 10 days | Revocation |
| All other licenses | $500 and up to 3 days | $1000 and up to 5 days | $1500 and up to 10 days | Revocation |

C. The Council may select the day or days during which the license will be suspended. The days of suspension shall be consecutive.

**Subd. 3. Immediate Suspension**. Conditions which effect an immediate suspension of a license pursuant to this ordinance or state law occur without further action of the Council. Failure to pay a civil penalty by the date set by the Council shall effect an immediate suspension of the license. Lapse of required proof of financial responsibility shall effect an immediate suspension of the license. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Clerk, a hearing before the Council shall be granted at the next regularly scheduled Council meeting. Any suspension under this Section shall continue until the Council determines that the financial responsibility requirements of state law and this ordinance have again been met.

**Subd. 4.** The term "violation" as used in this Section includes any and all violations of the provisions in this section, or of M.S. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three-year period, and include any violation which may have occurred under the license ordinance in effect prior to the adoption of this ordinance. License revocation or suspension shall occur no later than 60 days following a violation for which such a sanction is warranted or imposed unless a shorter period is specified by law. Any person violating the provisions of this ordinance or M.S. Ch. 340A as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time is guilty of a misdemeanor and upon conviction shall be punished as provided by law. License action pursuant to this Chapter does not bar criminal prosecution.

***SECTION 5.261 THROUGH 5.269, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 5.270. EXISTING MUNICIPAL STORES CONTINUED.*** The City has in existence on the effective date of this ordinance a municipal liquor store for the sale of intoxicating liquor. The operation of this municipal liquor store is continued. Except as specifically provided in the Code, no intoxicating liquor may be sold at retail elsewhere in the City.

***SECTION 5.271. OPERATION.***

**Subd. 1. Manager**. The municipal liquor store shall be in the immediate charge of a Liquor Store Manager, and who shall report to the City Administrator. The Manager shall not be a person who would be prohibited by law or any provision of this ordinance from being eligible for an intoxicating liquor license. The Manager shall furnish a surety bond to the City, conditioned upon the faithful discharge of the duties of the office, in a sum as specified by the Council. The bond premium may be paid by the City or the Manager, in the discretion of the Council. The Manager shall operate the municipal liquor store under the Council's direction and shall perform those duties in connection with the store as may be established by the Council. The Manager shall be responsible to the Council for the conduct of the store in full compliance with this ordinance and with the laws relating to the sale of intoxicating liquor and 3.2 percent malt liquor.

**Subd. 2. Other Employees**. No person under the age of 18 shall be employed in the store. The Council may require the employees to furnish surety bonds conditioned for the faithful discharge of their duties in a sum as specified by the Council. The premium on the bond may be paid by the City or the employees, as the Council determines.

**Subd. 3. Municipal Liquor Store Fund**. All of the revenue received from the operation of a municipal liquor store shall be deposited in a municipal liquor store fund from which all ordinary operating expenses, including compensation of the Manager and employees, shall be paid. Surpluses accumulating in the fund may be transferred to the general fund of the City or to any other appropriate fund of the City by resolution of the Council, and may be expended for any City purpose. The handling of municipal liquor store receipts and disbursements shall comply with the procedure prescribed by law and charter for the receipts and disbursements of city funds generally.

# CHAPTER 6

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# CHAPTER 6

# OTHER BUSINESS REGULATION AND LICENSING

***SECTION 6.01. DEFINITIONS***. As used in this Chapter, the following words and terms shall have the meanings stated:

A. **"Applicant"** - means any person making an application for a license under this chapter.

B. **"Application"** - means a form with blanks or spaces thereon, to be filled in and completed by the applicant as his/her request for a license, furnished by the City and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

C. **"Bond"** - means a corporate surety document in the form and with the provisions acceptable and specifically approved by the City Attorney.

D. **"Business"** - means any activity, occupation, sale of goods or services, or transaction that is either licensed or regulated, or both, licensed and regulated, by the terms and conditions of this Chapter.

E. **"License"** - means a document issued by the City to an applicant permitting him/her to carry on and transact a business.

F. **"Licensee"** - means an applicant who, pursuant to his/her application, holds a valid, current, unexpired and unrevoked license from the City for carrying on a business.

G. **"License Fee"** - means the money paid to the City pursuant to an application and prior to issuance of a license to transact and carry on a business.

H. **"Sale", "Sell" and "Sold"** - means all forms of barter and all manner or means of furnishing merchandise to persons.

***SECTION 6.02. LICENSE APPLICATIONS – PROCEDURE AND ADMINISTRATION.***

**Subd. 1. General Application Requirements.** All activities licensed by the City are subject to the application process and requirements set forth in this Section, and as supplemented by other Sections of this Code or as otherwise required by law. All applications shall be made at the office of the City Clerk upon forms prescribed by the City, or if by the State of Minnesota, then together with such additional information as the Council may desire. Information required may vary with the type of business organization or person making application. All questions asked or information required by during the application process shall be answered fully and

truthfully by the applicant. The Council has determined that a comprehensive background investigation is necessary for of each applicant. Such an investigation must be performed during the initial application process and may be performed anytime during the pendency or renewal of a license. A licensee shall allow the City to examine its records or other data in its possession or control in order to verify or investigate owners of a business or other information related to licensure. Each person or business named in or as part of this application shall execute a written authorization allowing the city and/or the Chief of Police to verify all information disclosed as part of the application.

**Subd. 2. False Statements**. It is unlawful for any applicant to make a false statement or willful omission in any application form or document, or to any inquiry or assertion made during the application process. A license application or license is rendered void at the moment such false statement or willful omission is made, whether or not it is discovered by the City. A voided license application or licensee's not cured by a subsequent grant of license renewal or amendment by the City, nor does it protect the applicant or licensee from prosecution or civil penalties for violation of law or operating without a valid license. Upon discovery of such false statement or willful omission a license application or license is revoked effective immediately upon notice to the applicant or licensee.

**Subd. 3. Fees.**

A. Application Fees. At the time of the initial application or license renewal, an applicant for each license type set forth in this Code shall pay the City a separate application fee as established by the Council.

B. Investigation Fees. A the time of an initial application, license renewal or at any time during the pendency of a license the City may conduct a background investigation of each applicant. The applicant shall pay an investigation fee as established by Council. Should the City's investigation costs exceed the scheduled fee, the applicant shall reimburse the City for its actual costs to conduct the background investigation. During initial and renewal applications this fee is due before an application will be processed by the City.

**Subd. 4. License Action**.

A. Granting. All licenses shall be issued on an annual basis as specified by each license type. The Council may approve a license application for a remaining period of the annual license year or for the entire ensuing license year. Prior to consideration of any application for a license, the applicant shall pay the license fee, and if applicable, pay the investigation fee.

B. Issuing. If an application is approved, the City Clerk shall forthwith issue a license pursuant thereto in the form prescribed by the City or the property

agency of the State of Minnesota, as the case may be. For licenses issued and which are to become effective other than on the first day of the license year, the fee to be paid with the application shall be valid only at one location and on the premises therein described.

C. Refundment. Fees are paid in full and not subject to a refund unless otherwise specified by statute. A quarterly pro-rata share of an annual license fee shall be paid for any license approved for a period of less than one year.

D. Transfer. No license shall be transferable between persons without prior consent of the Council and payment of the investigation fee. No license shall be transferable to a different location without prior consent of the Council and payment of the fee for a duplicate license or other costs related to investigation of the transfer.

E. Refusal and Termination. The Council may, in its sole discretion and for any reasonable cause, refuse to grant any application. The City shall only terminate a license by expiration or revocation. A licensee may terminate a license by failure to adhere to lawful requirements or by voluntary cancellation.

F. Fine, Suspension or Revocation. The Council may, in its sole discretion and for any reasonable cause, proscribe a civil penalty not to exceed $2,000.00 or suspend for a period not to exceed sixty days, any license granted under the provisions of this chapter. The Council may, in its sole discretion and for any reasonable cause, revoke any license granted under the provisions of this chapter. These penalties are independent from any criminal prosecution.

G. Right to Hearing. No civil fine, suspension or revocation shall take effect until the licensee has afforded an opportunity for a hearing before the Council, a committee of the Council, or a hearing examiner, or as may be determined by the Council in action calling the hearing. Such hearing shall be called by the Council upon written notice to the licensee served in person or by certified mail not less than fifteen days prior to the hearing date, stating the time, place and purpose thereof.

**Subd. 5. Business Applicants & Licensees**.

A. Business Ownership. An application for a license to be used by a business entity shall disclose all owners which have a beneficial interest in the business. It is presumed that any entity owning 5% or more of the business owns a beneficial interest. A business applicant must furnish the City with a list of all entities which own a beneficial interest and describe the extent of such interest. The list shall name all such owners, show the number of shares or percentage of ownership held by each, either individually or beneficially for others.

B. Report Change of Ownership. It is the duty of each business licensee to notify the Clerk of any change in legal ownership, beneficial interest or voting control in such corporation. Such notification is required for any corporation, partnership, limited liability corporation, trust, sole proprietorship, or any other form of business ownership. A transfer of stock or ownership of a beneficial interest of a business holding a license is deemed a transfer of the license, and transfer without prior approval of the City Council renders the license void. An application to transfer a license shall be provided to the City Clerk at least 90 days prior to the proposed transfer and shall be treated the same as an application for a new license. A transfer of ownership or beneficial interest in the type of shares entitled to vote at a meeting of the shareholders of a corporate licensee, which results in the change of voting control of the corporation by the persons owning the share(s) therein, shall be deemed equivalent to a transfer of the license issued to the corporation, and any such license shall be revoked thirty days after any such change in ownership or beneficial interest of shares unless the Council has been notified of the change in writing and has approved under the same standards as an application for a new license.

**Subd. 6. Duplicate Licenses.** Duplicates of all original licenses under this Chapter may be issued by the Clerk without action by the Council, upon licensee's affidavit that the original has been lost, and upon payment of a fee as established by the Council for issuance of the duplicate. All duplicate licenses shall be clearly marked DUPLICATE.

**Subd. 7. Posting**. All licensees shall conspicuously post their licenses in their places of business. If the licensee does not have a place of business the licensee shall conspicuously display the license on or about their person.

**Subd. 8. Agent**. Before a license is issued to an individual or to any business, corporation, partnership, or association, the applicant or applicants shall appoint in writing a natural person as its manager or agent. Such resident manager or agent shall, by the terms of his/her written consent, (1) take full responsibility for the conduct of the licensed premises, and, (2) serve as agent for service of the notices and other process relating to the license. Such manager or agent must be a person who, by reason of age, character, reputation, and other attributes, could qualify individually as a licensee.

**Subd. 9. Persons Disqualified**. No license may be issued, transferred, or renewed if the results of any investigation show, to the satisfaction of the Council, that such issuance, transfer, or renewal would not be in the public interest. It is presumed that is not in the public interest to issue a license to any person or any establishment owned (in whole or in part) to a disqualified person. The criteria of qualified and disqualified persons will vary depending on the type of license, and the Council shall set forth such criteria as it shall deem appropriate.

**Subd. 10. Delinquent Taxes and Charges**. Any license issued by the City is voided whenever taxes, assessments, or other financial responsibilities to the City or other government institution are delinquent or unpaid, either in whole, in part, or by failure to pay an installment by the licensee or related to a licensed premises.

***SECTION 6.03, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 6.04. FIXING LICENSE FEES***. Except as otherwise herein provided, all fees for licenses, late fee penalties, and investigation of applicants under this Chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such license fees may, from time-to-time, be amended by the Council by resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the Clerk, and open to inspection during regular business hours. For the purpose of fixing such fees, the Council may subdivide and categorize licenses under a specific license requirement, provided, that any such subdivision or categorization shall be included in the resolution authorized by this Section.

***SECTION 6.05. CARRYING OR POSTING***. All solicitors shall at all times when so engaged, carry their license on their person. All other licensees shall post their licenses in their place of business near the licensed activity. Provided, however, that in the case of machine or other device licensing, the City may provide a sticker for the current license year which shall be affixed to each machine or device requiring such sticker. All licensees shall display their licenses upon demand by any officer or citizen.

***SECTION 6.06. PENALTY FOR PROPERTY OWNER***. It is unlawful for any person to knowingly permit any real property owned or controlled by him/her to be used, without a license, for any business for which a license is required by this Chapter.

***SECTION 6.07. RESPONSIBILITY OF LICENSEE***. The conduct of agents or employees of a licensee, while engaged in performance of their duties for their principal or employer under such license, shall be deemed the conduct of the licensee.

***SECTION 6.08. CONDITIONAL LICENSES***. Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefore, place such conditions and restrictions upon a license as it, in its discretion, may deem reasonable and justified.

***SECTION 6.09. RENEWAL OF LICENSES***. Applications for renewal of all licenses shall be made at least 90 days prior to the date of expiration of the license, and shall contain such information as is required by the City. This time requirement may be waived by the Council for good and sufficient cause. The decision whether

or not to renew a license rest within the sole discretion of the Council. No licensee has a right to have a renewed license.

***SECTION 6.10. INSURANCE REQUIREMENTS.*** Whenever insurance is required by a Section of this Chapter, after approval by the Council, but before the license shall issue, the applicant shall file with the Clerk a policy or certificate of public liability insurance showing (1) that the limits are at least as high as required, (2) that coverage is effective for at least the license term approved, and (3) that such insurance will not be cancelled or terminated without thirty days' written notice served upon the Clerk. Cancellation or termination of such coverage shall be grounds for license revocation.

***SECTION 6.11. LICENSE DENIAL AND FIXING RATES – HEARING***.

**Subd. 1. Right to Deny**. The Council reserves to itself the right to deny any application for a license to operate any business licensed or regulated under this Chapter where such business involves service to the public, rates charged for service, use of public streets or other public property by the applicant or the public, or the public health, safety and convenience. The Council may also consider the location of such business in making such determination. Provided, however, that before making such determination, the Council shall hold a public hearing thereon pursuant to such notice to interested parties and the public as it may deem necessary or proper in action calling for such hearing.

**Subd. 2. Rates**. Where, under specific provisions of this Chapter, the Council has reserved to itself the right to fix or approve fees, rates or charges of a licensed or regulated business, such rates shall be uniform for each category or class of service, and no licensee or proprietor of a regulated business shall claim or demand payment in excess thereof.

**Subd. 3. Hearing**. Any applicant or licensee under this Chapter who challenges denial of a license or rates fixed or approved by the Council shall have a right to a hearing before the Council upon written request therefore. Notice of time, place and purpose of such hearing shall be given to such persons and by such means as the Council may determine in calling the hearing.

***SECTIONS 6.12 THROUGH 6.29, INCLUSIVE, RESERVED FOR FUTURE EXPANSION***.

***SECTION 6.30. AMUSEMENT DEVICES***.

**Subd. 1. Definitions**. The following terms, as used in this Section, shall have the meanings stated:

A. **"Game of Skill" -** Any device excepting pool and billiard tables, bowling alleys and shooting lanes, but including miniatures thereof, played by

manipulating special equipment propelling balls or other projectiles across a board or field into respective positions whereby a score is established, which is available to be played by the public generally at a price paid either directly or indirectly for such privilege.

B. **"Coin Amusement"** - Any machine which upon the insertion of a coin, token or slug, operates or may be operated and is available to the public generally for entertainment or amusement, which machine emits music, noise or displays motion pictures. This definition shall not apply to coin-operated music boxes, more commonly known as "jukeboxes".

C. **"Video Game"** - Any electrical device which displays objects on a screen and upon insertion of a coin, token or slug may be played by the public generally for entertainment or amusement.

D. **"Amusement Device"** - includes a game of skill, a coin amusement, or a video game, as defined in this Subdivision, or any combination thereof, and includes devices designed for and used exclusively as rides by children, such as, but not limited to, kiddy cars, miniature airplanes, mechanical horses, and other miniature mechanical devices not operated as a part of or in connection with any carnival, circus, show, or other entertainment or exhibition.

E. **"Amusement Center"** - A contiguous area in which more than five (5) amusement devices are kept for use by the public generally. Provided, however, that liquor establishments are excluded from this definition.

**Subd. 2. License Required**. It is unlawful for any person to keep or maintain an amusement device for use by the public, or operate an amusement center, without first having obtained a license therefore from the City. Prior to issuance of an amusement center license, the application shall be presented to the Planning Commission for recommendations in connection with the issuance of a special use permit.

**Subd. 3. Exception**. This Section shall not apply to video games of chances under the control of the Charitable Gambling Board.

**Subd. 4. Insurance Required**. If the application is for an amusement center, liability insurance with limits of $100,000.00 for one person or $300,000.00 for one occurrence shall be provided.

**Subd. 5. License Restrictions and Regulations**.

A. The license may be transferred from one amusement device to another similar amusement device if the licensed device is replaced with a newly acquired amusement device.

B. Not more than one amusement device shall be operated under one license and the licensee shall be required to secure a license for each and every amusement device displayed or operated by him/her.

C. No amusement device shall be located, placed, maintained or operated on any street or other public property.

D. No amusement device shall be operated so as to constitute a public nuisance.

E. No licensee shall permit an amusement device to be used for gambling or for the making of bets or wagers.

**Subd. 6. Amusement Center Restrictions and Regulations**.

A. Neither amusement center nor any amusement device therein shall be operated so as to constitute a public nuisance.

B. It shall be the responsibility of the licensee to see that the licensed premises do not become overcrowded so as to constitute a hazard to health or safety of persons therein. The Fire Chief may designate the maximum number of persons to be permitted on the licensed premises.

C. The licensee shall provide a full-time adult attendant upon the licensed premises during business hours.

D. It is unlawful for any person engaged in the business of operating an amusement center to sell, offer for sale, or knowingly permit to be sold or offered for sale or to be dispensed or consumed or knowingly brought on the licensed premises any alcoholic beverages, or narcotic drugs, or to knowingly allow any illegal activity upon the licensed premises.

E. Every licensed amusement center shall have affixed on its premises in plain view a decal evidencing the issuance of its license and each machine on the licensed premises shall have affixed to it a plate or sticker evidencing its being licensed under this Section.

F. The license required and described in this Section shall be purely a personal privilege and shall not constitute property. It is not transferable in any manner.

G. Licensed premises shall be closed at 12:00 o'clock midnight each night and not open until 9:00 o'clock A.M. on weekdays or until 12:00 o'clock noon on Sunday.

H. The licensee shall enforce the curfew and truancy laws, and ensure that no minors of school age are allowed to be on the premises during school hours that should otherwise be in school.

I. Unlawful Use and Devices. It is unlawful for any person to: (1) sell or maintain a machine or device which is for gambling or contains an automatic pay-off device; (2) give any prize, award, merchandise, gift, or thing of value to any person on account of operation of such device; (3) sell or maintain, or permit to be operated in his/her place of business, any amusement device equipped with an automatic pay-off device; or, (4) equip any amusement device with an automatic pay-off device.

***SECTION 6.31. ENTERTAINMENT LICENSE.***

**Subd. 1. Definitions**. As used in this Section, the following words and terms shall have the meanings stated:

**A.** Entertainment Event: Any public or private gathering for a commercial purpose where sound is amplified, or where live music, theater or other public oration occurs.

**B.** Annual Entertainment License: An annual license authorizing entertainment events for a single establishment, licensed establishment, or individual business unit at a single address in the City, and as contained within an authorized structure as defined in Chapter 11.

**C.** Special Event Entertainment License: A license authorizing entertainment event(s) at a specific location in the City, and for a specific period of days not to exceed three (3) consecutive days. This license is necessary for any entertainment event not specifically authorized by an annual entertainment license.

**Subd. 2. License Required.** It is unlawful to hold an entertainment event, or to maintain sound amplifying equipment outside of a structure, except under an entertainment license from the City. No license shall be required in the following instances:

**A.** Events presented in local schools and colleges, or under the sponsorship of such schools and colleges, and primarily for the students thereof only.

**B.** Athletic, musical or theatrical events sponsored by local schools or colleges using student talent only.

**C.** Events at private homes that do not otherwise meet the requirements of an entertainment event.

**D.** Recitals presented in local businesses such as Dance Studios, Music Studios, etc., where the students, parents and/or instructors are providing the performance.

**E.** Services held on the grounds of churches or religious organizations.

**F.** Athletic events held in City parks and subject to park rules and regulations.

**Subd. 4. Application and License.** Notwithstanding other provisions in the Code of Ordinances, the follow provisions apply as a condition of maintaining a license under this section:

**A.** No entertainment license shall be issued to any applicant under the age of eighteen (18) years.

**B.** No entertainment license is valid until approved by the Council and the appropriate fees are paid to the City.

**C.** Licenses are valid only for the date(s) specified on the license. Annual licenses are valid from July 1st through June 30th of the following year, or pro rata from the date granted through June 30th.

**D.** Granting of an entertainment license does not waive enforcement of a city ordinance unless specifically indicated on the license. The city does not have the authority to waive enforcement of a state or federal law or regulation.

**E.** A proposed site security and parking plan must be submitted to the Police and Fire Department as part of license application pursuant to this Chapter. A final plan must submitted to these Departments no less than forty-five (45) days prior to issuing the license.

**F.** During the entertainment event, the approved site security and parking plan must be conspicuously posted and otherwise available to the Police and Fire Departments.

**G.** The Police or Fire Departments have the right to conduct inspections pursuant to this Chapter. They may inspect the premises of an entertainment event, and all property therein. They may do so at any time without a warrant for purposes of evaluating a pending license application, or for any reason once a license is issued pursuant to this Chapter. Failure to allow immediate access to the premises for inspection immediately voids the license or pending application. Licensee is responsible for ensuring compliance with this provision for any of its employees, contractors, agents and all other persons related to the operation of the entertainment event.

**H.** The Police or Fire Departments have the right to immediately suspend any entertainment event or any provision within an entertainment license if they have reason to believe a violation of law has occurred, if a condition of the license has not been met, or for reasons they deem to be in the best interest of public safety or security. Under these limited conditions, no licensee has the right to a hearing before the suspension occurs.

**I.** The Council shall act upon all entertainment license applications at a regular meeting within sixty (60) days of the completed application and fee being received at by City staff. Inaction by the Council within this period is a denial of the application.

**Subd. 5. Entertainment Event Regulations.**

A. Sound Level: Sound from a licensed entertainment event must meet the following conditions:

   a. Sound measured at fifty (50) feet from the source shall not exceed ninety (90) dB(A).

   b. Sound measured off the property where the equipment is allowed under the license shall never be more than fifteen (15) dB(A) above the ambient noise level.

B. Hours Of Operation For Licensed Entertainment Events: Sound from an entertainment event may occur between the hours of 9:00 a.m. and 9:00 p.m. unless otherwise approved by the Council and specified in the license.

C. Entertainment Event Security:

1. Security shall be hired by Licensee.

2. All security personnel shall wear uniforms clearly indicating that they are security for the event (i.e. identifiable uniform colors; security logo located on front and back).

3. Outdoor events require two (2) security personnel for every fifty (50) patrons. For all other events, the police department shall determine the level of security based on the type of event.

4. Licensee must have an approved security plan from the police department before an entertainment license shall be issued by City staff.

D. Parking: All events must have adequate and clearly marked parking subject to a parking plan approved by the City. Unless otherwise provided by existing

signage, licensee shall clearly mark all parking with approved signs and provide adequate personnel hired by the licensee for parking enforcement.

E. Obscenity: All events under this Chapter shall not contain obscene acts and shall fully conform to the provisions found in Chapter 11.35 regulating adult oriented business and adult uses even if the event or its actors are not a business or the acts do not occur in an establishment regulated by that section.

**Subd. 6. License Revocation.**

**A.** At the sole discretion of the City Council or its appointed hearing officer, an entertainment license may be suspended, revoked or cancelled pursuant to Section 6.02, subd. 5, or for the specific conditions found in this Chapter. Reasons for revocation include but are not limited to citizen complaints related to noise, parking, disorderly conduct or other related violations at the establishment. Except in cases of a license suspension enforced by the Police Department or Fire Department as set forth above, no other suspension, revocation or cancellation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. §§ 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may appoint a hearing officer to fulfill its duties.

**B.** If a license is revoked or voided, another license shall not be issued for a twelve (12) month period.

**C.** If a license is revoked or voided, license fees will not be refunded. Under any circumstances, fees for performing background checks or investigations will not be refunded.

***SECTION 6.33. TOBACCO.***

**Subd. 1. Definitions.** As used in this section, the following terms are defined as follows:

A. **"Tobacco or Tobacco Products"** - Tobacco or Tobacco products shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco, cheroots; stogies; perique; granulated plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos, refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.

B. **"Tobacco Related Devices"** - Tobacco related devices shall mean any tobacco product as well as a pipe, rolling papers or other device intentionally

designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.

C. **"Self-Service Merchandising"** - Self-Service Merchandising shall mean open displays of tobacco, tobacco products or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products or tobacco related devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

D. **"Vending Machines"** - Vending Machine shall mean any mechanical, electric or electronic or other type of device which dispenses tobacco, products, or tobacco related devices upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product or tobacco related device.

E. **"Individually Packaged"** - Individually packaged shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packing of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

F. **"Loosies"** - Loosies shall mean the common term used to refer to a single or individually packaged cigarette.

G. **"Minor"** - Minor shall mean any natural person who has not yet reached the age of eighteen (18) years.

H. **"Retail Establishment"** - Retail establishment shall mean any place of business where tobacco, tobacco products or tobacco related devices are available for sale to the general public. Retail establishment shall include, but not be limited to, grocery stores, convenience stores and restaurants.

I. **"Moveable Place of Business"** - Moveable Place of Business shall refer to any form of business operated out of a truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

J. **"Sale"** - A sale shall mean any transfer of goods for money, trade, barter or other consideration.

K. **"Community Service"** - Community Service shall mean a service that provides assistance to the community. Community service shall have a reparative element which enables offenders to actually, and symbolically, pay back a debt to the community.

**Subd. 2. License Required.** No person shall sell or offer to sell any tobacco, tobacco products or tobacco related device without first having obtained a license to do so from the City.

A. Application for License. An application for a license to sell tobacco, tobacco products or tobacco related devices shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the City deems necessary. Upon receipt of completed application, the City Administrator shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the Administrator shall determine that an application is incomplete, he or she shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

B. Action. The Council may either approve or deny the license, or it may delay action for a reasonable amount of time to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the Clerk shall issue the license to the applicant. If the Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the Council's decision.

C. Term All licenses issued under this ordinance will expire December 31st of the year the license was purchased.

D. Suspension or Revocation. Any license under this ordinance may be revoked or suspended as provided in Section 350.06.

E. Transfers. All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the Council. The licensee shall not be entitled to a refund of the license fee upon revocation or voluntarily ceasing the licensed activity.

F. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

G. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but no more than sixty days before the expiration of the current license. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

**Subd. 3. Fees.** No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. the fee for a license under this ordinance shall be found in Section 350.09.

**Subd. 4. Basis for Denial of License**. The following shall be grounds for denying the issuance or renewal of a license under this ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the City must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section:

A. The applicant is under the age of 18 years.

B. The applicant has been convicted within the past five years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products or tobacco related devices.

C. The applicant has had a license to sell tobacco, tobacco products or tobacco related devices.

D. The applicant fails to provide any information required on the application, or provide false or misleading information.

E. The applicant is prohibited by Federal, State or other local law, ordinance or other regulation, from holding such a license.

**Subd. 5. Prohibited Sales**. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product or tobacco related device:

A. To any person under the age of eighteen (18) years.

B. By means of any type of vending machine, except as may otherwise be provided in this ordinance.

C. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco products or tobacco related devices and whereby there is not a physical exchange of tobacco, tobacco products or

tobacco related device between the license or the licensee's employee and the customer.

D. By means of loosies as defined in Section 345.01, Subd. 06 of this ordinance.

E. Containing opium, morphine, jimson weed, belladonna, strychnos, cocaine, marijuana or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.

F. By any other means, to any other person, or in any other manner or form prohibited by Federal, state or other local law, ordinance provision or other regulation.

**Subd. 6. Vending Machines.** It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

**Subd. 7. Self-Service Sales.** It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products or tobacco related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco products or the tobacco related devices between the licensee or his or her clerk and the customer. All tobacco, tobacco products and tobacco related devices shall either be stored behind a counter or other area, not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products or tobacco related devices at the time this ordinance is adopted shall comply with this Section within 180 days. Self-service sales restriction shall not apply to retail stores which derive at least 90% of their revenue from tobacco and tobacco related products and which cannot be entered at any time by persons younger 18 years of age.

**Subd. 8. Responsibility.** All licenses under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco related devices on the licensed premises and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, State or federal law, or other applicable law or regulation.

**Subd. 9. Other Illegal Acts.** Unless otherwise provided, the following acts shall be a violation of this ordinance.

A. Illegal Sales. It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product or tobacco related device to any minor.

B. Illegal Possession. It shall be a violation of this ordinance for a minor to have in his or her possession any tobacco, tobacco product or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

C. Illegal Use. It shall be a violation of this ordinance of any minor to smoke, chew, sniff or otherwise use any tobacco product, or tobacco related device.

D. Illegal Procurement. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

E. Use of False Identification. It shall be a violation of this ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

F. Activity Inside Retail Establishments. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products is prohibited.

**Subd. 10. Violations**.

A. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

B. Hearings. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

C. Hearing Officer. The Council shall serve as the hearing officer.

D. Decision. If the hearing officer determines that a violation of this ordinance did occur, the decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 345.13 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

E. Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court of the city in which the alleged violation occurred.

F. Criminal Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution for any alleged violation of this ordinance.

G. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

**Subd. 11. Penalties**.

A. Licensees and Employees. Any licensee, and any employee of a licensee, found to have violated this ordinance shall be charged an administrative fine of $200 for a first violation of this ordinance; $500 for a second offense at the same licensed premises within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

B. Other Individuals. Other individuals, other than minors regulated by Subdivision 3 of this Subsection, found to be in violation of this ordinance shall be charged an administrative fee of $100.

C. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products or tobacco related devices shall be charged an administrative fee of $25.00 and will be subjected to 20 hours of community service.

D. Criminal Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution for any violation of this ordinance.

**Subd. 12. Exceptions and Defenses**. Nothing in this ordinance shall prevent the providing of tobacco, tobacco products or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

**Subd. 13. Severability and Savings Clause**. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a

court of competent jurisdiction, that finding shall not serve as a validation or effect the validity and enforceability of any other section or provision of this ordinance.

**SECTION 6.34. SOLICITORS.**

**Subd. 1. Purpose**. This Section is not intended to in any way hinder, delay or interfere with legitimate business or organizational activities. The Council finds, however, that solicitors have used public streets and their direct contact with residents of the City for the illegitimate solicitation practices of harassment, nuisance, theft, deceit, or menacing, troublesome or unlawful activities. This Section is intended to ferret out and control (1) businesses and organizations using solicitation as a means of concealing unlawful activities; and, (2) businesses and organizations which, though its activities are lawful or even commendable, use such illegitimate practices in solicitation; and, (3) individual natural persons who, though they represent lawful businesses and organization, use such illegitimate solicitation practices. The Council further finds that a large number of the residents of the City are employed as their livelihood and means of support by manufacturing plants and other businesses on shifts rotating between night and day, and to disturb them during their sleeping hours for the purpose of solicitation is a source of nuisance or even harassment and should be subject to control.

**Subd. 2. Definitions.** The following terms, as used in this Section, shall have the meanings stated:

A. **"Solicitor"** - means any person making the solicitation, including such common terms as "peddler", "transient merchant" and "canvasser".

B. **"Solicitee"** - means the person solicited.

C. **"Goods"** - means any tangible thing of value, but not including money, things in action or intangible personal property other than merchandise certificates or coupons as herein described. The term includes such chattels as are furnished or used at the time of sale or subsequently in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable there from. The term also includes merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.

D. **"Services"** - means work, labor, or services of any kind.

E. **"Established Place"** - means real estate in the City owned, leased on a month-to-month or term-certain longer than thirty (30) days. The term includes a booth, compartment, or area leased or assigned during and for the length of an event or occasion.

F. **“Business Solicitation”** - means an attempt by a solicitor, engaging in transactions of the same kind, to sell or distribute for a consideration any goods or services primarily for personal, family, or household purposes, when either the solicitor or person acting for him/her contacts the solicitee by telephone or in person, other than at the established place of business of solicitor, except (1) an attempted solicitation in which the solicitee personally knows the identity of the solicitor, the name of the business firm or organization he/she represents, and the identity or kinds of goods, services or things of value offered; or, (2) an attempted solicitation in which the solicits has first initiated the contact with the solicitor; or, (3) an attempted solicitation of a newspaper subscription in which the solicitor is a minor child engaged in both the delivery and sale of the newspaper; or, (4) an attempted solicitation for the sale of products of a farm or garden occupied or cultivated by the solicitor, when facts of such occupancy or cultivation are proven by the solicitor.

G. **“Contribution Solicitation”** - means an attempt by a solicitor to obtain money from a solicitee for any cause or purpose, when either the solicitor or person acting for him/her contacts the solicits by telephone or in person other than at the established place of meeting, business, service, or activity of the organization represented by the solicitor, except: (1) an attempted solicitation in which the solicits personally knows the identity of the solicitor, the name of the organization he/she represents, and the identity of the services performed or offered by the organization, or, (2) an attempted solicitation in which the solicits has first initiated the contact with the solicitor or the organization represented by him.

**Subd. 3. Prohibited Solicitation Practices.**

A. It is unlawful for any solicitor to engage in solicitation for any unlawful business or organizational purpose or activity.

B. It is unlawful for any solicitor to practice harassment, nuisance, theft, deceit, or menacing, troublesome or otherwise unlawful activities during the course of solicitation.

C. It is unlawful for any solicitor to enter, or attempt to gain entrance, to residential premises displaying at such entrance a sign at least 3-3/4 inches long and 3-3/4 inches high with the words "Peddlers and Solicitors Prohibited" or "Solicitors Prohibited" in type not smaller than 48 point.

D. It is unlawful for any solicitor to refuse to leave any premises when requested by the owner, lessee, or person in charge thereof.

E. It is unlawful for any person to engage in contribution solicitation without completion of licensing or registration as herein provided.

F. It is unlawful for any person to engage in business solicitation without a license as herein provided.

**Subd. 4. Application.** Applications for licensing or registration shall contain the name and address of the solicitor, the name and address of the business or organization for which solicitations are sought and such other information as may reasonably be required by the Council as a condition to registration or licensing or to permit investigation into the applicant's background and past solicitation practices.

**Subd. 5. Investigation, Approval or Disapproval.**

A. All applications for licensing or registration shall be immediately referred to the Chief of Police, and by him/her or other person acting in his/her stead, investigated as to the truth thereof. The Chief of Police shall have five (5) business days within which to investigate and make a recommendation thereon.

B. If he/she finds no past history of the applicant indicating violations similar to those declared unlawful in this Section he/she shall recommend issuing a license or approving registration, as the case may be, and the Clerk shall forthwith advise the applicant. The Clerk shall issue a license, upon payment of the fee therefore, to the approved applicant for business solicitation, and shall approve the completion of registration by the applicant for a contribution solicitor.

C. If the Chief of Police finds a past history of the applicant indicating violations similar to those declared unlawful in this Section, he/she shall recommend denial of the license or registration. In all matters of recommended denial the applicant shall be forthwith advised thereof, and the application shall be referred to the Council and considered by it at its next regular or special meeting occurring more than ten (10) days thereafter. The applicant shall be afforded an opportunity to be heard at such meeting.

**Subd. 6. Duration of Contribution Solicitation Registration.** Registration of contribution solicitation shall expire sixty (60) days after registration is approved.

**Subd. 7. Exclusions**. The City may exclude certain classes of solicitor events from compliance with licensing or registration provisions of this Section. Provided, however, that such exclusion shall not extend to the prohibited solicitation practices set forth in Subdivision 3, Subparagraphs A through D, inclusive, of this Section.

***SECTION 6.35. GARBAGE AND REFUSE HAULERS***.

**Subd. 1. Definitions.** The following terms, as used in this Section, shall have the meanings stated.

A. **"Garbage"** - As used herein shall include only organic refuse resulting from the preparation of food and decayed and spoiled food from any source.

B. **"Rubbish"** - As used herein shall include all inorganic refuse matter, such as non-recyclable packaging, ashes, and sweepings.

C. **"Compost"** - As used herein shall include plant materials, such as grass, leaves, straw and non-woody plant materials stored on a person's property for the purposes of recycling organic materials as a soil conditioner.

D. **"Yard Waste"** - As used herein shall include leaves, grass clippings, organic garden waste, or similar non-woody plant materials.

E. **"Residence"** - As used herein shall include any single building of one to three dwelling units with individual kitchen facilities for each.

F. **"Multiple Dwelling"** - As used herein shall include any building used for residential purposes consisting of four or more residential units with kitchen facilities for each.

G. **"Commercial Establishment"** - As used herein shall include any premises where a commercial or industrial enterprise of any kind is carried on, including restaurants and clubs, churches, and schools where food is served.

H. **"Hauler"** - As used herein shall include a collector or transporter of garbage, rubbish, recyclable materials, or yard waste.

I. **"Manufactured Housing Park"** - As used herein shall include any park, trailer court, trailer camp, court, camp site, lot, parcel, a tract of land designed, maintained or intended for the purpose of supplying a location or accommodation for any manufactured home.

J. **"Recyclable Materials"** - As used herein shall include, but not being limited to, tin and aluminum cans, newspapers, corrugated cardboard, glass and plastics.

**Subd. 2. Failure to Dispose of Garbage and Rubbish**. It shall be unlawful for any person, firm, or corporation to fail to dispose of garbage and rubbish which may be or which may accumulate upon property owned or occupied by him or them in a sanitary manner. Failure or refusal to make provision for and secure such disposal at his or their expense or with the written approval of the property owner where it is being disposed. shall be subject to the penalties imposed in Subd. 10. To

make use of the services of a licensed hauler, persons shall do so by notifying one of said haulers and paying the fee thereof.

**Subd. 3. Garbage Containers**. Every residence, multiple dwelling and commercial establishment having garbage to dispose of, who does not otherwise provide for the disposal of such garbage in a sanitary manner, shall provide one or more fly tight waterproof containers sufficient to receive all garbage in a sanitary manner which may accumulate between the times of collection. Each non-disposable container shall have a capacity not to exceed 90 gallons, except where dumpsters are used in conjunction with multiple dwellings, and commercial establishments. Each non-disposable container shall be provided with a tight fitting cover and shall be maintained, cleaned and kept in a state of repair which will prevent leakage. All garbage shall be drained of surplus water and wrapped in a manner sufficient to prevent leakage before it is placed in said containers.

**Subd. 4. Storage of Garbage, Rubbish, Yard Waste and Recyclable Materials**.

A. Except on scheduled collection days, garbage, rubbish, yard waste and recyclable materials shall be stored behind the front of the building line for the width of the property. Garbage, rubbish, yard waste and recyclable materials may be placed at curbside or on the boulevard for collection by a licensed hauler during the twelve hour period prior to the day of collection. Any garbage cans or other containers or materials left over from collection shall be removed from the curbside or boulevard within twelve hours after said collection.

B. Dumpsters for garbage, rubbish, yard waste and recyclable materials used in conjunction with multiple dwellings and commercial establishments for the convenience of the property owners, renters or lessees, shall be stored in the rear or side yards, and must be screened from public view in an enclosure consisting of three walls, at least six feet high and a door. The walls must be flush to the ground.

C. Dumpsters intended for collecting recyclable materials from the public for charitable purposes may be located on a paved surface not designated for parking and must be clearly marked to indicate the type of recyclables accepted and the name of the charity to receive the resulting revenues.

**Subd. 5. Composting.** Any property owner and/or lease holder may provide for the handling of certain yard wastes as defined by Subd. 1 Paragraph 4 of this Chapter by means of composting. Composting shall be accomplished above ground in a controlled area allowing for the decomposition of the material through an aerobic process providing adequate oxygen and moisture. At no time shall composting create a health hazard or a nuisance to adjoining properties.

**Subd. 6. Yard Waste**. Except for purposes of composting under Subd. 9 of this Code it shall be unlawful for any person, firm or corporation to dispose of yard waste on private or public lands located in the City of Lexington. All yard waste must be disposed of in the manner prescribed by law. Yard waste for purposes of this Section consists of all grass clippings, leaves, twigs, tree branches and other woody and non-woody plant materials.

**Subd. 7. Licensing Requirements**.

A. It is unlawful for any person to collect garbage, rubbish, recyclables, or yard waste from commercial establishments, multi-family dwellings or manufactured home parks in the City without first securing a solid waste collection license from the City.

B. Each license shall be applied for, issued and renewed, and may be suspended or revoked, as provided by this Chapter, and each licensee shall comply with all applicable requirements of this Chapter.

C. Haulers collecting yard waste, recyclables and non-recyclables or any combination thereof from residential areas, commercial establishments, multiple dwellings and/or manufactured housing parks must be licensed.

D. Any person, firm or corporation desiring a license to collect garbage shall make application for the same to the City Clerk upon a form prescribed by the City. The applicant shall set forth the following:

   1) The name and address of the applicant.

   2) A list of the equipment which the applicant proposes to use in such collection.

   3) The place or places to which the garbage, rubbish, yard waste and/or recyclable materials are to be hauled.

   4) The manner in which said garbage, rubbish, yard waste and/or recyclable materials are to be disposed of.

E. Before a license is issued, the applicant shall file with the City Clerk evidence that the applicant has in effect public liability insurance for the hauler's business and for all vehicles in at least the sum of $500,000 for injury of one person, $1,000,000 for the injury of two or more persons in the same accident and $100,000 property damage.

F. When the application is submitted, the applicant shall file with the City Clerk a schedule of proposed rates to be charged during the licensed period. Every licensee shall provide 30 days prior written notification to the City and the

licensee's customers of any change in rates to be implemented during the licensed period.

G. Before a license is issued, the applicant shall pay to the City a license fee to be established by resolution of the City Council, which shall accompany the application.

H. No license issued shall be for a longer period than one year and all licenses shall expire on June 30 of each year.

I. Licenses may be suspended or revoked by the Council, after the licensee has been given a reasonable notice and an opportunity to be heard, for the violation of any provisions of this Chapter, or for the violation of any conditions or restrictions in the motion granting the license, or any motion passed by the Council, or upon failure of the licensee to comply with any conditions, order or direction issued by the City.

J. In addition to the other requirements of this Chapter, haulers servicing residences, manufactured housing parks and multiple dwellings shall comply with the following:

1) Curbside recycling collection will be made available to all residential, multiple dwelling and manufactured housing park customers. Such service shall include weekly or bi-weekly collection of all recyclable materials but may not necessarily occur on the same day as garbage and rubbish collection for residences.

2) Weekly collection of garbage and rubbish and weekly or biweekly collection of recyclable materials will be provided, but not necessarily on the same day, for multiple dwellings and manufactured housing parks.

3) Collection service provided on the basis of volume shall be provided. All billings shall be itemized so as to show what individual charges are being levied.

4) Each licensee shall separately collect and dispose of yard waste on a regular basis for a minimum of eight weeks in the spring, commencing on April 1, and eight weeks in the Fall, commencing on September 15th.

**Subd. 8. Requirements and Restrictions**. All licensees shall comply with all of the following requirements and restrictions:

A. No hauler shall operate in a residential district after 6:00 P.M. or before 7:00 A.M. of any day, and no hauler shall operate in a residential district on Sunday or legal holidays.

B. All haulers operating on a route in a residential district shall operate vehicles on City streets within the weight allowed by Minnesota State Statutes.

C. Licensees shall have covered water-tight, packer-type vehicles, or in the case of recycling, appropriate container vehicles, in good condition and which prevent loss in transit of liquid or solid cargo. All vehicles shall be kept clean and as free from offensive odors as possible, and shall not be allowed to stand in any street longer than reasonably necessary to collect garbage, rubbish, recyclable materials, or yard waste.

D. All garbage and rubbish shall be dumped or unloaded only at designated facilities.

E. Recyclable materials shall be disposed of at a recycling facility, an organized recyclable drive or through another licensed hauler.

F. Yard wastes may be composted privately or may be disposed of at an approved composting facility or through another licensed hauler.

G. Each vehicle for which a hauler's license is issued shall exhibit such license in a prominent position on the vehicle.

**Subd. 9. Reporting of Recyclables and Yard Waste.** All licensees shall report to the City in a manner consistent with the requirements of the Metropolitan Council. Such quantities shall be reported by tonnage, except that yard waste shall be reported in estimates of cubic yardage abated. Failure to certify accurate volumes within the time specified by the City may be cause for suspension or revocation of a hauling license.

**Subd. 10. Penalty.** Any person, firm or corporation violating any of the provisions of this Chapter shall be guilty of a misdemeanor.

***SECTION 6.36. REPEALED.***

***SECTION 6.37. PRIVATE STABLES.***

**Subd. 1. Definition**. The term **"private stable"** as used in this Section means the keeping or maintaining of one or more horses, cows, pigs, sheep, goats or other domesticated animals, or five or more rabbits, chickens, ducks, geese, turkeys, pigeons or mink.

**Subd. 2. License Required**. It is unlawful for any person to maintain a private stable without having a license therefore from the City.

**Subd. 3. License Restrictions and Regulations**.

A. Floors, walls and ceilings of buildings wherein said animals or fowl are kept shall be clean, sanitary and in good repair.

B. All barns, cages, pens, benches, boxes and receptacles in which the animals or fowl are confined shall be kept clean, sanitary and in good repair, and shall be properly sufficient and humane in size for the confinement of said animals or fowl.

C. All rooms shall be properly and adequately lighted and ventilated.

D. Such premises shall be operated in a proper and humane manner, and the licensee, or person having charge thereof, shall not deprive the animals or fowl of necessary food, water or shelter, or perform any act of cruelty to the animals or fowl, or in any way further any acts of cruelty toward them or in any act tending to produce said cruelty.

***SECTION 6.38. EXCAVATORS***.

**Subd. 1. Definitions**. For the purpose of this Section, the following definitions apply:

A. **"City Specifications"** - means that certain document adopted by the Council by resolution setting forth the manner in which excavations shall be made and repaired in public right-of-way.

B. **"Excavation"** - means the scraping or movement of the surface or subsurface of any street right-of- way.

C. **"Excavator"** - means any person, not acting within the course and scope of a contract with the City, who makes an excavation.

D. **"Owner"** - means the person hiring or engaging the excavator or benefiting from the excavation.

**Subd. 2. Purpose and Intent**. In order to insure proper restoration of excavations within the street right-of-way, public alleys and easements, a license is required by any person excavating in said public land. The license holder shall comply with all City regulations, requirements, and specifications in the performance of any excavations and the restorations of the excavated area.

**Subd. 3. License Required**. It is unlawful for any excavator to make an excavation without a license therefore from the City.

**Subd. 4. Licensee and Owner Restrictions and Regulations**.

A. Notice. Except in emergency situations, notice must be given to the office of the Clerk not less than twenty-four (24) hours before commencing any work and immediately upon the completion of any excavations. The license holder shall submit a form, provided by the City that explains the excavation in detail to the Clerk's office within 48 hours after the excavation has been completed. Upon proper notice it will become the responsibility of the Clerk to notify all emergency personnel of the excavation procedure.

B. Inspection. It shall be the responsibility of the excavator to arrange for any and all required inspections. No excavation will be considered completed until all mandatory inspections are completed.

C. Bond Required. The applicant shall give bond to the City in the penal sum of $2,000.00 conditioned upon faithful and lawful performance of all work in the City.

D. Public Liability Insurance. The applicant shall provide public liability insurance with minimum limits of $100,000.00 for injury to one person, $200,000.00 for injury to more than one person, and $25,000.00 for property damage.

E. Worker's Compensation Insurance. The excavator must provide a certificate to the City prior to the issuance of a license, showing workmen's compensation insurance as required by Minnesota State Law.

F. Responsibility. The owner and the excavator shall be responsible for compliance with the conditions of this Section and subject to the penalties provided for violation of this Chapter.

G. City Specifications Compliance. The owner and excavator shall be responsible for compliance, in detail, with City specifications.

***SECTION 6.39. NEW OR USED MOTOR VEHICLE DEALERS.***

**Subd. 1. Definition**. The term **"new or used motor vehicle dealer"** means any person who engages in the business of selling, trading, exchanging or advertising for sale or exchanges any new or used motor vehicle to consumers or other dealers. For the purpose of this Subdivision, any person who has for sale, trade, or exchange, more than five motor vehicles at any time shall be deemed to be engaged in the business of selling motor vehicles.

**Subd. 2. License Required**. It is unlawful for any person to be a new or used motor vehicle dealer without a license therefore from the City.

***SECTION 6.40. GENERAL CONTRACTORS.***

**Subd. 1. Contractors**. It is deemed to be in the best interest of the residents of the City of Lexington that any work involving the remodeling, alteration or construction of any building; or the installation of any appliances or service facilities in any building shall be done only by individuals, firms or corporations that have demonstrated and submitted evidence of their competency to perform such work in accordance with applications of the building code adopted by the City of Lexington.

**Subd. 2. City Licensing**. The permits which the zoning officer is authorized to issue under the code of the City of Lexington shall be issued only to individuals, firms, or corporations holding a license by the City for work to be performed under the permit, except as hereinafter noted.

**Subd. 3. Licensing Approval.** Application for license shall be made to the zoning officer and such license shall be granted upon proof of the applicant's qualifications therefore, their willingness to comply with the provisions of the code, the filing of certificates evidencing the holding of public liability insurance in the limits of $100,000.00 per person and $300,000.00 per accident for bodily injury and $100,000.00 for property damages and certificates of workman's compensation insurance as required by law. Any person aggrieved by the zoning officer's refusal to issue a license may appeal the zoning officer's decision to the City Council, which shall then review the zoning officer's decision and either affirm or reverse said decision.

**Subd. 4. License Fees**. The annual license fee and expiration date shall be a provided in Chapter 6.04 of the Code, except that no license shall be required for:

A. Plumbing work that entails the installation within a building of the pipes, fittings, and fixtures that carry water and waste;

B. Electrical construction and installation;

C. Water conditioning servicing and installation;

D. Water supply installation and construction (well drillers) provided that the applicant for any of these licenses presents for filing a copy of his license issued by the appropriate State of Minnesota regulatory board.

**Subd. 5. Requirements**. Licenses shall be obtained by every person engaging in the following businesses or work in accordance with the applicable section of the code of the City of Lexington

A. General contractors in the business of building construction. Exempted from this general contractor licensing requirement shall be any individual who applies to the City for a permit to build a home to be occupied by himself. However, if the same individual makes another application to build another home to be occupied by himself within two (2) years from the date of the first

building permit application, a general contracting license shall then be required for any structure building within the two (2) year period.

B. Heating, ventilation and refrigeration;

C. Water supply system installation and construction;

D. Sewer and water connections between street connection and property line;

E. Plumbing, including the installation of cesspool, septic tank, drain fields, connections to the municipal system, inside plumbing and the business of scavenging;

F. Water supply system installation and construction;

G. Excavations, including excavation for footings;

H. Cement contractors and block layers. Nothing here shall be construed as preventing any such qualified licensee from performing the work by an employee under his/her supervision and control, or by contract with another person qualified to perform the same, provided the contractor is subject to the control of the licensee and the licensee is at all times responsible for the work performed.

**Subd. 6. Work Performed By Property Owner**. The owner of the property may perform work on property which he occupies, so long as the work when performed is in accordance with the code of the City, and for such purpose, a permit may be granted to such owner without the necessity of obtaining a license.

**Subd. 7. Master License**. Those persons who possess valid master licenses issued by the State of Minnesota shall not be required to obtain a license from the City; they shall, however, be required to file proof of the existence of a valid master's license together with proof of satisfactory workmen's compensation and liability insurance coverage.

**Subd. 8. Public Service Corporations**. Public service corporations shall not be required to obtain licenses for work upon, or in connection with their own property except as may be provided by other sections of the City Code.

**Subd. 9. Manufacturers**. Manufacturers shall not be required to obtain licenses for work incorporated within equipment as a part of manufacturing except as may be provided by other sections of the City Code.

**Subd. 10. Liability**. This section shall not be construed to affect the responsibility of any party owning, operating, controlling or installing the above described work for damages to persons or property caused by any defect therein nor

shall the City of Lexington be held as assuming any such liability by reason of the licensing of persons, firms or corporations engaged in such work.

***SECTION 6.41. PAWNBROKERS***.

**Subd. 1. Definitions.** The following terms, as used in this Chapter, shall have the meanings stated:

A. **"Pawnbroker"** - A pawnbroker is a person who loans money on deposit of or pledge for personal property or other valuable things, or who deals in the purchasing of personal property or other valuable things on condition of selling the same back again at a stipulated price, or who loans money secured by chattel mortgages on personal property, taking possession of the property or any part thereof so mortgaged.

B. **"Secondhand Goods Dealer"** - A secondhand goods dealer is a person whose regular business includes selling or receiving tangible personal property excluding motor vehicles, furniture, clothing, and related accessories; previously used, rented, owned or leased.

**Subd. 2. License Required.**

A. No person, partnership, or corporation shall engage in or carry on the business of pawnbroker/secondhand dealer, without a license issued by the City of Lexington for each and every separate office or place of business operated by such licensee in the City of Lexington. The annual fee for such license shall be established by resolution.

B. A license issued under this Section shall expire on December 31 of the year of issuance. The annual license fee shall be paid in full before the application for a license is accepted. The fee for a pawnbroker/secondhand dealer license granted after the commencement of the license year shall be prorated on a monthly basis, or any part thereof exceeding 15 days. For the purposes of establishing the prorated license fee, the month of the application is excluded.

C. The actual license fee shall be based upon the date of Council approval of the license and in the event that the licensee paid a fee in excess of the required fee at the time of application, any excess payment shall be refunded. Upon rejection of a license or upon withdrawal of the application for a license before approval of the issuance by the Council, the license fee shall be refunded.

D. A license under this Section shall authorize the licensee to carry on its business only at the permanent place of business designated in the license. No license may be transferred to a different location or to a different license. Any and all property or buildings used for storage of items related to the pawn

shop or secondhand goods dealership must be identified in the application for either license.

E. A pawnbroker may not operate or engage in the business of secondhand goods dealer without having obtained a secondhand goods dealer license in addition to a pawnbroker's license. A secondhand goods dealer may not conduct, operate or engage in the business of pawnbroker without having first obtained a pawnbroker's license in addition to a secondhand goods dealer license.

F. The aforementioned license requirements do not apply to or include the following:

1) The sale of secondhand goods where all of the following conditions are present;

(a) The sale is held on property occupied as a dwelling by the seller, or owned, rented or leased by a charitable or political organization;

(b) The items offered for sale are owned by the occupant;

(c) The sale does not exceed a period of 72 consecutive hours;

(d) Not more than two sales are held either by the same person or on the same property in any twelve month period;

(e) None of the items offered for sale have been purchased for resale or received on consignment for purpose of resale;

2) Sales by a person licensed as a motor vehicle dealer.

3) The sale of secondhand books, magazines, sound or video recordings, or films.

4) The sale of goods at an auction held by a licensed auctioneer.

5) The business of buying or selling only those secondhand goods taken as part of full payment for new goods, and where such business is incidental to and not the primary business of a person.

6) A bulk sale of property from merchant, manufacturer, or wholesaler having an established place of business or of goods sold at open sale from bankrupt stock.

7) Goods sold at a public market.

8) Goods sold at an exhibition.

9) The sale of furniture, clothing and related accessories.

G. The owner of a business at which two or more secondhand goods dealers are engaged in business by maintaining separate sales space and identifying themselves to the public as individual dealers may obtain a multiple secondhand goods dealer license for that location. A multiple license may not be issued unless the following requirements are met:

1) The businesses must have a single name and address.

2) The businesses must operate in a compact and contiguous space.

3) The businesses must be under the unified control and supervision of the one person who holds the license.

4) Sales must be consummated at a central point or register operated by the owner of the business, and the owner must maintain a comprehensive account of all sales.

H. The holder of a secondhand goods dealer license under this Section for a business with more than one dealer at the same location must comply with all of the requirements of this Section, including the responsibility for police reporting and record keeping in the same manner as any other dealer licensed under this Section. A dealer licensed under this subsection is responsible to its customers for stolen or misrepresented goods sold at its place of business in the same manner as any other dealer licensed under this section.

**Subd. 3. Application Procedure.** Every applicant for a license to maintain, operate, or conduct a pawnbroker business or a secondhand goods dealer business shall file a completed application under oath with the City of Lexington upon a form provided by the Office of the City Clerk and pay a non-refundable $500.00 application fee. The application, once accepted, shall be referred to the Police Department for investigation. Copies of this application shall be forwarded to such other City departments as shall be necessary for verification and investigation of the facts set forth in the application. The Chief of Police and such other department heads shall make a written recommendation as to the issuance or non-issuance of the license within thirty days. The completed application form shall contain all information indicated, including:

A. Full name, place, date of birth, and street residence of the applicant.

B. The business address and the name and address of the owner of the premises.

C. A statement as to whether, within the preceding five years, the applicant has been convicted of any law relating to theft, damage or trespass to property, sale of a controlled substance, or the operation of business; the nature of such offense and the penalty assessed.

D. Whether the applicant is a natural person, corporation, or partnership, and;

1) If the applicant is a corporation, the state of the incorporation and the names and addresses of all officers and directors.

2) If the applicant is a partnership, the names and addresses of all partners.

E. The name of the manager or proprietor of the business.

F. Each application shall be accompanied by a bond in the amount of $10,000.00 executed by a corporation authorized to do business in this state and conditioned that in conducting such business the licensee will observe all laws in relation to pawnbrokers and will conduct business in conformity thereto, and that the licensee will account for and deliver to any person legally entitled any goods which have come into the licensee's possession through the licensee's business as a pawnbroker, or in lieu thereof, will pay there reasonable value in money to the person.

1) Such bond shall be maintained so long as the pawnbroker does business, and shall be for the benefit of the City or any person who shall suffer any damage through the act of such pawnbroker and shall not be terminable without the bond company giving written notice thirty days in advance of termination to the City Clerk.

2) If the applicant is a natural person, the application shall be signed and sworn to by the person; if a corporation, by an agent authorized to sign; if a partnership, by a general partner.

3) No person shall make any material false statement in the application. In addition to other penalties, the licensee's license may be revoked by the City Council for giving false information on the application.

4) All licenses shall expire one year after issuance unless earlier renewed. A new application fee shall be required whenever there is any change in the facts presented by the application other than date, applicant(s)' home address or building owner(s)' address. A new application fee shall be charged whenever a license is not renewed prior to its expiration.

5) All applicants requesting a license pursuant to this chapter may be required to submit to a background investigation, including, but not limited to, a criminal history check.

**Subd. 4. Records Required.**

A. Every pawnbroker or secondhand goods dealer purchasing or receiving on deposit for a loan any article of personal property shall give to the person selling or depositing such article a plain written or printed ticket or receipt for the article sold or deposited, showing the terms of such sale or loan.

B. Each licensee shall keep a record of each transaction made in the course of business. Such records shall be in a form prescribed by the Chief of Police and shall, in all instances, be legibly made in ink and be in the English language. The records so kept shall include the following information about each transaction:

1) The full name, address, and the date of birth of the person pledging or selling the item.

2) The time and date of the transaction.

3) A complete description of the item pledged or sold, including all identifying numbers and identifying marks.

4) A physical description of the person pawning or selling the item, including:
   - sex
   - height
   - weight
   - race
   - color of eyes
   - color of hair

5) The amount of money paid or loaned for the item.

6) The signature of the person pledging or selling the item.

7) The identification number from any of the following forms of identification of the seller:
   - valid driver's license containing a picture
   - picture identification

8) In the event that the property is stored at a place other than the permanent place of business designated in the license, the location of the property or buildings used for the storage of the item. The property or buildings used for storage must be identified in the application for the pawnbroker or

secondhand goods dealer license as set forth in Subd. 2. License Required.

9) Any other information the Police Chief shall require.

C. Every pawnbroker or secondhand goods dealer shall make available to the Chief of Police every day, before the hours of 12:00 Noon, a complete, legible and correct copy of the records required by this Section for all transactions which occurred on the previous day. The records required herein shall be kept at the licensee's place of business for three years, and shall be available for police inspection at any reasonable time.

D. For the following items, regardless of resale price, a secondhand goods dealer or pawnbroker must make out, on forms approved by the appropriate law enforcement agency, and second dally by mail to the appropriate law enforcement agency, a legible description of the goods received during the preceding day, together with the time received and a description of the person from whom the goods were received:

1) Items with a serial number identification, or "operation identification" symbol;

2) Cameras;

3) Electronic audio or video equipment;

4) Precious jewelry or gems, and precious metals;

5) Artist-signed or artist-attributed works of art;

6) Guns and firearms; and

7) Items not included in the above, except furniture and kitchen or laundry appliances, which the secondhand goods dealer intends to sell for more than $200.00.

**Subd. 5. Inspection.**

A. Any person, firm or corporation licensed under the provisions of Subd. 1 through Subd. 2, shall, at all times during the terms of said license, allow the officers of the Police Department to enter the premises where the licensee is carrying on such business or at any property or buildings used for storage of items related to the business, for the purpose on inspecting such premises and inspecting the goods, wares and merchandise therein for the purpose of locating goods suspected or alleged to have been stolen or otherwise improperly disposed of.

**Subd. 6. Holding of Property.**

A. When the Chief of Police, or any member of the police force designated by the Chief of Police, notifies any pawnbroker or secondhand goods dealer not to sell any property received on deposit or purchased by him, or not to permit the same to be redeemed, the pawnbroker shall not sell nor permit such property to be redeemed until such property is released in writing by the Chief of Police, or his designate.

B. No personal property deposited with or purchased by any licensee under Subd. 1 through Subd. 12 shall be permitted to be redeemed from the place of business of licensee until three (3) working days after the copy of the records required by Subd. 4 have been made available to the Chief of Police, except upon written permission of the Chief of Police.

**Subd. 7. Report of Stolen or Lost Goods.** If any goods, articles or things shall be advertised in any public newspaper of the City of Lexington as having been lost or stolen, and such goods, articles or things shall then be, or shall thereafter come into the possession of any licensee under the terms hereof said licensee shall, upon actual notice hereof, immediately thereafter, as a supplement to said licensee's daily report for that day to the Chief of Police, give information in writing that certain goods, articles or things advertised are in said licensee's possession, and shall not thereafter dispose of the same except upon written authority so to do from the Chief of Police of the Police Department.

**Subd. 8. Redemption Period.** Any person who pawns an item shall have at least thirty days to redeem the item before it may be sold.

**Subd. 9. Prohibited Transactions.**

A. No pawnbroker or secondhand goods dealer shall purchase or receive on deposit or pledge anything of value as security for a loan of money from any person, male or female, under age 18, nor knowingly from an intoxicated person or one of unsound mind.

B. A pawnbroker or secondhand goods dealer may not receive goods unless the seller presents identification in the form of driver's license or other picture identification.

**Subd. 10. Storage of Firearms.** A pawnbroker or secondhand goods dealer holding for sale a firearm or other dangerous weapon shall store the firearm or dangerous weapon in a locked and opaque compartment except when being viewed by a customer following a request to view the firearm or dangerous weapon.

**Subd. 11. Persons Ineligible for License.** A pawnbroker or secondhand goods dealer license will not be issued to:

A. A person not a citizen of the United States or a resident alien;

B. A person under 18 years of age;

C. Subject to the provisions of law, a person who within five years of the license application date has been convicted of receiving stolen property, sale of stolen property or controlled substance, burglary, robbery, damage or trespass to property, felony theft, larceny, fraud, or any law or ordinance regulating the business of pawnbroker or secondhand goods dealer;

D. A person who within five years of the license application date had a pawnbroker or secondhand goods dealer license revoked;

E. A person whom the City Council determines not to be of sufficient good moral character and repute; or

F. When the City Council determines, after investigation and public hearing, that issuance or renewal of the license would adversely affect the public health, safety, or welfare.

**Subd. 12. Places Ineligible for License.** A license will not be issued or renewed under this section for any place or for any business:

A. If taxes, assessments or other financial claims of the City or the State of Minnesota on the licensee's business premises are delinquent and unpaid;

B. If the premises is located within 300 feet or a school, church or residential area; or

C. Where operation of a licensed premises would violate zoning ordinances.

**Subd. 13. Method of Payment.** When a pawnbroker or secondhand goods dealer accepts an item for purchase or as security for a loan, payment shall be made by check only, made payable to the actual intended seller or borrower.

**Subd. 14. Denial, Suspension or Revocation of License.** Any license under Subd. 1 through Subd. 14 may be denied, suspended, or revoked for any of the following reasons:

A. Any conflict with the Lexington Zoning Code.

B. Any conflict with any health, building, building maintenance or provisions of this code or ordinance or state law;

C. Failure by applicant to comply with one or more provisions of Subd. 1 through Subd. 14;

D. Fraud, misrepresentation, or bribery in securing a license;

E. Fraud, misrepresentation, or false statements in the course of the applicant's business;

F. The applicant was convicted of violating any law relating to theft, damage or trespass to property, sale of a controlled substance, or unlawful operation of business within the preceding five years.

**Subd. 15. Applicability.** The licenses required by Subd. 2 shall be applied for within thirty days of the effective date of this Ordinance. Said licenses shall be obtained within sixty days of the effective date of this Ordinance. If said licenses are not obtained within the sixty day period, the designated business shall cease operating within the City of Lexington, unless the City Council extends the time for issuance of the license. All other provisions of this Chapter shall be effective and complied with within sixty days after the effective date of this Ordinance.

**Subd. 16. Separability.** Should any section, subdivision, clause or other provision of this Ordinance be declared by a court of competent jurisdiction to be invalid such decision shall not affect the validity of the Ordinance as a whole or any part other than the part so declared to be invalid.

**Subd. 17. Penalty.** Any person violating any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than $700.00 or by imprisonment of not more than 90 days, or both, plus costs of prosecution in either case.

***SECTIONS 6.42. COMMERCIAL SAUNA AND MASSAGE SERVICES***

**Subd. 1. Statement of Policy**.

A. The City Council of the City deems it necessary to provide for the special and express regulation of businesses or commercial enterprises which provide therapeutic massage or public saunas. Similar adult-oriented services operate under different names in order to protect the public health, safety and welfare and to guard against the inception and transmission of disease.

B. The City Council finds that commercial enterprises such as the type described in this Chapter, and all other similar establishments whose services include sessions offered to adults, conducted in private by members of the same or the opposite sex and employing personnel with no specialized training are susceptible to operation in a manner contravening, subverting or endangering

the morals of the community by being the site of acts of prostitution, illicit sex and occasions of violent crimes, thus requiring close inspection, policing, licensing and regulation.

C. The City Council finds that commercial enterprises such as the type described in this Chapter, and all other similar establishments whose services include sessions offered to adults, conducted in private by members of the same or the opposite sex and employing personnel with specialized training, professional licensing and/or standards of professional practice are less susceptible to operation in a manner contravening, subverting or endangering the morals of the community thus requiring a different level of inspection, licensing and regulation than establishments employing personnel with no specialized training, professional licensing and/or standards of professional practice.

D. The City further finds that regulating businesses and individuals who practice therapeutic massage and work associated with massage by creating a licensed activity for those who have a higher level of training, license, and professional standards help to:

1) Create barriers to entry into the commercial field of therapeutic massage against individuals or businesses likely commit criminal acts or provide injurious services to the public;
2) Ensure that people who use therapeutic massage for health and wellness will receiving the highest possible level of competent, ethical, and effective treatment and care;

3) Remove the stigma of therapeutic massage being a sensual or sexual activity and promote it as an accepted business practice.

**Subd. 2. Definitions.**

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

A. **“Day Spa”** - A spa that offers all or a portion of the following:

1) Environment: a clean, safe, calming and nurturing environment;

2) Privacy: private treatment area for each client receiving a personal service;

3) Business licenses: professional, licensed esthetician and therapists on staff;

4) Products: professional spa products for which estheticians and therapists have received training in their use;

5) Massages: Swedish, lymph drainage, reflexology, shiatsu, polarity, sports, deep tissue, deep muscle, or other types of massage related work;

6) Body treatments (one or more on the menu): body packs and wraps, exfoliation, cellulite, body toning/contouring, waxing, homecare program (optional: electrical impulse body toning, heat treatments, Ayurveda treatments, laser hair removal, electrolysis, hand and foot care);

7) Face: cleansing facial, homecare program (optional medical facial, electrical toning, laser hair removal, electrolysis, cosmetic, make-up consultation);

8) Aromatherapy: personalized for body and/or face:

(a) One of the following:

i) Hydrotherapy; or

ii) Steam and sauna.

(b) One of the following:

i) Nutritional counseling/weight management; or

ii) Private trainer/yoga/meditation; or

iii) Spa cuisine.

9) Optional: hair: full-service salon, scalp treatments and hair packs, spa manicure and pedicure.

B. **"Good Repair"** - Free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions and similar defects so as to constitute a good and sound condition.

C. **"Massage"** - The rubbing, stroking, kneading, tapping or rolling of the body of another with the hands for the exclusive purpose of physical fitness, relaxation, beautification, healthcare and for no other purpose, and performed in a manner consistent with the training, education and policies recognized by professional societies and standards to include, but not limited to the:

1) National Organization Board for Therapeutic Massage and Bodywork;

2) American Massage Therapy Association; or

3) Associated Massage and Bodywork Professionals.

D. **"Massage Therapist Certificate"** - A certificate issued by the City to a person who meets the appropriate requirements to practice or administer massage in the City.

E. **"Massage Therapy Establishment"** - Any premises at or in which therapeutic massage is performed.

F. **"Massage Therapist"** - A person who practices or administers massage and has obtained the required certification to practice or administer massage in the City.

G. **"Sauna"** - A steam bath or heat bathing room used for the purpose of bathing, relaxing or reducing agent utilizing steam or hot air as a cleaning, relaxing or reducing agent.

H. **"Sauna Establishment License"** - A license issued by the City authorizing the commercial operation of a sauna on premises within the City.

**Subd. 3. Distinction; Exemptions.**

A. The practice of massage as an activity licensed by the City is hereby declared to be distinct from the practice set forth below and those practices expressly excluded from the provisions of this Chapter. Practices expressly excluded from this Chapter include:

1) The practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry; persons duly licensed in this State to practice medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry, nurses and health care workers who work solely under the direction of those persons;

2) Institutions such as hospitals, rest homes, nursing homes, or other institutions licensed under the provisions of Minnesota Statutes § 144.50 to § 144.69;

3) Beauty culturists and barbers who do not give or hold themselves out to give massage, as defined herein, other than is customarily given in those shops or places of business shall be exempt from the provisions of this chapter insofar as they hold an appropriate license issued by the State of Minnesota;

4) Athletic directors and trainers who perform massage in the course of any athletic program or event which is sponsored by a local unit of government, bona fide educational institution complying with State or local regulations, bona fide churches, synagogues or institutions of organized religion or bona fide, nonprofit civic organizations are expressly excluded from the requirements of this Chapter, provided that the performing of massage is subsidiary to the performing of other services and tasks.

**Subd. 4 Through Subd. 14, Inclusive, Reserved for Future Expansion**

***LICENSES***

**Subd. 15. Licenses Required**.

A. No person shall engage in the business of operating a sauna, day spa, or massage therapy establishment either exclusively or in connection with any business enterprise without obtaining a license for that business establishment located in a commercial or mixed use zone and within a commercial enterprise as provided in this Chapter and shall only provide services on the premises of the licensed establishment.

B. General requirements for obtaining licensing as provided in this Chapter.

1) Individuals who provide services regulated by this Chapter for the licensed establishment may only do so if they are individually licensed or certified pursuant to this Chapter.
2) No establishment regulated by this Chapter may be granted a license or operate as a business unless it employs at least one person who is individually licensed or certified pursuant to this Chapter to perform services regulated by this Chapter.

3) All licenses pursuant to this Chapter must participate in a background investigation and successful completion of same prior to receiving a license. All licensees must grant the City the unlimited right to perform criminal background investigations during the pendency and period of the license application and operation.

C. Whenever any establishment ceases to be licensed as a sauna, day spa or massage therapy establishment, whether through the suspension, cancellation, revocation, nonrenewal, lack of employing of a licensed individual, or lapse of its license, its owners shall immediately remove from public view any sign or display which identified the establishment as a sauna, day spa, or massage therapy establishment or as offering sauna or massage services.

**Subd. 16. Contents of Application.**

A. Application for a sauna, day spa, or massage therapy establishment license shall be made only on the forms provided by the Administrator or designated staff.

B. Four complete copies of the application shall be furnished to the office of the Administrator containing the following information:

1) Address and legal description of the property to be used;

2) The names, addresses and telephone numbers of the owner, lessee if any, and the operator or manager;

3) The name, address and telephone number of three persons who may be called upon to attest to the applicant's, manager's or operator's character;

4) Whether the applicant, manager or operator has ever been convicted or charged with a crime or offense other than a non-criminal traffic offense and, if so, provide information as to the time, place and nature of the crime and the disposition for each charged offense. This includes disclosure of charges that have been dismissed, expunged, acquitted, pardoned, or any type of stayed sentence or adjudication, or diversion program;

5) The names and addresses of all creditors of the applicant, owner, lessee or manager insofar as and regarding credit which has been extended for the purposes of constructing, equipping, maintaining, operating or furnishing or acquiring the premises, personal effects, equipment or anything incident to the establishment, maintenance and operation of the massage parlor or massage establishment;

6) If the application is made on behalf of a corporation, joint business venture, partnership or any legally constituted business association, it shall submit, along with its application, accurate and complete business records showing the names and addresses of all individuals having an interest in the business, including partners, officers, owners, managers, members of the board of directors and creditors furnishing credit for the establishment, acquisition, maintenance and furnishing of the business, including the purchase or acquisition of any items of personal property for use in the operation;

7) Complete accurate documentation establishing the interest of the applicant and any other person having an interest in the premises upon or in which the business is proposed to be located, in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements and any other documents

establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the enterprise offering massage;

8) The application shall also contain blueprints, diagrams, plans, layouts and the like showing the construction, revision, remodeling, alteration or additions of or to the premises, and specifically showing the layout, design and arrangement of the bathing and restroom facilities and the size and type of equipment and facilities to be used.

9) Identify any prior or current professional license or license application from a jurisdiction other than the City. For each license or application supply the date of application, the nature of the license, whether the application was granted or denied, current status of the license or application, specify any adverse action (such as revocation, suspension, cancellation, or conditional provisions of practice of a professional license, or criminal charges) take against the license, licensee, any employee, agent, contractor, or other person associated with any license or license application from another jurisdiction;

10) The name and identify of all persons practicing services for the applicant establishment that are regulated by this Chapter. The applicant must specify the individual(s) who will be licensed and certified by the City to conduct the regulated services and must always keep that information current by giving immediate notice to the local Police Department and City anytime that information changes. (Each of these individuals are subject to individual licensing or certification requirements of this Chapter.);

11) A general authorization for release of information signed by the applicant granting the local Police Department and/or City authorization to complete the required investigation and to reinvestigate during the pendency of the license period.

**Subd. 17. License Fee, Investigation Fee and License Year.**

A. The investigation fee shall be set by Council, on an annual basis, through ordinance along with the annual license fee. A license, unless revoked, is for the calendar year or a part thereof for which it has been issued. The license fee and fee for the investigation of the license application shall be paid when the application is filed. In the event that the application is denied or the license, once issued, is revoked, cancelled or surrendered, no part of the annual license fee and investigation fee shall be returned to the applicant unless by express action of the City Council.

B. A separate license shall be obtained each year for each place of business. The licensee shall display the license in a prominent place in the licensed

premises at all times. A license for the operation of a massage therapy establishment or sauna establishment is nontransferable.

**Subd. 18. Granting or Denial of Licenses.**

A. License applications shall be reviewed by the Police Department and other departments as the City Council shall deem necessary.

B. The review shall include any inspection of the premises covered by the application by the Building Inspector and Fire Department to determine whether the premises conform to all applicable code requirements. Recommendations shall be made in writing to the Administrator. Thereafter, licenses shall be granted or denied by the City Council subject to the provisions of this chapter. The applicant may appeal to the City Council.

**Subd. 19. Conditions Governing Issuance of License.**

A. No sauna, day spa or massage therapy establishment license shall be issued if the applicant or any of its owners, lessees, managers, employees or agents is a person of bad repute;

B. Sauna, day spa or massage therapy establishment licenses shall be issued only if the applicant and all of its owners, lessees, managers, employees and agents are free of convictions for offenses which involve moral turpitude or which relate directly to the person’s ability, capacity or fitness to perform the duties and discharge the responsibilities of the licensed activity;

C. Licenses shall be issued only to applicants who have not, within one year prior to the date of application, been denied licensing; or who have not within that period had their license revoked;

D. Licenses shall be issued only to applicants who have completely answered all of the information requested in the application in an accurate and truthful manner subject to the penalty of criminal perjury, have paid the full license fee and have cooperated with the city in review of the application;

E. A license shall not be granted to an applicant who is under the age of 18 years;

F. Licenses may be granted only for locations with commercial or mixed use zones allowing similar activities;

G. Licenses may be granted only to establishments which can meet the health, safety, sanitary and building code requirements of the City;

H. A license shall not be granted if granting the license either would be inconsistent with the comprehensive development plan of the City, or would otherwise have a detrimental effect upon the property or properties in the vicinity; and

I. Licensee must provide and maintain a current copy of its insurance policy with the City and that policy must maintain a provision that the insurer shall notify the City of any change to the policy, notice of nonpayment or notice of cancellation.

J. Licensee must provide a general authorization for release of information signed by the applicant granting the local Police Department and/or City authorization to complete the required investigation and reinvestigate during the pendency of the license period.

**Subd. 20. Construction and Maintenance Requirements**.

A. Each licensed premises shall have separate restrooms for members of each sex or else have individual restrooms suited for use by one person at a time.

B. Floors, walls and equipment in massage rooms, restrooms and bathrooms must be kept in a state of good repair and sanitary condition at all times. Linen and other materials shall be stored at least 12 inches off the floor.

C. Massage tables and other equipment shall be kept in a sanitary condition including but not limited to the use of disposable or cloth sanitary protectors on tables and face cradles.

D. Each licensed premises shall provide adequate refuse receptacles, which shall be emptied as often as required.

E.

1) The doors to the individual massage rooms shall not be equipped with any locking device or else all interior doors shall be locked with a common keyed lock and a copy of that key shall be on deposit with the local Police Department.

2) Main entrance doors to the premises shall be unlocked at all times during business hours and while anyone is present on the premises.

F. Exterior signage is required and must prominently state that the establishment provides sauna, day spa or massage therapy services.

**Subd. 21. Restrictions and Regulations.**

A. No licensee shall employ any person as a massage therapist without first ensuring that the employee possesses a valid certificate for the administration or practice of massage from the City. The certificate shall be prominently and openly displayed on the premises.

B. The licensed premises may only be open for business or in operation anytime between the hours of 8:00 a.m. and 9:00 p.m. The actual hours when a licensee chooses to conduct business on the licensed premises must be on file with the local Police Department and the City as designated in their license application. These designated hours must be prominently posted on the exterior and interior of the licensed premises. Each licensee must so file their designated hours of operation. No person may engage in the practice of any service regulated by this Chapter outside of those designated hours. Clientele may be on the licensed premises for no more than fifteen minutes before or after the designated hours. No other person may be on the premises for more than one hour before or after the designated hours. Persons on the premises outside of the designated or authorized hours are subject to criminal prosecution for loitering or other crimes. Clientele, employees, agents and other persons on the premises must be so notified that they may be subject to criminal prosecution in this manner and it is incumbent upon the licensed establishment to so notify individuals by either posted notice or in writing. Failure to give notice to an individual shall not be a defense to this subdivision violation.

C. The licensee, certificate holder or any persons in his or her employ or agents or officers thereof, and any and all persons with interest in the business shall comply with all applicable ordinances, regulations and laws of the City, the State and the United States Government.

D. If the licensee is a partnership or corporation, the licensee shall designate a person to be manager and in responsible charge of the business. This person shall remain responsible for conduct of the business until another suitable person has been designated in writing by the licensee. The licensee shall promptly notify the local Police Department in writing of any change in manager, indicating the name, address and telephone number of the new manager and the effective date of the change.

E. During any hours of operation or at any time a person is present on the licensed premises such establishment shall be open for inspection by City inspectors or local police officers. Inspection shall include:

    1) Upon demand all persons employed or contracted by the licensed establishment or engaged in providing services shall identify themselves, giving their true and legal name, and proof of their identity.

2) All licenses, certificates, insurance and financial records of the establishment and its employees, contractors or agents must be available for inspection during these times.

3) The physical premises may be inspected.

F. Refusal to allow an inspection or to answer the request of City, local Police, Fire or other authority to being admitted into a licensed premises, identify employees, or unavailability of financial records shall be grounds for immediate suspension or revocation of all licenses or certificates.

G. Fees for all services shall be prominently posted in the reception area in a location available to all prospective customers.

**Subd. 22 Through Subd. 29, Inclusive, Reserved for Future Expansion**

***CERTIFICATES***

**Subd. 30. Massage Certificate Required**.

No person shall perform massage services within the City without a massage certificate as provided in this Chapter.

**Subd. 31. Contents of Application for Certificate.**

A. An application for a massage certificate shall be made only on forms provided by the City.

B. The application shall contain the following information together with any other information the City may require:

1) Evidence of the applicant's educational qualifications, including originals or certified copies of degrees, diplomas, certificates or licenses, if any, including proof of receiving educational, certification or licensing requirements least;

2) Evidence of applicant's practical qualifications to practice massage;

3) The names and addresses of three persons, who may be referred to as to the applicant's character;

4) Whether the applicant has ever been convicted or charged with a crime or offense other than a non-criminal traffic offense and if so, information as to the time, place and nature of the crime, and the disposition for each charged offense. This includes disclosure of charges that have been

dismissed, expunged, acquitted, pardoned, or any type of stayed sentence or adjudication, or diversion program;

5) A general authorization for release of information signed by the applicant granting the local Police Department and/or City authorization to complete the required investigation and to reinvestigate during the pendency of the license period.

**Subd. 32. Fee, Investigation Fee and Year.**

The investigation fee shall be determined by City Council on an annual basis through ordinance along with the annual certificate fee. The certificate year shall be the calendar year and a certificate shall be valid for the remainder of the calendar year in which it is issued. The certificate fee and fee for investigation for the certificate shall be paid when the application is filed. In the event that the application is denied or that the certificate, once issued, is revoked, cancelled or surrendered, no part of the annual certificate fee and investigation fee for the issuance of a certificate shall be returned to the applicant unless by express action of the City Council. A separate certificate shall be obtained each year. The certificate holder shall display the certificate in a prominent place in the licensed premises at all times. A certificate permitting the holder thereof to practice massage is nontransferable.

**Subd. 33. Investigation of Application.**

A. Certificate applications shall be reviewed by the local Police Department, which shall furnish written recommendations to the City Council.

B. Thereafter certificates shall be granted or denied by the City Council subject to the provisions of this Chapter.

C. The applicant may appeal to the City Council.

**Subd. 34. Conditions Governing Issuance of Certificate.**

A. Certificates shall be issued only to persons who have received and can furnish proof of receiving a qualifying amount of education. These minimum requirements are any of the following:

1) Hold an associates degree or greater level degree in a field of nursing or physical therapy from a State-accredited, post-secondary educational institution, and hold a current license, in good standing, from the State of Minnesota to practice nursing or physical therapy;

2) Receive no less than 500 hours of certified therapeutic massage training from an institution recognized and accredited by a State or National

professional therapeutic massage organization, to include, but not limited to the:

(a) American Massage Therapy Association, or

(b) Associated Massage and Bodywork Professionals; or

3) Receive no less than 500 hours of certified therapeutic massage training from any institution, and successfully pass the national examination for therapeutic massage within the year prior to application as offered by the National Organization Board for Therapeutic Massage and Bodywork.

B. Certificates shall be issued only to persons of good repute.

C. Certificates shall be issued only to persons free of convictions for offenses which involve moral turpitude or which relate directly to the person's ability, capacity or fitness to perform the duties and discharge the responsibilities of the occupation.

D. Certificates shall not be issued to persons who have, within one year prior to the date of application, been denied certification; or who have had his or her certificate revoked or surrendered in or by any political subdivision, a municipality or by the State.

E. Certificates shall be issued only to applicants who have completely answered all of the information requested in the application in an accurate and truthful manner subject to the penalty of criminal perjury, have paid the full license fee and have cooperated with the City in review of the application.

**Subd. 35. Restrictions and Regulations.**

A. During any hours of operation or at any time a person is present on the licensed premises, such establishment shall be open for inspection by City inspectors or local police officers. Upon demand all persons employed by the licensed establishment or engaged in providing services shall identify themselves, giving their true, legal name and proof of their identity. The certificate issued by the City, insurance and financial records of the establishment must be available for inspection during these times.

B. Any person acting as a massage therapist shall have his or her certificate displayed in a prominent place at his or her place of employment, and upon demand by any local police officer or other authorized officer or agent of the City, any person engaged in practicing massage shall identify himself or herself giving his or her true, legal name and proof of their identity.

C. Any person practicing massage within the City shall initially advise the City of his or her address, telephone number and shall further advise the City of any changes in address or telephone number within ten days of the change.

D. Any person practicing massage within the City may do so only at premises which are licensed for the conduct of the business as herein provided; and further, any person practicing massage shall inform the City of any changes in employment or the location of his or her employment within the City within seven days after the change.

E. Every person to whom a massage certificate is issued, shall appear personally at the local Police Department to receive delivery of the certificate and upon such appearance shall be photographed for identification purposes. One copy of the photograph shall be permanently affixed to the certificate and a second copy thereof shall be kept in the files of the local Police Department.

F. Fees for all services shall be prominently posted in the reception area in a location available to all prospective customers.

**Subd. 36 Health and Disease Control.**

No person while afflicted with any disease in a communicable form or while a carrier of disease or wounds, sores or any acute respiratory infection shall work in, be permitted by an employer to work in, or use the services regulated in this Chapter unless universal precautions are taken to prevent the spread of the disease or condition and to protect the general health and safety of others. Massage therapists and establishments licensed pursuant to this Chapter must use best practices and use appropriate universal precautions to prevent the spread or transmission of communicable disease. Penalty, see Subd. 99.

**Subd. 37. Revocation, Suspension or Nonrenewal of Certificate**.

A. The massage certificate may be denied, revoked, suspended or not renewed by the City Council by showing that the applicant, licensee, its owners, managers, employees, agents or any other interested parties, as enumerated in contents of application section of this Chapter have engaged in any of the following conduct:

1) Fraud, deception or misrepresentation in connection with the securing of the license;

2) Drunkenness or intemperance in the use of drugs, including but not limited to the use of drugs, defined in M.S. §618.01, as amended, barbiturates, hallucinogenic drugs, amphetamines, Benzedrine, Dexedrine or other sedatives, depressants, stimulants or tranquilizers;

3) Engaging in conduct involving moral turpitude by permitting or allowing others within their employ or agency to engage in conduct involving moral turpitude or failing to prevent agents, officers or employees in engaging in conduct involving moral turpitude;

4) Failure to fully comply with any requirements of the City code regarding the sanitary and safety conditions, zoning requirements, building code requirements or ordinances, the violation of which involves moral turpitude, or failure to comply fully with any requirements of this Chapter;

5) Conviction of an offense involving moral turpitude by any court of competent jurisdiction;

6) Engaging in any conduct which would constitute grounds for refusal to issue a license or massage certificate herein;

7) Failing to allow City Officials or local Police Officers access to the license premises for inspection.

B. Upon the report of any violation of this Chapter by the City inspector, licensed peace officer or City Attorney, the City Administrator may immediately suspend any license or certificate granted pursuant to this Chapter. Such suspensions shall be temporary and are subject to the appeal provisions as set forth in this Chapter, except that an immediate suspension shall allow the aggrieved party the right of appeal no later than ten days after a temporary suspension is effective. Any appeal pursuant to this subdivision not heard within ten days shall be rescinded.

**Subd. 38 Through Subd. 49, Inclusive, Reserved for Future Expansion**

**ENFORCEMENT**

**Subd. 50. Appeals.**

A. The license or certificate holder has the right to appeal any adverse action set forth in this Chapter. The scope of such an appeal is as follows:

1) The licenses or certificate holder may appeal the denial, suspension, revocation or nonrenewal of a license or certificate to the City Council within thirty days of this event. If no appeal is filed within this period, the event is affirmed.

2) Except as otherwise set forth in this Chapter, the Council shall consider the appeal at the next regularly scheduled Council meeting on or after 30 days from service of the notice of appeal on the Administrator.

3) The license or certificate holder may present evidence and argument at the hearing of the appeal.

B. After considering the evidence at the hearing of the appeal, the Council may:

1) Affirm the denial, revocation, suspension or nonrenewal;

2) Grant the license application, reinstate the revocation, suspension or nonrenewal; or

3) Where appropriate, for violations of the conditions set forth in this Chapter the Council may:

(a) Impose a civil fine no greater than $3,000.00; and/or

(b) Impose, in its sole discretion, appropriate additional terms, conditions and stipulations upon the licensee or certificate holder before granting a license application, or reinstating a revocation, suspension or nonrenewal.

**Subd. 51. Liability for Crimes of Another**.

Every person who commits or attempts to commit, conspires to commit or aids and abets in the commission of any act constituting a violation of this Chapter, or any act which constitutes an omission and therefore a violation of this Chapter, whether individually or in connection with one or more persons or as a principal, agent or accessory, shall be guilty of the offense. Every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any of the provisions of this Chapter is likewise guilty of the underlying offense.

***SECTION 6.44 FARMERS MARKET***

A. License Required. It is unlawful for any person to operate a Farmers Market without first having obtained a license therefore from the City.

B. Definitions:

a. “Farmers’ Market” means an outdoor market open to the public, operated by a governmental agency, a nonprofit corporation, or one or more Producers, at which:

i. at least seventy-five percent (75%) of the products sold are Farm Products or Value- license added Farm Products; and

ii. at least seventy-five percent (75%) of the vendors regularly participating during the market's hours of operation are Producers, or family members or employees of Producers.

b. "Farm Products" means fruits, vegetables, mushrooms, herbs, nuts, shell eggs, honey or other bee products, flowers, nursery stock, livestock food products (including meat, milk, cheese and other dairy products), and fish.

c. "Value-added Farm Product," means any product processed by a Producer from a Farm Product, such as baked goods, jams, jellies, leather goods, baskets, candles, etc.

d. "Producer" means a person or entity that raises or produces Farm Products on land that the person or entity farms and owns, rents, or leases.

e. The Farmers Market must meet the standards of the Minnesota Farmers Market Association, or comparable Farmers Market Association, to include liability insurance, food safety procedures, and a documented form of business governance (i.e. Partnership, Corporation, Proprietorship, etc.).

f. All Farmers Markets and their vendors comply with all federal, state, and local laws and regulations relating to the operation, use, and enjoyment of the market premises.

g. All Farmers' Markets and their vendors receive all required operating and health permits, and these permits (or copies) shall be in the possession of the Farmers Market Manager or the vendor, as applicable, on the site of the Farmers Market during all hours of operation.

h. All Farmers Markets have an established set of operating rules addressing the governance structure of the Farmers Market, hours of operation, maintenance and security requirements and responsibilities; and appointment of a Market Manager.

i. All Farmers Markets have a Market Manager, or designee, authorized to direct the operations of all vendors participating in the market on the site of the market during all hours of operation.

j. All Farmers Markets provide for composting, recycling, and waste removal.

***SECTION 6.44 THROUGH 6.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 6.99. VIOLATION A MISDEMEANOR.*** Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as a misdemeanor except as otherwise stated in specific provisions hereof. Failure to obtain a license, permit or any required permission pursuant to this Chapter shall be punished as a misdemeanor. Each day of such failure to comply constitutes a separate offense. Criminal prosecution shall be in addition to any other penalty or enforcement mechanism allowed by law or equity.

# CHAPTER 7

## STREETS AND SIDEWALKS GENERALLY

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# CHAPTER 7

# STREETS AND SIDEWALKS GENERALLY

***SECTION 7.01. DEFINITIONS***. Except as otherwise defined in the City Code, or where the context clearly indicates a contrary intent, the words and terms defined in Minnesota Statutes, Chapter 169, shall be applicable to City Code, Chapters 7, 8 and 9.

***SECTION 7.02. APPLICATION***. The provisions of City Code, Chapters 7, 8 and 9, are applicable to the drivers of all vehicles and animals upon streets, including, but not limited to, those owned or operated by the United States, the State of Minnesota, or any county, town, city, district, or other political subdivision.

***SECTION 7.03. SCOPE AND ORDERS OF OFFICERS***.

**Subd. 1. Scope.** The provisions of Chapters 7, 8 and 9 relate exclusively to the streets and alleys in the City, and the operation and parking of vehicles refer exclusively to the operation and parking of vehicles upon such streets and alleys.

**Subd. 2. Orders of an Officer**. It is a misdemeanor for any person to willfully fail or refuse to comply with any lawful order or direction of any police or peace officer invested by law with authority to direct, control or regulate traffic.

***SECTION 7.04. TRAFFIC AND PARKING CONTROL***.

**Subd. 1. Council Action**. No device, sign or signal shall be erected or maintained for traffic or parking control unless the Council shall first have approved and directed the same, except as otherwise provided in this Section; provided, that when traffic and parking control is marked or sign-posted, such marking or sign-posting shall attest to Council action thereon.

**Subd. 2. Temporary Restrictions**. The City, acting through the Chief of Police, may temporarily restrict traffic or parking for any private, public or experimental purpose. It is the duty of the Chief of Police to so restrict traffic or parking when a hazardous condition arises or is observed.

**Subd. 3. Traffic Restrictions and Prohibitions**. It is a misdemeanor for any person to drive a vehicle contrary to lane restrictions or prohibitions painted on any street, or contrary to sign-posted, fenced, or barricaded restrictions or prohibitions.

**Subd. 4. Parking Restrictions and Prohibitions**. It is unlawful for any person to park a vehicle, except an emergency vehicle, contrary to lane restrictions or prohibitions painted on any curb, or contrary to sign-posted, fenced, or barricaded restrictions or prohibitions.

**Subd. 5. Damaging or Moving Markings**. It is a misdemeanor for any person to deface, mar, damage, move, remove, or in any way tamper with any structure, work, material, equipment, tools, sign, signal, barricade, fence, painting or appurtenance in any street unless such person has written permission from the City or is an agent, employee or contractor for the City, or other authority having jurisdiction over a particular street, and acting within the authority or scope of a contract with the City or such other authority.

***SECTION 7.05. ICE AND SNOW ON PUBLIC SIDEWALKS.***

**Subd. 1. Ice and Snow a Nuisance**. All snow and ice remaining upon public sidewalks is hereby declared to constitute a public nuisance and shall be abated by the owner or tenant of the abutting private property within twelve (12) hours after such snow or ice has ceased to be deposited.

**Subd. 2. City to Remove Snow and Ice**. The City may cause to be removed from all public sidewalks, beginning twenty-four (24) hours after snow or ice has ceased to fall, all snow or ice which may be discovered thereon, and it shall keep a record of the cost of such removal and the private property adjacent to which such accumulations were found and removed.

**Subd. 3. Cost of Removal to be Assessed**. The Clerk shall, upon direction of the Council, and on receipt of the information provided for in the preceding Subdivision, extend the cost of such removal of snow or ice as a special assessment against the lots or parcel of ground abutting on walks which were cleared, and such special assessments shall at the time of certifying taxes to the County Auditor be certified for collection as other special assessments are certified and collected.

**Subd. 4. Civil Suit for Cost of Removal**. The Clerk shall, in the alternative, upon direction of the Council, bring suit in a court of competent jurisdiction to recover from the persons owning land adjacent to which sidewalks were cleared, as provided in Subdivision 2 hereof, the cost of such clearing and the cost and disbursement of a civil action therefore.

**Subd. 5. Clerk to Report Sidewalks Cleared**. The Clerk shall present to the Council at its first meeting after snow or ice has been cleared from the sidewalks as provided in Subd. 2 hereof the report of the City thereon, and shall request the Council to determine by resolution the manner of collection to be used as provided in Subd. 3 or 4 of this Section.

***SECTION 7.06. CONSTRUCTION AND RECONSTRUCTION OF ROADWAY SURFACING, SIDEWALK, CURB AND GUTTER***.

**Subd. 1. Methods of Procedure.**

A. Abutting or affected property owners may contract for, construct or reconstruct roadway surfacing, sidewalk or curb and gutter in accordance with this Section if advance payment is made therefore or arrangements for payment considered adequate by the City are completed in advance.

B. With or without petition by the methods set forth in the Local Improvement Code of Minnesota Statutes, presently beginning with Section 429.011, as the same may from time to time be amended.

**Subd. 2. Permit Required**. It is a misdemeanor to construct or reconstruct a sidewalk, curb and gutter, driveway, or roadway surfacing in any street or other public property in the City without a permit in writing from the City. Application for such permit shall be made on forms approved and provided by the City and shall sufficiently describe the contemplated improvements, the contemplated date of beginning of work, and the length of time required to complete the same, provided, that no permit shall be required for any such improvement ordered installed by the Council. All applications shall be referred by the Clerk to the City Engineer and no permit shall be issued until approval has been received from the City Engineer. All such applications shall contain an agreement by the applicant to be bound by this Chapter and plans and specifications consistent with the provisions of this Chapter and good engineering practices shall also accompany the application. A permit from the City shall not relieve the holder from damages to the person or property of another caused by such work.

**Subd. 3. Specifications and Standards**. All construction and reconstruction of roadway surfacing, sidewalk and curb and gutter improvements, including curb cuts, shall be strictly in accordance with specifications and standards on file in the office of the City Engineer and open to inspection and copying there. Such specifications and standards may be amended from time to time by the City, but shall be uniformly enforced.

**Subd. 4. Inspection**. The Clerk shall inspect such improvements as deemed necessary or advisable. Any work not done according to the applicable specifications and standards shall be removed and corrected at the expense of the permit holder. Any work done hereunder may be stopped by the Clerk if found to be unsatisfactory or not in accordance with the specifications and standards, but this shall not place a continuing burden upon the City to inspect or supervise such work.

***SECTION 7.07. OBSTRUCTIONS IN STREETS***.

**Subd. 1. Obstructions**. It is a misdemeanor for any person to place, deposit, display or offer for sale, any fence, goods or other obstructions upon, over, across or under any street without first having obtained a written permit from the Council, and then only in compliance in all respects with the terms and conditions of such permit, and taking precautionary measures for the protection of the public. An electrical cord

or device of any kind is hereby included, but not by way of limitation, within the definition of an obstruction.

**Subd. 2. Fires**. It is a misdemeanor for any person to build or maintain a fire upon a street.

**Subd. 3. Dumping in Streets**. It is a misdemeanor for any person to throw or deposit in any street any nails, dirt, glass or glassware, cans, discarded cloth or clothing, metal scraps, garbage, leaves, grass or tree limbs, paper or paper products, shreds or rubbish, oil, grease or other petroleum products, or to empty any water containing salt or other injurious chemical thereon. It is a violation of this Section to haul any such material, inadequately enclosed or covered, thereby permitting the same to fall upon streets. It is also a violation of this Section to place or store any building materials or waste resulting from building construction or demolition on any street without first having obtained a written permit from the Council.

**Subd. 4. Signs and Other Structures**. It is a misdemeanor for any person to place or maintain a sign, advertisement, or other structure in any street without first having obtained a written permit from the Council. In a district zoned for commercial or industrial enterprises special permission allowing an applicant to erect and maintain signs overhanging the street may be granted upon such terms and conditions as may be set forth in the zoning or construction provisions of the City Code.

**Subd. 5. Placing Snow or Ice in a Roadway or on a Sidewalk**.

A. It is a misdemeanor for any person, not acting under a specific contract with the City or without special permission from the City, to remove snow or ice from private property and place the same in any roadway or on a sidewalk.

B. Where permission is granted by the City the person to whom such permission is granted shall be initially responsible for payment of all direct or indirect costs of removing the snow or ice from the street or sidewalk. If not paid, collection shall be by civil action or assessment against the benefited property as any other special assessment.

**Subd. 6. Continuing Violation**. Each day that any person continues in violation of this Section shall be a separate offense and punishable as such.

**Subd. 7. Condition.** Before granting any permit under any of the provisions of this Section, the Council may impose such insurance or bonding conditions thereon as it, considering the projected danger to public or private property or to persons, deems proper for safeguarding such persons and property. Such insurance or bond shall also protect the City from any suit, action or cause of action arising by reason of such obstruction.

***SECTION 7.08. STREET OPENINGS OR EXCAVATIONS***. It is a misdemeanor for any person, except a City employee acting within the course and scope of his/her employment or a contractor acting within the course and scope of a contract with the City, to make any excavation, opening or tunnel in, over, across or upon a street or other public property within first having obtained a written permit from the Clerk as herein provided.

**Subd. 1. Application**. Application for a permit to make a street excavation shall describe with reasonable particularity the name and address of the applicant, the place, purpose and size of the excavation, and such other information as may be necessary or desirable to facilitate the investigation hereinafter provided for, and shall be filed with the Clerk.

**Subd. 2. Investigation and Payment of Estimated Costs.** Upon receipt of such application, the Clerk shall cause such investigation to be made as he/she may deem necessary to determine estimated cost of repair, such as back-filling, compacting, resurfacing and replacement and the conditions as to the time of commencement of work, manner of procedure and time limitation upon such excavation. The foregoing estimated costs shall include permanent and temporary repairs due to weather or other conditions, and the cost of such investigation shall be included in such estimate.

**Subd. 3. Protection of the City and the Public**.

A. Non-Completion or Abandonment. Work shall progress expeditiously to completion in accordance with any time limitation placed thereon so as to avoid unnecessary inconvenience to the public. In the event that work is not performed in accordance therewith, or shall cease or be abandoned without due cause, the City may, after six hours notice in writing to the holder of the permit of its intention to do so, correct the work, fill the excavation and repair the public property, and the cost thereof shall be paid by the person holding the permit.

B. Insurance. Prior to commencement of the work described in the application, the applicant shall furnish the City satisfactory evidence in writing that the applicant will keep in effect public liability insurance of not less than $100,000.00 for any person, $200,000.00 for any occurrence and property damage insurance of not less than $25,000.00, issued by an insurance company authorized to do business in the State of Minnesota on which the City is named as a co-insured.

C. Indemnification. Before issuance of a permit, the applicant shall, in writing, agree to indemnify and hold the City harmless from any liability for injury or damage arising out of the action of the applicant in performance of the work,

or any expense whatsoever incurred by the City incident to a claim or action brought or commenced by any person arising there from.

**Subd. 4. Prior To Issuance of Permit**. The Clerk shall issue such permit after (1) completion of such investigation, (2) determination of all estimated costs as aforesaid, (3) agreement by the applicant to the conditions of time and manner as aforesaid; (4) agreement in writing by the applicant to pay all actual cost of repairs over and above such estimate, and, (5) agreement in writing by the applicant to be bound by all of the provisions of this Section. No permit shall be issued until the applicant has paid all of the foregoing together with such investigation, inspection and permit fees as are fixed and determined by resolution of the Council.

**Subd. 5. Repairs.** All temporary and permanent repairs, including back-filling, compacting and resurfacing shall be made or contracted for, by the City in a manner prescribed by the City and an accurate account of costs thereof shall be kept.

**Subd. 6. Cost Adjustment**. Within sixty days following completion of such permanent repairs the Clerk shall determine actual costs of repairs, including cost of investigation, and prepare and furnish to such permit holder an itemized statement thereof and claim additional payment from, or make refund (without interest) to, the permit holder, as the case may be.

**Subd. 7. Alternate Method of Charging**. In lieu of the above provisions relating to cost and cost adjustment for street openings, the City may charge on the basis of surface square feet removed, excavated cubic feet, or a combination of surface square feet and excavated cubic feet, on an established unit price uniformly charged.

***SECTION 7.09. PARADES.***

**Subd. 1. Definition**. The term **"parade"** means any movement of vehicles, persons or animals, or any combination thereof, which either moves together and as a body so as to in some way impede or affect the free and unobstructed flow of vehicular or pedestrian traffic, or which moves so that some part thereof is in violation of one or more traffic laws or regulations, if such movement is without a permit hereunder.

**Subd. 2. Permit Required**. It is a misdemeanor to sponsor or participate in a parade for which no permit has been obtained from the City, and it is also a misdemeanor to obtain a parade permit and not conduct the same in accordance with the permit granted by the City. Application for such permit shall be made to the Clerk at least thirty (30) days in advance of the date on which it is to occur and shall state the sponsoring organization or individual, the route, the length, the estimated time of commencement and termination, the general composition, and such application shall be executed by the individuals applying therefore or the duly

authorized agent or representative of the sponsoring organization. No fee shall be required for such permit.

**Subd. 3. Investigation**. The Clerk shall forthwith refer all applications for parades to the Chief of Police for his/her consideration which shall take no longer than seven (7) days. If any State trunk highways are in the route the Chief of Police shall make all necessary arrangements with the Minnesota Department of Public Safety for alternate routes or whatever may be necessary. If the Chief of Police finds that such a parade will not cause a hazard to persons or property, and will cause no great inconvenience to the public, and if he/she is able to make arrangements for necessary direction and control of traffic, he/she shall endorse his/her acceptance and return the application to the Clerk. If the Chief of Police finds the parade described in the application to be a hazard, a substantial inconvenience, or if he/she is unable to make adequate arrangements for direction or control of traffic, he/she shall return the same to the Clerk with his findings.

**Subd. 4. Council Action**. The Clerk shall refer the application and results of investigation to the Council at its next regular meeting. The Council may either, (1) deny the permit, (2) grant the permit, or (3) grant the permit on condition that a date, time or route are acceptable to applicant which differ from such as stated in the application. Applicant shall have three (3) days within which to communicate his acceptance to the City.

**Subd. 5. Unlawful Acts**.

A. It is unlawful for any person to hamper, obstruct, or impede or interfere with any parade, parade assembly or any person, animal or vehicle participating in the parade.

B. It is unlawful for any person to drive a vehicle between the vehicles or persons comprising a parade when such parade is in motion.

C. It is unlawful for any person to enter into a parade without prior authorization from the parade chairman.

**Subd. 6. Exceptions**. This Section shall not apply to (1) funeral processions, or (2) a governmental agency acting within the scope of its functions.

***SECTION 7.10. REGULATION OF GRASS, WEEDS, AND TREES***.

**Subd. 1. City to Control Tree Planting (Standards)**. The City shall have control and supervision of planting shrubs and trees upon, or overhanging, all the streets or other public property. The City may establish and enforce uniform standards relating to the kinds and types of trees to be planted and the placement thereof. Such standards shall be kept on file in the office of the Clerk and may be

revised from time to time by action of the Council upon the recommendation of the Clerk.

**Subd. 2. Permit Required**. It is a misdemeanor for any person to plant, spray, trim or remove trees or other plants which are upon City property, including rights-of-way, without first procuring from the City a permit in writing to do so.

**Subd. 3. Duty of Property Owners to Cut Grass and Weeds and Maintain Trees and Shrubs**. Every owner of property abutting on any street shall cause the grass and weeds to be cut from the line of such property nearest to such street to the center of such street. If the grass or weeds in such a place attain a height in excess of one foot it shall be prima facie evidence of a failure to comply with this Subdivision. Every owner of property abutting on any street shall, subject to the provision herein requiring a permit therefore, trim, cut and otherwise maintain all trees and shrubs from the line of such property nearest to such street to the center of such street.

**Subd. 4. City May Order Work Done**. The City may, in cases of failure to comply with this Section, perform such work with employees of the City, keeping an accurate account of the cost thereof for each lot, piece or parcel of land abutting upon such street.

**Subd. 5. Assessment.** If such maintenance work is performed by the City as set forth in the foregoing Subdivision, the Clerk shall forthwith upon completion thereof ascertain the cost attributable to each lot, piece or parcel of abutting land. The Clerk shall, at the next regular meeting thereof, present such certificate to the Council and obtain its approval thereof. When such certificate has been approved it shall be extended as to the cost therein stated as a special assessment against such abutting land and such special assessment shall, at the time of certifying taxes to the County Auditor, be certified for collection as other special assessments are certified and collected.

***SECTION 7.11. CURB AND GUTTER. STREET AND SIDEWALK PAINTING OR COLORING.*** It is unlawful for any person to paint, letter or color any street, sidewalk or curb and gutter for advertising purposes, or to paint or color any street, sidewalk or curb and gutter for any purpose, except as the same may be done by City employees acting within the course or scope of their employment. Provided, however, that this provision shall not apply to uniformly coloring concrete or other surfacing, or uniformly painted house numbers, as such coloring may be approved by the City.

***SECTION 7.12. MOTORIZED VEHICLES PROHIBITED ON SIDEWALKS***. It is unlawful for any person to drive or operate a motorized vehicle on any public sidewalk or public property designated for use as a pedestrian walkway or bicycle trail, except when crossing the same for ingress and egress to private property lying on the other side thereof.

***SECTION 7.13. CHARGE FOR SERVICES***. The Council may provide, by ordinance, that the cost of any services such as street cleaning, street flushing or oiling, and tree trimming on streets, sidewalks, boulevards, nuisance abatement or other public or private property undertaken by the city may be charged against the property benefited. Service charges shall be collected and levied like special assessments or in such other manner as the council determines. The council shall have the power to abate nuisances on any particular property and shall have the power to collect the costs of such abatement as a special assessment in the manner provided in this chapter.

***SECTIONS 7.14 THROUGH 7.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION***.

***SECTION 7.99. VIOLATION A MISDEMEANOR OR PETTY MISDEMEANOR***. Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as follows:

**Subd. 1. Violations Resulting In Misdemeanor**. Where the specific section, subdivision, paragraph or provision specifically makes violation a misdemeanor, he/she shall be punished as for a misdemeanor; where a violation is committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property, he/she shall be punished as for a misdemeanor; where he/she stands convicted of violation of any provision of this Chapter, exclusive of violations relating to the standing or parking of an unattended vehicle, within the immediate preceding 12-month period for the third or subsequent time, he/she shall be punished as for a misdemeanor.

**Subd. 2. Petty Misdemeanor**. As to any violation not constituting a misdemeanor under the provisions of Subdivision 1 hereof, he/she shall be punished as for a petty misdemeanor.

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# CHAPTER 8

# TRAFFIC REGULATIONS

## (SEE CHAPTER 7 FOR DEFINITIONS, SCOPE AND APPLICATION RELATING TO THIS CHAPTER)

### *SECTION 8.01. CERTAIN STATUTES ADOPTED BY REFERENCE*.

**Subd. 1. Regulatory and Procedural Provisions**. Except as otherwise provided in this Chapter, or in Chapters 7 and 9 of this Code, the regulatory and procedural provisions of Minnesota Statutes, Chapter 169, commonly referred to as the Highway Traffic Regulation Act, as amended thereafter from time-to-time, is hereby incorporated herein and adopted by reference, including the penalty provisions thereof.

**Subd. 2. State Statutes**. Except as otherwise provided in this Chapter, or in Chapters 7 and 9 of this Code, Minnesota Statutes, Section 171.01, 171.02, 171.08, 171.22, 171.23 and 171.24, as amended thereafter from time-to-time, are hereby incorporated herein and adopted by reference, including the penalty provisions thereof.

### *SECTION 8.02. TRUCK ROUTE*.

**Subd. 1. Purpose**. The City of Lexington by and through the provisions of Minnesota Statutes 169.87 has determined that the weight of motor vehicles to be operated upon designated City streets and roads must be restricted to prevent serious damage or destruction of streets and roads subject to deterioration, rain, snow and other climatic conditions.

**Subd. 2. Temporary Restrictions**. The City Coordinator, upon the recommendation of the City Engineer may from time to time impose upon vehicular traffic on any part or on all of the City maintained streets, such load limits as may be necessary or desirable. Such limits and the specifications or weight to which loads are limited shall be clearly legible sign posted thereon.

**Subd. 3. Permanent Restrictions**. It is unlawful for any person to drive a tractor, agricultural implement, truck over 3 tons per axle weight, truck trailer, tractor-trailer or track tractor upon any street except those which have been designated and sign-posted as truck routes.

Truck routes of nine-ton per axle weight are as listed below:

A. Woodland Road between Lake Drive and Lexington Avenue

B. Restwood Road between Lake Drive and Lexington Avenue

C. Griggs Avenue from Lake Drive to Restwood

D. South Service Drive between Restwood Road and Lexington Avenue

E. North Service Drive between Restwood Road and Patriot Lane

**Subd. 4. Exceptions.** The above weight restrictions shall not apply to City or emergency vehicles, public school buses, recreational vehicles or to garbage and refuse trucks making regular collections or who are under license with the City of Lexington.

**Subd. 5. Emergency**. The Chief of Police may, without the recommendation of the City Coordinator; post signs closing or imposing weight restrictions on any street, provided that such emergency closing or restriction shall be effective only for such period of time as may be reasonable and necessary for the City Coordinator to have the streets examined.

**Subd. 6. Special Permission.** The City Coordinator or his/her designee may issue an "Overweight Permit" authorizing an individual whose gross weight exceeds the restrictions herein set forth and posted. The individual must make application to the City showing good cause for the permit. The application shall specifically describe the vehicle or vehicles, streets, particular routes to be traveled, and period of time for which permit is requested. The application will be reviewed by the City Coordinator or his/her designee for recommendation. If granted, proof of the permit shall be carried in the vehicle and shall be open to inspection.

"Overweight Permits" will only be granted after the following have been submitted to the City:

A. The applicant shall furnish to the City a bond with good and sufficient surety thereon guaranteeing to secure the payment of all costs of putting the streets in as good condition as it was before the restriction. The bond shall be in an amount as determined by the City Coordinator or his/her designee.

B. The applicant shall pay the City Coordinator a fee equal to the total cost to the City of issuing the permit including all legal fees, engineering fees, and other administrative and investigative costs.

***SECTION 8.03. EXHIBITION DRIVING.***

**Subd. 1. Prima Facie Evidence**. It is prima facie evidence of exhibition driving when a motor vehicle stops, starts, accelerates, decelerates, or turns at an unnecessary rate of speed so as to cause tires to squeal, gears to grind, soil to be thrown, engine backfire, fishtailing or skidding, or, as to two-wheeled or three-

wheeled motor vehicles, the front wheel to lose contact with the ground or roadway surface.

**Subd. 2. Unlawful Act.** It is a misdemeanor for any person to do any exhibition driving on any street, parking lot, or other public or private property, except when an emergency creates necessity for such operation to prevent injury to persons or damage to property; provided, that this Section shall not apply to driving on a racetrack. For purposes of this Section, a "racetrack" means any track or premises whereon motorized vehicles, horses, dogs, or other animals or fowl legally compete in a race or timed contest for an audience, the members of which have directly or indirectly paid a consideration for admission.

***SECTION 8.04. EMERGENCY VEHICLES***. The provisions of this Chapter shall not apply to vehicles when operated with due regard for safety, under the direction of police officers in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to Fire Department or fire patrol vehicles when traveling in response to a fire alarm, nor to public ambulances when traveling in emergencies. This exemption shall not, however, protect the-driver of any such vehicle from the consequences of a reckless disregard of the safety of others.

***SECTIONS 8.05 THROUGH 8.29, INCLUSIVE, RESERVED FOR FUTURE EXPANSION***.

***SECTION 8.30. RECREATIONAL MOTOR VEHICLES AND SNOWMOBILES.***

**Subd. 1. Definitions**. For the purposes of this section, the terms defined shall have the meanings given them.

A. **"All-Terrain Vehicle" or "ATV"** - Trail bikes, amphibious vehicles, three and four wheelers and similar devices, other than snowmobiles, used at least partially for travel on natural terrain, but not "special mobile equipment" as defined in M.S.A. 168.011, Subdivision 22, which is hereby incorporated herein by reference.

B. **"Deadman Throttle or Safety Throttle"** - A device which when pressure is removed from the engine accelerator or throttle, causes the motor to be disengaged from the driving mechanism.

C. **"Motorcycle"** - Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, not designed for street or highway use including motor scooters and mini-bikes.

D. **"Motorized Bicycle"** - A bicycle with fully operable pedals which may be propelled by human power or a motor, or by both, with a motor capacity of less than 50 cubic centimeters piston displacement, and a maximum of five horsepower, which is capable of a maximum speed of not more than 30 miles per hour on a flat surface with not more than one percent grade in any direction when the motor is engaged.

E. **"Motorized Skateboard"** - A device consisting of two or more wheels, normally propelled by human power, with a motor capacity of less than 50 cubic centimeters piston displacement, and a maximum of five horsepower, which is capable of a maximum speed of not more than 30 miles per hour on a flat surface with not more than one percent grade in any direction when the motor is engaged.

F. **"Operate"** - To ride in or on and have control of a recreational motor vehicle including snowmobiles.

G. **"Operator"** - The person who operates or is in actual physical control of a recreational motor vehicle including snowmobiles.

H. **"Owner"** - A person, other than a lien holder, having a property interest in, or title to, a recreational motor vehicle including snowmobiles, who is entitled to the use or possession thereof.

I. **"Recreational Motor Vehicle"** - Any self-propelled vehicle and any vehicle propelled or drawn by a self-propelled vehicle used for recreational purposes, including but not limited to a motor cycle, motorized bicycle, motorized skateboard, all-terrain vehicle or ATV, hovercraft or motor vehicle which is being used for recreational purposes.

J. **"Right of Way"** - The entire strip of land traversed by a highway or street in which the public owns the fee or an easement for roadway purposes.

K. **"Roadway"** - That portion of a highway or street improved, designed or ordinarily used for vehicular travel.

L. **"Snowmobile"** - A self-propelled vehicle designed for travel on snow or ice or natural terrain steered by wheels, skis or runners.

M. **"Street"** - A public thoroughfare, roadway, alley, or trail used for motor vehicular traffic which is not an interstate, trunk, county-state aid, or county highway.

**Subd. 2. Recreational Vehicle Operating Restrictions**. It is unlawful of any person to operate a recreational motor vehicle as follows:

A. On a public street or highway within the corporate limits of the City of Lexington.

B. On a public sidewalk, boulevard or walkway provided or used for pedestrian travel.

C. On a private property of another without lawful authority or permission of the owner or occupant.

D. On any lands owned or occupied by a public body, including but not limited to, school grounds, park property, playgrounds, recreational areas, private roads, platted but unimproved roads, utility easements, public trails and golf courses. Provided, however, that the Council may, by resolution, specifically permit use on City property, in which event the shortest route to and from areas so permitted shall be used.

E. While the operator is under the influence of alcohol, narcotics, or a controlled substance.

F. At a speed greater than reasonable or prudent under all of the surrounding circumstances.

G. In a careless, reckless or negligent manner so as to endanger the person or property of another or cause injury or damage thereto.

H. Towing any person or thing except through the use of a rigid tow bar attached to the rear of the recreational motor vehicle.

I. In a manner so as to create a loud, unnecessary or unusual noise which disturbs, annoys or interferes with the peace and quiet of other persons.

J. By chasing, running over, or killing any animal, wild or domestic.

**Subd. 3. Owner Responsibility.**

A. It is unlawful for the owner of any recreational motor vehicle to permit its operation on private property without permission of the owner or occupant, on City property without permission of the Council, or on other public property without permission of the body in charge thereof.

B. Every person leaving a recreational motor vehicle in a public place shall lock the ignition, remove the key and take the same with him/her.

**Subd. 4. Snowmobile Operating Restrictions**. It is the intent of this Section to supplement Minn. Stat. 84.82 - 84.911, and Minn. Stat. Chap. 169, with respect to

the operation of snowmobiles. Such statutes are incorporated herein by reference. This section is intended to be more restrictive than the state statutes.

**Subd. 5. Unlawful Use.** Except as otherwise allowed, it is unlawful for any person to operate a snowmobile within the limits of the City:

A. On any roadway except the most right-hand lane when available for traffic or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle stopped in that lane or proceeding in the same direction, or in making a left turn. Snowmobiles may also be operated upon the out-side slope of trunk, county-state aid and county highways where such highways are so configured within the corporate limits.

B. On a public sidewalk or trail provided for pedestrian travel.

C. On boulevards within any public right of way.

D. On private property of another without specific permission of the owner or person in control of said property.

E. Upon any school grounds, except as permission is expressly obtained from responsible school authorities.

F. On any public property, playgrounds or recreation areas, except areas previously listed or authorized for such use by the Council, in which case the use shall be lawful, and snowmobiles may be driven in and out of these areas by the shortest route. Authorized areas in the city shall be designated by resolution of the Council.

G. On streets as permitted by this section at a speed exceeding ten (10) miles per hour.

H. On posted portions of the Rice Creek snowmobile trail at a speed exceeding thirty (30) miles per hour.

I. The Anoka County Curfew Ordinance for minors under the age of 17 is hereby adopted by reference and shall apply to the operation of snowmobiles by youthful operators. For operators 17 years of age or older it shall be unlawful to operate a snowmobile within the city limits during the following times:

    1) During the hours from 10:00 o'clock p.m. to 7:00 o'clock a.m., Sunday through Thursday; and

2) 12:00 o'clock a.m. to 8:00 o'clock a.m., on other days. This provision is not intended to prohibit snowmobiles from operating on city streets during the specified hours, however snowmobiles may proceed to and from their residence by street utilizing the most direct route for the purpose of accessing the designated snowmobile trail while entering and exiting the City of Lexington.

J. Within two hundred (200) feet of church property during the hours of church services, and during the hours of other church functions where the operation of snowmobiles would interfere with such church functions. This provision is not intended to prohibit snowmobiles from operating on city streets adjacent to church property during the hours specified.

**Subd. 6. Traffic Ordinances**. City traffic ordinances and state statutes shall apply to the operation of snowmobiles upon streets and highways except those which by their nature have no application.

**Subd. 7. Uncontrolled Intersections**. No snowmobile shall enter any uncontrolled intersection without making a complete stop. The operator shall then yield the right of way to any vehicles or pedestrians at the intersection, or so close to the intersection as to constitute an immediate hazard.

**Subd. 8. Persons under 18.** No person under 14 years of age shall operate a snowmobile upon the public streets or highways or make a crossing of a city street as the operator of a snowmobile. A person 14 years or older, but less than 18 years of age, may operate a snowmobile on streets as permitted under this Section, and make a crossing of such streets only if the person has in their immediate possession a valid snowmobile safety certificate issued by the Commissioner of Natural Resources as provided by Minn. Stat. 84.86. It is unlawful for the owner of a snowmobile to permit the snowmobile to be operated contrary to the provisions of this section.

**Subd. 9. Violation a Misdemeanor**. Every person who violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be guilty of a misdemeanor.

***SECTION 8.31 SELF-PROPELLED WHEELED DEVICES.***

**Subd. 1. Definitions.** The term **"self-propelled device"** shall mean a non-motorized platform, foot board, ski-like device, shoe, boot, or similar object mounted on wheels and designed or intended to propel a rider by human power or force of gravity including, but not limited to, skateboards, roller-skis, roller skates, and rollerblades. These devices do not include a wheelchair operated by a disabled person, bicycles, wagons or strollers.

**Subd. 2. Prohibited Acts**. It shall be unlawful for any person to ride or operate a self-propelled wheeled device under any of the following conditions:

A. Upon any property containing facilities designed to invite public pedestrian shopping traffic, unless written permission has been obtained from the owner, occupant, or person in charge of the property.

B. In any area within the City while being pushed, pulled or in any way propelled by any motorized vehicle or by a person on a bicycle.

C. In a careless, reckless, or negligent manner in disregard for the rights or safety of property or any other person.

D. Contrary to the rights and duties applicable to the driver of any vehicle pursuant to Minnesota Statutes, Chapter 169, except in respect to those provisions therein which by their nature cannot reasonably be applied to such devices.

E. Upon the roadway of any County State Aid Highway.

**Subd. 3. Penalty**. Any person who shall operate a self-propelled wheeled device in violation of the provisions of this Section shall be punished in the same manner as a violation of Minnesota Statutes, Chapter 169, as more fully described in Section 169.89, Subd. 1 thereof.

**Subd. 4. Impoundment**. Any police officer who observes any violation of this Section is authorized to impound the self-propelled wheeled device and to hold the same at the police department. The self-propelled wheeled device shall immediately be released to the parent or legal guardian of an operator under the age of eighteen (18) years, and shall be released to any operator eighteen (18) years or older following the expiration of a 24-hour impoundment period.

***SECTIONS 8.32 THROUGH 8.89, INCLUSIVE, RESERVED FOR FUTURE EXPANSION***.

***SECTION 8.99. VIOLATION A MISDEMEANOR OR PETTY MISDEMEANOR.*** Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as follows:

**Subd. 1. Misdemeanor**. Where the specific section, subdivision, paragraph or provision specifically makes violation a misdemeanor, he/she shall be punished as for a misdemeanor; where a violation is committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property,

he/she shall be punished as for a misdemeanor; where he/she stands convicted of violation of any provision of this Chapter, exclusive of violations relating to the standing or parking of an unattended vehicle, within the immediate preceding 12-month period for the third or subsequent time, he/she shall be punished as for a misdemeanor.

**Subd. 2. Petty Misdemeanor.** As to any violations not constituting a misdemeanor under the provisions of Subdivision 1 hereof, he/she shall be punished as for a petty misdemeanor.

**Subd. 3. Violation**. As to any violation of a provision adopted by reference, he/she shall be punished as specified in such provision, so adopted.

# CHAPTER 9

## PARKING REGULATIONS

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# CHAPTER 9

# PARKING REGULATIONS

## (SEE CHAPTER 7 FOR DEFINITIONS, SCOPE AND APPLICATION RELATING TO THIS CHAPTER)

***SECTION 9.01. PRESUMPTION.*** As to any vehicle parking in violation of Chapters 7, 8 and 9 when the driver thereof is not present, it shall be presumed that the owner parked the same, or that the driver was acting as the agent of the owner.

***SECTION 9.02. GENERAL PARKING PROHIBITIONS.*** It is unlawful for any person to stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the specific directions of a police officer or traffic control device in any of the following places (1) on a sidewalk; (2) in front of or within five feet of a public or private driveway; (3) within an intersection; (4) within ten feet of a fire hydrant; (5) on a crosswalk; (6) within twenty feet of a crosswalk at any intersection; (7) in a sign-posted fire lane; (8) within thirty feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway; (9) between a safety zone and the adjacent curb or within twenty feet of points on the curb immediately opposite the ends of the safety zone, unless otherwise directed by signs or markings; (10) within ten feet of any mail box which is designated for the receipt of mail, either incoming or outgoing; (11) within fifty feet of the nearest rail of a railroad crossing; (12) within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when properly sign-posted; {13) alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic; (14) on the roadway side of any vehicle stopped or parked at the edge or curb of a street; (15) at any place where official signs prohibit or restrict stopping, parking or both; (16) in any alley, except for loading or unloading and then only so long as reasonably necessary for such loading and unloading to or from adjacent premises; or, (17) on any boulevard which has been curbed.

***SECTION 9.03. RECREATIONAL CAMPING VEHICLE PARKING.***

**Subd. 1. Definition**. The term **"recreational camping vehicle"** means any of the followings:

A. **"Travel Trailer"** - A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified "Travel Trailer" by the manufacturer of the trailer.

B. **"Pick-up Coach"** - A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.

C. **"Motor Home"** - A portable, temporary building to be used for travel, recreation and vacation, construction as an integral part of a self-propelled vehicle.

D. **"Camping Trailer"** - A folding structure, mounted on wheels and designed for travel, recreation and vacation uses.

**Subd. 2. Unlawful Act.** It is unlawful for any person to leave or park a recreational camping vehicle on or within the limits of any street or right-of-way for a continuous period in excess of twenty-four (24) hours, except where signs are erected designating the place as a campsite or in a manufactured home park. Provided, however, that during such 24-hour period, such vehicle shall not be occupied as living quarters.

***SECTION 9.04. UNAUTHORIZED REMOVAL***. It is unlawful for any person to move a vehicle not owned by such person into any prohibited area or away from a curb such distance as is unlawful.

***SECTION 9.05. DIRECTION TO PROCEED***. It is unlawful for any person to stop or park a vehicle on a street when directed or ordered to proceed by any police officer invested by law with authority to direct, control or regulate traffic.

***SECTION 9.06. PARALLEL PARKING.*** Except where angle parking is specifically allowed and indicated by curb marking or sign-posting, or both, each vehicle stopped or parked upon a two-way road where there is an adjacent curb shall be stopped or parked with the right-hand wheels of the vehicle parallel with, and within twelve inches of, the right-hand curb, and, where painted markings appear on the curb or the street, such vehicle shall be within such markings, front and rear; provided that upon a one-way roadway all vehicles shall be so parked, except that the left-hand wheels of the vehicle may be parallel with and within twelve inches from the left-hand curb, but the front of the vehicle in any event and with respect to the remainder of the vehicle, shall be in the direction of the flow of traffic upon such one-way street; and it is unlawful to park in violation of this Section.

***SECTION 9.07. ANGLE PARKING.*** Where angle parking has been established by Council resolution, and is allowed, as shown by curb marking or sign-posting, or both, each vehicle stopped or parked shall be at an angle of approximately 45 to 60 degrees with the front wheel touching the curb and within any parking lines painted on the curb or street, provided that the front wheel not touching the curb shall be the portion of the vehicle furthest in the direction of one-way traffic; and it is unlawful to park in violation of this Section.

***SECTION 9.08. STREETS WITHOUT CURB.*** Upon streets not having a curb each vehicle shall be stopped or parked parallel and to the right of the paving, improved or main traveled part of the street. Where no curb exists, a vehicle may be

parked on that part of the boulevard immediately adjacent to the traveled portion of the roadway; provided, however, that no vehicle shall be parked on any sidewalk, walkway, footpath or pedestrian walkway. A vehicle may be driven across a sidewalk, footpath, walkway or pedestrian right-of-way if said sidewalk, walkway or pedestrian right-of way is located within the right and left hand limits of a driveway which is used by vehicular traffic in gaining access to either a business or a residence. It is unlawful to park in violation of this Section.

***SECTION 9.09. PARKING HOURS***. Parking on streets shall be limited as follows:

**Subd. 1. In Excess Of 24 Hours**. It is unlawful for any person to stop, park or leave standing any vehicle upon any street or in a parking lot(s) owned by the City for a continuous period in excess of twenty-four (24) hours.

**Subd. 2. Limited Parking Hours**. The Clerk may, when authorized by resolutions of the Council, designate certain streets, blocks, or in a parking lot(s) owned by the City or portion thereof as prohibited parking zones, or five-minute, ten-minute, fifteen-minute, thirty-minute, one-hour, two-hour, four-hour, six-hour, eight-hour, morning or afternoon rush hour limited parking zones and shall mark by appropriate signs any zones so established. Such zones shall be established whenever necessary for the convenience of the public or to minimize traffic hazards and preserve a free flow of traffic. It is unlawful for any person to stop, park or leave standing any vehicle in a prohibited parking zone, for a period of time in excess of the sign-posted limitation, or during sign-posted hours of prohibited parking.

**Subd. 3. Reasonable Movement**. For the purpose of enforcement of this Section, any vehicle moved less than two blocks in a limited time parking zone shall be deemed to have remained stationary.

***SECTION 9.10. WINTER PARKING RESTRICTIONS.***

A. From November 1st to April 1st no owner shall park or permit to be parked a vehicle on any city street or in a parking lot(s) owned by the City, between the hours of 2:00 A.M. and 6:00 A.M. without an emergency parking permit issued by the Police Department.

B. Snow Removal. It is unlawful for any person to park a vehicle on any city street or in a parking lot(s) owned by the City after a continuous or intermittent snowfall during which there has been an accumulation of two (2) inches or more of snow on any city street, and until all snow, ice and similar debris has been plowed or removed from the paved portion of the city street or in a parking lot(s).

***SECTION 9.11. TRUCK PARKING.***

**Subd. 1. Detached Semi Trailer**. It is unlawful to park a detached semi-trailer upon any street, City-owned parking lot, or other public property except streets as specifically designated by the Council by resolution and sign-posted.

**Subd. 2. Tractor Trailer**. It is unlawful to park a semi-trailer, truck-tractor, or a combination thereof, within an area zoned as a residential district, except for the purpose of loading or unloading the same.

**Subd. 3. Limited Tractor Trailer Parking**. It is unlawful to park a semi-trailer, truck-tractor, or a combination thereof, on any street for a continuous period longer than two hours.

***SECTION 9.12. PARKING RULES IN CITY PARKING LOTS***. In City-owned parking lot(s), the Council may limit the sizes and types of motor vehicles to be parked thereon, hours of parking, and prescribed method of parking, provided that such limitations and restrictions which are in addition to those set forth elsewhere in these Ordinances are marked or sign-posted thereon. It is unlawful to park or leave standing any vehicle backed into a parking place, to drive in a direction opposite the flow of traffic marked by "one-way" signs or arrows, or to park any vehicle in any City-owned parking lot(s) contrary to the restrictions or limitations marked or sign-posted therein.

***SECTION 9.13. IMPOUNDING AND REMOVING VEHICLES.***

**Subd. 1. Authority to Remove Vehicles**. Any vehicle found to be in violation of any provision of this Chapter may be removed by the police to a place of safekeeping for the purpose of granting relief to such violation. The police are hereby authorized to remove said vehicle without prior notice to the registered owner that the vehicle is to be removed; provided, however, that the police shall make a sincere effort to notify the owner of a vehicle removed under the provisions of this Section, either by telephone or letter, within forty-eight (48) hours after the vehicle was removed as to the fact of the removal, the reason for the vehicle having been removed, and the current location of the vehicle, giving information as to how the registered owner of the removed vehicle may regain custody of the same.

**Subd. 2. Cost of Removal**. Any costs incurred for the removal of a vehicle, as well as any costs incurred as a result of maintaining, care and security of an impounded vehicle shall be the responsibility of the owner.

**Subd. 3. Release of Vehicle.** Prior to the release of any vehicle which has been removed under the provisions of this Section, the owner shall be required to furnish proof of ownership to the police, and shall thereupon be provided with appropriate release forms, and shall be required to sign such release forms or documents which may be required to establish proof that the vehicle has been released to the registered owner. Such vehicle shall not be released until the costs incurred pursuant to this Section have been paid.

**Subd. 4. Sale of Impounded Vehicles**. All costs and charges levied for towing and storage under this Section shall be a lien upon the vehicle in question and, if not paid within ninety (90) days following the towing of said vehicle, said vehicle shall be disposed of in accordance with Minnesota Statutes Annotated, Sections 514.18 through 514.22, which provide for the sale of personal property and possessions. All proceeds in excess of that necessary to cover the costs and claims for services herein performed shall be distributed in the manner provided for in the statutes referred to above.

**Subd. 5. City Not Liable for Damage or Loss**. Any owner who operates, or allows another to operate a vehicle on the streets in the City or in a parking lot(s) owned by the City shall be deemed to have consented to the removal of any vehicle which is in violation of the provisions of this Section, and such consent shall extend to the storage of said vehicle without liability to the City or its agents for damage to said vehicle or its contents while said vehicle is being removed or stored.

***SECTION 9.14. UNATTENDED VEHICLE.***

**Subd. 1. Engine Running**. It is unlawful for any person to leave a motor vehicle unattended while the engine is running.

**Subd. 2. Keys In Ignition**. It is unlawful for any person to leave a motor vehicle unattended with the key in the ignition.

***SECTION 9.15. VEHICLE REPAIR ON STREET***. It is unlawful for any person to service, repair, assemble or dismantle any vehicle parked upon a street or in a parking lot(s) owned by the City, or attempt to do so, except to service such vehicle with gasoline or oil or to provide emergency repairs thereon, but in no event for more than twenty-four (24) hours.

***SECTION 9.16. PARKING FOR THE PURPOSE OF ADVERTISING OR SELLING MERCHANDISE***. It is unlawful for any person to park a vehicle on any street or in a parking lot(s) owned by the City, for the purpose of advertising such vehicle for sale, for the purpose of advertising for sale or selling merchandise thereon or therein, or advertising any merchandise for sale or a forthcoming event.

***SECTION 9.17. PHYSICALLY HANDICAPPED PARKING***.

**Subd. 1. Parking Privileges**. Statutory parking privileges for physically handicapped shall be strictly observed and enforced. Police officers are authorized to tag vehicles on either private or public property in violation of such statutory privileges.

**Subd. 2. Fire Lane**. It is unlawful for any person, whether or not physically handicapped, to stop, park, or leave standing, a motor vehicle (1) in a sign-posted

fire lane at any time, or (2) in lanes where, and during such hours as, parking is prohibited to accommodate heavy traffic during morning and afternoon rush hours.

***SECTION 9.18. DISABLED VEHICLES***.

**Subd. 1. Parking of Disabled Vehicles**. Vehicles which are disabled due to either damage or malfunction while on streets, must be pulled over to the extreme right-hand portion of the roadway, and shall not be left unattended by the person parking such vehicle until all measures necessary to ensure the free and safe flow of other traffic using the roadway, such as setting in operation sufficient lighting to warn oncoming traffic of potential hazards have been taken. In no event shall a disabled vehicle be left unattended on a street or other roadway for longer than twenty-four (24) hours unless in case of extreme emergency. It is unlawful for any person to park or leave standing any vehicle in violation of this Subdivision.

**Subd. 2. Removal of Disabled Vehicles**. Any police officer shall be empowered to remove any disabled vehicle left unattended for longer than twenty-four (24) hours, or any such vehicle which presents a hazard to other traffic, to a place of safekeeping, and any and all costs incurred from moving such vehicle shall be the responsibility of the owner of the vehicle.

***SECTION 9.19. PARKED VEHICLES - LIMITATIONS RELATING TO OCCUPANTS***.

**Subd. 1. Children Under the Age of Ten (10) years.** It is unlawful for any person to park any vehicle on any public street or in any public or City owned parking lot(s), and leave said vehicle unattended, while said vehicle is occupied by any child under the age of ten (10) years, for a period not to exceed three (3) minutes, and in all such cases, the engine shall be shut off and the keys removed from the ignition.

**Subd. 2. Animals**. It is unlawful for any person to park a vehicle on any public street or in any public or City owned parking lot(s), and leave said vehicle unattended, while said vehicle is occupied by an animal unless such provisions as included herein have been taken to insure the well-being of said animal:

A. Windows must be left open no less than one inch, nor more than three inches to allow for ventilation of fresh air, and to prevent danger to the animal's or fowl's well-being from toxic fumes.

B. In no event shall a vehicle be parked and left unattended for a continuous period of longer than one (1) hour while said vehicle is occupied by any animal or fowl.

C. Compliance with the provisions of this Section shall not relieve any owner, driver or other person having actual physical control over any parked vehicle,

of any liability for injury sustained by another person, resulting from the actions of any animal left in an attended parked vehicle.

***SECTIONS 9.20 THROUGH 9.29, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 9.30. ESTABLISHMENT OF FIRE LANES ON PRIVATE PROPERTY***.

**Subd. 1. Fire Lane Access**. The City Fire Marshal is hereby directed to recommend fire lanes on private property in order that travel of fire equipment is not obstructed or interfered with and that access to buildings, structures, fire hydrants and standpipes is not blocked off or obstructed. The City Fire Marshal shall submit a scaled diagram, detailing and specifying the requested area of fire lanes on private property to the Council.

**Subd. 2. Council Adoption of Fire Lane**. The Council may by resolution, adopt and establish the fire lanes recommended by the City Fire Marshal and shall cause said diagram detailing the fire lanes to be filed in the Council minutes with said resolution.

**Subd. 3. Notification**. After a fire lane has been established by the Council, the City Fire Marshal shall forward a copy of the diagram designating said fire lanes to the owner or occupant of the private property who shall at his own expense and within sixty (60) days, erect signs and when there is curbing adjacent to said fire lanes cause them to be painted yellow within said time period, weather permitting. The signs shall bear the words NO PARKING AT ANY TIME FIRE LANE. Said signs shall not be less than 12" x 18"' and one shall be white with red lettering thereon and be clearly legible from a distance of 100 feet. Signs shall be erected on posts adjacent to the fire lanes and be at least five feet in height, and said signs shall not be more than 30 feet apart.

**Subd. 4. Parking In A Fire Lane**. It is unlawful for any person to thereafter park a vehicle in an established fire lane which has been signed as provided herein, and it is also unlawful for any owner or occupant of private property to fail to post said signs or paint curbs yellow within sixty (60) days after having been directed to do so by the City Fire Marshal.

***SECTIONS 9.31 THROUGH 9.39, INCLUSIVE, RESERVED FOR FUTURE EXPANSION***.

***SECTION 9.40. NOTICE OF VIOLATION AND PAYMENT OF PENALTY***.

**Subd. 1. Violation Enforcement**. Any member of the Police Department, or any other person employed by the City with authority to enforce the provisions of this Chapter shall, upon determining a vehicle to be in violation of the provisions of this

Chapter, attach to said vehicle notice of the violation, said notice setting forth the nature of the violation, the date of the violation, the time of day of the violation, the name of the official issuing the notice and the amount of the initial penalty. Once such a notice has been given, the owner or driver of the vehicle may within seventy-two (72) hours pay full satisfaction for the stated violation to the Clerk, or the Clerk's designated representative of the following penalties:

| | | |
|---|---|---|
| 1. | Junk Vehicle | $25.00 |
| 2. | Blocking Fire Station or Hydrant | $200.00 |
| 3. | Fire Lane | $200.00 |
| 4. | Keys in Vehicle | $10.00 |
| 5. | Occupied Vehicle Prohibition | $10.00 |
| 6. | Within 30 Feet of Stop Sign | $10.00 |
| 7. | Blocking Mail Box | $10.00 |
| 8. | Prohibited Parking | $10.00 |
| 9. | Obstructing Snow Removal | $25.00 |
| 10. | All other violations | $10.00 |

**Subd. 2. Failure To Pay**. It is unlawful for any person to fail to pay the fines provided in this Section within 72 hours after notice as herein provided.

***SECTION 9.41. ADMINISTRATIVE OFFENSE.***

**Subd. 1. Purpose**. Administrative offense procedures established pursuant to this section are intended to provide the public and the city with an informal, cost-effective and expeditious alternative to traditional criminal charges for violations of certain Code provisions. The procedures are intended to be voluntary on the part of those who have been charged with administrative offenses. At any time prior to the payment of the administrative penalty as is provided for in Subd. 7, the individual may withdraw from participation in the procedures, in which event, the city may bring criminal charges. In addition the City, in its discretion, may choose not to initiate an administrative offense and may bring criminal charges in the first instance. In the event a party participates in the administrative offense procedures but does not pay the monetary penalty which may be imposed, the City may seek to collect the costs of the administrative offense procedures as part of any subsequent criminal sentence, in the event the party is charged and is adjudicated guilty of the criminal violation.

**Subd. 2. Administrative Offense Defined.** A violation of any section of this code when one performs an act prohibited or fails to act when such failure is thereby prohibited and is subject to the penalties set forth in this code.

**Subd. 3. Notice.** Any officer of the City Police Department, or any other person employed by the City, authorized in writing by the City Administrator, and having the authority to enforce the code, shall, upon determining that there has been a violation, notify the violator, or in the case of the vehicular violation, attach to the

vehicle a notice of the violation. Said notice shall set forth the nature, date and time of violation, the name of the official issuing the notice, and the amount of the scheduled penalty.

**Subd. 4. Payment**. Once such notice is given, the alleged violator may, within seven day of the time of issuance of the notice, pay the amount set forth on the schedule of penalties for the violation, or may request that the matter be referred to the Anoka Count Court. The penalty may be paid in person or by mail, and the payment shall be deemed to be an admission of the violation. Administrative penalties for tags issued by the Police Department shall be paid to the Police Department.

**Subd. 5. Failure to Pay**. In the event a party charged with an administrative offense fails to pay the penalty, criminal charges may be brought against the alleged violator in accordance with the applicable Code section or State Statute. If the penalty is paid, no such charge may be brought by the City for the stated violation.

**Subd. 6. Disposition of Penalties**. All penalties collected shall be periodically paid over to the City Finance Dept.

**Subd. 7. Offenses and Penalties**. Penalties shall be imposed for violation of the scheduled administrative offenses according to a schedule established and adopted from time to time by resolution of the City Council. Any person violating a section of this code shall be subject to the scheduled penalty, not to exceed the maximum amount for a petty misdemeanor offense.

**Subd. 8. Subsequent Offenses**. In the event a party is charged with a subsequent administrative offense within a 12-month period of paying an administrative penalty for a same or similar offense, the subsequent administrative penalty shall be increased by 25% above the previous administrative penalty.

***SECTIONS 9.42 THROUGH 9.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 9.99. VIOLATION A MISDEMEANOR OR PETTY MISDEMEANOR***. Every person violates a section, subdivision, paragraph or provision of this Chapter when he performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as follows:

**Subd. 1. Misdemeanor.** Where the specific section, subdivision, paragraph or provision specifically makes violation a misdemeanor, he shall be punished as for a misdemeanor; where a violation is committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property, he shall be punished as for a misdemeanor; where he stands convicted of violation of any

provision of this Chapter, exclusive of violations relating to the standing or parking of an unattended vehicle, within the immediate preceding 12 month period for the third or subsequent time, he shall be punished as for a misdemeanor.

**Subd. 2. Petty Misdemeanor**. As to any violation not constituting a misdemeanor under the provisions of Subdivision 1 hereof, he shall be punished as for a petty misdemeanor.

# CHAPTER 10

## PUBLIC PROTECTION, CRIMES AND OFFENSES

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# CHAPTER 10

# PUBLIC PROTECTION, CRIMES AND OFFENSES

## *SECTION 10.01. STORAGE, DEPOSIT AND DISPOSAL OF REFUSE.*

**Subd. 1. Definitions**. The following terms, as used in this Section, shall have the meanings stated:

A. **"Refuse"** - Includes all organic material resulting from the manufacture, preparation or serving of food or food products, and spoiled, decayed or waste foods from any source, bottles, cans, glassware, paper or paper products, crockery, ashes, rags and discarded clothing, tree or lawn clippings, leaves, weeds and other waste products, or human waste, except waste resulting from building construction or demolition.

B. **"Residential Dwelling"** - Any single building consisting of one or two dwelling units with individual kitchen facilities for each.

C. **"Multiple Dwelling"** - Any building used for residential purposes consisting of more than two dwelling units with individual kitchen facilities for each.

D. **"Commercial Establishment"** - Any premises where a commercial or industrial enterprise of any kind is carried on, and shall include restaurants, clubs, churches, and schools where food is prepared or served.

**Subd. 2. Storage**.

A. It is unlawful for any person to store refuse on residential dwelling premises for more than one week. All such storage shall be in five to thirty-two gallon metal or plastic containers with tight-fitting covers, which shall be maintained in a clean and sanitary condition; provided, that tree leaves, weeds and grass clippings may be stored in plastic bags and tree limbs must be stored in bundles weighing no more than seventy-five pounds or no longer than three feet. All metal containers or equivalent shall at all times except on collection days be located behind the rear line of the dwelling, or in the garage, or screened from view from the street and at least ten feet from the abutting property.

B. It is unlawful for any person to store refuse on multiple dwelling premises for more than one week. Such storage shall be in containers as for residential dwelling premises, except that so-called "dumpsters" with close-fitting covers may be substituted.

C. It is unlawful for any person to store refuse on commercial establishment premises for more than forty-eight hours. Such storage shall be in containers

as for residential dwelling premises, except that so-called “dumpsters” with close-fitting covers may be substituted.

D. It is unlawful to store organic refuse unless it is drained and wrapped.

**Subd. 3. Deposit**. It is unlawful for any person to deposit refuse from any source, rubbish, offal, or the body of a dead animal, in any place other than a sanitary landfill.

**Subd. 4. Fire Danger**. It is unlawful for any person to store, deposit or dispose of any refuse which is in flames or heated to the point where it could cause danger of fire in other refuse.

***SECTION 10.02. TOILET INSTALLATION REQUIRED.*** It is the duty of every owner or occupant of any property within the City, having a dwelling house or business building situated thereon, which property is abutting a street in which there are City water and sewer mains, to install a toilet in such dwelling or business building and make connection thereof with such water and sewer mains. The City shall serve written notice upon said owner or occupant requiring the installation of toilet facilities upon premises described in said notice, and connection thereof with the sewer and water mains, all of which shall be done within thirty days after service of such written notice. Whenever any owner or occupant shall default in compliance with such written notice the Council may by resolution direct that a toilet be installed and connection made with the water and sewer mains and that the actual cost of such installation be paid in the first instance out of the General Revenue Fund, and assessed against the property so benefited. After such installation and connection is completed by order of the Council, the City shall serve a written notice of intention to make an assessment therefore. If such assessment is not paid within ten days the City shall certify the amount thereof to the County Auditor in the same manner as with other special assessments, provided that the Council may by resolution provide that the assessment be spread over a term of five years upon written request by the owner of the property.

***SECTION 10.03. UNLAWFUL USE AND FURNISHING OF TOBACCO***.

**Subd. 1. Age of Legal Use**. It is unlawful for any person, under the age of eighteen years, to use tobacco in any form.

**Subd. 2. Unlawful To Furnish**. It is unlawful for any person to furnish tobacco, by any manner or means and in any form, to any person under the age of eighteen years.

***SECTION 10.04. DANGEROUS WEAPONS AND ARTICLES***.

**Subd. 1. Acts Prohibited**. It is unlawful for any person to:

A. Recklessly handle or use a gun or other dangerous weapon or explosive so as to endanger the safety of another; or,

B. Intentionally point a gun of any kind, capable of injuring or killing a human being and whether loaded or unloaded, at or toward another; or,

C. Manufacture or sell for any unlawful purpose any weapon known as a sling-shot or sand club; or,

D. Manufacture, transfer or possess metal knuckles or a switch blade knife opening automatically; or,

E. Possess any weapons commonly used in martial arts including, but not limited to, “throwing stars”, “nunchakas” and similar devices. Provided, however, that a person engaged in martial arts may transport such devices between his/her residence and place of instruction or demonstration; or,

F. Possess any other dangerous article or substance for the purpose of being used unlawfully as a weapon against another; or,

G. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or,

H. Permit, as a parent or guardian, any child under fourteen years of age to handle or use, outside of the parent’s or guardian’s presence, a firearm or air gun of any kind, or any ammunition or explosive; or,

I. Furnish a minor under eighteen years of age with a firearm, air gun, ammunition, or explosive without the written consent of his/her parent or guardian or of the Police Department.

**Subd. 2. Exception**. Nothing in Subdivision 1 of this Section shall prohibit the possession of the articles therein mentioned if the purpose of such possession is for public exhibition by museums or collectors of art.

**Subd. 3. Discharge of Firearms and Explosives.** It is unlawful for any person to fire or discharge any cannon, gun, pistol or other firearm, air gun, air rifle, or other similar device commonly referred to as a B-B gun.

**Subd. 4. Exception**. Nothing in Subdivision 3 of this Section shall apply to a display of fireworks by an organization or group of organizations authorized in writing by the Council, or to a peace officer in the discharge of his/her duty, or to a person in the lawful defense of his/her person or family. This Section shall not apply to the discharge of firearms in a range authorized in writing by the Council.

**Subd. 5. Exposure of Unused Container**. It is unlawful for any person, being the owner or in possession or control thereof, to permit an unused refrigerator, ice box, or other container, sufficiently large to retain any child and with the doors which fasten automatically when closed, to expose the same accessible to children, without removing the doors, lids, hinges or latches.

**Subd. 6. Use of Bow and Arrow**. It is unlawful for any person to shoot a bow and arrow except in the Physical Education Program in a school supervised by a member of its faculty, a community-wide supervised class or event specifically authorized by the Chief of Police, or a bow and arrow range authorized by the Council.

**Subd. 7 State Statute 624.20 Adopted**. Minnesota State Statute 624.20 as amended thereafter from time to time is hereby adopted by reference as though set forth verbatim herein.

***SECTION 10.05. PROHIBITING THE REMOVAL OF MATERIALS SET OUT FOR RECYCLING COLLECTION AND PROVIDING PENALTIES.***

**Subd. 1. Purpose**. This section is designed to prevent the unauthorized collections of recyclable materials which are set out as part of a designated recycling program. Unauthorized collection or “Scavenging” may reduce the volume of material collected as part of a designated program and thereby threaten the economic liability of the authorized program. Scavenging may also cause confusion among participating residents and thereby disrupt the publicity and educational processes of an authorized program. This section is also designed to insure that a designated recycling program will be implemented in an orderly fashion to avoid adverse effects on the public health, welfare, safety and environment.

**Subd. 2. Definitions**.

A. **“Authorized Recycling Program”** - shall mean a program for the collection and recycling of recyclable materials which is instituted, sponsored, authorized or controlled by the City of Lexington.

B. **“Recyclable Materials”** - shall mean all items of refuse designated by the Recycling Coordinator to be a part of an authorized recycling program and which are intended for transportation, processing and remanufacturing or reuse.

C. **“Scavenging”** - shall mean the unauthorized collection of recyclable materials that have been set out by residents of the City specifically for participating in curbside recycling programs.

**Subd. 3. Designation of Items**. Items designated for recycling shall be listed by the City’s Recycling Coordinator to be part of an authorized recycling program.

**Subd. 4. Ownership of Recyclable Materials.** Ownership of recyclable materials set out for the purpose of participating curbside recycling programs shall remain with the person who set out the materials until removed by the authorized collector. Until the recyclable materials are removed by the authorized collector, the person who set out the materials is totally responsible for their proper preparation, handling and storage. Ownership and responsibility for the proper handling of the recyclable materials shall vest in the authorized collector upon removal thereof by the collector.

**Subd. 5. Unauthorized Collection.** It shall be unlawful for any person who is not authorized by the City to take or collect or scavenge recyclable material set out for authorized collection programs within the City. The first violation of this section shall constitute a petty misdemeanor. The second and subsequent violation shall be misdemeanors.

***SECTION 10.06. COMMUNITY SERVICE OFFICERS.***

**Subd. 1. Powers.** Notwithstanding anything to the contrary contained in this Code, individuals employed as community service officers by the Police Department or other entity which provides law enforcement services to the City are hereby authorized to issue citations in lieu of arrest or continued detention to persons who violate any provision of the following sections of this Code of state statute:

A. Chapter 3 Municipal Utilities, Section 3.20 Rules and Regulations Relating to Water Service Subd. 6

B. City Code Chapter 4 Construction Licensing

C. City Code Chapter 8 Traffic Violations

D. City Code Chapter 9 Parking Violations

E. City Code Chapter 10 Public Protection and Penalties

***SECTION 10.08. CLANDESTINE DRUG LAB AND CHEMICAL DUMP SITE CLEAN-UP.***

**Subd. 1. General Provisions.**

A. Purpose and Intent. The purpose of this ordinance is to reduce public exposure to health risks where law enforcement officers have determined that hazardous chemicals or residue from a suspected clandestine drug lab site or associated dump site may exist. Professional reports, based on assessments, testing and investigations, show that chemicals used in the production of illicit drugs can condense, penetrate, and contaminate surfaces,

furnishings, and equipment of surrounding structures. The City Council finds that such sites, and the personal property within such sites, may contain suspected chemicals and residues that place people, particularly children or adults of child bearing age, at risk when exposed through inhabiting or visiting the site or using or being exposed to contaminated personal property.

B. Interpretation and Application. In the interpretation and application of this article, the provisions herein shall be construed to protect the public health, safety and welfare. Where the conditions imposed by any provision of this ordinance are either more or less restrictive to the public than comparable provisions imposed by any other law, ordinance, statute, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements on the public shall prevail. Should any court of competent jurisdiction declare any section or subpart of this article to be invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the provision declared invalid.

C. Fees. Fees for the administration of this ordinance may be established and amended periodically by resolution of the City Council.

**Subd. 2. Definitions.** For the purposes of this ordinance, the following terms or words shall be interpreted as follows:

A. **"Child"** – Shall mean any person less than 18 years of age.

B. **"Chemical Dump Site"** – Shall mean any place or area where chemicals or other waste materials used in a clandestine drub lab operation have been located.

C. **"City"** – Shall mean the City of Lexington.

D. **"Clandestine Drug Lab Sites/Wastes/Substances"** – Shall mean any place or area where law enforcement has determined that conditions associated with the operation of an unlawful clandestine drug lab exist. A clandestine drug lab site may include dwellings, accessory buildings, accessory structures, a chemical dumpsite, any land or personal property which may include vehicle(s), boat(s), trailer(s), etc. Wastes generated from a clandestine drug lab shall be treated, stored, transported or disposed of in a manner consistent with Minnesota Department of Health, Minnesota Pollution Control, and Anoka County Health Department rules and regulations.

E. **"Clandestine Drug Lab Operation"** – Shall mean the unlawful manufacture or attempt to manufacture a controlled substance.

F. **"Controlled Substance"** – Shall mean any drug, substance or immediate precursor in Minnesota Statute § 152.02 Schedules I through V together with

any amendments or modifications thereto. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.

G. **"Manufacture, (in places other than a pharmacy)"** – Shall mean and include the production, cultivation, quality control, and standardization, by mechanical, physical, chemical or pharmaceutical means, and the packing, repacking, tableting, encapsulating, labeling, relabeling, or filling or by other process of drugs.

H. **"Owner"** – Shall mean any person(s), firm(s), corporation(s) or other entity who or which owns, in whole or in part, the land, building, structure, vehicle, boat, trailer or other location associated with a clandestine drug lab site or chemical dump site.

I. **"Public Health Nuisance"** – All dwellings, accessory structures and buildings or adjacent property associated with a clandestine drug lab site are potentially unsafe due to health hazards and are considered a public health nuisance pursuant to Minn. Stat. § 463.15, et seq.; § 463.15, et seq.; § 412.221, et seq.; and 145A.01, et seq.

**Subd. 3. Declaration of Site and Contents as a Public Health Nuisance**. All dwellings, accessory structures, buildings, vehicles, boats, trailers, personal property, adjacent property or other locations, associated with a clandestine drug lab site or chemical dump site are potentially unsafe due to health hazards and are hereby declared to be a public health nuisance pursuant to Minn. Stat. § 463.15, et seq.; § 463.15, et seq.; § 412.221, et seq.; and 145A.01, et seq.

**Subd. 4. Law Enforcement Action.** If law enforcement authorities determine the existence of a clandestine drug lab site or chemical dump site, the site, and all personal property therein, shall be declared a public health nuisance. Law enforcement authorities who identify conditions associated with a clandestine drug lab site or chemical dumpsite which may place neighbors, the visiting public, or present and future occupants of the site at risk for exposure to harmful contaminants and other associated conditions are authorized to take the following action:

A. Promptly notify the State Duty Officer, Chemical Assessment Team (CAT), Crime Lab, City Building Official or designee, child protection, public health authorities and the appropriate enforcement division of the drug enforcement administration of the U.S. Justice Department of the location of the site, local law enforcement officials, and the owner if known, of the conditions found; and

B. Treat, store, transport or dispose of all wastes/substances generated from a clandestine drug lab operation found at the site in a manner consistent with Minnesota Department of Health, Minnesota Pollution Control and Anoka County Health Department rules and regulations; and

C. Public Health Officials may issue a temporary declaration of public health nuisance for the affected site and post a copy of the declaration on all doorway entrances to the site or, in the case of bare land, post the declaration in several conspicuous places on the property. This temporary declaration of public health nuisance shall expire subsequent to the same authority and the City Building Official or designee inspecting the site and determining the appropriateness of issuing a after the City Building Official or designee inspects the site and determines the appropriateness of issuing a permanent declaration of public health nuisance; and

D. The Chemical Assessment Team (CAT) and Crime Lab will notify all persons occupying the site that a temporary declaration of public health nuisance has been issued; and

E. Require all persons occupying the site to immediately vacate the site, remove all pets from the site, and not return without written authorization from the City Building Official or designee; and

F. Notify all occupants vacating the site that all personal property at the site may be contaminated with dangerous chemical residue; and

G. Public Health Official or City Building Official or designee may put locks on each doorway entrance to the site to prohibit people from entering the site without authorization after all occupants of the site have vacated.

H. The obligation to promptly notify the persons and organizations mentioned above may be delayed to accomplish appropriate law enforcement objectives, but only to the extent that public health and child protection responsibilities are not unnecessarily compromised.

**Subd. 5. Seizure of Property.** When the clandestine drug lab site or chemical dump site is inside a vehicle, boat, trailer or other form of moveable personal property, law enforcement authorities, upon the direction of the Duty Officer, Chemical Assessment Team (CAT) and Crime Lab, shall immediately seize it and not allow it to be transported except to a more secure location. In such circumstances, all other requirements of this ordinance shall be followed as closely as possible given the specific type of property in which the site is discovered.

**Subd. 6. Action by City Building Official or Designee**.

A. Inspection and Declaration of Nuisance. Within 48 hours of notification that law enforcement authorities have determined the existence of a clandestine drug lab site or chemical dump site, the City Building Official or designee shall inspect the site to determine the appropriate scope of a permanent declaration of public health nuisance. Based on the results of the inspection,

the City Building Official or designee may then promptly issue a permanent declaration of public health nuisance and a Do Not Enter-Unsafe to Occupy Order for the affected site to replace the temporary declaration issued and posted by law enforcement. A copy of the permanent declaration and order shall be posted on all doorway entrances to the site or, in the case of bare land, shall be posted in several conspicuous places on the property.

B. Abatement Order. After a permanent declaration of public health nuisance has been issued and posted, the City Building Official or designee shall send written notice to the site owner ordering abatement of the public health nuisance. The abatement order shall include the following information:

1) A copy of the declaration of public health nuisance and Do Not Enter-Unsafe to Occupy Order; and

2) Information about the potentially hazardous condition of the site; and

3) Notification of suspension of the site's rental license if applicable; and

4) A summary of the site owner's and occupant's responsibilities under this ordinance; and

5) Information that may help the owner locate appropriate services necessary to abate the public health nuisance.

C. Notice to Concerned Parties. The Building Official or designee shall also mail a copy of the permanent declaration of public health nuisance, a copy of this ordinance, and a notification of the suspension of the site's rental licensees, if applicable, to the following concerned parties at their last known address:

1) Occupants or residents of the site if the identities of such persons are known; and

2) Neighbors in proximity to the site who may be reasonably affected by the conditions found; and

3) The City Administrator; and

4) The City Police Department; and

5) The City Fire Department; and

6) The appropriate enforcement division of the Drug Enforcement Administration of the U.S. Justice Department; and

7) Other City, State and Local authorities, such as the City Water Department, the Minnesota Pollution Control Agency, the Department of Natural Resources and any other agency or authority which is known to have public and protection responsibilities that are applicable to the situation.

D. Modification or removal of declaration. The City Building Official or designee is authorized to modify or remove the declaration of public health nuisance after the Building Official or designee receives documentation from a City approved environmental hazard testing and cleaning firm stating that the suspected health and safety risks, including those of neighbors and potential dwelling occupants, either do not exist or have been sufficiently abated or corrected to justify amendment or removal of the declaration.

**Subd. 7. Site Owner's Responsibility to Act**. Within ten (10) business days of the date the abatement order is mailed to the owner of the site, the owner shall accomplish the following:

A. Provide the City Building Official or designee, City Administrator and City Attorney with written notification:

1) That the owner has confirmed that all persons and their pets have vacated the site; and

2) Of the name(s) of all children who the owner believes were residing at the site during the time period the clandestine drug lab or chemical dump site is suspected to have been at the site; and

3) That the site will remain vacated and secured until the public health nuisance is completely abated as required by this ordinance.

B. Contract with one (1) or more City approved environmental hazard testing and cleaning firms to conduct the following work in accordance with the most current Minnesota Department of Health guidelines:

1) A detailed on-site assessment of the extent of contamination at the site and the contamination of the personal property therein;

2) Soil testing of the site and testing of all property and soil in proximity to the site which the environmental hazard testing and cleaning firm determines may have been affected by the conditions found at the site; and

3) A complete clean-up of the site (including, but not limited to, the clean up or removal of plumbing, ventilation systems, fixtures and contaminated soil) or a demolition of the site and complete clean-up of the demolished site; and

4) A complete clean up, or disposal at an approved dump site, of all personal property in the site; and

5) A complete clean-up of all property and soil in proximity to the site which is found to have been affected by the conditions found at the site; and

6) Remediation testing and follow-up testing, including, but not limited to, testing of the ventilation system and plumbing, to determine that all health risks are sufficiently reduced, according to Minnesota Department of Health guidelines, to allow safe human occupancy and use of the site and use of the personal property therein and of all property and soil in proximity to the site.

C. Provide the City Building Official or designee with the identity of the testing and cleaning firm with which the owner has contracted for abatement of the public health nuisance as required above; and

D. Sign an agreement with the City Building Official or designee establishing a clean-up schedule. The schedule shall establish reasonable deadlines for completing all actions required by this ordinance for abatement of the public health nuisance. In determining appropriate deadlines, the City Building Official or designee shall consider practical limitations and the availability of contractors in approving the schedule for clean-up.

E. The site owner must meet all deadlines established on the clean-up schedule. Also, pursuant to the deadlines established by the clean-up schedule, the site owner is required to provide the City Building Official or designee with written documentation of the clean-up process, including a signed statement from a City approved environmental hazard testing and cleaning firm that the site, all personal property therein and all property and soil in proximity to the site, is safe for human occupancy and use and that the clean-up was conducted in accordance with the most current Minnesota Department of Health guidelines.

**Subd. 8. Site Owner's Responsibility for Costs**. The site owner shall be responsible for all costs, including those of the City, of addressing and abating the public health nuisance, including contractor's fees and the City's costs for services performed in association with the clandestine drug lab site or chemical dump site clean-up. The City's cost may also include, but shall not be limited to:

A. Posting of the site; and

B. Notification of affected parties; and

C. Securing the site, providing limited access to the site, and prosecution of unauthorized persons found at the site; and

D. Expense related to the recovery of costs, including the assessment process; and

E. Laboratory fees; and

F. Clean up services; and

G. Administrative fees; and

H. Legal fees; and

I. Other associated costs.

**Subd. 9. City Action and Recovery of Costs.**

A. If the building owner fails to comply with any of the requirements of this ordinance, the City Building Official or designee is authorized to take all reasonable actions necessary to abate the public health nuisance including, but not limited to, contracting with a City approved environmental hazard testing and cleaning firm to conduct the work outlined in Section 7 of this ordinance.

   1) The Building Official or designee is also authorized to provide a certified copy of the declaration of public health nuisance to the lien and/or mortgage holder(s), insurance company(ies) and with the Office of the Anoka County Recorder or Registrar of Titles of the affected site to help assure that persons with interest in the site have access to information about the declaration of public health nuisance. Upon abatement of the nuisance as required herein, the Building Official or designee, shall cause a notice of successful abatement and removal of the Declaration of Public Health Nuisance.

B. If the costs to clean the site or to clean the personal property at the site are prohibitively high in relation to the value of the site or the personal property, the City is authorized to remove or demolish the site, structure or building and/or dispose of the personal property therein. These actions shall be taken in accordance with the provisions of Minnesota Statute Chapter 463 together with any amendments or modifications thereto.

C. If the City abates or assists in abating the public health nuisance, in addition to any other legal remedy, the City shall be entitled to recover all of its out of pocket costs as set forth in Section 8 above and an additional 25 percent of such costs for administrative and legal expense. The City may recover costs by civil action against the owner of the site or by assessing such costs as a special charge against the site as taxes and special assessments are certified

and collected pursuant to Minnesota Statute § 429.101 or according to the provisions of Minnesota Statute Chapter 463 together with any amendments or modifications thereto.

D. Nothing herein shall limit the authority of the City to enforce this ordinance or seek any other legal remedy to abate the nuisance through declaratory action, injunction, and nuisance declaration of otherwise.

**Subd. 10. Recovery of Costs from Persons Causing Damage.** No provisions of this ordinance are intended to limit the site owner's, residents' or the City's right to recover costs incurred under this article from either the persons contributing to the public health nuisance, such as the operators of the clandestine drug lab, and/or from other lawful sources.

**Subd. 11. Site Owner and Address**. When the site is real property and the owner or the address of the owner of the site is unknown, the owner and the owner's address is deemed to be that of the property's taxpayer's name and address as that information is maintained by the County Auditor's Office. When the site is a vehicle, boat or trailer and the owner or the address of the owner of the site is unknown, the owner and the owner's address is deemed to be that of the person on file as the owner on the current or most recent title to the vehicle, boat or trailer.

**Subd. 12. Suspension of Residential Rental Certification**. Upon issuance of a permanent declaration of public health nuisance, any residential rental certificate issued by the City for the site, or any part thereof, is hereby declared to be immediately suspended pending full compliance with this ordinance.

**Subd. 13. Unauthorized Removal of Postings**. It is unlawful for any person, except authorized City personnel or Public Health Officials, to remove postings designating a temporary or permanent declaration of public health nuisance and/or Do Not Enter – Unsafe to Occupy Order from a chemical dump site or a clandestine drug lab site.

**Subd. 14. Entry Into or Onto Site**. While a declaration of public health nuisance for an affected site is in effect and has been posted at the site, no persons are permitted to be inside the site, or on the site property without prior written consent of the City Building Official or designee or as otherwise authorized by this ordinance. To confirm compliance with this ordinance and to execute their duties under this ordinance, law enforcement officers, the City Building Official or designee, and any persons designated by the Building Official or designee, may enter onto the site property or enter into the site at any time while a declaration of public health nuisance is in effect for the site.

**Subd. 15. Removal of Personal Property from the Site.** While a declaration of public health nuisance for an affected site is in effect and has been posted at the site, no personal property may be removed from the site without prior

written consent from the City Building Official or designee. Consent to remove personal property shall only be granted at the reasonable discretion of the Building Official or designee, and only in cases of hardship after:

A. A City approved environmental hazard testing and cleaning firm has advised the City, in writing, that the item(s) of personal property can be sufficiently cleaned to remove all harmful contamination; and

B. The owner of the personal property agrees in writing:

1) That the owner is aware of the danger of using the contaminated property; and

2) That the owner will thoroughly clean the property to remove all contamination prior to the use of the property; and

3) That the owner releases and agrees to indemnify the city, its Staff, and the City Council from all liability to the owner and/or third persons for injuries or damages caused, or alleged to have been caused, by the contaminated property.

**Subd.16. City Council Review/Right to Appeal**. The owner of the property or any party with a legal interest in the property who has been issued a Declaration of Public Health Nuisance, an Order for Abatement, or a Statement of Public Costs may appeal to the City Council. The appeal shall be in writing, filed with the City Clerk and Anoka County Community Health and Environmental Services, specifying the grounds for the appeal and the relief requested. The appeal must be filed within ten (10) days of the issuance of the item from which appeal is taken. The City Council shall hear the appeal at the next available City Council meeting. Upon review, the City Council may affirm, modify or reverse the action taken. The filing of an appeal shall suspend the terms of the Declaration of Public Health Nuisance, Order for Abatement, or Statement of Public Costs, whichever is applicable. However, in the instance of an appeal from an Order for Abatement, the appeal shall not suspend that part of the order prohibiting occupancy of the property.

**Subd. 17. Violations and Penalties**. Any person violating any provision of this ordinance is guilty of a misdemeanor and upon conviction shall be subject to the penalties set forth in Minnesota Statute § 609.02, Subd. 3.

***SECTION 10.09, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 10.10. ANIMAL LICENSING AND REGULATION.***

**Subd. 1. Dogs And Other Animals.**

A. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subdivision, except where the context clearly indicates a different meaning:

1) **“Animal”** - means all animals, whether wild or domestic, including but not limited to dogs and cats.

2) **“Animal Control Authority”** - means the city, acting through its employees or officials, the police department, or any person or organization appointed by city council for the purpose of enforcing this chapter.

3) **“Animal Control Officer”** - means all employees of the police and public works departments, or any other person or employee of an organization appointed by the city council for purposes of enforcing this chapter.

4) **“Animal Shelter”** - means any premises designated by the city council for the purpose of impounding or caring for animals held under the authority of this chapter.

5) **“At Large”** - means an animal off the owner's premises and not under the control of the owner, a member of the owner’s immediate family, or person in control of the animal either by leash, cord or chain, or similar physical restraint.

6) **“Farm Animals”** - shall mean those animals commonly associated with a farm, ranch or stable or performing work in an agricultural setting. These animals shall include but are not limited to chickens, ducks, geese, horses, cows, sheep, goats, pigs (including Vietnamese pot-bellied pigs), and llamas.

7) **“Kennel”** - means any place where four or more dogs over the age of six months are kept, owned, boarded, bred or offered for sale.

8) **“Owner”** - means a person who harbors, feeds, boards, possesses, keeps or has custody of an animal.

9) **“Pet Shop”** - means any establishment, whether non-profit or for profit, engaged in the business of breeding, buying, selling or boarding animals of any species.

10) **“Veterinary Hospital”** - means any establishment maintained and operated by a licensed veterinarian for the diagnosis and treatment of diseases and injuries of animals.

B. Animal licensing/Identification. Animals that are permitted in the city are not required to obtain a license, however all dogs over the age of six months shall have an identification tag affixed to a collar which indicates the owner name, address and a contact phone number.

C. Licensing Pet Shops & Kennels. Pet shops and kennels shall require a license from the City. It is unlawful to operate a kennel in any residentially zoned district. Pet Shops and kennels are permitted in certain zoning district but require a conditional use permit.

D. License validity; fees. Licenses shall be issued as follows:

1) All fees will be established from time to time by ordinance or resolution of the city council. Licenses may be issued at any time during a license period, provided that the fees set forth in this section shall be prorated on the basis of the number of months remaining in any such period. However the minimum fee shall be no less than the licensing fee for a six month period. For this purpose fifteen days or more shall be construed a full month. Application for license shall be filed on the appropriate forms provided by the city.

2) Kennel licenses. No kennel license may be issued or renewed unless the applicant has a valid conditional use permit for the facility.

3) The commencement and ending period of licenses shall be set out in the ordinance or resolution that establishes fees for such license. Licenses shall be valid for a period of two years.

E. Unlawful acts.

1) It is unlawful for any animal to defecate on public property or the private property of another, without the owner or person in control of the animal immediately removing the excrement and disposing of it in a sanitary manner.

2) It is unlawful for any animal to be in or upon any city park, street, sidewalk or trail property unless owner or person in control of the animal restrains it by a leash or the animal is housed in a portable crate or kennel, and unless the owner or person in control of the animal has a bag or other receptacle for the collection and proper disposal of the animal's excrement in their possession.

3) It is unlawful for any animal to be at large. An owner or person in control of the animal is responsible under this chapter for any animal that is at large.

4) It is unlawful to possess more than three dogs, three cats, or three of any other type of animal or in combination a maximum of four animals over the age of six months to be kept on any property in the city, except in a location where a licensed pet shop or kennel is allowed or other exceptions as specifically set forth in this chapter.

5) It shall be unlawful for any animal to habitually or frequently bark or cry; to frequent school grounds; to chase vehicles; to molest or disturb any person if such person is not on the property of the owner or custodian of such animal; or to molest, defile or destroy any property, public or private. It shall be the obligation and responsibility of the owner or custodian of any animal in the city to prevent such animal from committing any act which constitutes a nuisance.

6) It is unlawful for the owner or person in control of the animal to permit such unsanitary conditions on a premise that the maintenance or keeping of the animal creates danger or odors to the annoyance of the public in the vicinity. Failure on the part of the owner or custodian to prevent their animal from committing an act of nuisance shall be a violation of this section.

7) Exceptions. The provisions of 1 and 2 do not apply to a guide dog accompanying a blind person, a service dog accompanying a disabled person, or a dog engaged in police or rescue activity.

F. Seizure of animals.

1) The Animal Control Officer may seize animals for reasons specified in this chapter. The animal Control Officer shall immediately seize any potentially dangerous animal or dangerous animal if:

(a) The animals is not validly registered, the owner does not secure proper liability coverage, or the animal is not sterilized within 14 days after the owner is provided notice of the animal's designation; or

(b) An animal is not otherwise maintained in a manner consistent with an order of the Animal Control Officer.

2) If an owner of a dog is convicted of a crime for which the dog was originally seized, the court may order that the dog be confiscated and destroyed in a proper and humane manner, and that the owner pay the costs incurred in confiscating, confining, and destroying the dog.

G. Impoundment; notice to owner; disposition of unclaimed animals. Unrestrained animals may be taken by any officer and impounded in an animal shelter. Impounded animals shall be kept for not less than five days

unless reclaimed by their owners. If the owner can be identified by registration, identification tag, or by other means, the Animal Control Officer shall immediately, upon impoundment, notify the owner by telephone, mail or personal contact of such impoundment. Animals not claimed by their owners within five days may be humanely disposed of by any person or agency delegated by the city council to exercise such authority. Any animal which is in the city that has been critically injured may be immediately and humanely euthanized by an Animal Control Officer or by a veterinarian.

H. Reclamation; pound fees. Impounded animals may be reclaimed by their owners after payment is made to the city of a pound fee, in addition to boarding and other costs. All fees in the city will be established from time to time by ordinance or resolution of the city council, or such expenses as otherwise set by market rates where establishing fees are not practical.

I. Alternative to impoundment; proceedings against owner. Notwithstanding other provisions of this section, if an animal is found at large and its owner can be identified and located, such animal need not be impounded but may, instead, be taken to the owner. In such case, however, proceedings may be taken against the owner for violation of this chapter.

J. Female animals in heat. Every female animal in heat shall be confined in a building or other secure enclosure, in such a manner that the female animal cannot come into contact with another animal, except for planned breeding.

K. Care of and cruelty to animals. No person shall fail to provide any animal with sufficient food and water, proper shelter and veterinary care when needed. No person shall beat, cruelly treat, torment or otherwise abuse any animal or cause or permit any dogfight, cockfight, bullfight or other combat between animals or between animals and humans. No person shall abandon an animal.

L. Quarantine of biting animals. Any animal which bites a person shall be quarantined for such time as may be directed by the city. During quarantine the animal shall be securely confined. At the discretion of the police chief the quarantine may be on the premises of the owner. However, if the police chief requires other confinement, the owner shall surrender the animal for the quarantine period to an animal shelter or shall, at his own expense, place it in a veterinary hospital.

M. Destruction of animals suspected of being rabid. No person shall kill any animal suspected of being rabid except after the animal has been placed in quarantine and the diagnosis of rabies made by a licensed veterinarian. If a veterinarian diagnoses rabies in an animal in quarantine, then the animal shall be humanely euthanized.

N. Enforcement of section. The city council may from time to time appoint such persons as may be necessary to assist in the enforcement of this section. Such persons shall have limited police powers only necessary for enforcement of this section, and no person shall interfere or obstruct in the exercise of such powers. [Such person may be appointed as a Reserve Officer to the police department for the purpose carrying out the duties set forth in this section.]

O. Interference with Animal Control Officer or police officer. No person shall interfere with, hinder or molest any Animal Control Officer or police officer in the performance of any duty, or seek to release any animal in the custody of the Animal Control Officer or police officer except as provided in this chapter.

**Subd 2. Wild or Dangerous Animals.**

A. Prohibited species. No person shall harbor, maintain or control any wild, dangerous, or non-domesticated animal within the city. These shall include, but are not limited to, the following animals:

1) Any animal which possession is prohibited by state or federal law.

2) Any non-domesticated animal or species, including but not limited to the following animals:

(a) Any non-human member of the family Primate (i.e., monkey).

(b) Any cat of the family Felidae (i.e., tiger, bobcat), except domesticated cats known as Felis catus.

(c) Any canine of the family Canidae (i.e., wolf, coyote), except domesticated dogs known as Canis lupus familaris.

(d) Any canine resulting from crossbreeding with a coyote or wolf.

(e) Any snake of the family Viperidae (i.e., rattlesnake, cobra), or any snake of the family Boidae (i.e., boa constrictor, python).

(f) Any carnivorous reptile (i.e., alligator, crocodile, gila monster).

(g) Any poisonous or stinging insect (i.e., scorpion).

(h) Any skunk, whether captured in the wild, domestically raised, descented or not descented, vaccinated against rabies or not vaccinated against rabies.

(i) Any raccoon, opossum, porcupine or badger.

(j) Any bear.

3) Other animals. Any other animal which by its size, vicious nature or other characteristics which are inherently dangerous to human beings; any other animal which is commonly considered wild and not domesticated; or that because of its odors, cries or similar characteristics is not compatible with urban living.

4) Any animal, including dogs known as Canis lupus familaris, that meets the definition of a dangerous animal contained in this chapter and is not otherwise permitted by this chapter.

B. Licensing Honey Bees. Notwithstanding other provisions of this chapter, a person may keep honey bee colonies on any premises after first obtaining a license as provided in this subsection. No license shall be issued except in compliance with this section.

1) Lot size shall be a minimum of one-half acre,

2) No more than two honey bee colonies shall be allowed,

3) Hives shall be setback from property lines a minimum of 25 feet,

4) Applicant must document at least 16 hours of training in beekeeping, and

5) The colony shall be maintained in good order and not be a nuisance to any member of the public.

C. Compliance with section. Anyone keeping or maintaining any animal prohibited by this chapter as of January 1, 2012, has 30 days in which to comply with the provisions of this section. Extensions beyond 30 days may be granted by the city council in its sole discretion for animals that have been previously permitted by the city.

**Subd 3. Farm Animals.**

A. Farm animals shall only be kept in an agricultural district of the city or on a residential lot of at least ten acres in size, and provided that no animal shelter shall be within 300 feet of an adjoining piece of property. Animal feedlots as defined in MN Rule 7020.03 are prohibited.

B. Backyard Chickens. Notwithstanding other provisions of this chapter, a person may keep up to four (4) female chickens on a parcel that they own that is less than ten acres in size, provided that the owner has a lot with a minimum of 10,000 square feet, and obtains a backyard chicken permit

from the City. No permit shall be issued except in compliance with this section.

1) Definitions

   (a) **"Coop"** means the structure for the keeping or housing of chickens permitted by the ordinance.

   (b) **"Hen"** means a female chicken.

   (c) **"Rooster"** means a male chicken.

   (d) **"Run"** means a fully-enclosed and covered area attached to a coop where the chickens can roam unsupervised.

2) Any person desiring to obtain a backyard chicken permit under this subdivision must make a written application to the City Clerk on a form provided by the City and pay an application fee. Fees to be charged for the permit to keep chickens shall be set by City Council on the fee schedule. The application must include a scaled diagram or site plan that shows the location of the chicken coop including the distance of the coop from adjoining structures and property lines and the coop's dimensions. If the applicant's lot is less than 15,000 square feet, the applicant must secure permission from at least 70 percent of the owners of property within 150 feet of the applicants parcel.

3) All initial permits will expire on June 30th of the following year after their issuance unless sooner revoked. Renewal permits shall expire on June 30th of the second year following their issuance unless sooner revoked.

4) The City may revoke a permit for failure to comply with provisions of this section or any of the permit's conditions.

5) The city may inspect the premises for which a permit has been granted in order to ensure compliance with this subdivision. If the city is not able to obtain the occupant's consent to enter the property, it may seek an administrative search warrant or revoke the permit.

6) All chickens must be kept in an enclosed coop or enclosed run. The chicken's living area must be maintained in a clean and sanitary condition, devoid of all rodents and vermin and free from objectionable odors. Waste must be disposed of on a weekly basis. Grains and feed must be stored in rodent and raccoon-proof containers inside of a structure. The enclosed coop must be built to protect the chickens from extreme heat or cold. The enclosed coop must be maintained in good condition and be sufficient in strength and size to allow the chickens to

move about, but also able to prevent escape. The enclosed coop must have a minimum size of four square feet per animal and must not exceed forty (40) square feet in total, with a maximum height of twelve (12) feet. The enclosed coop must be located in the rear yard and set back at least 25-feet from any residential dwelling and at least 15-feet from all property lines and may not be located in a utility or drainage easement.

7) Enclosed runs shall be attached to the coop. Fencing shall be adequate to keep chickens in and predators out. The coop and attached run shall be a maximum of 40 square feet each and set back at least 25 feet from all neighboring residential structures and 15 feet from the property line.

8) Chickens must not be raised or kept for the purpose of fighting. No permit will be granted by the city to keep any chickens within a dwelling or garage, nor on a property which contains two or more dwelling units. No outdoor butchering of chickens is allowed. No roosters are allowed.

9) No person shall allow any chicken under his or her ownership or control to violate Chapter 11, Nuisances.

10) Persons that intend to no longer keep chickens on their premises shall notify the City. The coop must be removed upon expiration of the permit.

11) Dead chickens must be disposed of according to the Minnesota Board of Animal Health rules which require chicken carcasses to be disposed of as soon as possible after death, usually within forty-eight (48) to seventy-two (72) hours. Legal forms of chicken carcass disposal include offsite burial, offsite incineration or rendering, or offsite composting.

**Subd. 4. Diseased Animals – Disease Control.**

A. Keeping of diseased animal. No person shall possess an animal which is diseased such that it is a danger to the health and safety of other persons. Possession of a diseased animal includes but is not limited to personal possession or possession on one's premises. Only a licensed veterinarian may harbor a diseased animal for either medical or treatment purposes.

B. Confinement. Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public may be apprehended and confined as directed by an Animal Control Officer. The officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in a manner so as to be a danger to the health and safety of the city, the officer shall cause the animal to be euthanized and shall properly dispose of the remains. Reasonable efforts will be made to notify the owner or keeper of the animal prior to the euthanasia. The owner will be liable to pay the cost

of maintaining and disposing of the animal, plus the costs of any veterinarian examinations.

C. Release. If the animal, upon examination, is not found to be diseased within the meaning of this section, the animal shall be released to the owner upon payment of the costs associated with the examination.

D. Vaccination of animals. No person shall keep any animal over six months of age within the city limits without having obtained a certificate from a qualified veterinarian showing the animal has a current rabies vaccination. The owner may affix a permanent tag to the collar of a dog or cat, which tag shall show the expiration date of the rabies vaccination. The owner may choose not to put a rabies tag on a dog or cat but must be able to prove the animal has a current rabies vaccination by presenting a rabies certificate.

**Subdivisions 5 Through 9, Inclusive, Reserved For Future Expansion.**

**Subd.10. Dangerous and Potentially Dangerous Animals.**

A. Definitions.

1) **"Dangerous Animal"** - An animal which has:

(a) Without provocation by a victim, inflicted substantial bodily harm on a human being on public or private property;

(b) Killed a domestic animal without provocation while off the owner's property; or

(c) Been found to be potentially dangerous, and after the owner has notice that the animal is potentially dangerous, the animal aggressively bites, attacks or endangers the safety of humans or domestic animals.

2) **"Potentially Dangerous Animal"** - An animal which has:

(a) When unprovoked by a victim, bites human or domestic animal while on public or private property.

(b) When unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the animal owner's property, in an apparent attitude of attack; or

(c) Has the known propensity, tendency or disposition to attack while unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

3) **"Proper Enclosure"** - Securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animal from the elements. A proper enclosure does not include a porch, patio or any part of a house, garage or other structure that would allow the animal to exit of its own volition or any house or structure in which windows are open or in which door or window screens are the only barriers which prevent the animal from exiting. The enclosure shall not allow the egress of the animal in any manner without human assistance.

4) **"Provocation or Provoked"** - means an act that an adult could reasonably expect may cause an animal to attack or bite. No act by a child that causes an animal attack or bite is provocation under this ordinance.

B. Designation as Potentially Dangerous Animal. The Animal Control Officer shall designate any animal as a potentially dangerous animal upon receiving evidence that the animal has committed an act meeting the definition of a "potentially dangerous animal."

1) When an animal is declared potentially dangerous, the Animal Control Officer shall order the immediate imposition of the following conditions:

(a) The owner of an animal designated as potentially dangerous must have a microchip implanted in the animal for identification, and the name of the microchip manufacturer and identification number of the microchip must be provided to the Animal Control Officer. If the microchip is not implanted by the owner, it may be implanted by the Animal Control Officer. In either case, all costs related to purchase and implantation of the microchip must be borne by the animal's owner.

(b) The owner must provide and maintain a proper enclosure for the potentially dangerous animal.

(c) If the animal is a dog and is outside the proper enclosure the dog must be muzzled, restrained by a substantial chain or leash (not to exceed six feet in length), and under the physical restraint of a person 16 years of age or older. The muzzle must be of a design as to prevent the dog from biting any person or animal, but will not cause injury to the dog or interfere with its vision or respiration.

(d) In addition, the owner of an animal declared potentially dangerous shall annually register the animal with the City and be issued a Certificate of Registration stating that the animal is potentially

dangerous. The owner shall pay the City the current registration fee as established by ordinance or resolution.

(e) The City may order any additional conditions which it finds just and appropriate to protect public safety and welfare from the dangerous nature of the animal.

C. Designation as Dangerous Animal. The Animal Control Officer shall designate any animal as a dangerous animal upon receiving evidence that the animal has committed an act meeting the definition of a “dangerous animal.”

1) Authority to Order Destruction. The Animal Control Officer, upon determining that an animal is dangerous hereunder, is authorized to order the destruction of animal. An order for destruction can only occur if one or more of the following acts occurred:

(a) The animal is dangerous as demonstrated by vicious attack, an unprovoked attack, an attack without warning, attack with multiple bites, or multiple attacks, or where more than one animal participated in the attack; or

(b) The owner of the animal has demonstrated an inability or unwillingness to control the animal in order to prevent injury to persons or other animals.

2) Dangerous Animal Registration Requirements. If the Animal Control Officer does not order the destruction of an animal that has been declared dangerous, an order for the following conditions shall be immediately imposed:

(a) That the owner provides and maintains a proper enclosure for the dangerous animal;

(b) Post the front and the rear of the premises with clearly visible warning signs, including a warning symbol to inform children that there is a dangerous animal on the property;

(c) Provide and show proof annually of public liability insurance in the minimum amount of $300,000.00;

(d) If the animal is a dog and is outside the proper enclosure, the dog must be muzzled, restrained by a substantial chain or leash (not to exceed six feet in length), and under the physical restraint of a person 16 years of age or older. The muzzle must be of a design as to prevent the dog from biting any person or animal, but will not cause injury to the dog or interfere with its vision or respiration;

(e) The animal must have an easily identifiable, standardized tag, identifying the animal as dangerous, affixed to its collar at all times;

(f) The owner of an animal designated as dangerous must have a microchip implanted in the animal for identification, and the name of the microchip manufacturer and identification number of the microchip must be provided to the Animal Control Officer. If the microchip is not implanted by the owner, it may be implanted by the Animal Control Officer. In either case, all costs related to purchase and implantation of the microchip must be borne by the animal's owner;

(g) An owner of a dangerous animal must renew the registration of the animal annually until the animal is deceased. If the animal is removed from the jurisdiction, it must be registered as a dangerous animal in its new jurisdiction;

(h) An owner of a dangerous animal shall sterilize the animal at the owner's expense. If the owner does not have the animal sterilized within 30 days, the animal control authority shall seize the animal and have it sterilized at the owner's expense; and

(i) The City may order any additional conditions which it finds just and appropriate to protect public safety and welfare from the dangerous nature of the animal.

D. Procedure For Animal Designation. The Animal Control Officer, after having made findings, designations, or issued orders under this ordinance shall proceed as follows.

1) The Animal Control Officer shall cause one owner of the animal to be notified in writing or in person of any findings, designations or orders relating to the animal. This notice shall contain a statement of reasons describing the facts used to make a designation or order by the Animal Control Officer. The notice shall also describe the owner's right of appeal to the City. Written notice shall be sent by certified mail to the last known address of the owner as determined by animal license records or the location of an attack. If no owner can be ascertained, the animal shall be destroyed.

2) An owner shall be given fourteen (14) days to appeal a designation or order by requesting a hearing before the City Council. If no appeal is filed within the requisite time period, the designation or order issued against the animal will stand and shall remain in effect for the life of the animal.

3) If an owner timely files an appeal from a designation or order of the Animal Control Officer, the hearing shall be held before the City Council which shall set a date for the hearing not more than three weeks after demand for the hearing. The City Council may delegate this hearing to be heard before a designated hearing officer. The records of the Animal Control Officer or any government agency shall be admissible for consideration during the hearing without further foundation. A copy of these records shall be made available to the owner at least one week before the hearing. The City shall notify any victim of an attack by the animal of the hearing date and time.

4) During the hearing, a finding by the Animal Control Officer shall be presumed correct but is subject to review. After considering the evidence and statements of the parties, the City Council or hearing officer shall make findings of fact on issues properly before it on appeal, and may sustain, modify or rescind a designation or order made by the Animal Control Officer.

5) Where appropriate to effectuate an order of the Animal Control Officer appealed to the City, the City Council or hearing officer may order the Animal Control Officer to immediately take the animal into custody pending the outcome of the appeal. After appeal, if the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the Animal Control Officer, and at the owners request and expense, destruction shall be stayed for fourteen days.

6) No person shall harbor an animal after it has been found to be dangerous and ordered into custody for destruction.

7) The animal owner shall bear all of the costs of these proceedings, board and care for an animal taken into custody, and other related expenses incurred by the City.

E. Exemptions to Animal Designation. Animals may not be declared potentially dangerous or dangerous if the threat, injury, or damage was sustained by a person:

1) Who was committing, at the time, a willful trespass or other tort upon the premises occupied by the owner of the animal;

2) Who was provoking, tormenting, abusing, or assaulting the animal or who can be shown to have repeatedly, in the past, provoked, tormented, abused, or assaulted the animal; or

3) Who was committing or attempting to commit a crime.

F. Rental Property - Disclosure Required. A person who owns a potentially dangerous animal or a dangerous animal, and will reside in rental property must disclose whether such an animal will be kept on the premises for any period of time. The animal owner must notify the rental property owner that a designated animal will be kept on the premises and shall also disclose all conditions imposed by the City related to that designation. This disclosure must occur immediately upon an animal designation imposed by the City, or before the animal owner enters into a lease or begins residing at such a premises. Proof of this disclosure must occur before the owner's animal registration with the City will be granted or renewed.

G. Stopping an Attack. If any police officer or Animal Control Officer is witness to an attack by an animal upon a person or another animal, the officer may take whatever means the officer deems appropriate to bring the attack to an end and prevent further injury to a victim.

H. Notification of New Address. The owner of an animal which has been identified as dangerous or potentially dangerous shall notify the Animal Control Officer in writing if the animal dies or is to be relocated from its current address or given or sold to another person. The notification shall be given in writing within 30 days of the death or at least 14 days prior to the relocation or transfer of ownership. The notification shall include the current owner's name and address, the relocation address and the name of the new owner, if any.

I. Animals Transported Into The City. No person shall bring into the City an animal which has previously been declared by another jurisdiction to be dangerous. No person shall bring into the City an animal which has previously been declared by another jurisdiction to be potentially dangerous, without first securing a permit from the City to register the animal. The City may seize and destroy, at the owner's expense, any animal brought into the City in violation of this provision.

J. Attack By An Animal. It shall be deemed an unlawful act by any animal owner in the event their animal inflicts or attempts to inflict bodily injury upon any person or other animal. The owner is held strictly liable for the actions of its animal whether or not the owner is present. This section shall not apply to an attack by a dog under the control of an on-duty law enforcement officer or to an attack upon an uninvited intruder who has entered the owner's home.

K. Dangerous Animal or Potentially Dangerous Animal, Designation Review. In accordance with State law, beginning six (6) months after an animal is declared a potentially dangerous animal or dangerous animal; an owner may annually request that the animal control authority review the designation. The owner must provide evidence that the animal's behavior has changed due to the animal's age, neutering, environment, completion of obedience training that includes modification of aggressive behavior, or other factors. If the

animal control authority finds sufficient evidence that the animal's behavior has changed, the authority may rescind designation or modify the conditions of an order imposing conditions related to a designation. The request shall be considered in the same manner as an appeal from designation of the Animal Control Officer.

**Subd. 11. Summary Destruction.** Whenever an Animal Control Officer or police officer determines that any animal presents an immediate threat to the safety of any person, after making reasonable attempt to impound the animal, the officer is hereby authorized to destroy the animal in the interests of public safety.

**Subdivisions 12 Through 89, Inclusive, Reserved For Future Expansion.**

**Subd. 90. Civil Actions.** In addition to the other remedies and penalties provided in this chapter, city officials, after approval of the city council, are authorized to file appropriate civil actions for a temporary restraining order, temporary injunction or permanent injunction against any person violating this section. These civil remedies and penalties do not bar criminal prosecution.

**Subdivisions 91 Through 96, Inclusive, Reserved for Future Expansion.**

**Subd. 97. Applicability.** Nothing in this chapter is intended to supersede state law, or the specific requirements found in Minnesota Chapter 347.50 to 347.56. It is the intention of the city to more precisely regulate dangerous animals.

**Subd. 98. Penalty for Violation.** Any person who shall violate the provisions of this chapter shall be guilty of a misdemeanor, with two exceptions:

A. License violations shall be charged as a petty misdemeanor if the violator has no similar offenses in the preceding three months.

B. Provisions of this chapter governing potential dangerous animals and dangerous animals shall be guilty of a misdemeanor unless otherwise specified as a gross misdemeanor under State law.

**Subd. 99. Continuing Violations.** Each day on which the violation continues shall constitute a separate violation.

***SECTION 10.11. THROUGH 10.19, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 10.20. JUVENILE CURFEW.***

**Subd. 1. Purposes and Findings.**

A. The Anoka County Board of Commissioners finds and determines that there has been an increase in juvenile violence and crime by juveniles in the County of Anoka.

B. Juveniles are particularly susceptible by their lack of maturity and experience to participate in unlawful activities and to be victims of older perpetrators of crime.

C. Because of the foregoing, special and extenuating circumstances presently exist within this county that require special regulation of juveniles within the county in order to protect them and other persons during the nighttime hours, to aid in crime prevention, to promote parental supervision and authority over minors, and to decrease juvenile crime rates.

D. In accordance with prevailing community standards, this ordinance serves to regulate the conduct of minors in public places during nighttime hours, to be effectively and consistently enforced for the protection of juveniles from each other and from other persons, in public places during nighttime hours, for the enforcement of parental control of, authority over, and responsibility for their children, for the protection of the general public from nighttime mischief by juveniles, for the reduction in the incidents of juvenile criminal activities, for the furtherance of family responsibility and for the public good, safety and welfare.

E. It is the intent of the County Board to review and evaluate the need and effect of nighttime curfew for juveniles set forth in this ordinance on the incidents of juvenile criminal activity and protection of juveniles against criminal activity.

**Subd. 2. Authority.** This Ordinance is enacted pursuant to the authority granted under Minn. Stat. 145A005, Subd. 7a (1994).

**Subd. 3. Definitions.**

A. **"Authorized Adult"** - shall mean any person who is at least eighteen (18) years of age and authorized by a parent or guardian to have custody and control of juvenile.

B. **"County Board"** - shall mean the Anoka County Board of Commissioners.

C. **"Emergency"** - means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

D. **"Juvenile"** - means a person under the age of eighteen (18) years. The term does not include persons under 18 who are married or have been legally emancipated.

E. **"Parent"** - shall mean any person having legal custody of a juvenile (1) as natural, adoptive parent, or stepparent; (2) as a legal guardian; or (3) as a person to whom legal custody has been given by order of the court.

F. **"Public Place"** - means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, roadways, parks, public recreation, entertainment or civic facilities, schools, and the common areas of hospitals, apartment house, office buildings, transport facilities, and shops.

G. **"Serious Bodily Injury"** - means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

**Subd. 4. Prohibited Acts.**

A. It is unlawful for a juvenile under the age of twelve (12) years to be present in any public place within Anoka County:

(a) Any time between 9:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday, and 5:00 a.m. of the following day.

(b) Any time between 10:00 p.m. on any Friday or Saturday and 5:00 a.m. the following day.

B. It shall be unlawful for any juvenile age twelve (12) to fourteen (14) years to be present in any public place within Anoka County:

(a) Any time between 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday, and 5:00 a.m. of the following day.

(b) Any time between 11:00 p.m. on any Friday or Saturday and 5:00 a.m. on the following day.

C. It shall be unlawful for any juvenile age fifteen (15) to seventeen (17) years to be in any public place within Anoka County:

(a) Any time between 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday, and 5:00 a.m. of the following day.

(b) Any time between 12:01 a.m. and 5:00 a.m. on any Saturday or Sunday.

D. It shall be unlawful for a parent or authorized adult of a juvenile to knowingly, or through negligent supervision, habitually permit such juvenile to be in any public place within the county during the hours prohibited herein, under circumstances not constituting an exception to this ordinances as set forth herein. The term “knowingly” includes knowledge which a parent or authorized adult shall reasonably be expected to have concerning the whereabouts of a juvenile under such person’s care.

E. It shall be unlawful for any person operating or in charge of any place of amusement or refreshment which is open to the public to knowingly and habitually permit any juvenile to be in such place during the hours prohibited herein, under circumstances not constituting an exception to this Ordinance as set forth herein. The term “person operating” shall mean any individual, firm, association, partnership or corporation operating, managing or conducting any such establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

**Subd. 5. Exceptions.**

A. The following shall constitute valid exceptions to the operation of the curfew:

1) At any time, if a juvenile is accompanied by his or her parent or an authorized adult;

2) At any time, if a juvenile is involved in, or attempting to remedy, alleviate, or respond to an emergency;

3) If the juvenile is engaged in a lawful employment activity, or is going to or returning home from his or her place of employment;

4) If the juvenile is attending an official school, religious, or other social or recreational activity supervised by adults and sponsored by a city or the county, a civic organization, or another similar entity that takes responsibility for the juvenile;

5) If the juvenile is going to or returning home from, without any detour or stop, and official school, religious, or other recreational activity supervised by adults and sponsored by a city or the county, a civic organization, or another similar entity that takes responsibility for the juvenile;

6) If the juvenile is on an errand as directed by his or her parent, without any detour or stop;

7) If the juvenile is engaged in interstate travel;

8) If the juvenile is on the public right-of-way boulevard or sidewalk abutting the juvenile's residence or abutting the neighboring property, structure, or residence;

9) If the juvenile is exercising First Amendment rights protected by the United States Constitution (or those similar rights protected by Article 1 of the Constitution of the State of Minnesota), such as free exercise of religion, freedom of speech, and the rights of assembly; or,

10) If the juvenile is homeless or uses a public or semi-public place as his or her usual place of abode.

B. It is an affirmative defense to prosecution that:

1) The owner, operator or employee of an establishment promptly notified the police department that a juvenile was present on the premises of the establishment during curfew hours and refused to leave.

2) The owner, operator or employee reasonably and in good faith relied upon a juvenile's representations of proof of age. Proof of age may be established pursuant to Minn. Stat. 340A.503, Subd. 6 or other verifiable means, including, but not limited to, school identification cards and birth certificates.

**Subd. 6. Enforcement.** Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in a public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has accrued and that no exception set forth is applicable.

**Subd. 7. Penalties.** Violation of Subdivision will be prosecuted pursuant to Minn. Stat. 260.195 and will be subject to the penalties therein.

**Subd. 8. Continuing Review and Evaluation.** The County Attorney shall prepare and submit a report annually to the County Board evaluating violations of this section and the criminal activity by and against juveniles within the county during the preceding year. The first report shall be submitted one year after the effective date.

**Subd. 9. Severability**. If any court of competent jurisdiction shall adjudge any provisions of this ordinance to be invalid, such judgment shall not affect any other provisions of this ordinance not specifically included in said judgment.

***SECTION 10.21. INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 10.22. PUBLIC INDECENCY.***

**Subd. 1. Purpose**. The purpose of this ordinance is to prohibit public indecency in order to deter criminal activity, to promote societal order and public health, and to protect children.

**Subd. 2. Findings**. The City of Lexington City Council makes the following findings regarding the need to prohibit public indecency:

A. Public indecency can increase the incidence of criminal activity, including but not limited to prostitution, disorderly conduct and sexual assault.

B. Public indecency can expose children to an unhealthy and nurtureless environment.

C. Public indecency can present health concerns in places of public accommodation and other public settings.

D. Public indecency can have a potentially negative impact on the value and marketability of property.

**Subd. 3. Definitions**. The following words and terms when used in this ordinance shall have the following meanings, unless the context clearly indicates otherwise:

A. **"Nudity"** - means:

1) The appearance of a human bare buttock, anus, male genitals, female genitals, female breast; or,

2) A state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

B. **"Person"** - means a natural person twelve (12) years of age or older, including employees or agents of a public accommodation.

C. **“Public Place"** - means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not for profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed a public place. A public place shall not include enclosed an enclosed tanning

booth, single sex public restrooms, enclosed single sex motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospital and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor shall it include a person appearing in a state of nudity in a modeling class operated by (1) a proprietary school licensed by the state; a college or university supported entirely or partly by taxation; or (2) a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation or an accredited private college.

**Subd. 4. Public Indecency Prohibited**. A person who knowingly or intentionally in a public setting or place:

A. appears in a state of nudity;

B. fondles the genitals of himself or herself, or

C. fondles the genitals of another person;

D. commits public indecency and is guilty of a misdemeanor under Minnesota law and upon conviction thereof, shall be punished by a fine of up to $1,000 or by imprisonment for up to 90 days; or both.

**Subd. 5. Exclusion**. The provisions of Section 4.A of this ordinance shall not apply to:

A. any theatrical production performed in a theater, by a professional or amateur theatrical or musical company, which has serious artistic merit; or,

B. a woman breast feeding a child.

**Subd. 6. Severability**. If any section, sentence, or clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted the section, sentence, clause, or phrase of this ordinance irrespective of the fact that any one or more sections, sentences, clauses or phrases be declared invalid.

**Subd 7. Application**. Section 4 of the ordinance shall apply to areas within the City of Lexington.

***SECTION 10.23. NOISE AND SPOTLIGHT***.

**Subd. 1.** It is unlawful to cause the making or production of an unnecessary noise by shouting or by any other means or mechanism including the blowing of any

automobile or other vehicle horn; or use a sound amplifier upon streets and public property without prior written permission from the City. Under any circumstances, amplified sound is deemed a public nuisance under the following conditions:

a. Sound measured at fifty (50) feet from the source shall not exceed ninety (90) dB(A).

b. Sound measured off of the property where amplification the equipment is allowed under the license shall never be more than fifteen (15) dB(A) above the ambient noise level.

Subd. 2. It is unlawful to use a flash or spotlight in a manner so as to annoy or endanger others.

***SECTION 10.24. PROPERTY DESTRUCTION***. It is unlawful to cause defacement, destruction, or otherwise damage to any premises or any property located thereon.

***SECTION 10.25. LITTERING***. It is unlawful to strew, scatter, litter, throw, dispose of or deposit any refuse, garbage, or rubbish unto any public or private property except into receptacles provided for such purpose, and no person shall dispose of or deposit such items on private property without the consent of the owner.

***SECTION 10.26. MOTOR VEHICLE, IMPROPER ENTRY***. It is unlawful to enter any motor vehicle of another without the consent of the owner or operator.

***SECTION 10.27. TRESPASS.*** It is unlawful to fail or refuse to vacate or leave any premises after being requested or ordered, whether orally or in writing, to do so, by the owner, or person in charge thereof, or by any law enforcement agent or official; provided, however, that this provision shall not apply to any person who is owner or tenant of the premises involved nor to any law enforcement or other government official who may be present thereon at that time as part of his/her official duty, nor shall it include the spouse, children, employee or tenant of such owner or occupier.

***SECTIONS 10.28 THROUGH 10.29, INCLUSIVE, RESERVED FOR FUTURE EXPANSION***.

***SECTION 10.30. SHADE TREE DISEASE CONTROL AND PREVENTION***.

**Subd. 1. Policy and Purpose.** The City has determined that the health of oak and elm trees is threatened by fatal diseases known as oak wilt and Dutch elm disease. It has further determined that the loss of oak and elm trees located on public and private property would substantially depreciate the value of property and impair the safety, good order, general welfare and convenience of the public. It is

declared to be the intention of the Council to control and prevent the spread of these diseases, and provide for the removal of dead or diseased trees, as nuisances.

**Subd. 2. Definitions.** The following terms, as used in this Section, shall have the meanings stated:

A. **"Shade Tree Disease"** - Dutch elm disease or oak wilt disease.

B. **"Tree Inspector"** - The Clerk, or such other employee of the City as the Council may designate and who shall thereafter qualify, together with his/her duly designated assistants.

C. **"Nuisance"** - (1) any living or standing tree infected to any degree with a shade tree disease; or (2) any logs, branches, stumps or other parts of any dead or dying tree, so infected, unless such parts have been fully burned or treated under the direction of the Tree Inspector.

**Subd. 3. Scope and Adoption by Reference.** Minnesota Statutes, Section 18.023, is hereby adopted by reference, together with the Rules and Regulations of the Minnesota Commissioner of Agriculture relating to shade tree diseases; provided that this Section shall supersede such Statutes, Rules and Regulations, only to the extent of inconsistencies.

**Subd. 4. Unlawful Act.** It is unlawful for any person to keep, maintain or permit upon premises owned by him/her or upon public property where he/she has the duty of tree maintenance, any nuisance as herein defined.

**Subd. 5. Inspection and Diagnosis**. It is the power and duty of the Tree Inspector to enter upon public or private property, at any reasonable time, for the purpose of inspecting for, and diagnosing, shade tree disease. In cases of suspected shade tree disease, and in performance of his/her duties, the Tree Inspector may remove such specimens, samples and biopsies as may be necessary or desirable for diagnosis.

**Subd. 6. Abatement of Nuisance**. Abatement of a nuisance, defined herein, shall be by spraying, removing, burning, or otherwise effectively treating the infected tree or wood to prevent spread of shade tree disease. Such abatement procedures shall be carried out in accordance with current technical and expert methods and plans as may be designed by the Commissioner of Agriculture of the State of Minnesota. The City shall establish specifications for tree removal and disposal methods consistent therewith.

**Subd. 7. Procedure for Removal of Infected Trees and Wood**.

A. Whenever the Tree Inspector finds with reasonable certainty that the infection, or danger of infection, exists in any tree or wood on any public of private property, he/she shall proceed as follows:

   1) If the Tree Inspector finds that the danger of infection of other trees is not imminent because of dormancy of shade tree disease, he/she shall make a written report of his/her finding to the Council which shall proceed by (a) abating the nuisance as a public improvement under Minnesota Statutes, Chapter 429, or (b) abating the nuisance as provided in Subparagraph B of this Subdivision.

   2) If the Tree Inspector finds that the danger of infection of other trees is imminent, he/she shall notify the owner of the property, or the abutting property, as the case may be, by certified mail that the nuisance will be abated within a specific time, not less than five (5) days from the date of mailing of such notice. The Tree Inspector shall immediately report such action to the Council, and after the expiration of the time limited by the notice he/she may abate the nuisance.

   3) If the Tree Inspector finds with reasonable certainty that immediate action is required to prevent the spread of shade tree disease, he/she may proceed to abate the nuisance forthwith. He/she shall report such action immediately to the Council and to the abutting property owner, or to the owner of the property where the nuisance is located.

B. Upon receipt of the Tree Inspector's report required by Subparagraph A, Item 1, the Council shall by resolution order the nuisance abated. Before action is taken on such resolution, the Council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to affected property owners and published once no less than one week prior to such meeting. The notice shall state the time and place of the meeting, the streets affected, action proposed, the estimated cost of the abatement, and the proposed basis of assessment, if any, of costs. At such hearing or adjournment thereof, the Council shall hear property owners with reference to the scope and desirability of the proposed project. The Council shall thereafter adopt a resolution confirming the original resolution with such modifications as it considers desirable and provide for the doing of the work by day labor or by contract.

C. The Tree Inspector shall keep a record of the costs of abatements done under this Subdivision and shall report monthly to the Council all work done for which assessments are to be made stating and certifying the description of the land, lots, parcels involved and the amount chargeable to each.

D. On or before September 1 of each year the Clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they

are attributable under this Section. The Council may then spread the charges or any portion thereof against the property involved as a special assessment under Minnesota Statutes, Section 429.101 and other pertinent statutes for certification to the County Auditor and collection the following year along with current taxes.

E. No damage shall be awarded the owner for destruction of any tree, wood or part thereof pursuant to this Section.

**Subd. 8. Spraying Trees.**

A. Whenever the Tree Inspector determines that any tree or wood is infected or threatened with infection, he/she may spray or treat all nearby high value trees with an effective concentrate or fungicide or both. Activities authorized by this Subdivision shall be conducted in accordance with technical and expert opinions and plans of the Commissioner of Agriculture and under the supervision of the Commissioner and his/her agents whenever possible.

B. The notice and assessment provisions of Subdivision 7 apply to spraying and treatment operations conducted under this Subdivision.

**Subd. 9. Transporting Wood Prohibited**. It is unlawful for any person to transport elm wood, including elm firewood, with bark intact into or through the City, or into or through any designated “disease control area” as defined by Minnesota Statutes, Section 18.023. This prohibition shall not apply to movement of such wood pursuant to an approved wood disposal or utilization program authorized by Minnesota Statutes, Section 18.023, or to transportation of elm wood intended for industrial use not to include firewood, provided such transportation of elm logs for industrial use continues without interruption through the City of “disease control area” to their intended destination lying outside the City and “disease control area”.

**Subd. 10. Interference Prohibited**. It is unlawful for any person to prevent, delay or interfere with the Tree Inspector while he/she is engaged in the performance of duties imposed by this Section.

**Subd. 11. Additional Duties of Tree Inspector.** It is the additional duty of the Tree Inspector to coordinate, under the direction and control of the Council, all activities of the City relating to the control and prevention of shade tree disease. He/she shall recommend to the Council the details of a program for the control of the diseases, and perform the duties incident to such a program adopted by the Council.

**Subd. 12. Diseased Trees in Streets**. The rights, duties and responsibilities of property owners set forth in this Section shall be equally applicable to, and binding upon, abutting property owners with tree maintenance responsibilities under the Section of the City Code entitled “Regulation of Grass, Weeds and Trees”.

**Subd. 13. Subsidies**. The duty of any property owner to bear the cost of removing or maintaining trees, whether by private contract or assessment, shall be subject to a subsidy policy, if any, established by the City for the treatment or removal of trees infected with shade tree disease.

***SECTION 10.31. AIR POLLUTION CONTROL***.

**Subd. 1. Burning**. It is unlawful for any person to burn or permit burning of any grass, weeds, leaves, rubbish or other substance upon premises owned or occupied by him/her, except as otherwise provided by this Code.

**Subd. 2. State Code**. Chapter Eight of the Air Pollution Control Rules, as amended in 1976, promulgated by the Minnesota Pollution Control Agency, are hereby adopted by reference as though set forth verbatim herein. One copy of said Rules shall be marked CITY OF LEXINGTON - OFFICIAL COPY and kept on file in the office of the Clerk and open to inspection and use by the public. It is unlawful to violate a provision of this Section or of the Air Pollution Control Rules hereby adopted by reference.

**Subd. 3. Permit Required.** Burning pursuant to the Rules adopted herein shall be permitted upon the issuance of a permit by the City Fire Marshal who may establish reasonable permit conditions consistent with such Rules. It shall be the duty of the City Fire Marshal to enforce the restrictions imposed by such Rules.

***SECTION 10.32. GARAGE OR RUMMAGE SALES REGULATIONS.***

**Subd. 1. Definitions**.

A. **"Garage or Rummage Sales"** - Any display and sale of personal property conducted on residential premises by the occupant. Estate sales conducted at a decedent's residence are not included in the definition of garage or rummage sales.

**Subd. 2. Restrictions**.

A. None of the items offered for sale have been obtained for resale or received on consignment for sale.

B. Any garage or rummage sale shall be conducted solely within the boundaries of the property owned by the occupant who is conducting the sale.

C. There shall be no more than four garage or rummage sales conducted at any one residence during any period of twelve calendar months.

D. No garage or rummage sale shall be conducted during any part of more than three consecutive days.

E. No garage or rummage sale may be conducted before 8:00 a.m. or after 10:00 p.m.

**Subd. 3. Penalty**. Any person violating any provision of this section shall be guilty of a misdemeanor.

***SECTION 10.33. MAINTENANCE OF PRIVATE PROPERTY.***

**Subd. 1. Owner Responsibilities**. It is the primary responsibility of any owner or occupant of any lot or parcel of land to maintain any weeds or grass growing thereon at a height of not more than six (6) inches; to remove all public health or safety hazards there from; to install or repair water service lines thereon; and to treat or remove insect-infested or diseased trees thereon.

**Subd. 2. Penalty.** If any such owner or occupant fails to assume the primary responsibility described in Subdivision 1 of this Section, and after notice given by the Clerk has not within ten (10) days of such notice complied, the City may cause such work to be done and the expenses thus incurred shall be a lien upon such real estate. The Clerk shall certify to the County Auditor of Anoka County a statement of the amount of the cost incurred by the City. Such amount together with interest shall be entered as a special assessment against such lot or parcel of land and be collected in the same manner as real estate taxes.

***SECTION 10.34. OBSTRUCTIONS ON PUBLIC PROPERTY.***

**Subd. 1. Obstructions**. It is unlawful for any person to place, deposit, display or offer for sale, any fence, goods or other obstructions upon, over, across or under any public property without first having obtained a written permit from the Council, and then only in compliance in all respects with the terms and conditions of such permit, and taking precautionary measures for the protection of the public. An electrical cord or device of any kind is hereby included, but not by way of limitation, within the definition of an obstruction.

**Subd. 2. Fires**. It is unlawful for any person to build or maintain a fire upon public property.

**Subd. 3. Dumping on Public Property.** It is unlawful for any person to throw or deposit on public property any nails, dirt, glass or glassware, cans, discarded cloth or clothing, metal scraps, garbage, leaves, grass or tree limbs, paper or paper products, shreds or rubbish, oil, grease or other petroleum products, or to empty any water containing salt or other injurious chemicals thereon. It is a violation of this Section to place or store any building materials or waste resulting from building construction or demolition on public property without first having obtained a written permit from the Council.

**Subd. 4. Signs and Other Structures**. It is unlawful for any person to place or maintain a sign, advertisement, or other structure on public property without first having obtained a written permit from the Council.

**Subd. 5. Snow or Ice on Public Property**. It is unlawful for any person not acting under a contract with the City to dump snow or ice on public property.

**Subd. 6. Continuing Violation.** Each day that any person continues in violation of this Section shall be a separate offense and punishable as such.

**Subd. 7. Condition**. Before granting any permit under any of the provisions of this Section, the Council may impose such insurance or bonding conditions thereon as it, considering the projected danger to public or private property or to persons, deems proper for safeguarding such persons and property. Such insurance or bond shall also protect the City from any suit, action or cause of action arising by reason of such obstruction.

***SECTION 10.35. JUNK CARS, FURNITURE. HOUSEHOLD FURNISHINGS AND APPLIANCES STORED ON PUBLIC OR PRIVATE PROPERTY***. It is unlawful to park or store any unlicensed, unregistered or inoperable motor vehicle, household furnishings or appliances, or parts or components thereof, on any property, public or private, unless housed within a lawfully erected building. Any violation of this Section is declared to be a nuisance and upon seven days written notice to the owner, as shown by the records in the office of the County Auditor, of private premises on which such material is found, the City may remove the same and certify the cost of such removal as any other special assessment.

***SECTION 10.36. ABANDONING A MOTOR VEHICLE***. It is unlawful for any person to abandon a motor vehicle on any public or private property without the consent of the person in control of such property. For the purpose of this Section, a "motor vehicle" is as defined in Minnesota Statutes, Chapter 169.

***SECTION 10.37. RULES AND REGUALTIONS GOVERNING PUBLIC PARKS AND GROUNDS.***

**Subd. 1. Public Parks and Grounds**. **"Public parks and grounds"** means any area owned or operated by the City of Lexington as a public park, recreational trail, athletic field, skating rink, or other recreational facility.

**Subd. 2. Hours**. No person, except authorized City employees, police, and fire personnel shall enter or remain in any public park or grounds between 10:00 pm and 5:00 am daily.

**Subd. 3. Park Rules.**

A. Removing, Defacing or Destroying Property. No person shall remove, deface, destroy, diminish or impair the value of public property located on or within any public park or public grounds, including buildings, structures, trees, shrubs, grass, vegetation, signs, tables, benches, fireplaces, trash receptacles, notices or placards, boundary markers or fences, or any other public property either real or personal.

B. Erection of Structures. No person shall construct or erect any tent, building, or structure of any kind, whether permanent or temporary, or run or string any public service utility into, upon or across any public park or public grounds, except by approved permit issued by the City.

C. Glass Containers. Glass containers are prohibited in public parks and public grounds.

D. Refuse and Trash. It is unlawful for a person to dump snow, dirt, rubbish, solid waste, garbage, refuse, or trash in a park except in proper receptacles as permitted by this subdivision. No refuse or trash shall be left anywhere on the grounds thereof, but shall be placed in the proper receptacles where provided; where receptacles are not provided, all such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere.

E. Pollution of Waters. It is unlawful for a person to throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, stream, or other body of water in or adjacent to any park or any stream, storm sewer, or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of said waters.

F. Climbing Buildings. No person shall climb on any building and/or any non-play structure in any public park or public grounds.

G. Maintenance of Vehicles. No person shall wash or perform maintenance of any vehicle in a public park or on public grounds.

H. Posting Signs and Placards. No person shall paste, glue, tack, or otherwise post any sign, placard, advertisement, or inscription, on any public park or public grounds, except by official permit issued by the City.

**Subd. 4. Alcoholic Beverages.**

A. Prohibition. No person shall possess, display, consume or use intoxicating liquor on any public park or public grounds. No person shall possess, display, consume or use non-intoxicating malt liquor or 3.2% beer in any public park or public grounds except in designated picnic areas and after being issued an official permit by the City.

B. Intoxication. No person shall enter or be upon any public park or public grounds while under the influence of any intoxicating liquor or 3.2% beer or malt liquor.

**Subd. 5. Traffic and Parking**.

A. Vehicle Traffic. Vehicles shall be driven or parked only in designated areas on any public park or public grounds and shall be driven therein at a maximum speed of 5 miles per hour. Parking in designated areas shall be allowed only by vehicles whose owners and/or occupants are currently using City public parks and grounds. City employees and police and fire personnel are authorized to drive vehicles in parks as part of their normal duties.

B. Overnight Parking or Occupancy. Overnight parking or occupancy within any public park or public grounds is prohibited.

**Subd. 6. Open Fires Prohibited**. No person shall build a fire in any place in any public park or public grounds, at any time, except in fireplaces or receptacles provided therein by the City.

**Subd. 7. Loitering and Boisterousness**. No person in any public park or ground shall engage in loud, boisterous, threatening, abusive, insulting or indecent language, or engage in any disorderly conduct, or behavior tending to a breach of the public peace.

**Subd. 8. Fireworks**. No person shall possess or discharge any fireworks in any public park or public grounds except by official permit issued by the City.

**Subd. 9. Posting of Areas**. The Council may by resolution determine from time to time, the areas of any public park and public grounds, in which other activities and conduct not amenable to efficient operation of such park or public grounds, shall be prohibited and shall post appropriate signs to notify persons thereof.

**Subd. 10. City Personnel**. Subd. 1 through Subd. 10 shall not be construed to prohibit the normal care, operations, or functions of the City or its authorized agents in any public park or public grounds.

***SECTION 10.38. POSSESSION AND DISPOSAL OF UNCLAIMED PROPERTY***.

**Subd. 1. Definitions**. For the purpose of this section, the following words or phrases shall have the meanings herein provided:

A. **"Property"** - shall mean all forms of tangible personal property excluding abandoned motor vehicles as defined in Section 168B.02 of the Minnesota Statues.

B. **"Owner"** - shall mean any person having a legal or equitable interest in any property affected by this ordinance.

**Subd. 2. Custody of Property**. Whenever the City of Lexington, in the course of its municipal operations shall come into possession of property owned by another; such property shall be delivered to the Chief of Police for appropriate storage and safekeeping.

**Subd. 3. Attempt to Find Owner.** Upon receipt of any such property, the Chief of Police shall make, or cause to be made, a reasonable and diligent effort to find the rightful owner of such property. If the rightful owner of such property is found, the Chief of Police shall return the property to such owner as soon as it is reasonably possible under the circumstances.

**Subd. 4. Disposal of Property**. The following procedures shall be adhered to for the disposal of unclaimed property:

A. Except as provided in parts B and C of this subdivision, if the owner of any property coming into possession of the City of Lexington cannot be found within sixty (60) days after the date such property came into possession of the City, the Chief of Police shall sell or cause to be sold, such property to the highest bidder at public auction or by sealed bids. Notice of the time and place of any public auction shall be published once a week for two consecutive weeks in the official newspaper of the City. At the time and place designated in such notice, the Chief of Police or his duly authorized representative shall conduct the auction in such manner as the Chief of Police shall deem appropriate under the circumstances. Notice of such sale shall also be posted in the City Hall, the Police Department, and such other locations as the Chief of Police shall deem appropriate.

B. If any item of unclaimed property in possession of the City appears to have a value of five dollars ($5.00) or less, is hazardous to store, or is perishable, the Chief of Police or his duly authorized representative may sell or otherwise dispose of such property in whatever manner the Chief of Police determines reasonable and appropriate.

C. Unclaimed Firearms: All firearms including long guns and hand guns of every kind, coming into the possession of the Police Department, in the course of its operations on behalf of the City, and remaining unclaimed by the owner, shall be subject to disposal under the terms of this ordinance.

1) The Police Department shall take reasonable steps to notify the owner of any property subject to disposal that the police department has come into possession of such property. The notice shall further provide that such property is subject to disposal within 65 days following the mailing of such notice.

2) Such notice shall be made by certified mail at the last known address of the owner.

3) In the event the actual identity or last known address of the owner is not reasonably known to the police department, notice may be made by publication. The notice must be published at least once in a legal newspaper published in the city or, if there is none in the city, published in the county.

4) In the event the owner has actual knowledge that the police department has possession of such firearms, no additional notice shall be required.

5) After proper notice, and upon the expiration of the 65 day period described herein, all unclaimed firearms shall be destroyed in a manner and under circumstances to be determined by the Chief of Police.

6) No unclaimed firearm shall be sold or otherwise used for any purpose.

D. Upon expiration of the sixty (60) day waiting period, unclaimed property coming into the possession of the City of Lexington may be appropriated by the City for use by the City at the discretion of the City Clerk.

**Subd. 5. Proceeds of Sale to Be Deposited With City Clerk.**

A. The proceeds of the sale of any item of property made pursuant to this ordinance shall first be applied to the payment of all costs and charges incurred for the storage, maintenance or otherwise in connection with such property.

B. The balance of the proceeds of the sale shall be deposited by the Chief of Police with the Clerk, along with a statement containing a description of the property sold, the gross amount for which it was sold, the amount for which it was sold, the amount of charges incurred in connection with such property, and the name of any person purchasing such property.

C. The City clerk shall keep separate accounts for the proceeds of the sale and such proceeds shall be invested in whatever manner is determined appropriate by the City Clerk.

**Subd. 6. Owner May Claim Proceeds Within Six (6) Months of Sale, Disposition of Unclaimed Proceeds.**

A. If the owner of any property sold pursuant to this ordinance shall furnish the clerk with evidence substantiating his claim of ownership of such property within six (6) months after the proceeds from the sale of such property were deposited with the City Clerk, then the City Clerk shall pay to such owner the balance of the proceeds of the sale of such property deposited by the Chief of Police with the City Clerk under Subdivision 5 thereof.

B. If no claim is made for the proceeds of any sale of property made pursuant to this ordinance within six (6) months after the proceeds were deposited with the City Clerk, then such proceeds shall thereupon become the property of the City to the exclusions of the owner of such property and all others.

C. All such proceeds that become the property of the City, with the exception of proceeds generated from the sale of unclaimed bicycles and pistols, shall be credited to the general fund of the City.

D. Proceeds deposited with the City Clerk from the sale of unclaimed bicycles held by the Police Department shall be made available to the Police Department upon request of the Chief of Police to be utilized solely for youth safety instruction.

E. Proceeds from pistols shall be deposited with the Joint Police Commission.

**Subd. 7. Persons Ineligible to Participate In Sale of Unclaimed Property**. No employee, police officer, or other person having a vested interest with the City shall be eligible to participate in the purchasing of such unclaimed property.

**Subd. 8. Violations.** Any person who violates any of the provisions of this ordinance shall, upon conviction, be guilty of a misdemeanor.

***SECTION 10.39. ALARM SYSTEMS.***

**Subd. 1. Definitions**.

A. **"Public Safety Personnel"** - means the law enforcement officers of the City.

B. **"Alarm User"** - means the person, firm, partnership, association, cooperative, company of organization of any kind in control of any building, structure, or facility wherein an alarm system is maintained.

C. **"Anoka County Communication Center" -** is the facility operated by the County of Anoka, State of Minnesota to receive emergency requests for

service and general information from the public to be dispatched to respective public safety units.

D. **"Alarm System"** - means and includes any alarm installation designed to be used for the prevention or detection of burglary, robbery, fire or unauthorized entry on the premises which contain an alarm installation. Automobile alarm devices shall not be considered an alarm system under the terms of this ordinance.

E. **"False Alarm"** - means an alarm signal eliciting a response by public safety personnel when a situation requiring a response does not, in fact, exist, and which is caused by the activation of the alarm system through mechanical failure, alarm malfunction, intentional acts, improper installation or the in advertence of the owner or lessee of an alarm system or of his/her employees, agents or of a third party. False alarms do not include alarms caused by climatic conditions such as tornadoes, thunderstorms, utility line mishaps, violent conditions of nature or any other conditions which are clearly beyond the control of the alarm manufacturer, installer or owner.

**Subd. 2. Alarm User Permits**.

A. Before placing a system into operation, every alarm user shall obtain from the Police Department an alarm user permit for each alarm system he/she operates within the City. Existing and installed alarm systems shall have until two months from the date of the enactment of this ordinance within which to obtain the permit. This paragraph does not require that an alarm business obtain a permit under this subparagraph when it leases or provides service to alarm system users. If an alarm business, however, does use an alarm system to protect its own premises, it shall obtain a permit for such system as required in this section.

B. Alarm user permit application.

1) The Chief of Police or his designee shall issue an alarm permit only after receiving the completed application. If any business or residence has two (2) or more separate alarm systems only one security alarm permit shall be required per location. In assessing any penalties for repeat false alarms, a business or residence with two or more separate alarm systems, shall be treated as having one system in reference to the amount of false alarms permitted prior to being penalized.

2) The alarm user applying for the permit required in this subparagraph shall state on a permit application form provided by the Chief of Police or his/her designee, his name; the address of the residence or business in or on which the alarm system has been or will be installed; his/her telephone number of the lessor of the system if leased; whether the system was

installed by the alarm user, and if not so installed, the name and/or certification number of the business installing the alarm system; and the name and telephone number of at least one other person (in the case of a nonresidential alarm user applicant, at least two persons) who can be reached at any time, day or night, and is authorized to respond to an alarm signal and who may enter the premises in which the alarm system is installed.

3) Alarm permits are valid until revoked or suspended as hereinafter provided in this section.

4) Every alarm user licensed under this section shall be required to provide the Chief of Police or his designee with any changes in the information required to be submitted on the permit application.

**Subd. 3. False Alarm Fees**.

A. An alarm system user against which there are more than three false alarms in a single year (September 1 through August 31) and who has received oral or written notice of such false alarms will be charged a fee of $50.00 per false alarm in excess of three false alarms in a calendar year, $100.00 per false alarm in excess of six (6) false alarms in a calendar year, and $150.00 per false alarm in excess of nine (9) false alarms in a calendar year.

B. Any alarm user which is required by the City to pay a penalty fee as the result of a false alarm may make a written appeal of the false alarm charges to the Chief of Police within ten (10) days of notice by the City of the false alarm charge. Following review and determination by the Chief of Police such decision may be appealed to the Joint Powers Governing Board who will have the authority to make a final determination as to whether the appellant is to be charged with a false alarm fee.

**Subd. 4. Payment of Fees.** Payment of penalty fees provided under Subparagraph 3 must be paid to the City within thirty (30) days from the date of the notice by the City to the alarm user. Failure to pay the fee within thirty (30) days notice will cause the alarm user to be considered delinquent and subject to a penalty of a full ten percent (10%) of the fee.

**Subd. 5. Alarm Report**. When an alarm user has incurred four false alarms or more within one (1) calendar year, the alarm user shall submit a written report to the Chief of Police or his/her designee within ten (10) days after being notified of the fourth false alarm, describing actions taken or to be taken to discover and eliminate the cause of the false alarms. Failure to submit the written report required by this Subparagraph will be considered a violation of this ordinance.

**Subd. 6. Exception for New Installation**. All newly installed alarm systems shall be exempt from the regulations of Subparagraph 4 and 5 above, in order to allow alarm installers and users to adjust the system. New installations shall be subject to the regulations of Subparagraph 4 and 5 above, thirty (30) days after installation is completed.

**Subd. 7. Removal of Unlawful Systems.** The Chief of Police or his/her designee, when there is probable cause to believe that there has been a violation of Subparagraph 4 and 5 of this ordinance may order the owner, user or lessee to disconnect and cease operation of the system within seventy-two (72) hours of receipt of the order. This order shall be in writing and shall be personally served. If personal service cannot be made, notice shall be by certified mail, return receipt requested. Any direct dialing telephone alarm device presenting a prerecorded message, installed prior to the effective date of this ordinance shall be removed within thirty (30) days of such date. It shall be unlawful for any alarm user as defined in this subparagraph to fail to comply with the provisions of this section.

**Subd. 8. Deactivation of Audible Alarms within Fifteen (15) Minutes**. It shall be unlawful to maintain any alarm system or audible alarm that does not deactivate within fifteen (150) minutes of its activation.

**Subd. 9. Administrative Rules**. The Chief of Police shall promulgate such rules as may be necessary for the implementation of this ordinance and the administration thereof.

**Subd. 10. Confidentiality.**

A. All information submitted in compliance with this ordinance shall be held in confidence and shall be deemed a confidential record exempt from discovery to the extent permitted by law.

B. Subject to requirements of confidentiality, the Chief of Police may develop and maintain statistics for the purpose of ongoing alarm systems evaluation.

**Subd. 11. Communication Center**. No automatic dialing devices shall be connected to the Anoka County Communication Center through any telephone line. Use of automatic dialing devices so connected will be considered a violation of this ordinance.

**Subd. 12. Enforcement and Penalties**. Failure or omission to comply with any subparagraph of this ordinance shall be deemed a misdemeanor and may be prosecuted, subject to the penalties hereinafter provided. Upon conviction a violation of this ordinance shall be punishable by a fine of not more than $1000.00, imprisonment for a period not to exceed ninety days, or both.

**Subd. 13. Supremacy and Severability**. Any conflict between this ordinance and any other ordinance shall be in favor of this ordinance. If any part of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment decree shall not affect, impair or invalidate the remainder of this

***SECTION 10.40. OPEN BURNING.***

**Subd. 1. Purpose.** The purpose of this Section is to establish permitted categories of open burn events for residences within the City of Lexington and provide for a permitting process for residential open burning, except when such open burning is defined as a "Recreational Fire" as prescribed in this Section.

A. Bucket, shovels, garden hoses connected to a water supply or other approved fire-extinguishing equipment shall be readily available for use at any burning site within the City of Lexington.

B. An attendant shall supervise a fire until such fire has been extinguished.

**Subd. 2. Definitions**. For the purposes of this Section, the terms in this Section have the meaning stated:

A. **"Open Burning"** - Means the burning of any matter if the resultant combustion products are emitted directly to the atmosphere without passing through a stack, duct or chimney, except a Recreational Fire as defined herein.

B. "**Recreational Fire"** – Recreational fires can only burn between 8:00 am and 2:00 am and no more than one recreational fire is allowed on any property at one time.

C. **"Recreational Fire Site"**- Means an area of no more than a three (3) foot diameter circle (measured from the inside of the fire ring or border); completely surrounded by non-combustible and non-smoke or odor producing material, either of natural rock, cement, brick, tile or blocks or ferrous metal only and which area is depressed below ground, on the ground, or on a raised bed. Included are permanent outdoor wood burning fireplaces. Burning barrels are not a Recreational Fire Site as defined herein. Recreational Fire Sites shall not be located closer than fifteen (15) feet to any structure or property line.

D. **"Starter Fuels"** - Means dry, untreated, unpainted kindling, branches, or cardboard, or charcoal fire starter. Paraffin candles and alcohol's are permitted as starter fuels and as aids to ignition only. Propane gas torches or other clean gas burning devices causing minimal pollution may be used to start an Open Burn.

E. **"Wood"** - Means dry, clean fuel only such as twigs, branches, limbs, "presto logs", charcoal, cordwood or untreated dimensional lumber. "Wood" does not include wood that is green, with leaves or needles, rotten, wet, oil soaked, or treated with paint, glue or preservatives. Clean pallets may be used for recreational fires when cut into three (3) foot lengths.

**Subd. 3. Prohibited Materials**.

A. No person shall conduct, cause or permit open burning of oils, petrol fuels, rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted or glued wood, composite shingles, tar paper, insulation, composition board, sheetrock, wiring, paint or paint fillers.

B. No person shall conduct; cause or permit open burning of hazardous waste or salvage operations, or open burning of solid waste generated from an industrial or manufacturing process or from a service or commercial establishment or building material generated from demolition of commercial or institutional structures. No person shall conduct, cause or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.

**Subd. 4. Permit Required for Open Burning**. No person shall start or allow any open burning on any property in the City of Lexington without first having obtained an Open Burn permit, except that a permit is not required for any fire which is a Recreational Fire as defined herein.

**Subd. 5. Purposes Allowed for Open Burning**. Open Burn permits may be issued only for the following purposes:

A. Elimination of fire or health hazard that cannot be abated by other practical means.

B. Ground thawing for utility repair and construction.

C. Disposal of vegetative matter for managing forest, prairie or wildlife habitat, and in the development and maintenance of land and rights-of-way where chipping, composting, land spreading or other alternative methods are not practical.

D. Disposal of diseased trees generated on site, diseased or infected nursery stock, diseased bee hives.

E. Disposal of unpainted, untreated, non-glued lumber and wood shakes generated from construction, where recycling, reuse, removal or other alternative disposal methods are not practical.

F. Fire Training permits can only be issued by the Minnesota Pollution Control Agency (MPCA).

G. No fire may be allowed to smolder with no flame present.

**Subd. 6. Permit Application for Open Burning and Permit Fees**.

A. Open Burning permits shall be obtained by making application on a form prescribed by the Department of Natural Resources (DNR) and MPCA and adopted by the City. The permit application shall be presented to the City Clerk or his/her designee for reviewing and processing said applications.

B. An Open Burning permit shall require a non-refundable application fee. In the event the Open Burning permit application is approved, the permit fee shall be volume based. Application and permit fees shall be set annually by City Council resolution. However, the City Council may at other times amend its resolution setting the fees as it deems necessary. The fees established by City Council resolution shall continue to be the required fee until amended by a resolution.

**Subd. 7. Permit Process for Open Burning**. Upon receipt of the completed Open Burning permit application and permit fee, the City Clerk or his/her designee shall schedule a preliminary site inspection to locate the proposed burn site, draft a fire event safety plan, and note special conditions. The materials to be burned may then be piled for burning at which time a second inspection shall be scheduled to assess volume of material and associated fees, set dates and times of permitted burn and review fire safety considerations. Two days before burning, the permit holder shall notify the City of Lexington Fire Department of the proposed burn.

**Subd. 8. Permit Holder Responsibility**.

A. Prior to starting an Open Burn, the permit holder shall be responsible for confirming that no burning ban or air quality alert is in effect. Every Open Burn event shall be constantly attended by the permit holder or his/her competent representative. The Open Burning site shall have available, appropriate communication and fire suppression equipment as set out in the fire safety plan. The Open Burn fire shall be completely extinguished before the permit holder or his/her representative leaves the site. It is the responsibility of the permit holder to have a valid permit, as required by this section, available for inspection on the site by the Fire Department, MPCA representative, and/or DNR Forest Officer.

B. The permit holder is responsible for compliance and implementation of all general conditions, special conditions and the burn event safety plan as established in the permit issued. The permit holder shall be responsible for

all costs incurred as a result of the burn, including, but not limited to, fire suppression and administrative fees.

**Subd. 9. Revocation of Open Burning Permit**. The Open Burning Permit is subject to revocation at the discretion of the MPCA commissioner, or DNR forest officer, or the City Administrator or his/her designee. Reasons for revocation include, but are not limited to: a fire hazard existing or developing during the course of the burn, any of the conditions of the permit being violated during the course of the burn, pollution or nuisance conditions developing during the course of the burn, or a fire smoldering with no flame present.

**Subd. 10. Denial of Open Burning Permit**. If established criteria for the issuance of an open burning permit are not met or during review of said application, it is determined that a practical alternative method for disposal of the material exists, or a pollution or nuisance condition would result, or if a burn event safety plan cannot be drafted to the satisfaction of the City Clerk or his/her designee, the City Clerk or his/her designee may deny the application for the open burning permit.

**Subd. 11. Burning Ban or Air Quality Alert**. No Recreational Fire or Open Burn will be permitted if the City or DNR has officially declared a burning ban due to potential hazardous fire conditions or when the MPCA has declared an Air Quality Alert.

**Subd. 12. Rules Adopted by Reference**. Minnesota Rules parts 7005.0705 to 7005.0805 “Open Burning”, Minnesota Statutes 88.16 to 88.171 and Minnesota Uniform Fire Code, are hereby adopted by reference and made a part of this ordinance as if fully set forth at this point.

***SECTION 10.41. ULTIMATE FIGHTING PROHIBITED.***

**Subd. 1. Definition and Purpose**. Ultimate fighting is any activity, regardless of how named or described, or any form of entertainment, where the primary practice involves individuals engaged in physical contact by striking an opponent with hands, feet, or body. This shall include, but not be limited to, any contest where, kicking, punching, martial arts, or submission holds are permitted. The City Council finds that the practice of ultimate fighting is dangerous and puts individuals and the public health, safety and welfare at great risk.

**Subd. 2. Prohibited Conduct**. It shall be unlawful in any public or private building or place to organize, permit, be present at, or to participate in the practice of ultimate fighting. Officially sanctioned matches regulated by the Minnesota Boxing Commission, martial arts, wrestling and team sports in which physical contact is incidental to the primary purpose of the game such as hockey, basketball, volleyball, soccer, baseball, and softball, are not included among activities prohibited by this section.

***SECTIONS 10.42 THROUGH 10.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 10.99. VIOLATION A MISDEMEANOR***. Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, or performs an act prohibited or declared unlawful by a Code adopted by reference by this Chapter, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

# CHAPTER 11

## ZONING REGULATIONS

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CHAPTER 11

# CHAPTER 11

# ZONING REGULATIONS

## *SECTION 11.01. PURPOSE AND INTENT.*

**Subd. 1. Purpose**. This chapter is adopted for the following purposes:

A. To promote the health, safety, comfort, convenience and general welfare of the inhabitants of the City;

B. To minimize congestion in the public rights-of-way, security safety from fire, panic and other dangers, provide for adequate light and air, and preventing the overcrowding of land;

C. Avoiding undue concentration of population, facilitating the adequate provisions of transportation, water, sewage, parks, and other public requirements;

D. To promote a more efficient and desirable utilization of land by recognizing special land features, such as topography, soils, vegetation, wetland areas, and wildlife;

E. Conserving and developing natural resources and maintaining a high standard of environmental quality;

F. To divide the City into zones or districts as to the compatible use of land and structures for residential and business purposes;

G. To prohibit the use of buildings, structures, and lands that are incompatible with the intended use or development of lands within the specified zones;

H. Providing for the compatible and appropriate use of land throughout the City;

I. Promoting orderly development of residential, commercial, recreational, and public areas;

J. Minimizing pollution of all types;

K. Providing for the administration of this Chapter and amendments thereto;

L. Defining the powers and duties of the administrative officers and bodies; and,

M. Describing penalties for the violation of provisions of this Chapter or any amendment thereto.

***SECTION 11.02. DEFINITIONS***. The following terms, as used in this Chapter, shall have the meanings stated:

A. **"Abutting"** - Having a common border or property line or separated only by streets, railroad tracks or a public utility right-of-way.

B. **"Access"** - A means of vehicular approach or entry to or exit from property.

C. **"Accessory Use, Structure or Building"** - A use, structure or building or portion of a structure subordinate to and serving the principal use or structure on the same lot and clearly and customarily incidental thereto.

D. **"Agriculture"** - The use of land for growing and producing field crops. Keeping or producing of livestock and poultry and all activities incident thereto. Said term shall not include feedlots, the raising of fur-bearing animals, or the operations of riding academies, commercial stables and kennels.

E. **"Alley"** - A minor right-of-way which affords a secondary means of access to abutting property.

F. **"Alteration"** - Any change or rearrangement, other than incidental repairs, in the supporting members of an existing building, such as bearing walls, columns, beams, girders or interior partitions, as well as any change in doors or windows, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another, which would prolong the building's life.

G. **"Animal Hospital"** - A place where animals or pets are given medical, surgical or grooming treatment and the boarding of animals is limited to short-term care incidental to the hospital use.

H. **"Antenna"** - An arrangement of wires, metal rods, panels, dishes, etc. used to send or receive electromagnetic or microwave signals.

I. **"Apartment"** - A room or suite of rooms in a multiple-family dwelling structure which is arranged, designed, used, or intended to be used as a dwelling unit for a single family.

J. **"Applicant"** - The owner of land proposed to be subdivided or rezoned, or his/her legal representative.

K. **"Automotive Sales Lot"** - Sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks, and other recreational vehicles.

L. **"Automobile Repair, Major"** - General repair, rebuilding, or reconditioning of engines, motor vehicles or trailers, including body work, frame work, welding and major painting surface.

M. **"Automobile Repair, Minor"** The replacement of any part or repair of any part which does not require the removal of the engine head or pan, engine transmission or differential; incidental body and fender work, minor painting and upholstering service when said service above stated is applied to passenger automobiles and trucks, not in excess of 12,000 pounds gross vehicle weight.

N. **"Automotive Service Station"** - A retail place of business engaged primarily in the sale of motor vehicle fuels, and includes businesses providing standalone car wash services.

O. **"Banners and Pennants"** - Attention-getting devices which resemble flags and are of a paper, cloth or plastic-like material.

P. **"Barbed Wire"** - See Fence, Hazardous.

Q. **"Basement"** - A portion of a building located entirely or partially underground, but having half or less than its floor to ceiling height below the average grade of the adjoining ground. A basement shall be counted as a story, except that a basement, the ceiling of which does not extend more than five feet above the curb level or above the highest level of the adjoining ground shall not be counted as a story.

R. **"Berm"** - A mound of earth, or the act of pushing earth into a mound.

S. **"Block"** - An area of land within a subdivision that is entirely bounded by streets or by streets and the exterior boundary or boundaries of the subdivision, or a combination of the above with a river or lake, or outlet.

T. **"Boarding House"** - Any dwelling other than a hotel, motel or apartment where meals and lodging are provided for compensation to persons unrelated to the owner or possessor, pursuant to previous arrangement.

U. **"Bond"** - Any form of security including cash deposit, surety bond or letter of credit in an amount and form satisfactory to the Council and filed with the City.

V. **"Boulevard"** - The portion of the street right-of-way between the curb line or surfaced roadway and the property line.

W. **"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, glare, noise, dust and other external effects.

X. **"Building"** - Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind. In addition, when said structure is divided by party walls without opening, each portion of such building so separated shall be deemed a separate building.

Y. **"Building, Completely Enclosed**" - A building separated on all sides from the adjacent open space from other buildings or structure, by a permanent roof and by exterior walls or party walls, pierced only by windows and normal entrance and exit doors.

Z. **"Building Coverage" -** The horizontal area measured within the outside of the exterior walls of the ground floor of all principal and accessory buildings on a lot.

AA. **"Building, Detached"** - A building surrounded by an open space on the same lot.

BB. **"Building, Height"** - The vertical distance measured from the average ground elevation adjoining the front walls of the building to the highest point of the roof surface of a flat roof, to the deck line of a mansard roof, or to the average height between the eaves and ridge of a gable, hip or gambrel roof.

CC. **"Building Setback Line"** - A line on a lot, generally parallel to a lot line, high water mark, shoreline or road right-of-way line, located a sufficient distance there from to provide the minimum yards required by this Chapter. The building setback lines delimit the area in which buildings are permitted subject to all applicable provisions of this Chapter.

DD. **"Building, Residential"** - A building which is arranged, designed, used or intended to be used for residential occupancy by one or more families and which includes, but is not limited to, the

following types: (1) single family dwellings; (2) two family dwellings; (3) multiple family dwellings; (4) townhouses.

EE. **"Building, Principal"** - A building in which is conducted, or in which is intended to be conducted, the main or principal use of the lot on which it is located.

FF. **"Bulk Storage"** - The storage of chemicals, petroleum products and other materials in above ground containers for subsequent resale.

GG. **"Business"** - Any establishment, occupation, employment or enterprises wherein merchandise is manufactured, exhibited or sold, or where services are offered for compensation.

HH. **"Business, Temporary"** - Any person or corporation who engages temporarily in the business of selling and delivering goods, wears, or merchandise within the City and who in furtherance of such purpose hires, leases, uses or occupies any building, structure, vacant lot, motor vehicle, trailer or railroad car.

II. **"Caliper"** - A measurement of the size of the tree equal to the diameter of its trunk measured four and one-half (4.5) feet above natural grade.

JJ. **"Capital Improvements Program"** - A proposed City schedule of future projects or capital purchases listed in order of priority together with cost estimates and the anticipated means of financing each project.

KK. **"Carport"** - A roofed automobile shelter opened on at least two sides, usually formed by extension of the roof from the side of a building. A carport is an accessory structure.

LL. **"Central Water and Sewer System"** - A system serving a group of buildings, lots, or a defined area of the City.

MM. **"Church"** - A building or edifice consecrated to religious worship, where people join together in some form of public worship under the aegis and direction of a person who is authorized under the laws of the State of Minnesota to solemnize marriages. Camp meeting grounds, mikvahs, coffee houses, recreational complexes, retreat house, sleeping quarters for retreatants during spiritual retreats extending for periods of more than one day, Bible camps with live-in quarters, ritual slaughter houses, radio or television towers and transmission facilities theological seminaries, day care centers, hospitals, and drug treatment centers are not churches. A church as

defined above may include living quarters for persons employed on the premises of said church.

NN. **"Clinic"** - A building in which a group of physicians, dentists, and/or allied professional assistants are associated for carrying on their profession. The clinic may include a dental or medical laboratory, but shall not include in-patient care or operating rooms for major surgery.

OO. **"Club or Lodge, Private"** - An association of persons who are bona fide members paying annual dues, of which owns, hires, or leases the building, property or a portion thereof; the use of such premises being restricted to members and their guests. It shall be permissible to serve food and means on such premises, provided adequate facilities are available.

PP. **"Comprehensive Plan or Policies"** - A computation of goals, policy statements, standards, programs and maps for guiding the physical, social, and economic development, both public and private, as defined in the Minnesota Municipal Planning Act, and includes any part of such plan separately adopted and any amendment to such plan or parts thereof.

QQ. **"Conditional Use"** - A use permitted in a particular zoning district only upon showing that such use in a specified location will comply with all the restrictions and standards for that location or operation of such use as specified by this Chapter and authorized by the City.

RR. **"Condominium"** - A form of individual ownership within a building which entails joint ownership and responsibility for maintenance and repairs of the land and other common property of the building.

SS. **"Conforming Building or Structure"** - Any building or structure which complies with all the regulations of this Chapter or any amendment thereto governing the zoning district in which such building or structure is located.

TT. **"Construction Plan"** - The map or drawing accompanying a subdivision plat and illustrating the specific location and design of improvements to be installed in the subdivision in accordance with engineering and City Code requirements of the City and as conditioned in the approval of the plat.

UU. **"Contour Map"** - A map on which irregularities of land surface are shown by lines connecting points of equal elevation. Contour interval is the vertical height between contour lines.

VV. **"Contractor's Yard"** - An area where vehicles, equipment, and/or construction materials and supplies commonly used by building, excavation, roadway construction and similar contractors are stored or serviced. The contractor's yard includes both areas of outdoor storage and areas confined within a completely enclosed building used in conjunction with a contractor's business.

WW. **"Convalescent, Nursing and Rest Home"** - A home for aged, chronically ill, or convalescent persons in which two or more persons not of the immediate family are received, kept or provided with food, shelter and care of compensation, but not including hospitals, clinics or similar institutions devoted primarily to the diagnosis and treatment of disease or injury, maternity cases, or mental illness.

XX. **"Cooperative"** - A multi-unit development operated for and owned by its occupants. Individual occupants do not own their specific housing unit outright as in a condominium, but they own shares in the enterprise.

YY. **"Corner Lot"** - See Lot, Corner.

ZZ. **"County Recorder"** - The County Recorder when referring to abstract or registered property under the Torrens system in Anoka County.

AAA. **"Covenant"** - A contract between two individuals which constitutes a restriction of a particular parcel of land.

BBB. **"Coverage"** - See Lot Coverage.

CCC. **"Cul-De-Sac"** - A local street with only one vehicular outlet and having an appropriate terminal for the safe and convenient reversal of traffic.

DDD. **"Curb Level"** - The curb level for any building is the level of the established curb in front of such building measured at the center of such front. Where no curb elevation has been established, the City Engineer shall establish such curb elevation. When a building has frontage on more than one street, the lowest curb level as determined above shall apply.

EEE. **"Day Care Facility"** - Any facility, 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 twenty four (24) hours per day, in a place other than the person's Own home, including but not limited to family day care homes, group family day care homes, day care centers, day nurseries, nursery schools, pre-schools, daytime activity centers, day treatment programs and day services.

FFF. **"Deck"** - An above grade platform adjacent to or extending from a principal structure and not covered by a permanent roof.

GGG. **"Deflection"** - The angle between a line and the prolongation of the preceding line.

HHH. **"Density"** - A number expressing the relationship of the number of dwellings to an acre of land.

III. **"Developer"** - The owner of land proposed to be subdivided or his legal representative.

JJJ. **"Development"** - The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance, and any use or extension of the use of land.

KKK. **"Development Identification Sign"** - A permanent ground low profile sign which identifies a specific residential, industrial, commercial or office development and which is located on the premises of the development which it identifies.

LLL. **"District"** - See Zoning District.

MMM. **"Drive-In Use"** - An establishment which 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 vehicle.

NNN. **"Dwelling"** - A building or portion thereof designed or used exclusively for human habitation, including single family, two family, multiple family and townhouse dwellings, but not including hotels or motels.

OOO. **"Dwelling, Attached"** - An attached dwelling is one which is joined to another dwelling or building at one or more sides by a party wall or walls.

PPP. **“Dwelling, Detached”** - A detached dwelling is one which is entirely surrounded by open space on the same lot.

QQQ. **“Dwelling Unit”** - One room, or rooms located in a dwelling which are connected together constituting a complete, separate, and independent housekeeping unit for owner occupancy, rental or lease, physically separated from any other room or dwelling unit which may be in the same structure, and containing independent cooking, sleeping and sanitary facilities, but not including hotels, motels, boarding or rooming houses, tourist homes, manufactured homes, travel trailers or tents.

RRR. **“Dwelling, Single-Family”** - A detached building containing one dwelling unit designed for occupancy for one family.

SSS. **“Dwelling, Two-Family”** - A detached dwelling containing two dwelling units, designed for occupancy by not more than two families.

TTT. **“Dwelling, Multiple-Family or Apartment Building”** - A detached building containing three or more dwelling units, with the number of families in residence not exceeding the number of dwelling units provided. Condominiums and cooperatively owned multiple residential dwellings are multiple-family dwellings for purposes of this Chapter.

UUU. **“Easement”** - A limited ownership interest in land enabling the construction and maintenance of public services and utilities thereon including, but not limited to, sanitary sewers, water mains, electrical lines, telephone lines, storm sewer or storm drainage facilities, gas lines, and conservation and pedestrian trails.

VVV. **“Efficiency Unit”** - A dwelling unit consisting of one principal room, exclusive of bathroom, kitchen, hallway, closets or dining alcove directly off the principal room.

WWW. **"Entertainment"** - For the purposes of this Chapter, “entertainment” is allowed within an establishment operating under an entertainment license granted pursuant to Section 6.31.

XXX. **“Escrow”** - A deposit of cash with the local government in lieu of an amount required and still in force on a performance or maintenance bond.

YYY. **“Essential Services”** - The erection, construction, alteration, or maintenance of underground, surface or overhead services such as but not limited to, electrical, communications, gas, steam, water and

sewerage transmission and collection systems, and the equipment and appurtenances necessary for such systems to furnish an adequate level of public service.

ZZZ. **"Exterior Storage"** - The storage of goods, materials, equipment, manufactured products and similar items not fully enclosed by a building.

AAAA. **"Extraction"** - The removal, filling with, or storage of rock, sand, gravel, clay, silt or other like material.

BBBB. **"Extraction Permit"** - A permit approved by and issued by the City, to remove, excavate, fill with, or store rock, sand, gravel, clay, silt or other like material.

CCCC. **"Facade"** - That portion of any exterior elevation of a building exposed to public view extending from grade to the top of the parapet wall or eaves and the entire width of the building elevation.

DDDD. "**Farmers Market**" – A Farmers Market is a specific use subject to a business license issued by the City and subject to operating standards as defined in Section 6.##, and as otherwise defined by State law or regulation.

EEEE. **"Family"** - Any number of individuals generally but not necessarily related by blood and marriage, living together at one location as a single nonprofit housekeeping unit, as distinguished from a group occupying a boarding or rooming house, tourist home, hotel or motel.

FFFF. **"Feedlot"** - A confined area used for housing or feeding poultry or livestock where substantial amounts of animal waste will be generated, but not including barns or pens which are accessory uses incidental to a farming operation.

GGGG. **"Fence"** - A structure, partition or enclosure of wood, iron, metal, or other material enclosing or dividing a piece of land. For the purpose of this subdivision, a fence shall not include naturally growing shrubs, trees or other foliage.

HHHH. **"Fence Hazardous"** - Any barrier which exposes the general public to danger, chance, or risk of injury by the nature of its components such as barbed wire, sharpened metal or electrical charges.

IIII. **"Fence Solid"** - A fence which provides a visual barrier between adjacent property and the area enclosed without openings in fencing material.

JJJJ. **"Fill"** - Sand, gravel, earth or other material of any composition whatsoever placed or deposited by humans.

KKKK. **"Financial Institution"** - A commercial banking establishment or savings and loan association chartered by the State of Minnesota or the United States.

LLLL. **"Flood Fringe"** - That portion of the flood plain outside the floodway.

MMMM. **"Flood Plain"** - The land adjacent to a body of water which has been or may be hereafter covered by flood water, including that land covered by the regional flood.

NNNN. **"Flood, Regional"** - 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 one hundred (100) year recurrence interval.

OOOO. **"Floodway"** - The minimum channel of a watercourse and those portions of the floodplain adjoining the channel that are reasonably required to discharge the regional flood.

PPPP. **"Floor Area"** - The sum of the gross horizontal areas of the several floors of the building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings. The floor area of a building shall include basement floor area, elevator shafts, and stairwells, at each floor, penthouses, attic space having headroom of seven feet or more, interior balconies and mezzanines, enclosed porches and floor area devoted to accessory uses. However, any space devoted to mechanical equipment, parking or loading shall not be included in the floor area. The floor area for enclosed space having a floor to ceiling height in excess of twenty (20) feet shall be computed on the basis that each fifteen (15) feet of height shall be equal to one floor for the purposes of computation.

QQQQ. **"Floor Area Ratio"** (F.A.R.) - The numerical value obtained by dividing the floor area of a building by the total size of the lot.

RRRR. **"Foster Child"** - A foster child is one placed in a private home for care and maintenance by a parent, guardian, or a duly accredited and established public or private welfare agency.

SSSS. **"Front Lot Line"** - See Lot Line, Front.

TTTT. **"Front Yard"** - See Yard, Front.

UUUU. **"Frontage"** - That boundary of a lot which abuts an existing or dedicated public street.

VVVV. **"Garage, Common"** – Multi unit garage for multiple dwellings.

WWWW. **"Garage, Public"** - A building used for the storage or care of power driven vehicles, or where such vehicles are equipped for operation, repair, or kept for storage, hire or sale.

XXXX. **"Garden Center"** - A place of business where retail and wholesale products and produce are sold to the retail consumer. These centers, which may include a nursery and/or greenhouses, import most of the items sold. These items may include plants, handicrafts, nursery products and stock, fertilizers, potting soil, hardware, lawn and garden power equipment and machinery, hoes, rakes, shovels, and other garden and farm tools and utensils.

YYYY. **"General Development Plan"** - A report in text and in map form with the map drawn to scale depicting the general location and relationship of structures, streets, driveways, recreation areas, parking areas, utilities, etc., as related to a proposed development.

ZZZZ. **"Grade"** - Grade is an average level of the finished surface of the ground adjacent to the exterior walls of the building or structure, or the slope of a street, specified in percentage (%) terms.

AAAAA. **"Greenhouse"** - A structure used for the cultivation or protection of flowers, vegetables and nursery stock.

BBBBB. **"Health Services"** - Establishments primarily engaged in furnishing medical, surgical or other services to individuals, including the offices of physicians, dentists, and other health practitioners, medical and dental laboratories, out-patient care facilities, blood banks, and oxygen and miscellaneous types of medical supplies and services.

CCCCC. **"Home Occupation"** - See Section 11.60, Subd. 18.

DDDDD. **“Horticulture Use”** - The use of land for the growing or production of fruits, vegetables, flowers, nursery stock including plants, trees and cultured sod for income.

EEEEE. **“Hospital”** - An institution providing persons with intensive medical or surgical care and devoted primarily to the diagnosis and treatment of disease or injury, maternity cases, or mental illness.

FFFFF. **“Hotel”** - A building containing guest rooms in which lodging is provided with or without meals for compensation and which is open to transient or permanent guests or both, and where no provision is made for cooking in any guest room, and which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge.

GGGGG. **“Impervious Surface”** - Impervious surfaces are those which do not absorb water. They consist of all buildings, parking areas, driveways, roads, sidewalks, and any areas of concrete or asphalt. In the case of lumberyards, areas of stored lumber constitute impervious surfaces.

HHHHH. **“Individual Sewage Treatment System”** - A sewage treatment system or part thereof, serving a dwelling, or other establishment, or group thereof, which utilizes subsurface soil treatment and dispersal.

IIIII. **“Industrial”** - See Manufacturing.

JJJJJ. **“Junk Yard”** - An area where used, waste, discarded or salvaged materials are bought, sold, exchanged, stored, baled, cleaned, packed, disassembled or handled, including but not limited to scrap iron and other metals, paper, rags, rubber products, bottles and lumber. A junk yard includes an automobile wrecking or dismantling yard, but does not include uses established in conjunction with a permitted manufacturing process when within an enclosed area or building. The storage of unlicensed and/or inoperable motor vehicles for a period in excess of thirty (30) days shall also be considered a junk yard.

KKKKK. **“Kennel, Commercial”** - Any place where a person, firm, or corporation accepts dogs, cats, or other common household pets from the general public and where such animals are kept for the purpose of selling, boarding, breeding, training, treating or grooming.

LLLLL. **“Kennel, Private”** - Any place where more than two (2) dogs or cats over six months of age are kept or harbored, such animals being

owned by the owner or lessee of the premises wherein or whereupon the animals are kept or harbored.

MMMMM. **"Key Map"** - A map drawn to comparatively small scale which definitely shows the area proposed to be platted or developed and the areas surround it to a given distance.

NNNNN. **"Land Reclamation"** - Depositing of clean fill materials so as to elevate the grade of said land.

OOOOO. **"Landscaping"** - The addition to a lot of lawns, trees, plants, and other natural and decorative features including walks, patios, gravel, and mulches.

PPPPP. **"Loading Space"** - That portion of a lot designed to serve the purpose of loading or unloading all types of vehicles.

QQQQQ. **"Lot"** - A separate parcel, tract, or area of land undivided by any public street or private road, which has been established by plat, metes and bounds subdivision, or as otherwise permitted by law, and which is occupied by or intended to be developed for and occupied by a principal building or group of such buildings and accessory buildings, or utilized for a principal use and uses accessory thereto, including such open spaces and yards as are designed and arranged or required by this Chapter for such building, use or development.

RRRRR. **"Lot, Area"** - The area of a horizontal plane bounded by the front, side or rear lot lines, but not including any area occupied by the waters of lakes or rivers or by public rights-of-way.

SSSSS. **"Lot, Corner"** - A lot abutting upon two (2) or more streets at their intersection, or upon two parts of the same Street, such streets or parts of the same street forming an interior angle of less than one hundred thirty-five (135) degrees.

TTTTT. **"Lot Coverage"** - That portion or percentage of a lot which may be covered by buildings or impervious surfaces.

UUUUU. **"Lot Depth"** - The mean horizontal distance between the front lot line and the rear lot line of a lot, measured within the lot lines. The greater frontage of a corner lot is its depth, and its lesser frontage is its width.

VVVVV. **"Lot, Double Frontage"** - An interior lot having frontage on two streets.

WWWWW. **“Lot Frontage”** - The boundary of a lot fronting on a public street.

XXXXX. **“Lot, Interior”** - A lot other than a corner lot.

YYYYY. **“Lot Line”** - A line of record bounding a lot which divides one lot from another lot or from a right-of-way or any other public space.

ZZZZZ. **“Lot Line, Front”** - The lot line separating a lot from a street right-of-way. In the case of a corner lot it shall be the boundary with the shortest dimension on the street. In the case of lots with more than two street frontages, the front lot line shall be the lot line having the legal street address.

AAAAAA. **“Lot Line, Rear”** - The lot line which is parallel to and most distant from the front lot line; or in the case of triangular or otherwise irregularly shaped lots, a line twenty (20) feet in length, entirely within lots, parallel to and at the maximum possible distance from the front lot line.

BBBBBB. **“Lot Line, Side”** - Any lot line other than a front or rear lot line. A side lot line separating a lot from a street is called a side street lot line. A side lot line separating a lot from another lot or lots is called an interior side lot line.

CCCCCC. **“Lot of Record”** - Any legally recorded lot which at the time of its recordation complied with all applicable laws, City Code provisions, and regulations.

DDDDDD. **“Lot, Through”** - A lot which fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot. On a through lot, both street lot lines shall be deemed front lot lines. Same as double frontage lot.

EEEEEE. **“Lot Width”** - The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

FFFFFF. **“Lot, Zoning”** - A zoning lot is a single tract of land which, at the time of filing for a building permit, is designated by its owner or developer as a tract to be used, developed or built upon as a unit under single ownership or control. A zoning lot or lots may or may not coincide with a lot of record.

GGGGGG. **“Manufactured Home”** - A structure, transportable in one or more sections, which in the traveling mode, is eight body feet or

more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except that the term includes any structure which meets all the requirements and with respect to the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development or the head of any successor agency with responsibility for enforcement of Federal laws relating to manufactured homes and complies with the standards established pursuant to M.S. 327.31 - M.S. 327.35. A manufactured home is a dwelling.

HHHHHH. **"Manufactured Home Park"** - A parcel of land so designated and improved with utilities, parking paths, walks and access roads homes for the purpose of supplying a location or accommodation for a manufactured home.

IIIIII. **"Manufacturing, Heavy"** - All manufacturing, compounding, processing, packaging, treatment, or assembly of products and materials that may emit objectionable and offensive influences beyond the lot on which the use located. Such uses include, but are not limited to the following: sawmill, refineries, commercial feedlots, acid, cement, explosives, flour, seed, and grain milling or storage, meat packing, slaughter houses, 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, plastics, crude oil and petroleum products, including storage, electric power generation facilities, vinegar works, junk yard, auto reduction yard, foundry, forge, casting of metal products, rock, stone, cement products.

JJJJJJ. **"Machine Shop"** – Fabricating of metal parts by milling, tooling or welding.

KKKKKK. **"Manufacturing, Light"** - Fabrication, processing, or assembly employing only electric or other substantially noiseless and inoffensive motive power, utilizing hand labor or quiet machinery and processes, and free from neighborhood disturbing agents, such as odors, gas, fumes, smoke, cinders, flashing or excessively bright lights, refuse matter, electromagnetic radiation, heat or vibration.

LLLLLL. **"Medical Uses"** - Those uses concerned with the diagnosis, treatment, and care of human beings. These include: hospitals, dental

services, medical services, or clinic, nursing or convalescent home, orphan homes, rest home, sanitarium.

MMMMMM. **"Metes and Bounds Description"** - A description of real property which is not described by reference to a lot or block shown on a map, but is described by starting at a known point and describing the bearings and distances of the lines forming the boundaries of the property, or delineates a fractional portion of a section, lot or area by described lines or portions thereof.

NNNNNN. **"Minerals"** - The nonmetallic materials found in the earth including, but not limited to, rock, sand, gravel, clay, silt and soil which may be covered by overburden.

OOOOOO. **"Mini-Warehouse"** - A building or group of buildings in a controlled-access and fenced compound that contains varying sizes of individual, compartmentalized, and controlled-access stalls or lockers for the dead storage of a customer's goods or wares. No sales, service, or repair activities other than the rental of dead storage units are permitted on the premises, and outdoor storage must be fully screened from public view at street level.

PPPPPP. **"Motel, Motor Court, Motor Hotel"** - An establishment consisting of a group of attached or detached living or sleeping accommodations with bathroom, located on a single zoning lot and designed for use by transient automobile tourists, and furnishing customary hotel services.

QQQQQQ. **"Motor Freight Terminal"** - A building or area in which trucks, including tractor or trailer units, are parked, stored, or serviced, including the transfer, loading or unloading of goods. A terminal may include facilities for the temporary storage of loads prior to trans-shipment.

RRRRRR. **"Motor Vehicle"** - Any passenger vehicle, truck, truck-trailer, trailer or semi-trailer propelled or drawn by mechanical power.

SSSSSS. **"Non-Conforming Lot"** - Any lot of record which does not comply with the minimum lot area, frontage, or depth requirements of the district in which it is located, as required by this Chapter.

TTTTTT. **"Non-Conforming Structure"** - Any building or structure which lawfully existed on the effective date of this Chapter, or any amendments thereto, which does not comply with the bulk, placement, land use intensity, or height regulations of the district in which it is located, as required by this Chapter.

UUUUUU. **"Non-Conforming Use"** - Any use of land, buildings, or structures lawfully existing on the effective date of this Chapter which use does not comply with all the regulations of this Chapter or any amendment hereto governing the zoning district in which such use is located.

VVVVVV. **"Noxious Water or Material"** - Material which is 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.

WWWWWW. **"Nursery"** - An enterprise which conducts the retail and wholesale of plants grown on the site, as well as accessory items (but not including power equipment such as gas or electric lawnmowers and farm implements) directly related to their care and maintenance.

XXXXXX. **"Odorous Matter"** - Any material or matter that yields an odor which is offensive in any way.

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

ZZZZZZ. **"Official Zoning Map"** - The map or maps which are a part of this Chapter and delineate the boundaries of the zoning districts.

AAAAAAA. **"On-Site"** - Located on the lot in question, except in the context of on-site detention, when the term means within the boundaries of the development site as a whole.

BBBBBBB. **"Open Space"** - Any open area not covered by structure or paving.

CCCCCCC. **"Ordinary High Water Mark"** - A mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

DDDDDDD. **"Outdoor Storage"** - The storage of any goods, junk, equipment, wood, trailers, material, merchandise, supplies or vehicles not fully enclosed in a building for more than twenty-four hours.

EEEEEEE. **"Outlot"** - A platted lot to be developed for a use which will not involve a building.

FFFFFFF. **"Overburden"** - Those materials which lie between the surface of the earth and the material to be excavated.

GGGGGGG. **"Owner"** - The person or persons having the right of legal title to, beneficial interest in, or a contractual right to purchase a lot or parcel of land.

HHHHHHH. "**Parking Area**" - A suitable surfaced and permanently maintained area on property either within or outside of a building of sufficient size to store one or more standard automobile. Commonly referred to as a 'parking lot.

IIIIIII. **"Parking Space"** - A suitable surfaced and permanently maintained area on property either within or outside of a building of sufficient size to store one standard automobile.

JJJJJJJ. **"Patio"** - A level, hard surfaced area adjacent to a principal building at or within three feet of the finished grade and not covered by a permanent roof.

KKKKKKK. **"Peddler"** - Any person corporation who engages temporarily in the business of selling and delivery of goods, wears or merchandise within the City and who in furtherance of such purpose hires, leases, uses or occupies any building, structure, vacant lot, motor vehicle, trailer or railroad car.

LLLLLLL. **"Pedestrian Way"** - A public pedestrian walkway provided between lots where required by the City to allow for pedestrian accessibility to streets or public service areas. This may also be referred to as a trailway.

MMMMMMM. **"Performance Bond"** - A bond granted by the person(s) platting property to the City to guarantee the installation of improvements required in this Chapter.

NNNNNNN. **"Performance Guarantee"** - A financial guarantee to insure that all improvements, facilities, or work required by this Chapter will be completed in compliance with this Chapter, regulations, and the approved plans and specifications of a development.

OOOOOOO. **"Performance Standard"** - A criterion established to control noise, odor, toxic or noxious matter, vibration, fire and

explosive hazards, glare or heat, or other nuisance elements which a particular use, property, or process may not exceed.

PPPPPPP. **"Permitted Use"** - Any principal use allowed in a zoning district as a property right without the special conditions required for a conditional use, but subject to the minimum requirements and restrictions established in this Chapter for that zoning district.

QQQQQQQ. **"Plat"** - A map or drawing which graphically delineates the boundary of and layout for streets, lots, and easements for a subdivision prepared for filing of record pursuant to Minnesota Statutes, Chapter 505.

RRRRRRR. **"Plat, Preliminary"** - The preliminary map, drawing or plan indicating the proposed layout of the subdivision to be submitted to the Planning Commission and the Council for their consideration.

SSSSSSS. **"Plat, Final"** - The final map, drawing or plan on which the sub divider's plan of subdivision is presented to the Council for approval and which, if approved, will be submitted to the County Recorder.

TTTTTTT. **"Platting Authority"** - The City Council.

UUUUUUU. **"Premises"** - A lot, parcel, tract or plot of land together with the building and structures thereon.

VVVVVVV. **"Principal Building"** - See Building, Principal.

WWWWWWW. **"Principal Use"** - See Use, Principal.

XXXXXXX. **"Prohibited Use"** - A use that is not permitted in a zoning district under any circumstances.

YYYYYYY. **"Property Line"** - See Lot Line.

ZZZZZZZ. **"Processing"** - The crushing, washing, compounding or treating of rock, sand, gravel, clay, silt or other like material.

AAAAAAAA. **"Protective Covenants"** - Contracts entered into between private parties that constitute a restriction on the use of all private property within the platted area, and provide mutual protection against undesirable aspects of development which would tend to impair stability of values.

BBBBBBBB. **"Public Land or Building" -** Land or building owned and/or operated by a governmental unit.

CCCCCCCC. **"Publication"** - An official notice as prescribed by State Statutes in a newspaper so designated for this purpose by the Council.

DDDDDDDD. **"Rear Lot"** - See Lot Line, Rear.

EEEEEEEE. **"Rear Yard**" - See Yard, Rear.

FFFFFFFF. **"Recreation, Commercial"** - Includes all uses such as bowling alleys, driving ranges and movie theaters, that are privately owned and operated with the intention of earning a profit by providing entertainment for the public.

GGGGGGGG. **"Recreation, Public"** - Includes all uses such as tennis courts, ball fields, picnic areas, and the like, that are commonly provided for the public at parks, playgrounds, community centers, and other sites, owned and operated by a unit of government for the purpose of providing recreation.

HHHHHHHH. **"Recreational Vehicle"** - A vehicle or vehicular unit which can be driven or which can be towed or hauled, and which is primarily designed as a temporary living accommodations for recreational camping and travel use. Recreational vehicles include travel trailers, camping trailers, truck campers, and self-propelled motor homes.

IIIIIIII. **"Registered Land Survey"** - A survey map of registered land designed to simplify a complicated metes and bounds description, designating the same into tract or tracts of registered land survey number.

JJJJJJJJ. **"Rehabilitation"** - To renew land or buildings to a self-sustaining, long-term use which is compatible with contiguous land uses in accordance with the standards set forth in this Chapter.

KKKKKKKK. **"Replat"** - The platting of an area that was previously platted.

LLLLLLLL. **"Research Laboratory"** - A research laboratory building, or group of buildings, in which are located facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

MMMMMMMM. **"Residential Facility"** - Any facility, public or private, which for gain or otherwise, regularly provides one or more persons with a twenty-four hour per day (24 hr./day) substitute for 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, including but not limited to, state institutions under the control of the commissioner of public welfare, foster homes, residential treatment centers, maternity shelters, group homes, residential programs, or schools for handicapped children.

NNNNNNNN. **"Restaurant, Fast Food"** - An establishment whose principal business is the sale of food and/or beverages in a ready-to-consume state for consumption (1) within restaurant building, (2) within a motor vehicle parked on the premises, or (3) off the premises as carry-out orders; and whose principal method of operation includes the following characteristics (a) food and/or beverages are usually served in edible containers or in paper, plastic, or other disposable containers; (b) the customer is not served food at his table by an employee, but receives it at a counter, window, or similar facility and carries it to another location on or off the premises for consumption.

OOOOOOOO. **"Restaurant, Standard"** - Means any establishment, other than a hotel, under the control of a single proprietor or manager, having appropriate facilities for the serving of meals, and where, in consideration of payment thereof, meals are regularly served at tables to the general public, which employs an adequate staff to provide the usual and suitable service to its guests.

PPPPPPPP. "**Retail Sales and Service**" - Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods. Examples include uses from the four subgroups listed below:

i. Sales-oriented: Stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, plants, printed material, stationery, and videos; food sales, and Farmers Markets.

ii. Personal service-oriented: Branch banks, laundromats; dry cleaners; photographic studios; photocopy and blueprint services; hair, tanning, and personal care services; business, martial arts, and other trade schools; dance or music classes;

taxidermists; mortuaries; and animal grooming; medical and dental offices; health services; pharmacies.

iii. Entertainment-oriented: Indoor or outdoor continuous entertainment activities such as bowling alleys, ice rinks, and game arcades; pool halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs, and lodges; hotels, motels, and other temporary lodging with an average length of stay of less than 30 days.

iv. Repair-oriented: Repair of TVs, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop.

QQQQQQQQ. **"Right-of-Way"** - A strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied or presently occupied by a road, pedestrian walk, railroad, electric transmission lines, oil or gas pipeline, sewer and water lines, and other similar uses.

RRRRRRRR. **"Right-of-Way Lines"** - The lines that form the boundaries of a right-of-way.

SSSSSSSS. **"Salvage Yard"** - See Junk Yard.

TTTTTTTT. **"Setback"** - The minimum horizontal distance between a structure and the nearest property line or roadway easement line; and, within shore land areas, it shall also mean the minimum horizontal distance between a structure or sanitary facility and the ordinary high water mark.

UUUUUUUU. **"Sewage"** - Any water-carried domestic wastes, exclusive of footing and roof drainage, from any industrial, agricultural or commercial establishment, or any dwelling or other structure. Domestic waste includes, but is not limited to, liquid waste produced by bathing, laundry, culinary operations, and liquid wastes from toilets and floor drains. Domestic waste specifically excludes animal waste and commercial process wastes.

VVVVVVVV. **"Shopping Center"** - An integrated group of commercial establishments planned, developed, and managed as a unit, with off-street parking facilities provided on-site.

WWWWWWWW. **"Shore Land"** - Land located within the following distances from public waters: 1,000 feet from the normal high water mark of a lake, pond or flowage; and 300 feet from a river or stream or

the landward extend of a flood plain designated by ordinance on such a river or stream, whichever is greater. The practical limits of shore lands may be less than the statutory limits whenever the waters involved by bounded by natural topographic divides which extend landward from the waters for lesser distances and when approved by the Commissioner of the Department of Natural Resources.

XXXXXXXX. **"Side Lot Line"** - See Lot Line, Side.

YYYYYYYY. **"Side Yard"** - See Yard, Side.

ZZZZZZZZ. **"Sign"** - Any object, device, display, or structure, or part thereof situated outdoors, or visible through a window or door, which is used to advertise, announce, identify, display, direct or attract attention to an object, person, institution, organization, business, commodity, product, service, event or location, by means, including words, letters, figures, design, symbols, fixtures, pictures, illumination or projected images.

AAAAAAAAA. **"Sign, Address"** - any signs which identify the property number or numerical address of the premises on which the sign is located.

BBBBBBBBB. **"Sign, Advertising"** - Any sign which directs attention to a business, commodity, service, activity or entertainment not necessarily conducted, sold or offered upon the premises where such a sign is located.

CCCCCCCCC. **"Sign, Alteration"** - Any change, reconstruction, relocation, or enlargement of a sign, or of any of its component parts. Routine maintenance, the changing of movable parts of signs which are designed for such changes, and the repainting of sign copy and display matter shall not be deemed to be an alteration within the context of this Chapter.

DDDDDDDDD. **"Sign, Area Identification"** - A free standing sign which identifies a specific residential subdivision development, whether single-family or multifamily, or an office and industrial park. Area identification signs shall be located on the same premises as the development which it identifies.

EEEEEEEEE. **"Sign, Billboard"** - See Sign, Advertising.

FFFFFFFFF. **"Sign, Bulletin Board"** - A sign which identifies an institution or organization on the premises of which it is located and which contains the name of the institution or organization, the names

of individuals connected with it, and general announcements of events or activities occurring at the institution or similar messages.

GGGGGGGGG. **"Sign, Business"** - A sign which directs attention to a business or profession conducted, or to a commodity or service sold, offered or manufactured, or to an entertainment offered on the premises where the sign is located.

HHHHHHHHH. **"Sign, Business Directory"** - A sign which identifies the names of specific businesses located in a shopping center and which is located on the premises of the shopping center so identified.

IIIIIIIII. **"Sign, Campaign"** - A temporary sign announcing, promoting, or supporting political candidates or issues in connection with any national, state, or local election.

JJJJJJJJJ. **"Sign, Canopy or Marquee"** - A sign which is mounted, painted on, or attached to any projection or extension of a building that is designed in such a manner as to provide shelter or cover over the approach to any entrance of the building.

KKKKKKKKK. **"Sign, Construction"** - A temporary sign erected on the premises on which construction is taking place, during the period of such construction, indicating the names of the architects, engineers, landscape architects, contractors or similar artisans, and the owners, financial supporters, sponsors, and similar individuals or firms having a role or interest with respect to the situation or project.

LLLLLLLLL. **"Sign, Directional"** - A sign erected on private property for the purpose of directing pedestrian or vehicular traffic onto or about the property upon which such sign is located, including signs marking entrances and exits, circulation direction, parking areas, and pick-up and delivery areas.

MMMMMMMMM. **"Sign Display Area"** - The area within a single continuous perimeter enclosing the extreme limits of the actual sign message surface, but excluding any structural elements outside the limits of each sign not forming an integral part of the sign. The stipulated maximum sign display area for a sign refers to a single facing.

NNNNNNNNN. **"Sign, Flashing"** - Any directly or indirectly illuminated sign which exhibits changing natural or artificial light or color effects by any means whatsoever.

OOOOOOOOO. **"Sign, Free Standing"** - Any non-movable sign not affixed to a building.

PPPPPPPPP. **"Sign, Governmental"** - A sign erected and maintained pursuant to and in discharge of any governmental functions, or required by law, City Code provision or other governmental regulation.

QQQQQQQQQ. **"Sign, Ground"** - Any sign, other than a pole sign, placed upon or supported by the ground independent of any other structure.

RRRRRRRRR. **"Sign, Ground Low Profile Business"** - A business sign affixed directly to the ground, with the sign display area not greater than two (2) feet above the ground.

SSSSSSSSS. **"Sign Height"** - The vertical distance measured from the ground surface at the base of the sign to the top of the sign.

TTTTTTTTT. **"Sign, Holiday Decoration"** - Temporary signs, in the nature of decorations, clearly incidental to and customarily and commonly associated with any national, local or religious holiday.

UUUUUUUUU. **"Sign, Home Occupation"** - A sign containing only the name and occupation of a permitted home occupation.

VVVVVVVVV. **"Sign, Illuminated"** - A sign lighted by or exposed to artificial lighting either by lights on or in the sign or directed towards the sign.

WWWWWWWWW. **"Sign, Institutional"** - A sign which identifies the name and other characteristics of a public or private institution of the site where the sign is located.

XXXXXXXXX. **"Sign, Motion"** - Any sign or part of a sign which changes physical position by any movement or rotation or which gives the visual impression of such movement or rotation.

YYYYYYYYY. **"Sign, Nameplate"** - A sign, located on the premises, which bears the name and/or address of the occupant of the building or premises.

ZZZZZZZZZ. **"Sign, Pole or Pylon"** - A free standing sign erected upon a pole, post or other similar support so that the bottom edge of the sign display area is eight (8) feet or more above the ground elevation at the base of the sign.

AAAAAAAAAA. **"Sign, Portable"** - A sign designed so as to be movable from one location to another, and that is not permanently affixed to a building, structure, or the ground.

BBBBBBBBBB. **"Sign, Private Sale or Event"** - A temporary sign advertising private sales or personal property such as "house sales", "Garage sales", and the like or private not—for-profit events such as picnics, carnivals, bazaars, game nights, art fairs, craft shows and Christmas tree sales.

CCCCCCCCCC.**"Sign, Projecting"** - A sign that is wholly or partly dependent upon a building for support and which projects more than 12 inches from such building.

DDDDDDDDDD.**"Sign, Real Estate"** - A sign pertaining to the sale or lease of the premises, or a portion of the premises, on which the sign is located.

EEEEEEEEEE. **"Sign, Roof"** - A sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and which projects above the roof line of a building with a flat roof, the eave line of a building with a gambrel, gable or hip roof or the deck line of a building with a mansard roof.

FFFFFFFFFF. **"Sign, Rotating"** - A sign which revolves or rotates on its axis by mechanical means.

GGGGGGGGGG. **"Sign, Surface Area Of"** - The entire area with a single continuous perimeter enclosing the extreme limits of the actual sign surface, not including any structural elements outside the limits of such sign and nor forming an integral part of the display. Only one side of a double-faced or V-type sign structure shall be used in computing total surface area.

HHHHHHHHHH.**"Sign, Temporary"** - A sign or advertising display constructed of cloth, canvas, fabric, plywood or other light material and designed or intended to be displayed for a short period of time.

IIIIIIIIII. **"Sign, Wall"** - A sign attached to or erected against the wall of a building or structure with the exposed face of the sign in a plane approximately parallel to the face of the wall, and which does not project more than 12 inches from such building or structure.

JJJJJJJJJJ. **"Site"** - Any lot or parcel of land or combination of contiguous lots or parcels of land.

KKKKKKKKKK. **"Site Plan"** - The development plan, drawn to scale, for one or more lots on which is shown the existing and proposed conditions of the lots.

LLLLLLLLLL. **"Sketch Plan"** - An informal layout of the proposed subdivision including preliminary topographic data, location of existing structures, requested zoning changes, relationship to existing community facilities and relationship to existing surrounding land use.

MMMMMMMMMM. **"Solar Access Space"** - That air space above all lots within the district necessary to prevent any improvement or tree located on said lots from casting a shadow upon any solar device located within said zone greater than the shadow cast by a hypothetical vertical wall ten feet high located along the property lines of said lots between the hours of 9:30 A.M.-2:30 P.M. central standard time on December 21, provided, however, this Chapter shall not apply to any improvement or tree which casts a shadow upon a solar device at the time of installation of said device, or to vegetation existing at the time of installation of said solar device.

NNNNNNNNNN.**"Solar Collector"** - A device, or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy and that contributes significantly to a structure's energy supply.

OOOOOOOOOO. **"Solar Energy"** - Radiant energy direct, diffused, and reflected which is received from the sun.

PPPPPPPPPP. **"Solar Energy System"** - A complete design or assembly consisting of a solar energy collector, and energy storage facility and components to the distribution of transformed energy. To qualify as a solar energy system, the system must be permanently located for not less than 90 days in any calendar year beginning with the first calendar year after completion of construction. Paths of solar energy systems are included in this definition, but not to the extent that they fulfill other functions such as structural and recreational.

QQQQQQQQQQ. **"Solar Sky Space"** - The space between the solar energy collector and the sun which must be free of obstructions that shade the collector to an extent which precludes the cost effective operation.

RRRRRRRRRR.**"Solar Sky Space Easement"** - A right, expressed as an easement, covenant, condition, or other property interest in any deed or other instruments executed by or on the behalf of any landowner, which protects the solar sky space of an actual, proposed, or

designated solar energy collector at a described location by forbidding or limiting activities or land uses that interfere with access to solar energy. The solar sky space must be described as the three dimension space in which obstruction is prohibited or limited, or as the times of day during which direct sunlight to the solar collector may not be obstructed, or as a combination of the two methods.

SSSSSSSSSS. **"Solar Structure"** - A structure designed to utilize solar energy as an alternative for, or supplemental to, a conventional energy system.

TTTTTTTTTT. **"Specialty Food Store"** - A retail store specializing in a specific type of class of foods such as an appetizer store, bakery, butcher, delicatessen, fish, gourmet and similar foods.

UUUUUUUUUU.**"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 it, then the space between the floor and the ceiling next above it.

VVVVVVVVVV. **"Streets and Alleys":**

1) **"Street"** - A public right-of-way accepted or a private right-of-way approved pursuant to the requirements of the City, by public authority which provides a legal primary means of public access to abutting property. The term "street" shall include a highway, thoroughfare, arterial, parkway, collector, avenue, drive, circle, road, boulevard or any other similar term describing an entity complying with the preceding requirements.

2) **"Collector Street"** - A street which carries traffic from minor streets to arterials.

3) **"Cul-De-Sac"** - A minor street with only one outlet and having an appropriate turn-around for the safe and convenient reversal of traffic movement.

4) **"Marginal Access Street"** - A minor street which is parallel and adjacent to an arterial street and which provides access to abutting properties and protection from through traffic.

5) **"Minor Street"** - A street of limited continuity which is used primarily for access to abutting properties.

6) **"Alley"** - A public right-of-way which is used primarily for secondary vehicular service access to the back or the side of properties abutting on a street.

7) **"Private Street"** - A street serving as vehicular access to two (2) or more parcels of land which is not dedicated to the public but is owned by one or more private parties.

8) **"Arterial Street"** - A street or highway with access restrictions designed to carry large volumes of traffic between various sectors of the City or County and beyond.

WWWWWWWWWW. **"Street Frontage"** - That portion of a parcel of land abutting one or more public streets. An interior lot has one (1) street frontage and a corner lot has two (2) street frontages.

XXXXXXXXXX. **"Street Width"** - The shortest distance between the lines delineating the right-of-way of a street.

YYYYYYYYYY. **"Structure"** - Anything constructed or erected, the use of which requires more or less permanent location on the ground or attachment to something having a permanent location on the ground. When a structure is divided into separate parts by an unpierced wall, each part shall be deemed a separate structure.

ZZZZZZZZZZ. **"Subdivider"** - Any person commencing proceedings under this Chapter to effect a subdivision of land hereunder for himself or for another.

AAAAAAAAAA. **"Subdivision"** - The separation of any area, parcel, or tract or land under single ownership into two or more parcels, tracts, lots, or long-term leasehold interests where the creation of the leasehold interest necessitates the creation of streets, roads, or alleys, for residential, commercial, industrial, or other use or any combination thereof, except those separations:

1) Where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses and five acres or larger in size for commercial and industrial uses;

2) Creating cemetery lots;

3) Resulting from Court orders or the adjustment of a lot line by the relocation of a common boundary.

BBBBBBBBBBB. **"Subdivision, Major"** - A subdivision involving the creation of four (4) or more parcels, tracts, or lots.

CCCCCCCCCCC. **"Subdivision, Minor"** - A subdivision involving the creation of not more than three (3) parcels, tracts, or lots and the dedication of public utility and street easements is not involved.

DDDDDDDDDDD. **"Tangent"** - A straight line; also a straight line projected from the end of a curve, which is perpendicular to a line in the curve drawn from the radius point to the end of the curve.

EEEEEEEEEEE. **"Temporary Structure"** - A structure without any foundation or footings and which shall be removed when the designated time period, activity, or use for which temporary structure was erected has ceased.

FFFFFFFFFFF. **"Temporary Use**" - A use established for a fixed period of time with the intent to discontinue such use upon the expiration of the time period.

GGGGGGGGGGG. **"Top Soil"** - That portion of the overburden which lies closest to the surface of the earth and which supports the growth of vegetation.

HHHHHHHHHHH. **"Townhouse"** - A single family attached residence building consisting of three or more dwelling units having the first story at the ground level with no separate dwelling units directly above or below and with each dwelling unit separated from the adjoining unit by a fire resistant wall or walls with no openings and extending from the basement to the roof.

IIIIIIIIIII. **"Toxic Matter or Material"** - Those materials which are capable of causing injury to living organisms by chemical means when present in relatively small amounts.

JJJJJJJJJJJ. **"Trailer, Temporary"** - A trailer or manufactured home used for no more than six months as an office for construction mobilization the display or sale of real estate, or as a temporary form of residential dwelling on lot on which a house is being repaired or improved. Temporary trailers shall not connect to water or sewer. Temporary trailers may be used in any district only following the receipt of a zoning permit from staff. In the event of a natural disaster or other emergency, staff shall issue permits for temporary trailers as necessary.

KKKKKKKKKKK. **"Trailer, Travel"** - A vehicle or movable structure which is designed, intended or used for temporary human habitation during recreational or vacation activities. The term includes, without limitation, recreational vehicles, campers, camper trailers and tents, and house travel and tent trailers, but does not include manufactured homes.

LLLLLLLLLLL. **"Travel Trailer Court"** - A park, court, campsite or lot, tract, or parcel of land maintained or intended for the purpose of providing temporary location or accommodation for travel trailers, provided that parcels or lots used for the inspection and sale of such trailers are not trailer courts.

MMMMMMMMMMM. **"Truck Terminal"** - Any use, area, or building where cargo, trucks, truck parts, loading equipment, etc., is stored and/or where trucks load and unload on a regular basis.

NNNNNNNNNNN. **"Use"** - The purpose or activity for which land, buildings, or structures are designed, arranged, or intended, or for which land, buildings, or structures are occupied or maintained.

OOOOOOOOOOO. **"Use, Permitted"** - See Permitted Use.

PPPPPPPPPPP. **"Use, Principal"** - The primary or predominant use of any lot.

QQQQQQQQQQ. **"Variance"** - A modification or variation of the provisions of this Chapter as applied to a specific piece of property, except that modification of the allowable uses within a district shall not be considered a variance.

RRRRRRRRRR. **"Veterinary Clinic"** - A facility whose function is the medical and surgical treatment of animals, including grooming, on an out-patient basis.

SSSSSSSSSS. **"Warehousing"** - The commercial storage of merchandise and personal property.

TTTTTTTTTT. **"Wetland"** - Land which is annually subject to periodic or continuing inundation by water and commonly referred to as a bog, swamp, or marsh.

UUUUUUUUUU. **"Wholesale Trade"** - Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying

merchandise for, or selling merchandise to, such individuals or companies.

VVVVVVVVVV. **"Windmill"** - A mechanism operated by the wind's rotation of soils or vanes radiating from a shaft; used as a source of energy.

WWWWWWWWWW. **"Yard"** - Any open space that lies between the principal or accessory building or buildings and the nearest lot line. Such yard is unoccupied and unobstructed from the ground upward except as may be specifically provided in this Chapter.

XXXXXXXXXX. **"Yard, Front"** - A yard extending across the full width of the lot between any building and the front lot line, and measured perpendicular to the building from the closest point of the building to the front lot line.

YYYYYYYYYY. **"Yard, Rear"** - A yard extending across the full width of the lot between the principal building and the rear lot line, and measured perpendicular to the building from the closest point of the building to the rear lot line.

ZZZZZZZZZZ. **"Yard, Side"** - A yard extending from the front yard to the rear yard between the principal building and the side lot line, measured perpendicular to the building from the closest point of the building to the side lot line.

AAAAAAAAAA. **"Zero Lot Line"** - A property line forming a common boundary of two dwellings or commercial units, or combinations thereof, not required to provide building setbacks along said boundary.

BBBBBBBBBB. **"Zoning Administrator"** - The officer charged with the administration enforcement of this Chapter.

CCCCCCCCCC. **"Zoning Amendment"** - A change authorized by the City, either in the allowed use within a district, or in the boundaries of a district.

DDDDDDDDDD. **"Zoning District"** - An area or areas within the limits of the City for which the regulations and requirements governing use are uniform.

EEEEEEEEEE. **"Zoning Map"** - The map or maps incorporated into this Chapter as a part thereof, designating the zoning district.

***SECTION 11.03. DEADLINE FOR ACTIONS.*** The City will comply with statutory requirements for a timely review of all zoning actions. Within 60 days of receipt of a completed application the City will approve or deny the zoning action or the City will notify the applicant of the zoning action in writing within 60 days of the completed application of the need to extend the action period for another 60 days. In the event a zoning action is contingent upon another action, each action shall constitute an independent action and review timeframe. For example, action on the review of a development proposal which requires a rezoning may be postponed or suspended until the rezoning review and action is completed. For purposes of this section, a zoning action includes but is not limited to a site plan review, zoning ordinance amendment, conditional use permit, variance, comprehensive plan amendment and other permit review. The City has ten business days after the receipt of an application to determine whether the application is complete. The 60-day review does not begin until the application is determined complete by the City or the initial 10-day application review period expires.

***SECTIONS 11.04 THROUGH 11.09, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 11.10. GENERAL PROVISIONS.***

**Subd. 1. Application of this Chapter.**

A. In their interpretation and application1 the provisions of this Chapter shall be held to be the minimum requirements for the promotion of public health, safety, and general welfare.

B. Where the conditions imposed by any provision of this Chapter are either more restrictive or less restrictive than comparable conditions imposed by any other law, City Code provision, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.

C. From and after the effective date of this Chapter, the use of all land and every building or portion of a building erected, altered in respect to height and area, added to, or relocated, and every use within a building or use accessory thereto, in the City shall be in conformity with the provisions of this Chapter. Any existing building or structure and any existing use or properties not in conformity with the regulations herein prescribed, shall be regarded as non-conforming, but may be continued, extended or changed, subject to the special regulations herein provided with respect to non-conforming properties or uses.

**Subd. 2. Private Agreements**. This Chapter does not abrogate any easement, covenant, or any other private agreement which are not legally enforceable, provided that where the regulations of this Chapter are more restrictive

(or impose higher standards or requirements) than such easements, covenants, or other private agreements, the requirements of this Chapter shall govern.

**Subd. 3. Separability**. It is hereby declared to be the intention that the provisions of this Chapter are separable in accordance with the following:

A. If any Court of competent jurisdiction shall adjudge any provisions of this Chapter to be invalid, such judgment shall not affect any other provisions of this Chapter not specifically included in said statement.

B. If any Court of competent jurisdiction shall adjudge invalid the application of any provision of this Chapter to be a particular property, building, or structure, such judgment shall not affect other property, buildings, or structures.

**Subd. 4. Accessory Buildings, Structures, Uses.**

A. No accessory building or use shall be constructed or use developed on a lot prior to obtaining a building permit for the principal building or use to which it is accessory.

B. A detached accessory building shall not be located in any required front yard.

C. All accessory buildings and uses shall comply with the regulations of the zoning district in which they are located.

D. Accessory buildings shall be located behind the building setback line as herein regulated, subject to the building code, and fire zone regulations.

E. Unless otherwise herein specified, no accessory building shall exceed the height of the principal building.

F. No accessory building shall exceed the square footage of the main floor of the principal structure.

G. All accessory buildings shall be constructed with materials and to a design which conforms to neighborhood architecture.

H. All accessory buildings in residential districts shall have a setback of ten (10) feet from the principal structure without fire wall construction and three (3) feet from the principal structure with fire wall construction.

I. Accessory buildings shall include, but are not limited to garages, carports, storage sheds, gazebos, or structures not to exceed 200 square feet.

J. Each lot is limited to no more than one structure less than 200 square feet per 10,000 square feet of property.

**Subd. 5. Non-Conforming Uses.**

A. Non-Conforming Buildings and Uses. Except as hereinafter provided, the non-conforming use of any structure, building and/or land, shall not be extended or enlarged. Buildings found to be non-conforming only by reason of height, yard or area requirements do not have to be discontinued but any enlargements must meet the requirements of this Chapter.

B. Non-Conforming Signs.

1) Signs which are non-conforming uses shall be discontinued following a reasonable period for amortization of the sign. The period of amortization for signs shall be not more than:

2) Advertising Signs - Three (3) years from the date the nonconformity began.

3) Business Signs - Three (3) years from the date the non-conformity began.

4) Business signs on the premises of a non-conforming building or use may be continued, but such signs shall not be increased in number, area, height or illumination. New signs not to exceed thirty-five (35) square feet in aggregate sign area may be erected only upon the complete removal of all other signs existing at the effective date of this Chapter. Such signs may be illuminated, but no flashing, rotating or moving signs shall be permitted.

5) No sign erected before the effective date of this Chapter shall be rebuilt, altered or removed to a new location without being brought into compliance with the requirements of this Chapter.

C. Non-Conforming Lots of Record. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Chapter, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on the effective date of this Chapter provided that it fronts on a public right-of-way and provided, further, that the width and area measurements are at least seventy-five percent (75%) of the minimum requirements of this Chapter. Yard dimensions and other requirements for the lot shall conform to regulations for the district unless a variance is granted. If two or more lots or combinations of lots and portions of lots with contiguous street frontage in single ownership are of record on the effective date of this Chapter, and if all or part of the lots do not meet with width and area requirements of this Chapter for lots in the district,

the contiguous lots shall be considered to be an undivided parcel for the purpose of this Chapter and no portion of such parcel shall be used or occupied which does not meet lot width and area requirements of this Chapter, nor shall the parcel be so divided that any remaining lot does not comply with such requirements.

D. Phasing Out of Certain Non-Conforming Uses. The following non-conforming uses of buildings, structures or land may be continued for a period no longer than one (1) year from the effective date of this Chapter1 or any amendment hereto which causes the use to be nonconforming:

1) Any non-conforming use with a building or structure having an assessed valuation of Two Thousand Dollars ($2,000.00) or less on the effective date of this Chapter or amendment.

2) Any non-conforming use of land where no enclosed building is involved or where the only buildings involved having an assessed valuation of $2,000.00 or less are accessory or incidental to such use or where such use is maintained in connection with a non-conforming building.

E. Non-Conforming Junk Yards. No junk yard may continue as a non-conforming use for more than one (1) year after the effective date of this Chapter, except that a junk yard may continue as a non-conforming use in an Industrial District if, within that period, it is completely enclosed within a building, fence, screen planting or other device of such height as to screen completely the operations of the junk yard. Plans of such a building or device shall be approved by the Planning Commission and the Council before it is erected or put into place.

F. Discontinuance.

1) In the event that a non-conforming use of any building or premises is discontinued or its normal operation stopped for a period of six (6) months, the use of the same shall therefore conform to the regulations of the district in which it is located.

2) In the event that the use of a non-conforming advertising sign structure is discontinued or its normal operation stopped for a period of six (6) months, said structure shall be removed by the owner or leaser at the request of the Council.

G. Alterations. The lawful use of a building existing on the effective date of this Chapter may be continued, although such use does not conform to the provisions hereof. If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of the same or more restricted classification and/or use which would be defined as a use which is more in conformance with the intended land use of the area. The

foregoing provisions shall also apply to nonconforming uses in districts hereafter changed. Whenever a non-conforming use of a building has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed into a less restricted use.

H. Residential Alterations. Alterations may be made to a residential building containing non-conforming residential units when they will improve the livability of such units; provided, however, that they do not increase the number of dwelling units in the building.

I. Restoration. No non-conforming building or structure, except single-family dwellings in any residential district, which has been damaged by fire, explosion, flood, act of God or other calamity to the extent of more than fifty percent (50%) of its assessed market value, as determined by the City Assessor, shall be restored to what was previously existing or in conformity with the regulations of this Chapter. A non-conforming building or structure which is damaged to a lesser degree may be restored and its previous use continued or resumed provided that the restoration is completed within one (1) year following its damage and no enlargement of the structure or increase in the intensity of use occurs.

J. Normal Maintenance. Maintenance of a building or other structure containing or used by a nonconforming use will be permitted when it includes necessary, non-structural repairs and incidental alterations which do not extend or intensify the non-conforming building or use. Nothing in this Chapter shall prevent the placing of a structure in safe condition when said structure is declared unsafe by the Building and Zoning Administrator.

K. Issued Permits. Nothing herein contained shall require any change in plans, construction or designated use of a building or structure for which a building permit has been issued prior to the effective date of this Chapter; provided, however, that the entire building shall be completed according to such plans as filed within twelve (12) months from the date of issuance of said permit.

L. Status of Variances or Conditional Use Permits. If a conditional use permit or a variance has been granted as provided in this Chapter, it shall not be deemed a non-conformity, but shall without further action be deemed permitted in such district.

M. Non-Conformities Created by Amendment. When a non-conformity in a structure or use of land or a structure is created by an amendment to this Chapter, the rights granted by this Section to the continuance of non-conformities and to the termination and amortization apply to such non-conformities existing on the date of the amendment.

N. Annual Inspection. The Zoning Administrator shall submit an annual report to the Planning Commission on the status of all known non-conforming buildings, uses, and signs.

***SECTION 11.11. OPT-OUT TEMPORARY FAMILY HEALTH CARE DWELLINGS***

Pursuant to authority granted by Minnesota Statutes Section 462.3593, subdivision 9, the City of Lexington opts-out of the requirements of Minnesota Statute Section 462.3593, which defines and regulates Temporary Family Health Care Dwellings.

***SECTIONS 11.12 THROUGH 11.19, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 11.20. ADMINISTRATION***

**Subd. 1. Enforcing Officer**. The Clerk shall serve as the Zoning Administrator. The Zoning Administrator shall enforce this Chapter and shall perform the following duties:

A. Issue building and other permits upon review and approval of the Building Inspector to ensure compliance with the building code, and make and maintain records thereof.

B. Insure that the Building Inspector conducts inspections of buildings and use of land to determine compliance with the terms of this Chapter.

C. Maintain permanent and current records of this Chapter, including, but not limited to: all maps, amendments, and conditional uses, variances, appeals and applications therefore.

D. Receive, files, and forwards all applications for appeals, variances, conditional uses or other matters to the designated official bodies.

**Subd. 2. Planning and Zoning Commission.**

A. There is hereby established for the City, a Planning and Zoning Commission which may be known as the “Planning and Zoning Commission”, “Planning Commission”, “Zoning Commission”, or “Commission”.

B. Establishment and Composition” The commission shall be composed of (5) members appointed by the Council from among the residents of the City who shall serve staggered three year terms. In addition, one member from the Council and one member from the City administrative staff may by appointed Ex-Officio.

C. Terms of office for members other than Ex-officio shall be for three years, except that three members shall initially serve a term of two years, and, thereafter, all members shall serve the prescribed three-year term. Terms shall expire on the last day of the year. Ex-officio members shall be appointed for annual terms, provided that membership on the Commission shall terminate with the office from which Ex-officio membership is derived; to serve during the pleasure of the Council or as may otherwise be appropriate.

D. Members other than Ex-officio shall be appointed from among persons in a position to represent the general public interest, and no person shall be appointed with private or personal interests likely to conflict with the general interest. If any person appointed shall find that his private or personal interests are involved in any matter coming before the Commission, he shall disqualify himself from taking part in action on the matter, or he may be disqualified by the Chairperson of the Commission.

E. Any member of the Commission may be removed from office for just cause and on written charges by a two-thirds vote of the entire Council, but such member shall be entitled to a public hearing before such vote is taken. In addition, any member may be removed for non-attendance at Planning Commission meetings without action of the Council, according to the rules adopted by the Commission and approved by the Council.

F. It shall be the duty of the Chairperson of the Commission to notify the City Manager promptly of any vacancies occurring in membership, The City Manager shall coordinate activities of the Commission toward filling the vacancy, including recruiting, interviewing and recommending candidates. Whenever possible appointments to the Planning and Zoning Commission should be made and confirmed within (30) days.*

G. The Planning Commission is an advisory board to the City Council and Board of Appeals and Adjustments. The Planning Commission shall review, hold public hearings, and make recommendations through the City Manager or designee to the City Council and the Board of Appeals and Adjustments where applicable, on all applications for zoning amendments, conditional use permits, and variances, using the criteria set down in Subd. 4A, 5A and 6A of this section. The Planning Commission shall also prepare and recommend a comprehensive plan for the development of the City, study and make recommendations to the Council, through the City Manager or designee as regards to carrying out and maintaining the comprehensive plan and regulations thereto. The Commission shall prepare and recommend to the proper officials of the City, needed capital improvements consistent with the comprehensive plan for the City. The Commission with the assistance of City staff shall conduct hearings, study, and recommend to the City Council, a

zoning code and such amendments thereto as may, from time to time, be proposed.*

H. All written communications, from or through the Planning Commission will be routed through City staff. City staff will prepare minutes of Planning Commission meetings and all outgoing communications.*

**Subd. 3. Board of Appeals and Adjustments.**

A. The City Council shall serve as the Board of Appeals and Adjustments. City Council Ex-officio to the Planning Commission shall serve as Chairperson of the Board of Appeals and Adjustments.

B. Appeals to the Board of Appeals and Adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The Board of Appeals and Adjustments has the following powers with respect to the zoning ordinance:

1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

2) Rules for hearings before the Board of Appeals and adjustments can be found under City of Lexington Resolution 02 – 11.

**Subd. 4. Zoning Amendments.**

A. Criteria for Granting Zoning Amendments. The Council may adopt amendments to this Chapter by a 4/5 vote relative to land uses within a particular district or to the location of the district line. Such amendments shall not be issued indiscriminately, but shall only be used as a means to reflect changes in the goals and policies of the City as reflected in the comprehensive plan or changes in conditions in the City.

B. Kinds of Amendments.

1) A change in the District Boundaries.

2) A change in a districts uses and regulations.

3) A change in any other provisions of this Chapter.

C. Initiation of Proceedings. Proceedings for amending this Chapter shall be initiated by at least one of the following three methods:

1) By petition of an owner or owners of property which is proposed to be rezoned, or for which district regulation changes are proposed.

2) By recommendation of the Planning Commission.

3) By action of the Council.

D. Required Exhibits for Rezoning or District Regulations Changes.

1) Abstracters property certificate showing property owners names and addresses within 350 feet of the outer boundaries of the property in question.

2) A boundary line survey.

3) A general development plan showing the potential development of the property, indicating proposed streets, buildings, drainage, and landscaping.

E. Procedure. The procedure for a property owner to initiate a rezoning or district regulation change is:

1) The property owner or his agent shall meet with the Zoning Administrator to explain his proposal, obtain procedures, and an application form.

2) The applicant shall file the completed application form together with the required exhibits and fee with the City Clerk/Zoning Administrator. All applications for rezoning shall be received in the City Office no later than thirty (30) days prior to a Planning Commission meeting. If the City Clerk/Zoning Administrator shall determine that the application form is not complete, the City Clerk/Zoning Administrator shall, within ten (10) days of receipt of the application, send the applicant notice of the deficiency, and such notice shall state in writing the information which needs to be supplied.

3) The Zoning Administrator shall transmit the application and the required exhibits to the Planning Commission and shall notify all property owners within 350 feet of the outer boundaries of the property in question.

4) The Zoning Administrator shall set the date for the public hearing and shall have notices of such hearing published in the legal newspaper at least once, not less than ten (10) days and not more than thirty (30) days prior to said hearing. The Council may waive the mailed notice requirements for a City-wide amendment to this Chapter initiated by the Planning Commission or Council.

5) The Planning and Zoning Commission shall hold the public hearing and shall recommend, to the City Council for their consideration, within thirty (30) days of the public hearing, one of three actions approval, denial, or conditional approval.

6) The Planning and Zoning Commission shall transmit its recommendation to the Council for the Council's official action upon the application within sixty (60) days after receipt of exhibits and fees by the City Clerk/Zoning Administrator of the completed application. If the additional information is requested by the Planning and Zoning Commission or Council, the City may extend the sixty (60) day period by providing written notice of the extension to the applicant. The notice must state the reasons for the extension and the anticipated length of the extension, which may not exceed sixty (60) days unless approved by the applicant. In the event the application is denied, the Council shall state in writing the reasons for the denial.

7) No re-application of a property owner for an amendment to the text of this Chapter shall be considered by the Planning Commission within a one (1) year period following a denial of such request, except that the opinion of the Planning Commission may permit a new application, if, in the opinion of the Planning Commission, new evidence or a change of circumstances warrant it.

8) Zoning Permit

   a. Purpose. The purpose of a Zoning Permit is to provide a review to ensure the improvement meets standard zoning requirements such as setbacks, hard surface coverage, structure height, etc. The Zoning Permit is a tool to help property owners insure that improvements they make to their property, particularly those improvements that are permanent or that would be difficult or expensive to move after the fact are installed according to City Code in the first place. Examples of the types of improvements include, but are not limited to, fences, patios, sport and tennis courts, driveway replacement/expansion and sidewalks, one-story detached accessory structures used as tool or storage, play houses/structures and similar uses, not to exceed 200 square feet in building area (multi-story structures or those larger than 200 square feet require a building permit), retaining walls less than 4 feet in height (retaining walls 4 feet and taller require a building permit).

   b. A Zoning Permit is required for the construction of a physical improvement that does not require a building permit and may be subject to inspection or review.

c. The City shall establish zoning permit fees sufficient to recover the costs of enforcing this section.

**Subd. 5. Conditional Use Permits.**

A. Criteria for Granting Conditional Use Permits. In granting a conditional use permit, the Council shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use on the comprehensive plan and upon the health, safety, and general welfare of occupants of surrounding lands. Among other things, the Council shall consider the following findings where applicable:

1) The use will not be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the City;

2) The use will be harmonious with the general and applicable specific objectives of the comprehensive plan of the City and this Chapter;

3) The use will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential the essential character of that area;

4) The use will not be hazardous or disturbing to existing or future neighboring uses;

5) The use will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, water and sewer systems, and schools; or will be served adequately by such facilities and services provided by the persons or agencies responsible for the establishment of the proposed use;

6) The use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

7) The use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare because of excessive production of traffic, noise, smoke, fumes, glare, or odors;

8) The use will have vehicular approaches to the property which are so designed as not to create traffic congestion or an interference with traffic on surrounding public streets;

9) The use will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

10) The use will conform to specific standards of this Chapter applicable to the particular use.

B. Additional Conditions. In permitting a new conditional use or the alteration of an existing conditional use, the Council may impose, in addition to these standards and requirements expressly specified by this Chapter, additional conditions which the Council considers necessary to protect the best interest of the surrounding area or community as a whole. These conditions may include, but are not limited to, the following:

1) Increasing the required lot size or yard dimension.

2) Limiting the height, size or location of buildings.

3) Controlling the location and number of vehicle access points.

4) Increasing the street width.

5) Increasing the number of required of f street parking spaces.

6) Limiting the number, size, location or lighting of signs.

7) Requiring additional compatible fencing, screening landscaping or other facilities to protect and buffer adjacent or nearby property.

8) Designating sites for open space.

C. The Zoning Administrator shall maintain a record of all conditional use permits issued, including information on the use, location, and condition made by the Council; time limits, review dates, and other information as may be appropriate.

D. Required Exhibits for a Conditional Use Permit. The following exhibits shall be required:

1) Abstract or certificate showing property owner’s names and addresses within 350 feet of the outer boundaries of the property in question.

2) A boundary line survey.

3) A general development plan showing the potential development of the property, including proposed streets, buildings, landscaping, and drainage.

E. Procedure. The procedure for applying for a conditional use permit is as follows:

1) The property owner or his agent shall meet with the Zoning Administrator to explain his proposal, learn the procedures, and obtain an application form.

2) The applicant shall file the completed application form together with the required exhibits and fees with the City Clerk/Zoning Administrator. All applicants for a conditional use permit must be received thirty (30) days prior to a Planning and Zoning Commission meeting. If the City Clerk/Zoning Administrator shall determine that the application form is not complete the City Clerk/Zoning Administrator shall, within ten (10) days or receipt of the application, send the applicant notice of the deficiency and such notice shall state in writing the information which need to be supplied.

3) The Zoning Administrator shall set the date for a public hearing and shall give notice of such hearing published at least once in the legal newspaper, not less than ten (10) days and not more than thirty (30) days prior to said hearing.

4) The Zoning Administrator shall transmit the application to the Planning Commission and shall notify all property owners within 350 feet of the outer boundaries of the property in question of the nature of the request, time and place and of the hearing.

5) The Planning Commission shall hold the public hearing and shall then study the application to determine possible adverse effects of the proposed special use and to determine what additional requirements may be necessary to reduce such adverse effects and recommend one or the three actions - approval, denial, or conditional approval.

6) The Planning and Zoning Commission shall transmit, within thirty (30) days of the public hearing; make its recommendation to the Council for the Council’s official action.

7) The Council shall take appropriate action on the request for conditional use permit within sixty (60) days of receipt of the original application by the City Clerk/Zoning Administrator. If additional information is requested by the Planning and Zoning Commission or Council the City may extend the sixty (60) day period by providing written notice of the extension and the anticipated length of the extension, which may not exceed sixty (60) days unless approved by the applicant. In the event the application is denied, the Council shall state in writing the reasons for the denial. If the Council grants a conditional use permit, the Council may impose conditions,

including time limits it considers necessary to protect the public health, safety, and general welfare, and such conditions may include as time limit for the use to exist or operate.

F. Revocation of Conditional Use Permits.

1) Where a conditional use permit has been issued pursuant to provisions of this Chapter, such permit shall become null and void without further action by the Planning Commission or Council unless work thereon commences within one (1) year of the date of granting such special use. A conditional use permit shall be deemed to authorize only one particular use and shall expire if that use shall cease for more than twelve (12) consecutive months.

2) In the event that the applicant violates any of the conditions set forth in this permit, the Council shall have the authority to revoke the conditional use permit.

**Subd. 6. Variances.**

A. Criteria for Granting Variances. A variance to the provision of this Zoning Chapter may be issued by the Board of Adjustments and Appeals to provide relief to the land owner in those cases where this Chapter imposes undue hardship or practical difficulties to the property owner in the use of his land. No use variances may be issued. A variance may be granted only in the event that the following circumstances exist:

1) Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, topography, or other circumstances over which the owners of the property, since the effective date of this Chapter, have had no control.

2) The literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Chapter.

3) That the special conditions or circumstances are not a consequence of the petitioner’s own action or inaction.

4) That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other owners of land, structures or buildings within the same district.

5) That the variance requested is the minimum variance which would alleviate the hardship. Economic considerations alone shall not be considered a hardship.

6) A variance would not be materially detrimental to the purposes of this Chapter, or to other property in the same zone.

7) The proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

B. The Board of Adjustment may impose such restrictions and conditions upon the premises benefited by the variance as may be necessary to comply with the standards established by this Chapter, or to reduce or minimize the effect of such variance upon other properties in the neighborhood, and to better carry out the intent of the variance.

1) Time limits may be established.

2) Variance will become null and void in one year after approval if no substantial action is taken on the property by the owner.

3) In the case of a variance denial, re-application shall not be submitted for six months.

C. Required Exhibits for Variances.

1) Abstracters property certificate showing property owners names and addresses within 350 feet of the outer boundaries of the property in question.

2) The boundary survey and preliminary building and site development plan.

D. Procedures. The procedures for obtaining a variance from the regulations of this Chapter are as follows:

1) The property owner or agent shall meet with the Zoning Administrator to explain his situation, learn the procedures and obtain an application form.

2) The applicant shall file the completed application form together with the required exhibits with the City Clerk/Zoning Administrator. Applications for variances must be submitted to the City Office no later than thirty (30) days prior to a Planning and Zoning Commission meeting. If the City Clerk/Zoning Administrator shall determine that the application form is not complete, the City Clerk/Zoning Administrator shall, within ten (10) days of

receipt of the application, send the applicant notice of the deficiency, and such notice shall state in writing the information which needs to be supplied.

3) The Zoning Administrator shall transmit the application to the Planning and Zoning Commission and shall notify all property owners within 350 feet of the outer boundaries of the property in question of the public hearing.

4) The Planning and Zoning Commission shall conduct the public hearing and shall make a recommended decision to the City Council within thirty (30) days of the application, one of three actions - approval, denial, or conditional approval. The Council shall take appropriate action on the request for variance within sixty (60) days of receipt of the original application by the City Clerk/Zoning Administrator. If additional information if requested by the Planning and Zoning Commission or Council, the City may extend the sixty (60) day period by providing written notice of the extension to the applicant. The notice must state the reasons for the extension and the anticipated length of the extension, which may not exceed sixty (60) days, unless approved by the applicant. In the event the application is denied, the Council shall state in writing the reasons for the denial.

5) No re-application by a property owner for a variance shall be submitted to the City Council within a twelve (12) month period following denial of such request, except that the Board of Appeals and Adjustment may permit a new application if, in the opinion of the Board, new evidence or a change of circumstances warrant it.

6) The City Council may revoke a variance if any conditions established by the Board, as part of granting the variance request, are violated.

**Subd. 7. Enforcement**.

A. Enforcing Officer. It shall be the duty of the Zoning Administrator, in cooperation with the Building Inspector and Fire Marshal, to cause the provisions of this Chapter to be properly enforced through the proper legal channels.

B. Building Permit.

1) Hereafter, no person shall erect, alter, remodel, raze or move any kind of structure or building or part thereof without first securing a building permit.

2) Moving of Buildings. Before proceeding with the moving of any building into or out of the city as well as buildings being moved from one location to

another within the City limits, the owner or his agent shall first obtain a permit for such purpose from the Building Inspector. The applicant shall file an application giving the legal description of the land upon which the building is to be moved, the nature of the building to be moved together with a picture of the building and a certified abstract of title holders of all property holders of all property within 350 feet of such title holders. The applicant shall submit a petition to the Council, signed by 50% of said property owners within 350 feet of the proposed relocation, approving the relocation. Application shall be referred to the Council who shall set a time and place for a public hearing giving at least ten (10) days published notice of such hearing. After said hearing the Council may grant or deny the issuance of said permit by a majority vote.

3) All owners of buildings or their agents who propose to move a building into or upon or out of the streets of the City shall procure a bond in the amount of $10,000.00 protecting the City against damage to its streets and roads and give evidence of such bond prior to the issuance of the moving permit as set out in this Section of this Chapter.

4) Applications for commercial, industrial, and multiple dwelling building permits, shall be accompanied by the following exhibits:

5) A complete site plan application form together with all applicable filing requirements.

6) A boundary survey of the area including the property in question and 100 feet beyond its outer boundaries and dimensions, buildings, easements, foliage, topography, and waterways. Soil tests may be included if pertinent.

7) Building and site development plans showing buildings, location, dimensional parking and loading arrangement, vehicular and pedestrian access and egress, surface drainage plan, landscaping, utility plan, screening, size and location of all signs, building and floor plans of all floors, elevations of all sides of all buildings, and sections and outline material specifications as appropriate.

8) Written approval of the plans by the Fire Marshall.

9) Applications for single and two family building permits shall be accompanied by building plans and certificate of survey.

10) The enforcing officer may waive, or require additional, submission materials as may be necessary to issue a permit.

C. Procedure.

1) Persons requesting a building permit shall fill out a building permit form and site plan application form available from the Zoning Administrator.

2) Completed building permit forms shall be submitted to the Zoning Administrator. Upon review and approval of the Building Inspector, and if the proposed development conforms in all respects to this Chapter, a building permit shall be issued by the Zoning Administrator within a period of sixty (60) days upon permit fee payment.

3) If the proposed development involves a zoning amendment, variance, or conditional use permit, the application, together with a building permit, shall be follow applicable procedures defined in this ordinance.

D. Violation and Penalties.

1) Any person who shall violate or refuse to comply with any of the provisions of this Chapter shall be guilty of a misdemeanor. Violations of any condition of a conditional use permit will result in immediate termination of such permit by the Council, following a public hearing.

2) Notice of public hearing of violations and terminations proceedings and all nonconforming, conditional, incompatible, accessory, special uses, or home occupation uses, notice of hearing shall be given by the Council to the interested party or parties by certified mail or in lieu thereof, one legal published notice at least ten (10) days before the public hearing date, which notice shall be given by the Council within a reasonable time.

***SECTIONS 11.21 THROUGH 11.29, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 11.30. ZONING DISTRICT.*** The zoning districts are so designed to assist in carrying out the intents and purposes of the comprehensive plan and are based upon the comprehensive plan which has the purpose of protecting the public health, safety, convenience and general welfare. For the purpose of this Chapter, the City is hereby divided into the following zoning districts.

| SYMBOL | NAMES |
|---|---|
| B-1 | Limited Business |
| B-2 | Highway and Business Services |
| B-4 | General Business |
| M-1 | Mixed Medium Density Residential With Business |
| M-2 | Professional & Business Office Development |
| R-1 | Single Family Detached Residential |

| | |
|---|---|
| R-2 | Single Family Detached and Two Family Residential |
| R-3 | Townhouse and 4-Plex |
| R-4 | Medium Density Residential |
| R-5 | Manufactured home Park |
| O-S | Open Space |

***SECTION 11.31. ZONING MAP.***

**Subd. 1. Location and Boundaries.** The location and boundaries of the districts established by this Chapter are set forth on the official zoning map which is hereby incorporated as part of this Chapter and which is on file with the Clerk.

**Subd. 2 District Boundary Lines**. District boundary lines recorded on the City zoning map are intended to follow lot lines, the center lines of streets or alleys, the center line of streets or alleys projected, the center of water courses or the corporate limit lines as they exist on the effective date of this Chapter.

**Subd. 3. Zoning Map Maintenance and Amendment**. It shall be the responsibility of the Zoning Administrator to maintain and amend said zoning map. The Zoning Administrator shall make, or cause to have made, any corrections or amendments to said map after all of the procedures outlined in this Chapter for the making of such revisions or amendments shall have been followed by the Planning Commission and the Council.

**Subd. 4. Amendment Adoption**. Amendments to the zoning map shall be recorded on said map within fifteen (15) days after adoption by the Council. The copy of the official zoning map shall be kept on file in the Clerk's office and shall be open to public inspection at all times during when the office is customarily open.

**Subd. 5 Correction to Zoning Map**. In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Council may, by ordinance, adopt a new official zoning map. The new official zoning map may correct drafting or other errors or omissions in the principal zoning map, but no such corrections shall have the effect of amending this Chapter or any subsequent amendment thereof. The new official zoning map shall be identified by the signature of the Mayor, attested by the Clerk, and under the following words: "This is to certify that the official zoning map supersedes and replaces the official zoning map.

***SECTION 11.32. EXEMPTIONS***. The following essential services are permitted in any district: the erection, construction, alteration, or maintenance, by public utilities or municipal or other governmental agencies of systems, including gas, electrical, steam or water transmission or distribution systems; collection, communication, supply or disposal systems; elevated and underground water storage tanks; poles, wires, mains, drains, sewers, pipes, conductance, cables, fire

alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith; reasonably necessary for the furnishing of adequate service of such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, but not including buildings.

## *SECTION 11.33. SCHEDULE OF USES BY DISTRICT.*

| LAND USE DISTRICT INTENT | USES PERMITTED PRINCIPAL | ACCESSORY | CONDITIONAL |
|---|---|---|---|
| M-1 | | | |
| Mixed Medium Density Residential With Business | Financial Institutions | Accessory Building | Animal Hospital |
| | Home Occupation | Garage, common | Automotive Sales Lot |
| | Public Land or Buildings | Parking | Automotive Service Station |
| | Restaurant | Signs | Convalescent, Nursing and Rest Home |
| | Retail Sales & Service | | Day Care Facility |
| | Farmers Market | | Entertainment |
| | Shopping Center | | Residential Facility |
| | Dwelling, Single-Family | | Veterinary Clinic |
| | Dwelling, Two-Family | | |
| | Dwelling, Multiple-Family or Apartment Building. *At a maximum density of 20 dwelling units per acre as part of an allowed business structure, or standalone structure. | | |
| | Townhouse | | |

(Revised 15-11, 12/1/15, 1/5/17)

| LAND USE DISTRICT INTENT | USES PERMITTED PRINCIPAL | ACCESSORY | CONDITIONAL |
|---|---|---|---|
| M-2 | | | |
| Professional & Business Office Development | Church | Accessory Building | Day Care Facility |
| | Home Occupation | Garage, common | Residential Facility |
| | Offices | Parking | |
| | Farmers Market | Signs | |
| | Public Land or Buildings | | |
| | Recreation, Public | | |
| | Dwelling, Single-Family | | |
| | Dwelling, Two-Family | | |
| | Dwelling, Multiple-Family or Apartment Building. *At a maximum density of 20 dwelling units per acre as part of an allowed business structure, or standalone structure. | | |
| | Townhouse | | |

(Revised 15-11, 12/1/15, 1/5/17)

| LAND USE DISTRICT INTENT | USES PERMITTED PRINCIPAL | ACCESSORY | CONDITIONAL |
|---|---|---|---|
| | | | |
| **R-1** | Single Family Detached Dwelling | Garage | Temp. Real Estate Office and Model Home |
| | | | |
| Single-Family Detached Residential | Parks & Playgrounds | Storage Shed | Private Kennel |
| | | | |
| Single-Family Residential Large Lot Development with a min. lot size of 11, 250 S.F. | Public Utility Structures | Swimming Pool | Communication Tower in excess of 45' from grade. |
| | | | |
| | Day Care Facility for 10 or fewer | Tennis Court | Home Occupation |
| | | | |
| | Residential Facility (Group Home) for up to 4 persons excluding supervisors | Gazebo | Wind Generator Private |
| | | | |
| **R-2** | Single Family Detached Dwelling | Garage | Temp. Real Estate Office and Model |
| | | | |
| Single Family Detached & Two Family Residential | Duplexes, Public Utility Structures | Swimming Pool | Churches |
| | | | |
| | Parks & Playgrounds | Storage Shed | Kennel Private |
| | | | |
| Low Density Residential Subdivisions with a min. lot size of 10,000 S.F. for a single family and 12,000 S.F. for duplex | Day Care Facility for 10 or fewer children | Tennis Court | Home Occupation |
| | Residential Facility (Group Home) for up to 6 Persons excluding supervisors | Gazebo | Non-Retail Woodworking Studio |
| | | | |
| | | | Communication Tower in excess of 45' grade. |
| | | | |
| | | | Wind Generator Private |

| LAND USE DISTRICT INTENT | USES PERMITTED PRINCIPAL | ACCESSORY | CONDITIONAL |
|---|---|---|---|
| | | | |
| **R-3** | | | |
| | | | |
| Townhouse & 4 Plex | Townhouses, Single and two family | Common Garage | Temp. Real Estate Office and Model |
| | 4 Plexes | Pool | Day Care Center |

| | | | |
|---|---|---|---|
| Residential development at a maximum density of 10 dwelling units per acre | Public Utility Structures | Tennis Courts | Supervised Living Group Homes |
| | Parks & Playgrounds | Storage Shed | Home Occupations |
| | | | |
| **R-4** | | | |
| | | | |
| Med. Density Residential | Townhouses & Multi-Family, Single and Two Family | Common Garage | Nursing Home |
| | | Pool | Day Care Center |
| | | Tennis Court | Supervised Living Group Home |
| | | Playground | |
| Townhouses & Multi-Family Residential Structures at a maximum density of 20 dwelling units per acre | Public Utility Structures | Storage Shed | Temp. Real Estate Office and Model |
| | Residential Facility (Group Home) for 7 to 16 Persons excluding supervisors | | Home Occupations |
| | | | |
| **R-5** | | | |
| | | | |
| Manufactured home Park | Manufactured Housing Manufactured Homes | Common Garage | Day Care Center |
| Manufactured Residential Structures at a maximum density of 10 dwelling units per acre | Public Utility Structures | Pool | Supervised Living Group Homes |
| | Parks & Playgrounds | Tennis Courts | Temp. Real Estate Office |
| | | Playground | |
| | | Storage Shed | Home Occupations |

| LAND USE DISTRICT INTENT | USES PERMITTED PRINCIPAL | ACCESSORY | CONDITIONAL |
|---|---|---|---|
| | | | |
| **B-1** | | | |
| | | | |
| Limited Business<br><br>Limited Retail and Services to meet daily needs of residents | Professional & Business Office Retail Shops (2,000 S.F) | Surface Parking Signs | School (Public)<br>Farmers Market |
| | Pharmacy | | Veterinary Clinic |
| | Day Care Facility | | |
| | Personal Service | | Churches |
| | Small Appliance Repairs | | |
| | Farmers Market | | |
| | Medical/Dental Clinic | | |

| | | | |
|---|---|---|---|
| | | | |
| | Public Utility Structures | | |
| | Government Buildings | | |
| | | | |
| **B-2** | As permitted in B-1 Ord. 05-09 | | Major Auto Repair |
| | | | |
| Highway & Business Services | Fast Food & Family Restaurant | Signs | Print Shop |
| | | | |
| Highway Oriented Commercial Development Restricted to a low building profile | Motel | Surface Parking | Machine Shop |
| | | | |
| | Retail Shops | | Gasoline Pumps |
| | Minor Auto Repair | | |
| | Car Wash | | Automotive Sales Lot |
| | Farmers Market | | Veterinary Clinic |
| | Convenience Food Store | | Tattoo Parlor |
| | Liquor Stores | | Welding/Fabrication |
| | Lodge | | |
| | Medical/Dental Clinic | | Day Care Facility |
| | Public Utility Structures | | |
| | Bar | | |
| | Government Buildings | | |
| | Fire Station | | |

| LAND USE DISTRICT INTENT | USES PERMITTED PRINCIPAL | ACCESSORY | CONDITIONAL |
|---|---|---|---|
| | | | |
| **B-3** | | | |
| | | | |
| Central Business | Shopping Center | Parking | Indoor Amusement Center |
| Downtown business supporting a strong central business district while enhancing the overall character of the community | Retail Shops and Stores<br>Restaurants with or w/o bar<br>Entertainment<br>Financial Institutions w/o drive-in | Surface or Structure | Automotive Sales Lot<br>Gasoline Pumps<br>Veterinary Clinic |
| | Medical/Dental Clinic | | |
| | | | |
| | Grocery Stores (10,000 S.F.+) | | |
| | Personal Services | | |
| | Health/Recreation Club | | |
| | Fast Food Restaurant as part of complex | | |
| | Public Utility Structures | | |
| | | | |
| **B-4** | As permitted in B-1 | | Minor Auto Repair |

| | | | |
|---|---|---|---|
| | except Day Care Facility | | |
| | Convenience Food Stores | | Automotive Sales Lot |
| | Farmers Market | | Gasoline Pumps |
| | Restaurants Fast Food & Family | | Veterinary Clinic |
| | Restaurant. Establishments holding a liquor license pursuant to Section 5.212, except licenses pursuant to 5.212, subd. 4A. | | |
| | | | |
| **B-5** | | | |
| | | | |
| Office | Offices | Parking Surface or Structure | Day Care Center |
| Professional & Business Office Development | | Signs | |

| LAND USE DISTRICT INTENT | USES PERMITTED PRINCIPAL | ACCESSORY | CONDITIONAL |
|---|---|---|---|
| | | | |
| **O-S** | | | |
| | | | |
| OPEN SPACE | Public Recreation | | |
| Public Parks, Recreation and Open Space | Public Works Buildings | | |
| | Public Utilities | | |
| | Private Utilities | | |

NOTE: Uses of land, buildings, and structures not permitted below as either principal, accessory, or conditional are prohibited.

### *SECTION 11.34. DIMENSIONAL REQUIREMENTS.*

**SCHEDULE OF ZONING DISTRICT REGULATIONS FOR AREA, BULK, PLACEMENT AND LAND USE INTENSITY**

| | *Minimum Lot Area in Square Feet* | *Minimum Lot Width* | *Minimum Lot Depth* | *Maximum Lot Coverage (All structures & paved surfaces)* | *Minimum Front Yard* | *Minimum Rear Yard* | *Minimum Side Yard* | *Maximum Height Principal Structure* | *Minimum Rear Yard Detached Accessory Structure* | *Maximum Height Detached Accessory Structure* |
|---|---|---|---|---|---|---|---|---|---|---|
| *B-1* | *No Limit* | *No Limit* | *100* | *80%* | *35* | *30* | *15* | *2 stories* | *30* | *1 story* |
| *B-2* | *15,000* | *50* | *100* | *80%* | *25* | *40* | *10* | *2 stories* | *40* | *1 story* |
| *B-3* | *No Limit* | *No Limit* | *300* | *80%* | *None* | *None* | *None* | *2 stories* | *None* | *1 story* |
| *B-4* | *15,000* | *50* | *100* | *80%* | *25* | *25* | *10* | *1 story* | *25* | *1 story* |
| *B-5* | *15,000* | *50* | *150* | *75%* | *25* | *25* | *20* | *3 stories* | *25* | *1 story* |
| *R-1* | *11,250* | *75* | *150* | *40%* | *35* | *20* | *5* | *3 stories or 40'* | *20* | *1 story* |
| *R-2* | *10,000 SFH 12,000 DU* | *75 SFH 80 DUP* | *130* | *45%* | *30* | *20* | *5* | *3 stories or 40'* | *10* | *1 story* |
| *R-3* | *3,500 DU or 12,000 (whichever is greater)* | *No Limit* | *80* | *60%* | *25* | *30* | *10* | *3 stories or 40'* | *30* | *1 story* |
| *R-4* | *3,000 DU or 12,000 (whichever is greater)* | *No Limit* | *No Limit* | *70%* | *25* | *25* | *25* | *4 stories or 45'* | *Not allowed w/o PUD.* | *Not allowed w/o PUD.* |
| *R-5* | *3,500 DU* | *35* | *100* | *45%* | *25* | *10* | *15 Commercial 5 Residential* | *1 story* | *10* | *1 story* |
| *M-1* | *No Limit* | *No Limit* | *100* | *80%* | *35* | *30 Commercial 20 Residential* | *15 Commercial 5 Residential* | *45'* | *30* | *1 story* |
| *M-2* | *3,500 DU or 12,000 (whichever is greater)* | *No Limit* | *No Limit* | *75%* | *25* | *25* | *15 Commercial 5 Residential* | *40'* | *10* | *1 story* |
| *O-S* | | | | | | | | | | |

Table in lineal feet unless indicated. Dwelling Unit = DU. Single Family Home = SFH. Duplex = DUP. (Recommended by P&Z Comm. 10/9/2018)

***SECTION 11.35. ORDINANCE REGULATING ADULT ORIENTED BUSINESSES AND ADULT USES.***

**Subd. 1. Purpose and Intent.** The purpose of this Section is to prescribe licensing requirements for sexually-oriented businesses in order to protect the general health, safety and welfare.

A. Findings and Provisions. It is the purpose of this Ordinance to regulate Adult Oriented Business and Adult Uses as defined in Section 3 below to promote the health, safety, morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to:

   1) Prevent additional criminal activity within the City;

   2) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;

   3) Locate Adult Uses away from residential areas, schools, churches, and parks and playgrounds; and

   4) Prevent concentration of Adult Uses within certain areas of the City.

B. Based upon its reliance upon the Studies referred to in the Preamble, among other things, the City Council also makes the following findings regarding the need to license sexually-oriented businesses:

   1) Sexually-oriented businesses can contribute to an increase in criminal activity in the area in which such businesses are located, taxing city crime-prevention programs and law enforcement services;

   2) Sexually-oriented businesses can be used for fronts for prostitution and other criminal activity. The experience of other cities indicates that the proper management and operation of such businesses can, however, minimize this risk, provided the owners and operators of such facilities are regulated by licensing or other procedures;

   3) Sexually-oriented businesses can increase the risk of exposure to communicable diseases, including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS) for which currently there is no cure. Experiences of other cities indicate that such businesses can facilitate the spread of communicable diseases by virtue of the design and use of the premises, thereby endangering not only the patrons of such establishments but also the general public;

4) Sexually-oriented businesses can cause or contribute to public health problems by the presence of live adult entertainment in conjunction with food and/or drink on the same premises;

5) A licensing and regulatory scheme as prescribed herein can facilitate and aid in monitoring sexually-oriented businesses for adverse secondary effects on the community; and

6) The risk of criminal activity and/or public health problems can be minimized through a licensing and regulatory scheme as prescribed herein.

C. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including Adult oriented materials. Similarly, it is not the intent nor effect of this Ordinance to restrict or deny access by adults to Adult Uses protected by the First Amendment of the Constitution of the United States, or to deny access by distributors and exhibitors of Adult oriented entertainment to their intended market.

**Subd. 2. Definitions.**

A. **"Adult Uses"** - Adult uses include adult book stores, adult motion picture theaters, adult mini-motion picture theaters, adult steam room/ bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public. Activities classified as obscene as defined by Minnesota Statutes 617.241 are not included.

1) **"Adult Uses - Principal"** - The offering of goods and/or services which are classified as adult uses as a primary or sole activity of a business or establishment and include but are not limited to the following:

2) **"Adult Use - Body Painting Studio"** - An establishment or business which provides the service of applying paint or other substance, whether transparent or nontransparent, to or in the body of a patron when such body is wholly or partially nude in terms of "specified anatomical areas".

3) **"Adult Use – Bookstore"** - A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides,

records, audio tape, videotape, or motion picture film if such building or portion of a building is not open to the public generally but only to one or more classes of the public excluding any minor by reason of age or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas.

4) **“Adult Use - Cabaret”** - A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas".

5) **“Adult Use - Companionship Establishment”** - A companionship establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

6) **“Adult Use - Conversation/Rap Parlor”** - A conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk, or discussion, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

7) **“Adult Use - Health/Sport Club”** - A health/sport club which excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

8) **“Adult Use - Hotel or Motel”** - Adult hotel or motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

9) **“Adult Use - Mini-Motion Picture Theater”** - A building or portion of a building with a capacity for less than 50 persons used for presenting material if such building or portion of a building as prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

10) **“Adult Use - Modeling Studio”** - An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in "specified sexual activities" or display "specified anatomical areas" while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

11) **“Adult Use - Motion Picture Arcade”** - Any place which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas".

12) **“Adult Use - Motion Picture Theater”** - A building or portion of a building with a capacity of fifty (50) or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age or if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

13) **“Adult Use - Novelty Business”** - A business which has a principal activity is the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.

14) **“Adult Use - Sauna”** - A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam of hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

15) **“Adult Use - Steam Room/Bathhouse Facility”** - A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if such building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

B. Specified Anatomical Areas:

1) Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) below a point immediately above the top of the areola; and

2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

C. Specified Sexual Activities.

1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral or anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprohilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sappism, zooerasty; or

2) Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or

3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or

4) Fondling or touching of nude human genitals, pubic region, buttocks or female breast; or

5) Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint or any such person; or

6) Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; and

7) Human excretion, urination, menstruation, vaginal or anal irrigation.

**Subd. 3. Application of This Ordinance.**

A. Except as in this Ordinance specifically provided, no structure shall be erected, converted, enlarged, reconstructed, or altered, and no structure or land shall be used for Adult Uses – Principal, for any related Adult Uses purpose or in any manner related to Adult Uses as defined herein, which is not in conformity with this Ordinance.

B. No Adult Oriented Business or Adult Use – Principal shall engage in any activity or conduct or permit any other person to engage in any activity or

conduct in or about the establishment which is prohibited by any ordinance of the City of Lexington, the laws of the State of Minnesota or the United States of America. Nothing in this Ordinance shall be construed as authorizing or permitting conduct which is prohibited or regulated by other statutes or ordinances, including but not limited to statutes or ordinances prohibiting the exhibition, sale or distribution of obscene materials generally, or the exhibition, sale or distribution of specified materials to minors

**Subd. 4. Location**. During the term of this Ordinance, no Adult Uses-Principal shall be located less than 750 feet from the nearest property line of any land in any residential zone, or any public day care, library, park, playground or other public recreational facility in any zone, or less than 750 feet from the nearest property line of any religious institution. Measurements shall be made in a straight line, without regard to City boundaries intervening structures or objects, from the nearest point of the actual business premises of the adult use or sexually-oriented business.

**Subd. 5. Hours of Operation**. No Adult-Oriented Business site shall be open to the public from the hours of Eleven o'clock p.m. to Ten o'clock a.m.

**Subd. 6. Operation**.

A. Offsite Viewing. An establishment operating as an Adult-Oriented Business shall prevent off-site viewing of its merchandise, which if viewed by a minor, would be in violation of Minnesota Statutes Chapter 617 or other applicable Federal or State Statutes or local ordinances.

B. Entrances. All entrances to the business, with the exception of emergency fire exits which are not useable by patrons to enter the business, shall be visible from a public right-of-way.

C. Layout. The layout of the display areas shall be designed so that the management of the establishment and any law enforcement personnel inside the store can observe all patrons while they have access to any merchandise offered for sale or viewing including, but not limited to, books, magazines, photographs, videotapes or any other material.

D. Illumination. Illumination of the premises' exterior shall be adequate to observe the location and activities of all persons on the exterior premises.

E. Signs. Signs for Adult-Oriented Businesses shall comply with the City's sign ordinance Section 11.60 Subd. 24, and in addition signs for Adult-Oriented Businesses shall not contain representational depictions of an adult nature or graphic descriptions of the adult theme of the operation.

**Subd. 7. Licenses.**

A. License Required. All establishments, including any business operating at the time this Section becomes effective, operating or intending to operate an Adult-Oriented Business, shall apply for and obtain a license from the City of Lexington. A person is in violation of the City Code if the person operates an Adult-Oriented Business without a valid license, issued by the City.

B. Applications. An application for a license must be made on a form provided by the City and comply with the following requirements:

1) The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

2) The applicant must be qualified according to the provisions of this section and the premises must be inspected and found to be in compliance with the appropriate state, county and local law and codes by the health official, fire marshal and building official.

3) The application for license shall contain the address and legal description of the property to be used; the names, addresses, phone numbers, dates of birth, of the owner, lessee, if any, the operator or manager, and all employees; the name, address, and phone number of two persons, who shall be residents of the State of Minnesota, and who may be called upon to attest to the applicant's, managers or operators character; whether the applicant, manager or operator has ever been convicted of a crime or offense other than a traffic offense and, if so, complete and accurate information as to the time, place and nature of such crime or offense including the disposition thereof, the names and addresses of all creditors of the applicant, owner, lessee or manager insofar as and regarding credit which has been extended for the purposes of constructing, equipping, maintaining, operating or furnishing or acquiring the premises, personal effects, equipment or anything incident to the establishment, maintenance and operation of the business.

4) If the application is made on behalf of a corporation, joint business venture, partnership or any legally constituted business association, it shall submit along with its application, accurate and complete business records showing the names, addresses and dates of birth of all individuals having an interest in the business, including partners, officers, owners and creditors furnishing credit for the establishment, acquisition, maintenance and furnishings of said business and, in the case of a corporation, the names addresses and dates of birth of all officers, general managers,

members of the board of directors as well as any creditors who have extended credit for the acquisition, maintenance, operation or furnishing of the establishment including the purchase or acquisition of any items of personal property for use in said operation.

5) All applicants shall furnish to the City, along with their applications, complete and accurate documentation establishing the interest of the applicant and any other person having interest in the premises upon which the building is proposed to be located or the furnishings thereof, personal property thereof or the operation or maintenance thereof. Documentation shall be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements and any other documents establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the enterprise.

C. Issuance or Renewal of License. The City Clerk shall recommend approval of the issuance or renewal of a license by the City to an applicant within 45 days after receipt of an application unless the Administrator finds one or more of the following to be true:

1) An applicant is under 18 years of age.

2) An applicant is overdue in his payment to the City, County or State of taxes, fees, fines or penalties assessed against him or her or imposed upon him or her in relation to an Adult-Oriented Business, or if the State of Minnesota prohibits the issuance of such a license because of taxes, fees, fines or penalties assessed against him or her.

3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

4) An applicant has been convicted of a violation of a provision of this Section, other than the offense of operating an Adult-Oriented business without application. The fact that a conviction is being appealed shall have no effect.

5) The premises to be used for the Adult-Oriented Business have not been approved by the health official, fire marshal and the building official as being in compliance with applicable laws and ordinances; such inspections shall be completed within thirty (30) days from the date the application was submitted, provided that the application contains all of the information required by this Section. If the application is deficient, the inspections shall be completed within thirty (30) days from the date the deficiency has been corrected.

6) The license fee required by this chapter has not been paid.

7) An applicant has been convicted of a crime involving any of the following offenses:

8) Any sex crimes as defined by Minn. Stat. '609.29 through 609.352 inclusive or as defined by any ordinance or statute in conformity therewith;

9) Any obscenity crime as defined by Minn. Stat. '617.23 through 617.299 inclusive, or as defined by any ordinance or statute in conformity therewith; for which:

(a) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(b) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or

(c) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the late date, if the conviction is of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

10) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

D. Requalification. An applicant who has been convicted of an offense listed in this Section, may qualify for an Adult-Oriented Business license only when the time period required by Section 6.42 has elapsed.

E. Posting. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the Adult-Oriented Business. The license shall be posted in a conspicuous place at or near the entrance to the Adult-Oriented Business so that it may be easily read at any time.

F. Council Action. The City Council shall act to approve or disapprove the license application within one hundred and twenty (120) days from the date the application was submitted, provided that the application contains all of the information required by this ordinance. If the application is deficient, the Council shall act on the application within one hundred and twenty (120) days from the date that the deficiency has been corrected.

G. Appeals. Within ninety (90) days after the decision by the Council, the applicant may appeal to the District Court by serving a notice upon the Mayor or Clerk of the City.

**Subd. 8. Fees.** All fees for Adult-Oriented Business licenses shall be fixed and determined by the City Council and adopted by resolution. Such license fees may, from time to time, be amended by City Council resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Clerk and be open to inspection during regular business hours.

**Subd. 9. Inspection.**

A. Access. An applicant or licensee shall permit health officials, representatives of the police department, fire department, and building inspection division, to inspect the premises of an Adult Oriented Business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

B. Refusal to Permit Inspections. A person who operates an Adult-Oriented Business or his agent or employee commits an offense if she or he refuses to permit a lawful inspection of the premises by health officials, representatives of the police department, fire department and building inspection division at any time it is occupied or open for business. Refusal to permit inspections may result in the suspension of the license as provided in Section.

C. Exceptions. The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

**Subd. 10. Expiration and Renewal.**

A. Expiration. Each license shall expire at the end of the calendar year and may be renewed only by making application as provided in Section 6.42 Subd. 8. Application for renewal must be made at least 60 days before the expiration date, and when made less than sixty (60) days before the expiration date, the expiration of the license will not be affected.

B. Denial of Renewal. When the City denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the City finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

**Subd. 11. Suspension**.

A. Causes of Suspension. The City may suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:

1) Violated or is not in compliance with any provision of this Section.

2) Engaged in the use of alcoholic beverages while on the Adult-Oriented Business premises other than an Adult Hotel or Motel.

3) Refused to allow an inspection of the Adult-Oriented Business premises as authorized by this Section.

4) Knowingly permitted gambling by any person on the Adult-Oriented Business premises.

5) Demonstrated inability to operate or manage an Adult-Oriented Business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

B. Notice. A suspension by the City shall be preceded by written notice to the licensee and a public hearing before the City Council. The notice shall give at least ten (10) days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed business premises with the person in charge thereof.

**Subd. 12. Revocation**.

A. Suspended Licenses. The City may revoke a license if a cause of suspension in Section 6.42 occurs and the license has been suspended within the preceding twelve (12) months.

B. Causes of Revocation. The City shall revoke a license if it determines that:

1) A licensee gave false or misleading information in the material submitted to the City during the application process;

2) A licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;

3) A licensee or an employee has knowingly allowed prostitution on the premises;

4) A licensee or an employee knowingly operated the Adult-Oriented Business during a period of time when the licensee's license was suspended;

5) A licensee has been convicted of an offense as listed in Section 6.42 for which the time period required by Section 6.42 has not elapsed;

6) On two or more occasions within a twelve (12) month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 6.42, for which a conviction has been obtained, and the person or persons were employees of the Adult-Oriented Business at the time the offenses were committed.

7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.

C. Appeals. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

D. Exceptions. Section 6.42 subd. 18, does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in a public place or within public view.

E. Granting a License After Revocation. When the City revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an Adult-Oriented business license for one (1) year from the date revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under this Section 6.42 SECTION 12, Subd. B(5), an applicant may not be granted another license until the appropriate number of years required under Section 6.42 SECTION 7, Subd. C(7), has elapsed.

F. Notice. A revocation by the City shall be preceded by written notice to the licensee and a public hearing before the City Council. The notice shall give at least ten (10) days' notice of the time and place of the hearing and shall state the nature of the charges against the license. The notice may be served upon the licensee personally, or by leaving the same at the licensed premises with the person in charge thereof.

**Subd. 13. Transfer of License**. A licensee shall not transfer their license to another, nor shall a licensee operate an Adult-Oriented business under the authority of a license at any place other than the address designated in the application.

**Subd. 14. Severability**. Every section, provision or part of this Section or any permit issued to this ordinance is declared severable from every other section,

provision or part thereof to the extent that if any section, provision or part of Section 6.42 or any permit issued pursuant to this Section shall be held invalid by a court of competent jurisdiction it shall not invalidate any other section, provision or part thereof.

**Subd. 15. Violation A Misdemeanor**. Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

**Subd 16. Violation**. The City may enforce any provision of this Ordinance by mandamus, injunction or any other appropriate civil remedy in any Court of competent jurisdiction.

**Subd. 17. Separability**. Every section, provision or part of this Ordinance or any permit issued pursuant to this Ordinance is declared separable from every other section, provision or part of this Ordinance or any permit issued pursuant to this Ordinance shall be held invalid by a Court of competent jurisdiction, it shall not invalidate any other section, provision, or part thereof.

**Subd. 18. Length of Time**. This ordinance shall remain in effect from the date of its effective date until such time as said ordinance shall be revoked or otherwise amended.

***SECTIONS 11.36 THROUGH 11.59, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 11.60. PERFORMANCE STANDARDS***.

**Subd. 1. Intent**. These performance standards are designed such to encourage a high standard of development by providing assurance that neighboring land uses will be compatible. These standards are also designed to eliminate blight. All future development in all districts shall be required to meet these standards. These standards shall also apply to existing developments where stated.

**Subd. 2. Glare**. Any lighting used to illuminate an off-street parking area, sign or other structure shall be arranged so as to deflect light away from adjoining residential districts or from public streets.

**Subd. 3. Storage and Disposal of Chemicals.** All commercial and industrial uses associated with the bulk storage of oil, gasoline, liquid fertilizer or other hazardous materials shall require a conditional use permit and compliance with all State and local life safety agency regulations in order that the Council may have assurance that fire, explosion, or water or soil contamination hazards are not present that would be detrimental to the public health, safety, and welfare. All disposal

operations shall be in compliance with appropriate State, County, and Federal regulations.

**Subd. 4. Nuisances**. No noise, odors, vibration, smoke, air pollution, liquid or solid wastes, heat, glare, dust, or other adverse influences shall be permitted that will in any way have an objectionable effect upon adjacent or nearby property.

A. Noise. It is unlawful to make, continue or cause to be made or continued, any noise in excess of the noise levels set forth unless such noise be reasonably necessary to the preservation of life, health, safety, or property.

B. Measurement of Noise. Any activity which creates or produces sound regardless of frequency exceeding the ambient noise levels at the property line of any property by more than six decibels above the ambient noise levels as designated in the following table, shall be a violation.

NOISE LEVEL TABLE

| | RESIDENTIAL DAY | NIGHT | COMMERCIAL DAY | NIGHT |
|---|---|---|---|---|
| | | | | |
| Duration of Sound | 7:00 a.m.- | 9:00 p.m. | 7:00 a.m.- | 9:00 p.m. |
| | 9:00 p.m. | 7:00 a.m. | 9:00 a.m. | 7:00 a.m. |
| | | | | |
| Less than-10 mins. | 75db | 60db | 75db | 70db |
| | | | | |
| Less than-2 hours | 70db | 50db | 70db | 60db |
| | | | | |
| More than-2 hours | 60db | 40db | 60db | 50db |

C. The limits of the most restrictive district shall apply at the boundaries between different land use categories. The determination of land use shall be by its zoned designation.

D. Sounds emanating from the operation of motor vehicles on public highways, aircraft, outdoor implements, such as power lawnmowers, snow blowers, power hedge clippers, and power saws, pile drivers or jackhammers and other construction equipment, are exempt from the sound level but not time restriction provisions of this Subparagraph. Sounds emanating from lawful and proper activities at school grounds, playgrounds, parks or places where athletic contests take place, are exempt from the provisions of this Subparagraph.

E. Emission of Smoke. It is unlawful for any person owning, or in charge of, or operating any fuel burning, refuse burning, combustant, or process equipment, process device, portable boiler, stacks, vents on premises, to

cause, suffer, or allow emission or discharge of smoke from any single such source into the atmosphere, the appearance, density, or shade of which is darker than number one and one-half of the Ringleman Chart.

F. Emission of Particulate Matter. It is unlawful for any person to cause or allow the emission of particulate matter from any process, including any material handling or storage activity that is visible beyond the property line of the emission source.

G. Toxic and Noxious Matter. No use shall discharge across the boundaries of the lot where it is located, toxic, odorous or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety, comfort or welfare, or cause appreciable injury or damage to property or business.

H. Storage of Vehicles. It is unlawful for any person to store or keep any vehicle of any type requiring a license to operate on a public highway but without a current license attached, whether such be dismantled or not, outside of any enclosed building.

**Subd. 5. Land Reclamation.**

A. Land reclamation under this Subdivision is the reclaiming of land by depositing of clean fill materials so as to elevate the grade of said land.

B. Clean fill material shall be defined as rock, gravel, sand, dirt, clay, or other like and similar non-decomposable material.

C. Land reclamation shall be permitted in all zoning districts, on any lot or parcel except that when 100 or more cubic yards of fill is to be deposited on any lot or parcel, or if the storm water runoff pattern is altered, a conditional use permit shall be required.

D. In addition to whatever conditions or restrictions that may be attached to any conditional use permit, the following data and standards shall be included in each application.

1) Site plan showing existing and proposed grade elevations and effect of storm water drainage on adjacent areas.

2) A time shall be specified by the applicant as to when, in the applicant's best judgment, the land reclamation project will be completed.

3) The granting of the conditional use permit may be based on the consideration that highly organic soils be removed from the proposed land reclamation area prior to any fill being deposited.

4) That within sixty (60) days after the deposit of said fill material, the area shall be covered with a minimum of twelve (12) inches of clean, native earth fill, and the depth of fill shall be controlled to blend with the surrounding ground conditions.

5) That all entrances to any land reclamation project be properly safeguarded with a barricade to prevent the general public from depositing garbage or other refuse in the land reclamation project.

6) Any and all land reclamation projects in existence on the effective date of this Chapter shall comply within sixty (60) days after notice being served on the recorded fee owner of said property to be used in any land reclamation project.

**Subd. 6. Storm Water Management.**

A. No land shall be altered, developed or redeveloped in a manner that results in an increase in the rate or degradation of the quality of storm water runoff that existed prior to such alteration or development. Storm water management shall be consistent with the provisions in Chapter 13 of the City Code.

B. No land shall be graded or disturbed without preparing and adhering to an erosion and sedimentation control plan consistent with the Minnesota Pollution Control Agency's "Protecting Water Quality in Urban Areas," as amended, and the provisions in Chapter 13 of the City Code.

**Subd. 7. Landscaping.**

A. All developed, improved, or built upon lots or parcels shall be landscaped. Landscaping on a lot shall consist of a finish grade and a soil retention cover such as sod, seed and mulch, or plantings to protect the soil and aesthetic values on the lot and adjacent property.

B. In all districts, all developed uses shall provide an acceptable means of soil retention from street edge to the road right-of-way lines. This area shall be kept clear of all structures, exterior storage and off-street parking.

C. No trees or large shrubs shall be allowed within any drainage or utility easement or road right-of-way.

D. Landscaping shall be provided and maintained on all required front and side yards in all developed districts except where pavement or crushed stone is used for walkways or driveways.

**Subd. 8. Lot Provisions.**

A. Any lot of record existing upon the effective date of this Chapter in a residential district, which does not meet the minimum requirements of this Chapter as to area or dimensions, shall conform to the provisions of Section 11.10, Subd. 5, of this Chapter.

B. If in a group of contiguous created and/or platted lots under single ownership, any individual lot that does not meet the minimum requirements of this Chapter, such individual lot cannot be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots and/or parcels under the same ownership so that the accumulation of lots will equal one or more parcels of land, meeting the minimum requirements of this Chapter.

C. Any lot, group of lots, or created parcels created by any means after the effective date of this Chapter, for the purpose of erecting a structure, must be approved by the Council. The plan for such subdivision shall be submitted in accordance with the City's subdivision regulations.

D. No more than one principal building shall be located on a lot.

E. The required front yard of a corner lot shall not contain any wall, fence, or other structure, tree, shrub, or other growth, which may cause danger to traffic on a street or public road by obscuring the view. On corner lots, in any district, no structure or planting in excess of thirty inches above the curb line shall be permitted within a triangle defined as follows: "Beginning at the intersection of the project curb line of the two intersecting streets, thence thirty (30) feet along one curb line, thence diagonally to a point thirty (30) feet from the point of beginning on the other curb line, thence to the point of beginning."

**Subd. 9. Screening**.

A. Screening shall be required where:

1) Any off-street parking area contains more than four parking spaces and is adjoining a residential district; and

2) Where the driveway to a parking area of more than six parking spaces is adjoining a residential district.

3) Where any business or industrial use (structure, parking or storage) is adjacent to a property zoned residential, that business or industry shall provide screening along the boundary of the residential property. Screening shall also be provided where a business, parking lot or industry

is across the street from a residential zone, but not on the side of a business or industry considered to be the front.

B. The screening required in this Subdivision shall consist of earth mounds, berms or ground forms; fences and walls; landscaping (plat materials) or landscaped fixtures (such as timbers) used in combination or singularly so as to block direct visual access to an object.

**Subd. 10. Tree and Woodland Preservation.**

A. Structure arid other amenities shall be located in such a manner that the optimum number of trees shall be preserved.

B. Forestation, reforestation, or landscaping shall utilize a variety of tree species and shall not utilize any species presently under disease epidemic. Species planted shall be hardy under local conditions and compatible with the local landscape.

**Subd. 11. Site Plans.**

A. All building construction for commercial, industrial, or multiple dwellings shall be accompanied by a complete site plan, showing the proposed use of the balance of the property. The plan shall show waste disposal, water supply, drainage, ingress and egress, landscaping, screening, and other supportive and pertinent data. Distances to surrounding buildings must also be shown on the site plan. The completed site plan must be reviewed by the City Clerk/Zoning Administrator and Building Inspector. Upon the completion of their review, a written report must accompany the site plan as to their conformity with the City's present development codes and Comprehensive Plan to the Planning Commission for their review and recommendation to the City Council. No building permit shall be issued until the City Council has given their approval.

B. The property owner or agent shall meet with the City Clerk/Zoning Administrator to explain his situation, learn the procedures and obtain an application form.

C. The applicant shall file the completed site plan together with the required exhibits with the City Clerk/Zoning Administrator. All applications for site plan approval shall be received in the City Office no later than thirty (30) days prior to a Planning Commission meeting. If the City Clerk/Zoning Administrator shall determine that the plan is not complete, the City Clerk/Zoning Administrator shall, within ten (10) days of receipt of the application, send the applicant notice of the deficiency, and such notice shall state in writing the information which need to be supplied.

D. The City Clerk/Zoning Administrator shall complete the written report, and forward it to the Planning Commission six (6) days prior to the Planning and Zoning Commission meeting.

E. The Planning and Zoning Commission shall consider such site plan at its next regularly scheduled meeting following receipt by the City Clerk/Zoning Administrator of the complete site plan.

F. Within sixty (60) days after receipt by the City Clerk/Zoning Administrator of a complete site plan, the Council shall act to approve or deny the site plan. If additional information is requested by the Planning Commission or Council, the City may extend the sixty (60) day period by providing written notice of the extension to the applicant. The notice must state the reasons for the extension and the anticipated length of the extension, which may not exceed sixty (60) days unless approved by the applicant. In the event the application is denied, the Council shall state in writing the reasons for the denial.

G. Preliminary plans required:

1) Certificate of Survey. The certificate of survey shall be drawn at a scale of one (1) inch equals fifty (50) feet. The certificate of survey shall indicate all existing structures and site improvements.

2) Preliminary Site Plan. The preliminary site plan shall be drawn at a scale of one (1) inch equals fifty (50) feet. The submission may be composed of one or more sheets and drawings and shall include the location of all proposed buildings and their proposed uses; location of driveways and parking areas; indicate front, rear, and side yard setbacks proposed; location of all easements, width and purpose; location and size of existing public improvements adjacent to the lot site, including sanitary sewer, water main, and storm drainage location and size of existing buildings and structures on site and within the district of 100 feet of the site; existing zoning and land use; location of refuse areas; location of outdoor storage areas; locations and specifications of signs; location and type of lighting.

3) Landscape Plan. The landscape plan shall be prepared at a scale of one (1) inch equals fifty (50) feet and shall include the following information:

4) General. Name and address of the developer/owner, name and address of architect/designer, date of plan preparation, date and description of all revisions, name of project or development, scale of plan, north point indication.

5) Site Analysis. Boundary lines of property line with dimensions based upon certified survey, name and alignment of proposed and existing adjacent on-site streets, location of all proposed utility easements and right of-way,

location of existing and proposed buildings, topographic contours at two (2) foot contoural intervals, location of parking areas, water bodies, proposed sidewalks, and percent of site not covered by structures.

6) Landscape Data. Identification of both sodded and seeded areas with respect to any areas indicated in square footage. Identification of types, size, and location of plant materials, fences, walls, berms, and other landscape improvements.

7) Where landscape or manmade materials are used to provide required screening from adjacent and neighboring properties, a cross-section shall be provided at a legible scale illustrating the prospective of the site from the neighboring property and property line elevation.

8) Grading and Drainage Plan. The grading and drainage plan shall be drawn at a scale one (1) inch equals fifty (50) feet and shall contain the following information:

9) Existing and proposed grades with a minimum of two (2) foot contour intervals to a known sea level datum;

10) Sufficient spot elevations on all proposed hard surface areas;

11) Estimated runoff of the area based upon 10 and 100 year storm events;

12) Provisions to carry runoff to the nearest adequate outlet, such as a storm drain, natural drainage way, or street;

13) Location of any proposed ponding areas, indicating the size and depth of the pond and amount of acre feet of water to be stored;

14) Finished floor elevations of all buildings;

15) Identification of soil conditions by type and location, including identification of the water table, and suitability of soil for proposed development;

16) Identification of any areas located within a flood hazard zone as identified by the City's flood plain maps.

17) Floor Plans and Elevations. All floor plans and elevations shall be drawn to a legible scale and include the following information:

18) Floor plans indicating square footage and dimensions of all proposed rooms and areas identifying the proposed uses;

19) Elevations of the proposed building.

20) Preparation of Plans. Site plans shall be prepared by a registered architect, civil engineer, landscape architect or land surveyor.

**Subd. 12. Exterior Storage.**

A. All materials and equipment shall be stored within a building or fully screened by fencing from adjacent properties and the street, except for the following: clothes lines, recreational equipment, patio furniture, patio furniture, firewood and operable and currently licensed automobiles and trucks weighing not more than one ton.

B. In non-residential districts, all exterior storage shall be screened. The exceptions are: (1) merchandise being displayed for sale; (2) materials and equipment currently being used for construction on the premises; (3) merchandise located on service station pump islands.

C. In non-residential district, up to three commercial vehicles such as delivery and service trucks up to 12,000 pounds of gross weight may be parked without screening if such vehicles relate to the principal use. Construction equipment, trailers, and vehicles over 12,000 pounds shall require screening.

D. In all districts, the Council may order the owner of any property to cease or modify open storage uses' including existing uses, providing it is found that said use constitutes a threat to the public health, safety, convenience, or general welfare.

**Subd. 13. Use and Parking of Manufactured Homes, Travel Trailer and Similar Vehicles for Business or Industry.** No manufactured home, travel trailer, motor home, camper, or similar vehicle may be used for office, business, industrial manufacturing, testing, or storage of items used with or in a business, commercial or industrial enterprise.

**Subd. 14. Parking or Storage of Motor Home or Travel Trailer**. One travel trailer, motor home, camper, or similar vehicle may be parked or stored on a residential site when used by the family residing in the dwelling on such site. Such vehicles or items shall have affixed thereto current registration or license plates as required by law and shall be stored so that same shall meet all minimum side, front and rear yard setback requirements of the residential district of this Chapter and such parking or storage shall otherwise meet all other requirements of any other City Code provision and State laws. None of such parked or stored vehicles or items shall be connected to any water or sewage disposal system on said residential property where same is so parked or stored.

**Subd. 15. Temporary Parking of Recreational Vehicles.** Temporary parking and occupancy of one recreational vehicle per residential parcel shall be

allowed for non-residents of the City for a maximum of a fourteen (14) day period in any one year if such parking and occupancy otherwise complies herewith. Any such occupancy as stated in this Subdivision shall be only for noncommercial use with no fee paid to the landowner, occupant or renter.

**Subd. 16. Fences**.

A. Purpose. The purpose of this Subdivision is to promote a pleasant physical environment and to protect the public and private property within the City by regulating the location, height, type of construction, and maintenance of all fences.

B. Definitions.

1) **"Fence"** - A fence is defined as any structure, partition or enclosure of wood, iron, metal, or other material enclosing or dividing a piece of land. For the purpose of this Subdivision, a fence shall not include naturally growing shrubs, trees or other foliage. Snow fences must adhere to the location, construction and maintenance ordinances outlined in this section.

C. Permit Required.

1) Fence to be erected on property line requires the written permission of the abutting property owner to be filed with the Zoning Administrator.

2) No fence shall be erected or substantially altered in the City without securing a permit from the Building Inspector. All such permits shall be issued upon a written application which shall set forth the type of fence to be constructed, the material to be used, height, and exact location of the fence.

3) Snow fences are allowed from November 1st to April 30th each year. A fence permit is required to erect a snow fence. This permit fee will be refunded after the applicant provides proof that the fence has been removed in the spring.

D. Location of Fences.

1) Fences, when constructed to enclose any lot or tract of land, shall be located in such a way that the entire fence shall be on the property of the owner. Posts and framework shall be placed within the property lines of the owner and the actual fencing material, such as wire, lumber, pickets, etc., shall be placed on the side of the fence which faces the street or the adjacent property.

2) No fences shall be allowed or constructed on street rights-of-way. Fences may, by permit, be placed on public utility easements so long as the structures do not interfere in any way with existing underground or over ground utilities. Further, the City or any utility company having authority to use such easements, shall not be liable for repair or replacement of such fences in the event they are moved, damaged or destroyed by virtue of the lawful use of said easement.

E. Construction and Maintenance.

1) Every fence shall be constructed in a workmanlike manner and of substantial material reasonably suited to the purpose for which the fence is to be used. Every fence shall be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition which would constitute a public nuisance or a dangerous condition. If such fence is allowed to become and remain in such condition, the Building Inspector is authorized to notify the owner or owner(s) of such fences of the condition and allow ten (10) days in which to repair or demolish the fence.

2) Link fences, wherever permitted, shall be constructed in such a manner that the barbed end is at the bottom of the fence.

3) No barbed wire fences shall be allowed on private property in residential zones. No barbed wire fences shall be allowed on private property in business or industrial zones where the property lines of such property abut lots or parcels adjacent to residential districts.

4) All fences shall be constructed in conformity with the wind, stress, foundation, structural and other requirements of the State Building Code.

F. Residential District Fences. In residential districts, no fence may exceed five (5) feet in height above the ground level, in front of the front line of the residential structure, along any street or highway right-of-way, or in the front yard as defined by this Chapter. In such districts, fences along the side lines to the rear of the front line of the residential structure and along the rear line, including rear lines abutting street or highway right-of-way zones, may not exceed six (6) feet in height above ground level. The required front yard of a corner lot shall not contain any fence which may cause danger to traffic on a street or public road, by obscuring the view. On corner lots, no fence shall be permitted within a triangular area defined as follows: “Beginning at the intersection of the projected curb line of two intersecting streets, thence thirty (30) feet along one curb line, thence diagonally to a point thirty (30) feet from the point of beginning on the other curb line, thence to the point of beginning.

G. ”Commercial and Industrial Fences. In business, industrial zones and multifamily zones, including abutting residential properties, fences may not

exceed eight (8) feet in height above the ground level, and the use of barbed wire is prohibited, except that the top one (1) foot of any fence along side or rear lot lines in these zones may be constructed of barbed wire. Barbed wire shall not be used, installed or constructed, on fences fronting any street, or when adjacent to any residential district. The owners of fences must take reasonable precautions to protect the public from injuries incurred in accidental contact.

H. Swimming Pool Fences.

1) A fence, hedge, barrier or retaining wall, constructed or placed for the purpose of limiting access to outdoor swimming pools, and which otherwise complies with City Code provisions and regulations, may exceed the height limitations provided in Subparagraph F of this Subdivision.

2) Fences shall be at least four (4) feet in height for all pools of less than four (4) feet in elevation above the ground. The bottom of the fence shall not be more than four (4) inches from the ground. Fences shall be of a non-corrosive material and shall be constructed so as to not be easily climbable. All fence openings or points of entry into the pool area enclosure shall be equipped with gates or doors that have self-closing and self-latching devices placed at a sufficient height so as to be inaccessible to small children.

I. Special Purpose Fences.

1) Fences for special purpose and fences differing in construction, heights, or location, may be permitted in any commercial or industrial district in the City, only by issuance of a special fence permit approved by the Council after a recommendation by the Planning Commission, and upon evidence that such special purpose fence is necessary to protect, buffer, or improve the premises for which such fence is intended.

2) The approval of such buffer fences may include stipulations as to the material, height, or location of such special purpose fences.

J. Non-Conforming Fences. All existing fences, on the effective date of this Chapter, which are not in violation of this Subdivision and are not located within a public right-of-way, but which violate other Sections of this Chapter, may be continued to be maintained and to exist but may not be replaced, if destroyed or removed, to the extent that the violations be continued.

**Subd. 17. Permitted Encroachments - Yards**. For the purpose of this Chapter, the following shall be considered as permitted encroachments within the yards indicated:

A. In any yard: Overhanging roof eaves, open terraces, marquees, flues, sills, lintels, pilasters, cornices, gutters, open canopies, and awnings attached to the principal building, not to exceed twenty-five percent (25%) of the depth of the front or rear yards or twenty-five percent (25%) of the width of the side yards. Chimneys, flag poles, ornamental features, sidewalks, fences, landscaping, posts, or other similar amenities are permitted encroachments that are not restricted by area, placement, and land use intensity.

B. Yard lights and name plate signs in residential districts, provided such lights and signs are three (3) feet or more from all lot lines. Lights for illuminated parking and loading areas or yards for safety and security purposes may be provided where necessary, provided that the glare is not visible from public rights-of-way or adjacent residential property.

C. In front yards, balconies may extend a distance of four (4) feet or less, provided they are seven (7) feet or more above the grade at the building line. Patios or decks may extend a distance of eight (8) feet or less. Enclosed entryway not to exceed 64 square feet.

D. In rear yards, balconies, breezeways, detached picnic shelters, swimming pools, recreational equipment, landscaping, driveways, steps, stoops, uncovered porches, patios, picnic tables, open arbors, trellises, laundry drying equipment, detached outdoor living room and outdoor eating facilities, provided they are not less than five (5) feet from any lot line.

E. Encroachments in any yard that abut a public or private street, shall be considered as permitted encroachments, as outlined above, except that no encroachment shall be permitted within present or proposed street right-of-way lines.

F. On corner lots, in any district, encroachments are not permitted in excess of thirty (30) inches above the curb line in a triangular area defined as follows: “Beginning at the intersection of the projected curb line of two intersecting streets, thence thirty (30) feet from the point of beginning on the other curb line, thence to the point of beginning.”

**Subd. 18. Home Occupations.**

A. Intent. To provide peace, quiet, and domestic tranquility within all residential neighborhoods, within the City, and in order to guarantee to all residents freedom from excessive noise, excessive traffic, nuisance, fire hazard and other possible effects of commercial uses being conducted in residential areas, and to protect the public health, safety, and general welfare of the residents of the City.

B. Definition. A home occupation is defined as any gainful occupation, business that is conducted by an occupied dwelling that is zoned for residential use.

C. Home occupations shall conform to the following standards:

1) No interior or exterior business sign shall be permitted unless authorized by the sign regulations for residential districts.

2) There shall be no exterior storage of business equipment, materials, merchandise, inventory or heavy equipment.

3) Vehicular traffic flow and parking within the driveway shall not increase by more than four (4) additional vehicles at a time.

4) All parking related to the home occupation shall be off-street and within the driveway.

5) Any manufacturing business or activity which produces noxious matter or perceptible noise or is visible beyond the lot line is prohibited.

6) Shall not constitute a fire hazard to neighboring residences, will not adversely affect neighboring property values, nor constitute a nuisance or otherwise be detrimental to the neighbors because of excessive traffic, excessive noise, odors or other circumstances.

7) The home occupation shall be carried out by a member of the family residing in the dwelling unit and no outside help shall be hired.

D. All home occupations shall conform to the above standards #1 through #7 or be subject to Subd. 5 Conditional use permits.

**Subd. 19. Housing Standards**

A. The placement of residential dwellings within the City is authorized in all residential zones if such homes comply with the following conditions:

1) Such homes shall comply with all zoning regulations for the residential and multiuse zone in which they are located.

2) A building permit and any other required permits shall be obtained.

3) No such home shall have ground floor space of less than 600 square feet.

4) No such home shall have a width of less than twenty (20) feet.

5) A permanent foundation of concrete, concrete block or wood as approved by the Uniform Building code as adopted in the State of Minnesota is required with frost footings of at least forty-four (44) inches.

6) Residential dwellings shall have exterior siding extending from within six (6) inches of the ground or two (2) inches of concrete, which siding shall be of a conventional exterior dwelling type material. Any metal siding would have horizontal edges and overlap in sections no wider than twelve (12) inches. Sheet metal siding is prohibited.

7) Such homes shall have a pitched roof covered with shingles or tile and have eaves of not less than six (6) inches.

8) All such residential dwelling shall be built in compliances with Minnesota Statutes 327.31 - 327.35, or the standards of the National Manufactured Housing Construction and Safety Standards Act, or its predecessor in effect at the time the building permit is granted.

9) All manufactured homes shall have available for inspection, manufacturer's instructions specifying how said home is to be situated on a permanent foundation.

10) All exterior and bearing stud walls are to be of at least 2' x 4' construction.

B. Exemptions. This Subdivision shall have no application to manufactured homes built in compliance with the Uniform Building Code as adopted in the State of Minnesota or to manufactured housing place in a manufactured home park.

**Subd. 20. Zero Lot Line Provisions - Residential**. Two family residential lots may be platted or subdivided in such a manner that the common boundary line for the residential units will have a zero lot line setback, provided, however, that such lot meets with the following requirements:

A. Each lot shall have a minimum square footage of 6,000 square feet.

B. Separate services shall be furnished to each residential unit for sanitary sewer and water.

C. Fence or shrubbery dividers may be installed or maintained on the common boundary line in the rear of the structure.

D. The two family unit shall be constructed in a side-by-side manner.

E. A double fire wall in conformance with the Building Code shall be constructed as a common wall extending from the foundation through the rafters of the building.

**Subd. 21. Traffic Control.** The traffic generated by any use shall be channelized and controlled in a manner that will avoid: congestion on public streets, traffic hazards, and excessive traffic through residential areas, particularly truck traffic.

A. Internal traffic shall be so regulated as to insure its safe and orderly flow. Traffic into and out of Commercial and industrial areas shall, to the extent possible, be forward moving with no backing into streets. On corner lots, no structure or other materials shall be placed within the intersection sight distance triangle between the height of two and one-half (2 1/2) and ten (10) feet above the center line grade of the intersecting Street. This intersection sight distance triangle is described as that area on the Street side of a line drawn between two points located approximately thirty (30) feet from the point of the intersection of the curb lines of the intersecting streets.

B. Access Drives and Access.

1) The number and type of access drives onto arterial or collector streets may be controlled and limited in the interest of public safety and efficient traffic flow.

2) Access drives onto County or State highways shall require a review by the County or State Engineer who shall determine the appropriate location, size, and design of such access drives and may limit the number of access drives in the interest of public safety and efficient traffic flow.

3) All lots or parcels shall have direct adequate physical access for emergency service vehicles along the frontage of the lot or parcel from either an existing dedicated public roadway or an existing private roadway approved by the Council.

C. Vacated Streets. Whenever any street, alley, easement or public way is vacated by official action, the zoning district abutting the center line of said vacated area shall not be affected by such proceedings.

**Subd. 22. Parking.**

A. Any off-street parking space in connection with existing buildings or structures, on the effective date of this Chapter, shall not be removed, enlarged or altered, except in conformance with the requirements of this Chapter. In connection with any building or structure which is to be erected or substantially altered and which requires off street parking spaces, off-street

parking space will be provided in accordance with the following regulations. The following requirements are designed to provide adequate off street parking space for passenger automobiles of patrons, occupants or employees.

B. Size.

a. Off-Street Parking Spaces: A required off-street parking space shall be at least nine (9) feet in width and twenty (20) feet in length, exclusive of access drives, aisles, ramps and columns.

b. Driveways:
   i. A required driveway may not exceed 24 feet wide at the intersection with the street nor at any point in a right of way or publically owned property.
   ii. A driveway can flare no greater than 45 degrees, beginning immediately outside any right of way or publically owned property.
   iii. A driveway may not exceed the width of a garage and a single, approved off-street parking space, and then only to a point intersecting with the driveway flare.

c. Lot Coverage: Parking spaces, driveways or other hard and dust-free surfaces are included when calculating lot coverage standards. If permeable materials are used, they shall reduce coverage by the percentage rated by the manufacturer of material.

C. Access.

1) Each required off-street parking space shall open directly upon an aisle or driveway of such width and design as to provide safe and efficient means of vehicular access to parking spaces.

2) All off-street parking facilities shall be provided with appropriate means of vehicular access to a street, alley, or driveways, in a manner which will least interfere with traffic movements.

3) A parking area containing four (4) or more parking spaces, shall have vehicular access to it by a street, alley, or driveway, containing all-weather, hard surfaced pavement and the size, location, and route of access to such parking areas shall be approved by Council.

D. Yards.

1) Off-street parking spaces shall not be permitted within any front yard or side yard setback

a. For those off-street spaces existing in the front yard or side yard setback in residential districts at the time this ordinance was modified on May 19, 2016, they may continue to exist as nonconforming but in no instance shall the number of these parking spaces exceed two per dwelling unit.

b. Parking spaces required for single or two family dwelling units shall be located on the same lot as the dwelling served.

E. Computation of Parking Spaces. When determination of the number of parking spaces required by this Chapter results in a requirement of a fractional space, any fraction shall be counted as one parking space.

F. Collective Parking Provisions for Non-Residential Uses. Off-street parking facilities for separate uses may be provided collectively if the total number of spaces so provided is not less than the sum of the separate requirements of each use and if all regulations governing the location of accessory parking spaces in relation to the use served are observed. But no parking space, or portion thereof, shall serve as a required space for more than one use unless otherwise authorized in this Chapter.

G. Repair. No major motor vehicle repair work shall be permitted in parking lots.

H. Design, Maintenance, and Installation.

1) All open off-street parking areas, and access to those areas, shall be improved with a hard and dust-free surface, and vehicles shall only park, stand or operate on that surface.

2) All parking areas shall provide for proper drainage of surface water to prevent the drainage of such water onto adjacent properties or walkways.

3) All open automobile parking areas containing more than four parking spaces shall be effectively screened on each side adjoining or fronting on any residential property, by an approved, compatible wall or fence that conforms with this Chapter or a densely planted compact hedge not less than five (5) feet in height and so as not to create a traffic hazard on adjacent streets.

4) Illumination of an off-street parking area shall be arranged so as not to project or reflect rays of light into adjacent and residential districts, and so as not to create a traffic hazard on adjacent streets.

5) The owner of any off-street parking area shall maintain the area in good condition without holes and free of all dust, trash, and other debris.

6) Hard and dust-free surfaces.

   a. Residential Areas.

      i. Interim Standard. Hard and dust-free surfaces used for parking or access to parking areas for residential districts may only be constructed from materials that include bituminous, cement, gravel (class 2 or class 5), crushed rock, recycled bituminous, pavers, permeable pavers, or other materials specifically approved by the building official.

      ii. Permanent Standard. All new construction and all properties granted a non-maintenance building permit shall meet the following standard for hard and dust-free surfaces. Hard and dust-free surfaces used for parking or access to parking areas for residential districts may only be constructed from materials that include bituminous, cement, pavers, permeable pavers, or other materials specifically approved by the building official.

   b. Non-residential Areas. Hard and dust-free surfaces used for parking or access to parking areas for all other areas such as business, commercial or multiuse districts may only be constructed from materials that include bituminous, cement, or other materials specifically approved by the building official.

7) Driveways or other access to parking areas required by this section shall be constructed in the same manner as the parking area. Driveways and parking areas must be durable and designed to support the weight of vehicles. Driveways must connect to a street, alley, or roadway by a curb, gutter or apron designed for vehicular travel and as otherwise approved by the building official.

8) A zoning permit shall be issued for the installation or replacement of residential driveways and off-street parking unless performed in conjunction with a building permit for construction of a primary or accessory structure. In all other instances, a building permit is necessary for installation or replacement of driveways and off-street parking.

9) Driveways may not encroach easements, rights of way or publically owned property but may exist therein subject to the applicable property rights in a manner as set forth in the applicable permit.

10) Off-street parking spaces are subject to the setbacks of their district. Driveways are subject to the setbacks of their district except where necessary to connect to a street, alley or roadway by a direct route, or

such route as approved by the building official for unique lots, return driveways or commercial applications in a manner as set forth in the applicable permit.

I. Required Parking Spaces. The minimum number of off-street parking spaces for each type of use shall be determined in accordance with the following:

1) Residential Use. Two parking spaces for each dwelling unit for single family, two family, or multiple dwelling units. Parking space(s) inside an accessory structure may satisfy this requirement.

2) Automobile Service Stations. At least one parking space for each employee, plus two for each service stall.

3) Banks. At least one parking space for each two hundred square feet of floor area.

4) Group Homes, Boarding and Rooming Houses. At least two parking spaces, plus one parking space for each three persons for which living accommodations are provided.

5) Bowling Alleys. At least seven parking spaces for each alley, plus such additional spaces as may be required for affiliated uses.

6) Business and Professional Offices or Public Administration Buildings. At least one parking space for each two hundred square feet of floor area.

7) Churches and Synagogues. At least one parking space for each four seats in accordance with density capacity of the main auditorium.

8) Establishments Handling the Sale and Consumption of Food and Refreshment on the Premises. At least one parking space for each seventy-five square feet of floor area.

9) Furniture and Appliance Stores, Motor Vehicle Sales, Stores for Repair of Household Equipment, or Furniture. At least one parking space for each six hundred square feet of floor area.

10) Hotels. At least one space for each three separate rooms and at least one space for each three suites of more than one room.

11) Libraries and Museums. At least one parking space for each five hundred square feet of floor area.

12) Manufacturing, Fabricating, and Processing Plants Not Engaged in Retail Trade. At least one parking space for each employee or one parking space for every one thousand square feet of floor area, whichever is greater.

13) Medical and Dental Clinics. At least two spaces for each examining or treatment room, plus one for each doctor and employee in the building.

14) Motels. At least one parking space for each dwelling unit, plus one space per employee.

15) Public Utility and Public Service Uses. At least one parking space for each three employees, plus spaces in adequate number as determined by the Council to serve the visiting public.

16) Recreational Buildings or Community Centers. Spaces in adequate number as determined by the Planning Commission.

17) Schools, Elementary. Junior High, Public or Private. At least one parking space for each faculty member and other full-time employees. Senior high schools shall also provide one space for each ten students.

18) Supermarkets, Discount Houses, Mail Order Outlets, Retail Stores and Other Stores with High Customer Volume. At least one parking space for each three hundred square feet of floor area.

19) Theaters. At least one parking space for each four seats in the theater.

20) Warehouse and Storage Establishments and Freight Terminals. At least one off-street parking space for each two thousand square feet of floor area or one parking space for every two employees, whichever is greater.

21) Other Uses. Parking spaces on the same basis as required for the most similar use.

J. Exception to Required Parking Spaces: The City may modify the minimum parking requirements in any Multiuse or Business District, as part of a planned unit development approval process or for other exception circumstances, if it is determined that the use is consistent with the purpose of the district and that parking is determined by the City to be sufficient to accommodate the use.

K. Implementation Of Ordinance Changes From Ordinance 16-01: Unless otherwise specified, all changes to this Chapter are effective on the date adopted by the City Council. All parcels that do not conform to the requirement to construct driveways, construct off-street parking from hard and dust free surfaces, or all other requirements of Section 11.06 as adopted in

Ordinance 16-01 shall come into compliance with the amended Section 11.06 at such time as a non-maintenance building permit is issued, or not later than December 1, 2017.

(Revised 16-01; effective 6/7/16)

**Subd. 23. Off-Street Loading.** In connection with any building or structure, which is to be erected or substantially altered, and which requires the receipt or distribution of materials or merchandise by trucks or other similar vehicles, there shall be provided off-street loading space not less than the minimum requirements specified in this Subdivision. Any loading operation shall not create traffic congestion or traffic hazard on the public approaches to any property.

A. Location.

1) All required loading spaces shall be located on the same lot as the use to be served and no portion of any vehicle shall, while occupying any loading space, project into a street or alley.

2) No required off-street loading space shall be less than 100 feet from any residential district boundary without adequate screening provided.

3) No loading spaces shall be located within twenty-five (25) feet of the nearest point of intersection of any two streets, nor shall it be located in a required front or side yard.

4) Loading spaces may be located within the confines of a building.

5) All loading spaces shall be in the side or rear yards.

B. Access. Each required off-street loading space shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movements and shall be subject to approval by the City Engineer.

C. Space Usage. Space allocated for an off-street loading space shall not, while so allocated, be used to satisfy the parking requirements.

D. Required Loading Spaces.

1) In Commercial Districts. One off street loading space shall be provided for each store unit having a gross floor area of 10,000 square feet or less. One additional space shall be provided for each additional 15,000 square feet of floor area.

2) Banks, Business and Professional Offices, Public Administration Building, Schools and Other Similar Uses. One off-street loading space for each

building containing up to 100,000 square feet of floor area. One additional space for each additional 100,000 square feet of floor area.

**Subd. 24. Signs**. The purpose of this Subdivision is to provide for necessary visual communication and to preserve and promote a pleasant physical environment on the streets and highways within the City, by regulating the type, number, structure, size, height, type of illumination, and the erection and maintenance of all outdoor signs and sign structures within the City.

A. Non-Conforming Signs.

1) Temporary signs shall be permitted only to identify special, unique, or limited activities, services, products or sales of limited duration. A temporary sign shall not exceed thirty-two (32) square feet in gross surface area for each exposed face, nor exceed an aggregate gross surface area of sixty-four (64) square feet. A temporary sign shall be located only upon the lot(s) upon which the unique, special, or limited activities, services, or sales are to occur. Such signs may be located within required front, rear or side yards, but shall not extend over any lot line nor within fifteen (15) of any point of vehicular access to a public roadway. The temporary sign shall not project higher than eight (8) feet as measured from the base of the sign or the grade of the nearest adjacent roadway, whichever is higher. Permits are to be allowed for 30 day increments four (4) times per calendar year with a minimum 30 day waiting period between each increment. Permits can be issued for smaller increments of time each with a minimum 30 day waiting period between each increment for up to a maximum of 120 days per calendar year. Such temporary sign shall be removed within three (3) days of the termination of the advertised activity, service, product, or sale.

2) Other signs existing on the effective date of this Chapter and not conforming to its provisions, but which conform to previous laws, shall be regarded as nonconforming signs, which may be continued if properly repaired and maintained as provided in this Chapter, and if in conformance with other City Code provisions. If said signs are not so continued, they shall be removed in accordance with Section 11.10, Subd. 5.

3) All non-conforming signs which are structurally altered, relocated, or replaced shall comply immediately with all provisions of this Chapter.

B. Prohibited Signs.

1) Signs that, by reason of position, shape or color would interfere with the proper function of a traffic sign or signal.

2) Signs within a public right-of-way or easement, except for signs installed by governmental subdivisions.

3) Signs that resemble any official marker erected by a governmental agency or that display such words as “Stop” or “Danger” which are not erected by legal authority.

4) Signs or sign structures that obstruct any window, door, fire escape, stairway or opening intended to provide ingress or egress for any building structure. With reference to commercial districts, signs painted on the inside glass portion of windows or doors are permitted.

5) Sign posters that are tacked or posted on trees, fences, utility posts, or other such supports.

6) Billboards.

7) All other signs not expressly permitted by this Chapter.

8) Projecting signs.

C. Permitted Signs. General requirements and standards for permitted signs:

1) Where a sign is illuminated, the beam of light shall not shine directly upon any part of a residence or into the street.

2) No sign shall extend more than two (2) feet above the eave or parapet of the building to which it is mounted.

3) No part of any permanent freestanding sign shall be closer than five (5) feet from the side lot line.

4) No part of any sign shall project over or beyond the property line of the property upon which the sign is located.

5) The supporting columns of a freestanding sign, exceeding sixteen (16) square feet in area, shall not materially impede vision between a height of two and one-half (2 1/2) and seven and one-half (7 1/2) feet above the center line grade of a street. Such a freestanding sign shall be set back ten (10) feet or more from the street right-of-way line. Freestanding signs located within twenty-five (25) feet of intersecting streets shall have a minimum vertical clearance of ten (10) feet above the center line grade of the intersecting streets.

6) When electrical signs are installed, their installation shall be subject to inspection by the State Board of Electricity.

7) Canopies and marquees shall be considered to be an integral part of the structure to which they are attached. If signs are attached to a canopy or marquee, the canopy or marquee shall be considered a part of the wall area used.

D. Permitted Signs - No Permit Required.

1) Identification signs for one and two family dwellings, provided that such signs are less than two (2) square feet in area.

2) Pedestrian, vehicular-traffic, and parking directional signs in parking lots, provided such signs are less than six (6) square feet in area.

3) Traffic control signs, non-commercial governmental signs, local notices, and temporary non-advertising safety or emergency signs.

4) Signs denoting the architect, engineer, contractor, or owner, when placed upon a worksite, which do not exceed an aggregate of forty-eight (48) square feet in area. Such signs must be removed ten (10) days after completion of construction.

5) Copy of message changing on a printed or painted sign, which is a permitted sign.

6) Political Campaign Signs. Signs designating candidates seeking political office and other data pertinent thereto shall be permitted, provided that the property owner's permission has been obtained, as follows: A maximum of nine (9) square feet for each premise in a residential zone and a maximum area of thirty-two (32) square feet in a commercial or industrial zone. These signs shall be located on private property and shall not be less than thirty (30) feet from the nearest curb line intersection of any street or road. These signs may be displayed thirty (30) days prior and five (5) days after the election for which they are intended. In a state general election year (even years), this ordinance is overruled by Minnesota Statute 211B.045 (as may be amended) from 46 days before the primary until 10 days after the general election, and campaign signs may be posted in any size and number.

7) Signs or posters painted on or attached to the inside of a display window.

8) Flags, badges, or insignia of any government or governmental agency, or of any civic, religious, fraternal or similar organizations.

9) Emergency signs required by other governmental agencies.

10) Temporary displays which are erected to celebrate commemorate or observe a civil or religious holiday.

11) Real Estate Signs, as follows:

(a) Temporary signs for the purpose of selling or leasing individual lots or buildings provided that such signs are less than ten (10) square feet for residential property and thirty-two (32) square feet for other property and provided that only one sign is permitted for each property. The signs must be removed within ten (10) days following the least or sale.

(b) One sign per building for the purpose of leasing dwelling units in buildings containing two or more units provided such signs are limited to five (5) square feet in area.

E. Permitted Signs - Permit Required.

1) Commercial Business Districts.

2) Wall Signs and Roof Signs. Each establishment or enterprise may have wall signs and projecting signs on each wall, provided the aggregate area of such signs does not exceed thirty percent (30%) of the area of the wall supporting the signs.

3) Marquee Signs. Signs may be placed on the vertical faces of a marquee or may project below the lower side of a marquee not more than twenty-four (24) inches. The bottom of a sign placed on a marquee shall be no less than eight (8) feet above the sidewalk or grade at any point. No part of the sign shall project above the top of the vertical faces of a marquee. The signs shall not be permitted on a marquee which project over any public right-of-way, except that a variance may be granted for theater marquees by the Council.

4) Each establishment or enterprise eligible for a freestanding sign may instead elect to have a roof sign for identification, instead of a freestanding identification sign, provided that the sign does not extend more than ten (10) feet above the roof line, or more than thirty-five (35) feet, whichever is lesser. The sign may not exceed two hundred fifty (250) square feet in area.

5) Individual establishments or enterprises which are not located in a shopping center complex may have one freestanding sign not to exceed two hundred fifty (250) square feet in area and not to exceed thirty-five (35) feet in height.

6) Commercial establishments or those enterprises clustered in a shopping center complex may have a single freestanding sign not to exceed two hundred fifty (250) square feet in area and not to exceed thirty-five (35) feet in height.

7) Residential Districts.

8) Home occupations and special home occupations may have one freestanding or wall sign per dwelling, which may not exceed 2.5 square feet and which may not be more than six (6) feet above the ground.

9) Multiple family dwellings may have one wall or freestanding sign per building, which may not exceed ten (10) square feet in area.

10) Public and Semi-Public Places (All Zoning Districts).

11) Churches, synagogues, temples, and places of worship may have the following signs:

(a) One freestanding sign with the sign area not to exceed thirty-six (36) square feet. The sign shall not extend more than ten (10) feet above ground level. There may be a second such sign if the use abuts two or more streets.

(b) One wall sign immediately above or beside each public entrance to that part of the building which is used as a school and meets the requirements of the Minnesota Department of Education. The sign area shall not exceed ten (10) square feet.

12) Other Public and Semi-Public Uses.

(a) Freestanding signs as specified above for churches, synagogues, and temples.

(b) One wall sign with an area of not more than thirty-six (36) square feet.

F. Sign Permits. No sign shall hereafter be erected, re-erected or altered, unless a permit for each sign has been obtained, unless no permit is required pursuant to this Chapter. In addition, electrical permits shall be obtained for all electrical signs. Application for a sign permit shall be made in writing on forms furnished by the Building Inspector. Such application shall contain the location by street and number of the proposed sign structure, as well as the name and address of the owner and the sign contractor, or erector. The Building Inspector may require filing of plans or other pertinent information where such information is necessary to insure compliance with this Chapter.

G. Sign Permit Fees. The following fees are hereby established and shall be collected before issuance of any sign permit.

1) Sign Permit Fee established by fee schedule resolution each year.

H. Sign Variances. The procedure for obtaining a variance from the requirements of this Chapter shall be the same as set out in Section 11.20, Subd. 6 of this Chapter. The Planning Commission may recommend that the Council may grant variances from the literal provisions of this Chapter in instances where the strict enforcement would cause hardship because of circumstances unique and distinct as to the specific property or use under consideration. Circumstances caused by the property owner or the applicant or a predecessor in title may not constitute sufficient justification to grant a variance. A variance may be granted by the Council after demonstration by evidence that all of the following qualifications are met.

1) A particular hardship to the owner would result if the strict letter of the regulations were observed.

2) The circumstances upon which the application for a variance are based are unique to the parcel of land or the use thereof and are not common generally to other property or uses within the same zoning classification.

3) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood.

I. Repair and Removal.

1) Any sign or sign structure which may be, or may hereafter become rotted, unsafe, or unsightly, shall be repaired or removed by the lessee, licensee9 owner, or agent of the owner of the property upon which the sign is located after receipt of written notice from the Building Inspector.

2) The Building Inspector may order the removal of any sign erected or maintained in violation of this Chapter. Ten (10) days notice in writing shall be given to the owners of such sign, or the owner of the building, structure or premises on which the sign is located, to either bring the sign into compliance with this Chapter, or effect its removal. Upon failure to remove the sign or to comply with this notice, the Building Inspector shall remove the sign immediately and without notice if it reasonably appears that the condition of the sign is such as to present an immediate threat to the safety of the public. Any cost of removal incurred by the City shall be assessed to the owner of the property on which such sign is located or may be collected in appropriate legal proceedings.

J. Sign Enforcement.

1) It shall be the responsibility of the Building Inspector to administer and enforce the sign provisions of this Chapter.

2) It is unlawful for any person to erect, alter, repair, move, equip, or maintain any sign or sign structure or cause or permit the same to be done in violation of any provisions of this Chapter.

**Subd. 25. Requiring The Numbering Of Buildings.**

A. Numbers Assigned. The City shall assign distinctive street numbers to all principal buildings presently located within the City. Principal buildings hereafter constructed shall be assigned street number when the building permit is issued.

B. Numbering Required. It shall be the duty of the owner, agent, lessor or occupant of every house, mobile home or other building except barns, garages and other residential, commercial or industrial buildings which are part of the same property with a numbered house or building, to place on every such mobile home or building its proper street number in conformity with the following:

1) Arabic Numbers shall be posted above, on or beside the principal entrance to the building.

2) Numbers shall be posted in a manner as to be visible from the dedicated street on which the property is located.

3) Premises which are located so that they are not visible from the abutting street shall have an additional set of numbers located on a post, sign or other device, which is clearly visible from such street and which clearly designates the premises numbered.

4) Numbers must have a minimum height of 4 inches and a minimum width of 1-1/2 inches. Numbers must contrast with the color of background to which they are attached or must be made of a reflective material.

5) In cases where a principal building is occupied by more than one business or family dwelling unit each separate front entrance of such building shall bear a number, as assigned by the City.

C. Time to Comply. All houses or other buildings with existing non-conforming numbering shall comply with this Section no later than July 1, 2002. All persons replacing existing numbers shall comply with the terms of this Section. Buildings hereafter constructed in the City shall comply with this ordinance within thirty (30) days of substantial completion of construction and/or occupancy

D. Variations. Variations from the strict application of provisions of this Section may be granted by the Council where there are practical difficulties or

unnecessary hardships in effecting strict compliance. Such hardships or difficulties must have to do with the characteristics of the property and not of the property owner

**Subd. 26. Zero Lot Line Provisions - Commercial.** Two or more business or commercial use lots may be platted or subdivided in such a manner that the common boundary line for the commercial units will have a zero lot line setback, provided, however, that such lot meets with the following requirements:

A. Each lot shall have a minimum square footage as identified for that zoning district as listed in Section 11.34. Dimensional Requirements.

B. Separate services shall be furnished to each unit for sanitary sewer and water.

C. Fence or shrubbery dividers may be installed or maintained on the common boundary line in the rear of the structure.

D. The units shall be constructed in a side-by-side manner.

E. A double fire wall in conformance with the Building Code shall be constructed as a common wall extending from the foundation up through the rafters of the building.

F. The end units must meet the side yard setback requirements for the non-zero lot line side of the lot as identified for that zoning district as listed in Section 11.34. Dimensional Requirements.

***SECTIONS 11.61 THROUGH 11.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION***.

***SECTION 11.99. VIOLATION A MISDEMEANOR.*** Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

# CHAPTER 12

## SUBDIVISION REGULATIONS (PLATTING)

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# CHAPTER 12

# SUBDIVISION REGULATIONS (PLATTING)

***SECTION 12.01. PURPOSE***. All subdivision of land hereafter submitted for approval shall fully comply with the regulations set forth herein. It is the purpose of these regulations to: (1) provide for and guide the orderly, environmentally sound, economic and safe development of land and public services and facilities, in a manner consistent with the City Comprehensive Plan; (2) encourage well-planned, efficient, and attractive subdivisions by establishing adequate minimum standards for design and construction; (3) facilitate adequate provision for streets, transportation, water supply, sewage disposal, storm drainage, schools, parks, playgrounds and other public services and facilities; (4) place the cost of improvements against those benefiting from their construction; (5) secure the rights of the public with respect to public lands and waters; (6) set the minimum requirements necessary to protect the natural environment, public health, safety, and general welfare; and, (7) encourage the wise use and management of natural resources in order to preserve the integrity, stability, and beauty of the City and value of the land through the prevention of pollution and provision of open space.

***SECTION 12.02. COMPLIANCE***.

**Subd. 1. Owner Responsibilities**. The owner, or agent of the owner, of any parcel of land located in a proposed major/minor subdivision shall not transfer ownership of such parcel before a plat or certificate of survey of said subdivision has been approved by the Council and has been filed with the County Recorder of Anoka County, Minnesota.

**Subd. 2. Filing**. No plat or certificate of survey shall be filed with the County Recorder which does not bear the signature of the Mayor and Clerk of the City.

**Subd. 3. Documentation**. Proof of all such recordings with the County shall be provided to the Clerk within ten working days after such filing with the County Recorder.

**Subd. 4. Additional Requirements**. All such recordings shall be subject to any other additional requirements mentioned elsewhere in this Chapter.

***SECTION 12.03. RULES AND DEFINITIONS***. In the event of conflicting provisions in the text of this Chapter, the more restrictive shall apply. Definitions in Chapter 11 are adopted by reference.

***SECTIONS 12.04 THROUGH 12.09, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 12.10. PROCEDURES***.

**Subd. 1. Fees**.

A. The sub divider shall pay at the time of filing and submission of the preliminary plat, a cash fee to the City.

B. Such fee shall be as determined by resolution of the Council and shall be available in the form of a published fee schedule. The City may refuse to continue review of an application if there is a negative balance in the escrow account. All required data, documentation plans, copies, fees and deposits must be submitted before the application will be considered complete.

C. Rejection of the plat or subdivision by the Council, or abandonment or withdrawal of the proposed plat or subdivision by the sub divider, shall not entitle the applicant to the return of all or any part thereof. However, excess escrow deposits shall be refunded.

D. In addition to the aforementioned fee, the sub divider shall pay any expense incurred by the City for the services of the City Planner, City Engineer, and City Attorney in their review of the preliminary plat and final plat.

E. The sub divider, (owner or developer) on or before submitting a preliminary plat, shall make a cash deposit in an amount as determined by ordinance of the Council which shall be available in the form of a published schedule. This deposit shall be held in a special Escrow Account and shall be credited to the said sub divider, owner or developer. Review and administrative expenses incurred by the City in checking plat improvements, giving notice, holding hearings, checking and setting grade and drainage requirements, general supervision, staking, inspection, drafting as-built drawings and all other engineering services performed in the processing of said improvements and plats, administrative and legal expenses in examining title to the property being developed shall be charged to the aforementioned account.

F. The City shall itemize all time, services, and materials billed to any escrow account and said time, services and materials shall be in accordance with the rules, regulations and fees as promulgated and adopted by the Council. The sub divider, owner or developer making the deposit(s) in the Escrow Account shall be furnished a copy of said itemized charges and any balance remaining in the account shall be returned to the depositor by the City Clerk after all claims and charges thereto have been paid.

**Subd. 2. Major Subdivision**. Preliminary and final plats for major subdivisions shall be reviewed by the City in accordance with the following procedures:

A. Pre-Application Consultation. Prior to the preparation of a preliminary plat, the applicant shall consult with the City Clerk in order to be made fully aware of all City Code Provisions, regulations and plans applicable to the area to be subdivided. At this time or at subsequent meetings, the sub divider may be required to submit a general development plan of the proposed subdivision and preliminary proposals for water supply and sewage disposal.

B. General Development Plan. This general development plan shall illustrate the proposed subdivision and its relationship to existing and proposed development surrounding the site. General land uses, collector and arterial streets, open space systems, and major utility easements shall be shown.

C. Preliminary Plat.

1) After the pre-application consultation, the applicant may file with the City Clerk an application for approval of the preliminary plat at least thirty (30) days prior to the meeting of the Planning Commission at which action is desired. The application shall be accompanied by ten copies of the plat, proof of ownership or ownership interest (abstract, option, title insurance policy, registered property abstract and any unrecorded documents) satisfactory to the City, and a list of property owners located within 350 feet of the property certified by an abstract company or the County.

2) When appropriate the City Clerk may refer one copy of the preliminary plat to each of the following agencies for their review, comments and recommendations.

(a) City Engineer.
(b) City Attorney.
(c) City Planner.
(d) Park Board.
(e) Fire Marshal.
(f) County Engineer.
(g) Watershed District.
(h) Public Works Director.
(i) Telephone Company.
(j) Electric Company.
(k) Gas Company.

3) The City Clerk shall review the preliminary plat and the comments and recommendations of the referral agencies, and shall prepare a written report containing its findings and recommendations. The staff report shall be sent to the Planning Commission and applicant and shall be made available for review by all interested citizens in advance of the Planning Commission meeting.

4) The Planning Commission shall hold a public hearing on the preliminary plat after notice of the date, time, place and purpose of the hearing has been published once in the official newspaper, and a site sign has been erected by the applicant, both at least ten (10) days before the date of the hearing. Written notice shall also be mailed by the City to the applicant and all owners of record listed in the County Recorder's Office, within 350 feet of the outer boundaries of the preliminary plat. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the City Clerk and shall be made a part of the records of the proceedings. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made.

5) After considering the City Clerk's report and the comments and suggestions received at the public hearing, the Planning Commission shall make its recommendation on the preliminary plat to the Council within forty-five (45) days from the date of the opening of the public hearing, unless the applicant consents on the record to a continuance. The Planning Commission may recommend approval, approval subject to certain conditions or that the preliminary plat be denied. If denial is recommended, the reasons for that recommendation shall be stated in the record.

6) When feasible, the Council shall consider the preliminary plat at its next regular meeting following action by the Planning Commission. The Council shall make its decision within 120 days following receipt by the City of the properly completed application, unless the sub divider shall consent on the record to a continuance. The Council may:

   (a) Grant approval of the preliminary plat, with or without modification or conditions; or,

   (b) Refer the preliminary plat to the Planning Commission or appropriate City staff, officers or departments for further investigation and report to the Council at a specified future meeting; or,

   (c) Disapprove the preliminary plat. If the plat is not approved, the Council shall state the reasons for denial in the record.

7) The City Clerk shall notify the applicant in writing of the Council's action, stating the conditions of approval or reasons for disapproval and shall endorse the date of the approval or disapproval on the preliminary plat. Approval of the preliminary plat is an acceptance of the general layout submitted and indicates to the sub divider that he/she may proceed toward

approval of the final plat in accordance with the resolution granting preliminary approval and the terms of this Chapter.

8) Subsequent to approval of the preliminary plat and prior to approval of the final plat, the sub divider shall submit engineering plans, satisfactory to the City Engineer, for all required improvements, as specified in Section 12.53 of this Chapter.

9) Notwithstanding the above procedure, an applicant may at his/her own risk, apply to process the preliminary and final plats simultaneously.

D. Final Plat.

1) Unless otherwise provided in the development contract, within one (1) year after the date of the Council approval of the preliminary plat, the sub divider or owner shall file an application for approval of the final plat accompanied by ten (10) copies of the final plat with the City Clerk. If the final plat application is not filed within said period, the preliminary plat will be considered void unless for good cause shown an extension is requested in writing by the sub divider and granted by the Council. The application shall be filed at least fourteen (14) days prior to the meeting of the Council at which action is desired.

2) The final plat shall conform to the requirements of this Chapter and to all conditions set forth in the approval of the preliminary plat.

3) The City Clerk shall review the final plat, the developer's contract as required by this Chapter, improvement plans, and any comments or recommendations of other agencies, and shall submit its findings in writing to the Council. Substantial changes from the preliminary plat or failure to address the concerns of the Planning Commission's review of the preliminary plat will be cause for the final plat to be referred to the Planning Commission.

4) The Council shall consider the final plat during a regular business meeting as an agenda item and shall approve or disapprove the final plat within 60 days of receipt of the complete application.

E. Findings Required. The findings necessary for Council approval of the preliminary plat and the final plat shall be as follows:

1) The proposed subdivision is consistent with the Zoning Chapter and conforms with all its requirements;

2) The proposed subdivision is consistent with all applicable City, County, and regional plans including but not limited to the City's Comprehensive Plan;

3) The physical characteristics of the site, including but not limited to topography, soils, vegetation, susceptibility to erosion and siltation, susceptibility to flooding, and storm water drainage are suitable for the type and density of development and uses contemplated;

4) The proposed subdivision makes adequate provision for water supply, storm drainage, sewage disposal, transportation, erosion control and all other public and private services, facilities and improvements otherwise required herein;

5) The proposed subdivision will not cause adverse environmental damage or degradation;

6) The proposed subdivision will not conflict with easements of record or with easements established by judgment of a court; and,

7) The proposed subdivision will not have an undue and adverse impact on the reasonable development of neighboring land.

8) The proposed subdivision incorporates appropriate design and site planning elements for reasonable energy conservation measures.

F. No final plat shall be approved by the Council until satisfactory evidence is filed with the City that the plat is in a form acceptable for recording with the County, that the proper filing fees have been paid to the City, that a developer's agreement with appropriate improvement sureties has been executed, and that the escrow account is current and no other payments to the City are outstanding.

G. Upon approval of the final plat by the Council, the City Clerk shall promptly notify the applicant of said approval and within thirty (30) days thereafter, the applicant shall file the final plat with the County Recorder. The applicant shall furnish the City with one mylar and two paper copies of the final plat as recorded, showing evidence of such recording. Failure of the applicant to comply with these requirements of recording shall be cause for revoking the City's approval.

**Subd. 3. Minor Subdivision**. Minor subdivisions do not require review by the Planning Commission nor do they require platting. The staff shall initially determine and recommend to the Council the extent to which a minor subdivision shall be subject to the requirements of this Chapter. In the case of a subdivision resulting in three (3) or less lots, situated in a neighborhood where conditions are

well defined, the Council may exempt the sub divider from complying with some of the requirements of these regulations. In the case of a request to subdivide a lot which is a part of a recorded plat, or where the subdivision is to permit the adding of a parcel of land to an abutting lot or to create not more than three (3) new lots, and the newly created property lines will not cause any resulting lot to be in violation of these regulations or the Zoning Chapter, the division may be approved by the Council, after submission of a survey by a registered land surveyor showing the original lot and the proposed subdivision.

A. Resubdivision. In the case of a request to divide a lot which is a part of a recorded plat where the division is to permit the adding of a parcel of land to an abutting lot or to create two lots and the newly created property line will not cause the other remaining portion of the lot to be in violation with these regulations or the Zoning Chapter, the division may be approved by the Council after a submission of a survey by a registered land surveyor showing the original lot and the proposed subdivision. In the case of a request to divide a lot which is part of a previous minor subdivision approved after the effective date of this Chapter, such a request shall be processed as a major subdivision.

B. Land Division. In any case where the division of land into two or more lots or parcels for the purpose of transfer of ownership or building improvement is not specifically provided for in the provision of these regulations, a description of such land division shall be filed with the City Clerk. No building permit shall be issued for any construction, enlargement, alteration, or repair, demolition or moving of any building or structure on any lot or parcel resulting from such division, until such division has been approved by the Council. Prior to the consideration of such division by the Council, it shall require that a certified survey be submitted.

C. Unplatted Land. On application of the owner filed with the City Clerk, the Council by resolution may approve a conveyance by metes and bounds if it is determined that the following conditions exist:

    1) That the restriction against such conveyance will create an unnecessary hardship.

    2) That such conveyance will not interfere with the purposes of these subdivision regulations.

    3) That the dedication of public utility or street easements is not involved.

    4) That such conveyance involves the division of a parcel into not more than three separate parcels.

5) That the new and residual parcels of land which would result from the conveyance meet the frontage and area requirements of the Zoning Chapter. Prior to formal application, general development plans and preliminary and final plat, if required, shall be reviewed by the staff for submission of a written recommendation thereon to the Council.

D. The staff shall submit its findings and recommendations to the Council concerning the proposed minor subdivision, and if platted, the Council shall hold a public hearing thereon after notice of the date, time, place and purpose thereof has been published once in the official newspaper at least ten (10) days before the date of the hearing.

E. Minor subdivisions do not require review by the Planning Commission nor do they require platting. The staff shall initially determine and recommend to the Council the extent to which a minor subdivision shall be subject to the requirements of this Chapter.

F. The Council reserves the right to require the provision of utility, drainage, and street easements on certificate of survey in regards to the approval of a minor or resubdivision proposal.

**Subd. 4. Vacation of a Plat or Subdivision.**

A. Any plat or any part of a plat may be vacated by the owner of the property, before the sale of any lot therein, by a written instrument, with a copy of the plat attached, declaring the same to be vacated. Such vacation shall require the approval of the Council in the same manner as for plats of subdivisions. The Council may reject any such instrument which abridges or destroys any public rights in any of its streets or alleys. Such an instrument shall be approved and recorded in the same manner as plats or subdivisions. After being recorded, such instrument shall nullify the recording of the plat so vacated and divest all public rights in the streets, alleys and public grounds, and all dedications laid out or described in such plat.

B. When lots have been sold, the plat may be vacated as stated in Subparagraph A above, provided that all the owners of lots in such plat join in the execution of such instrument.

C. Platted areas may be replatted, provided that they follow the provisions of this Chapter.

***SECTIONS 12.11 THROUGH 12.19, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 12.20. DATA FOR PRELIMINARY PLAT.***

**Subd. 1. Identification and Description.**

A. Proposed name of subdivision, which shall not duplicate or be similar in pronunciation or spelling to the name of any plat heretofore recorded in the County.

B. Location by section, township, range, and by legal description.

C. Name of municipality.

D. Names and addresses of the record owner, sub divider, land surveyor, engineer, designer of the plan, and any agent having control of the land.

E. Graphic scale not less than one (1) inch to fifty (50) feet.

F. North arrow.

G. Key map including area within one (1) mile radius of plat.

H. Date of preparation.

I. A current Abstract of Title or a Registered Property Certificate along with any unrecorded documents.

**Subd. 2. Existing Conditions**.

A. Boundary lines of proposed subdivision, clearly labeled.

B. Existing zoning classifications for land within and abutting the subdivision.

C. A general statement of the approximate acreage and dimensions of the lots.

D. Location, right-of-way width, and names of existing or platted streets, or other public ways, parks, and other public lands, permanent buildings and structures, easements and section and corporate lines within the proposed subdivision and to a distance one hundred fifty (150) feet beyond.

E. Boundary lines of adjoining platted or subdivided land, within one hundred fifty (150) feet, identified by name and ownership including all contiguous land owned or controlled by the sub divider.

F. Topographic data, including contours at vertical intervals of at least two (2) feet. Water courses, marshes, rock outcrops, power transmission poles and lines, and other significant features shall also be shown. United States Geographic Survey data shall be used for all topographic mapping where feasible.

G. An accurate written soil report of the proposed subdivision indicating soil conditions, properties, permeability and slope, recommended street and foundation design, recommended basement (lowest floor) elevation, and long term water table contours acceptable to the City.

H. Utilities on or adjacent to the property, including location, size and invert elevation of public sanitary and storm sewers; location and size of water mains; location of gas lines, and street lights. The direction and distance to, and size of, such facilities shall be indicated, showing invert elevation of sanitary and storm sewers, including catch basins, manholes and hydrants. Such data may be that available from City plans, and the source thereof so noted, unless such utilities are located on the subject property. In all instances, they shall be field checked as far as practicable.

**Subd. 3. Subdivision Design Features**.

A. Layout of proposed streets showing the right-of-way widths, centerline gradients and typical cross sections. Street names shall be assigned or approved by the City.

B. Location and width of proposed pedestrian ways and utility easements.

C. Lot sizes, layout, numbers and preliminary dimensions of lots and blocks.

D. Minimum front and side street building setback lines.

E. When side lot lines are not parallel, the width of the lot shall be measured at the building setback line. The setback distance may be increased until the minimum width can be attained on this setback line, at the discretion of the City. In no case can this adjusted setback distance be less than the required minimum. Such lots with adjusted setback distances should be noted on the preliminary plat.

F. Areas other than streets, pedestrian ways and utility easements, intended to be dedicated or reserved for public use, including the size of such area or areas in acres.

G. Location, size and approximate gradient of proposed public sewer lines and water mains.

H. If the preliminary plat is a rearrangement or a re-plat of any recorded plat, the lot and block arrangement of the original plat, its original name, and all revised or vacated rights-of-way and easements shall be shown by dotted or dashed lines.

**Subd. 4. Other Information**. All or any part of the following information shall be provided at the request of the City:

A. Statement of the proposed use of lots stating type of buildings with number of proposed dwelling units or type of business or industry, or combination thereof, so as to reveal the effect of the proposed development on traffic, fire hazards, and density of population.

B. Proposed protective covenants, if any.

C. A drainage plan for the area indicating the direction and rate of natural storm water runoff and those unaltered areas where storm water collects. A proposed drainage plan for the developed site indicating the direction and rate of runoff and those areas where storm water will collect shall also be included.

D. A proposed finished grading plan shown at contour intervals appropriate to the topography or spot elevations clearly indicating the relationship of proposed changes to existing topography and remaining features.

   1) Showing proposed first floor and garage floor elevations. Garage floor elevations to be set 18 inches above street elevation in residential zoning areas.

   2) Showing the type of house.

E. If any zoning changes are contemplated, the proposed zoning plans for the areas.

F. Where the sub divider owns property adjacent to that which is being proposed for the subdivision, the Planning Commission shall require that the sub divider submit a general development plan of such remaining property so as to depict the possible relationships between the proposed subdivision and the future subdivision. This plan shall address the overall land use, major street patterns, utility easement configurations, and general lot layouts.

G. A plan for soil erosion and sediment control both during construction and after development has been completed. The plan shall include a timing schedule and sequence of operation indicating the anticipated starting and completion dates of the particular development sequence and the estimated time of exposure of each area prior to completion of effective erosion and sediment control measures. Gradients of waterways design of velocity and erosion control measures, and landscaping of the erosion and sediment control system shall also be shown.

H. A vegetation preservation and protection plan to provide stabilization of erosion of sediment-producing areas by covering soils with:

1) Permanent seeding or sodding, producing areas covered with a turf of perennial sod-forming grass;

2) Short-term seeding, producing temporary vegetative cover such as annual grasses, grains or other temporary ground cover;

3) Mulching, by the application of plants or other suitable material on newly seeded surface to conserve moisture, hold soil in place and aid in establishing plant cover.

4) The plan shall indicate existing vegetative cover including marsh lands, grasses, and shrubbery trees. Trees to be removed for streets, drives, buildings, drainage or other purposes shall be identified.

I. Any variances required shall be shown on the preliminary plat.

J. Source of water supply.

K. Facilities for sanitary sewage disposal.

L. Proposals for street lighting curb and gutters, sidewalks, and boulevard improvements.

M. Such other information as may be requested by the City Clerk.

N. With the approval of the City Clerk, unnecessary data requirements can be waived.

***SECTIONS 12.21 THROUGH 12.29, INCLUSIVE, RESERVED FOR FUTURE EXPANSION***.

***SECTION 12.30. DATA FOR FINAL PLAT***.

**Subd. 1. General**.

A. The final plat shall be prepared by a land surveyor who is registered in the State of Minnesota and shall comply with the requirements of this Chapter and all provisions of the Minnesota Statutes regarding the platting of land.

B. Execution by all owners of any interest in the land to be subdivided and any holders of a mortgage therein of deeds or easements for any area to be conveyed for public use and any covenants or association documents in such form as shall be approved by the City Attorney.

C. For guidance, the applicant's surveyor may refer to the Plat Manual of Minimum Guidelines, Minnesota Land Surveyors Association.

**Subd. 2. Certifications.**

A. Form for approval by signature of County officials concerned with the recording of the plat:

Checked and approved as to compliance with Chapter 505, Minnesota Statutes.

Dated this ___ day of _____ , 20__.

By_____
(Name)

County Surveyor (or)
Registered Land Surveyor No._____

Recommended for approval this ___ day of _____ , 20__.

By_____
County Highway Engineer

COUNTY AUDITOR, _____

I hereby certify that there are no delinquent taxes for all years prior to _____ for land described on this plat and transfer entered. Dated this ____ day of _____,20__

By_____
County Auditor

COUNTY RECORDER, _____

I hereby certify that this plat of _____ was filed this ___ day of _____ 20 at ___ o'clock .__M. as Document No. _____

By_____
County Recorder

Form for approval of the City:

Approved and accepted by the City Council of the City of Lexington, Minnesota, at a regular meeting thereof held this ___ day of _____, 20___.

Signed By_____
Mayor

Attest: By_____
City Clerk

***SECTIONS 12.31 THROUGH 12.39, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 12.40. SUBDIVISION DESIGN STANDARDS.***

**Subd. 1. General Requirements.**

A. The proposed subdivision shall conform to the Comprehensive Plan and Zoning Chapter.

B. The arrangement, character, extent, width and location of all streets shall be considered in their relation to existing and planned streets, to reasonable circulation of traffic, to topographic conditions, to runoff of storm water, to public convenience and safety, and in their appropriate relation to the proposed uses of land to be served by such streets. The arrangements of streets in new subdivisions shall provide for the continuation of existing streets in adjoining areas unless otherwise authorized by the City. Where adjoining unsubdivided in the future, the arrangement of streets in a new subdivision shall make provision for the proper projection of streets into adjoining areas by carrying the new streets to the boundaries of the new subdivision at appropriate locations; temporary easements for vehicular movement shall be provided until the adjoining areas are developed.

**Subd. 2. Streets.**

A. Widths. Street right-of-way widths shall be as determined in the Comprehensive Plan and official map, if adopted, and, where applicable, shall conform to County and State standards for trunk highways. If there are no such plans or standards, right-of-way widths shall not be less than the following:

| Street Classifications | Right-of-Way Widths |
|---|---|
| Local Street | 50 Ft. |
| Cul-de-sac Turnaround Radius | 60 Ft. |

B. Street Intersections. In so far as practical, streets shall intersect at right angles. In no case shall the angle formed by the intersection of two streets be less than sixty (60) degrees. Intersections having more than four corners shall be prohibited.

C. Deflections. When connecting street lines deflect from each other at one point by more than ten (10) degrees they shall be connected by a curve with a radius adequate to ensure a sight distance within the right-of-way of not less than one hundred (100) feet for all local streets.

D. Turning Radius. Proper design should consider required turning radius of vehicles for access points or entrances to and from a highway using standards adopted by the Minnesota Department of Transportation.

E. Grades. All centerline gradients shall be at least five-tenths percent (0.5%) and shall not exceed eight percent (8%) for all local streets.

F. Horizontal Curves. As recommended by the City Engineer for specific site conditions.

G. Vertical Curves. Different connecting street gradients shall be connected with vertical curves. Minimum length, in feet, of said vertical curves shall be 20 times the algebraic difference in the percentage of grade of the two adjacent slopes.

H. Offset Intersections. Streets shall have a centerline offset of not less than 150 feet.

I. Local Streets. Streets shall be so aligned that their use by through traffic will be discouraged.

J. Access to Arterial Streets. Where a proposed subdivision is adjacent to a limited access highway or arterial street, there shall be no direct vehicular or pedestrian access from individual lots to such highways or streets. To accomplish that, control of access shall be dedicated to the City on the final plat. To the extent feasible access to arterial streets shall be at intervals of not less than one-fourth (1/4) mile and through existing and established crossroads. Access along collector streets will be restricted and controlled on the final plat.

K. Half-Streets. Half-streets shall be prohibited except where it will be practical to require the dedication of the other half when the adjoining property is subdivided, in which case the dedication of a half-street may be permitted or required. The probable length of time elapsing before dedication of the remainder shall be a factor considered in making this determination.

L. Private Streets or Driveways. Private streets may be allowed when not more than three (3) lots are served. All private streets shall be built to the proper right-of-way width and to City standards but no public improvements shall be approved.

**Subd. 3. Alleys**. Alleys are prohibited in the City except for fire lanes which are required or permitted in commercial and industrial developments.

**Subd. 4. Blocks**. The length, width and acreage of blocks shall be sufficient to provide convenient and safe access, circulation, control and street design. Blocks may not be longer than one thousand eight hundred (1,800) feet, or shorter than three hundred (300) feet except where topography of surrounding development limits ability to strictly comply or as specifically recommended by City staff and concurred with by the Council to foster innovative design consistent with sound planning principles. Pedestrian ways may be required on blocks longer than nine hundred (900) feet or in other areas to provide access to schools, parks and other destination points. Pedestrian ways shall be at least ten (10) feet wide and shall be located so as to minimize intersections with streets.

**Subd. 5. Lots**.

A. Location. All lots shall abut for their full required minimum frontage on a publicly dedicated street as specified by the Zoning Chapter.

B. Size. Lot dimensions shall comply with minimum lot area and other dimensional requirements specified in the Zoning Chapter.

C. Size Lot Lines. Side lines of lots shall be substantially at right angles to straight street lines or substantially radial to curved street lines.

D. Drainage. Lots shall be graded so as to provide drainage away from building locations.

E. Natural Amenities. Lots shall be placed to preserve and protect natural amenities, such as vegetation, wetlands, steep slopes, water courses and historic areas.

F. Lot Remnants. Lot remnants are prohibited. All land within a plat shall be included in a usable building lot, outlot, or dedicated open space.

G. Hardship to Owners of Adjoining Property. Street arrangements for the proposed subdivision shall not cause undue hardship to owners of adjoining property in subdividing their own land and providing convenient access to it.

H. Dedication. All proposed streets shown on the plat shall be in conformity with the Comprehensive Plan and County Comprehensive plans and shall be offered for dedication as public streets.

I. Double Frontage Lots Double frontage lots with frontage on two (2) parallel streets or reverse frontage shall not be permitted except where lots back on an arterial or collector street. Such lots shall have an additional depth of at least ten (10) feet to accommodate vegetative screening along the back lot line.

J. Solar Orientation. Lot layouts should take into consideration the potential use of passive and/or active solar energy design features.

**Subd. 6. Tree Removal and Conservation of Vegetation**. All subdivisions shall be planned, designed, constructed and maintained consistent with the following:

A. Existing healthy trees and native vegetation on the site shall be preserved to the maximum extent feasible and shall be protected by adequate means during construction.

B. Where inadequate vegetation exists on land not being disturbed for development, permanent vegetation shall be established as soon as possible.

C. Unless already on the site following construction, vegetation suitable to the site shall be planted. The type or species of trees planted shall be approved by the City. Trees with root structures that are less likely to interfere with utility lines or sidewalks, or cause other nuisance damage are preferable. Trees shall have a trunk diameter (measured twelve (12) inches above ground level) of not less than two (2) inches, and shall be planted in not less than one (1) cubic yard of good growing soil with a suitable amount of fertilizer. Approved multiple varieties shall be used alternately. Trees shall be planted at intervals of at least one per lot.

D. Consistent with approved grading plans, existing trees shall be preserved within any right-of-way when such trees are suitably located and in good health.

E. No damaged or dead trees or uprooted stumps shall remain after development.

F. The detailed requirements for each plat shall be set forth in a development contract.

**Subd. 7. Erosion and Sedimentation Control.** In addition to the following requirements, all site grading or land disturbance shall be consistent with the

Minnesota Pollution Control Agency's "Protecting Water Quality in Urban Areas," as amended, and the provisions of Chapter 13 of the City Code:

**Subd. 8. Storm Water Management**. In addition to the following requirements, storm water management facilities will be consistent with the provisions of Chapter 13 of the City Code.

A. Proposed drainage facilities shall have adequate capacity to accommodate potential runoff from their entire upstream drainage area, whether within or without the subdivision. The effect of the subdivision on existing downstream drainage areas outside the subdivision shall be considered in evaluating the adequacy of the storm water management plan.

B. Storm water runoff shall be discharged to marsh lands, swamps, detention basins or other treatment facilities in a manner consistent with the Rice Creek Watershed requirements.

C. No existing ditch, stream, drain or drainage canal shall be deepened, widened, rerouted or filled without review and approval by the City.

D. Quality of storm water runoff and water infiltrated to the water table shall remain undisturbed, to the maximum extent feasible by development of the subdivision.

E. The drainage system shall be constructed and operational as part of the first stage of development and construction.

**Subd. 9. Minimum Design Features.** The design features set forth in this Chapter are minimum requirements. The City may impose additional or more stringent requirements concerning lot size, streets and overall design as deemed appropriate considering the property being subdivided.

***SECTIONS 12.41 THROUGH 12.49, INCLUSIVE, RESERVED FOR FUTURE EXPANSION***.

***SECTION 12.50. EASEMENTS***. All easements shall be dedicated by appropriate language on the final plat in accordance with the following:

**Subd. 1. Utilities**. Easements at least ten (10) feet wide (generally 5' along both sides of property line) shall be provided for utilities where necessary; if appropriate, easements of lesser width may be allowed by the City. All utility easements shall have continuity of alignment from block to block.

**Subd. 2. Drainage**. Easements shall be provided along each side of the centerline of any water course or drainage channel, whether or not shown in the Comprehensive Plan, to a width sufficient to provide proper maintenance and

protection and to provide for storm water runoff from a five (5) year storm. Where necessary, drainage easements corresponding to lot lines shall be provided. Such easements for drainage purposes shall not be less than twenty (20) feet in width.

***SECTION 12.51. DEDICATION OF LAND OR CONTRIBUTION IN CASH FOR PUBLIC PURPOSES***. In every plat, replat, or subdivision of land to be developed for residential, commercial, industrial or other uses, or as a planned unit development which includes residential, commercial and industrial uses, or any combination thereof, as a general rule, it is reasonable to require than an amount of land be set aside and dedicated or preserved by the owner(s) for public use as streets, roads, or easements for sewers, electric, gas, water facilities, storm water drainage and holding areas or ponds and similar utilities and improvements.

**Subd. 1. Land Size**. In addition, the City may require than an amount of land, in a location and configuration selected by the City, equal in value to eight percent (8%) of the gross acreage of the undeveloped land proposed to be subdivided shall be set aside and dedicated by the tract owner or owners to the general public for use as trails, pathways, parks, playgrounds, or public open space, or, at the option of the City, the tract owner or owners shall contribute to the City an amount of cash equal to the fair market value of the undeveloped land otherwise required to be so set aside and dedicated, or set aside and dedicate a part of such land and contribute the balance of such undeveloped land value in cash. Any monies so paid to the City shall be placed in a special fund and used only for the acquisition of land for parks, playgrounds, public open space; development of existing parks and playground sites, public open space; and debt retirement in connection with land previously acquired for such public purposes.

**Subd. 2. Fair Market Value**. For purposes of this Chapter. “fair market value of the undeveloped land” is defined as the fair market value of the land within such plat, replat, or subdivision as of the date of the plat, replat, or subdivision is presented to the Council for approval of the final plat, as determined by the City Assessor in the same manner as he determines the fair market value of land for tax purposes.

**Subd. 3. Suitability**. Land to be dedicated shall be reasonably suitable for its intended use and shall be at a location convenient to the people to be served. Factors used in evaluating the adequacy of proposed park and recreation areas shall include size, shape, topography, geology, hydrology, tree cover, access and location.

**Subd. 4. Usage**. Land area conveyed or dedicated to the City may be used in calculating density requirements of the Zoning Chapter.

**Subd. 5. Private Open Space**. Where private open space for park and recreation purposes is provided in a proposed subdivision, such areas may not be

used for credit against the requirement of dedication for park and recreation purposes.

**Subd. 6. Protected Uses**. Wetlands, ponding areas and drainage ways accepted by the City shall not be considered in the park land and/or cash contribution to the City.

***SECTION 12.52. MAINTENANCE OF COMMON OPEN SPACE; OPERATING AND MAINTENANCE***. Where certain land areas or structures are provided within the subdivision for private recreational use or as common service facilities, the owner of such land and buildings shall enter into an agreement with the City to assure their continued operation and maintenance to a predetermined reasonable standard. These common areas may be placed under the ownership of one of the following, depending upon which is more appropriate in the discretion of the City:

A. Public. Dedicated to the public where a community-wide use would be anticipated; or

B. Ownership. Sub divider's ownership and control; or

C. Homeowners Association. Landowner's (Homeowners) Association ownership and control provided all of the following conditions are met:

1) The Landowners (Homeowners) Association established prior to the sale of any lot.

2) Membership must be mandatory for each owner and any successor in interest.

3) The open space restriction must be in perpetuity and not for a specified term of years.

4) The Association must be responsible for liability insurance, local taxes, and the maintenance of residential and other facilities.

5) Landowners (Homeowners) must pay their pro rata share of associated costs and the assessment levied by the Association shall become a lien on the property in accordance with the law.

6) The Association must be able to adjust the assessment to meet changed circumstances and needs.

***SECTION 12.53. IMPROVEMENTS REQUIRED.***

**Subd. 1. Improvements Listed and Described.** Public improvements shall be made in every plat and the sub divider shall have agreed in the manner set forth below to the following improvements and those additional improvements required by the resolution granting approval of the preliminary plat.

A. Survey Monuments. All subdivision boundary corners, block and lot corners, road intersection corners and points of tangency and curvature shall be marked with durable iron or steel monuments meeting the minimum requirements of State law. Permanent monuments shall be placed at all quarter-quarter section points within the subdivision plat or on its perimeter. At all sections, quarter sections, meander or witness corners of the government survey within the subdivision on its perimeter or otherwise shown on the face of the plat, an Anoka County cast iron monument shall be placed and a “Certificate of Location of a Government Corner” shall be filed with the office of the County Recorder. The notation “Anoka County Monument” shall be placed on the face of the plat by each monument so shown. In addition, an “Anoka County Monument” shall be placed and a Certificate filed for each government survey corner necessary to survey the boundaries of the plat if such monument has not already been set and a certificate filed. All U.S., State, County, and other official benchmark monuments or triangulation station in or adjacent to the property shall be preserved in position unless a relocation is approved by the controlling agency The Council may, when a subdivision is essentially complete, require a development to have the plat restaked to replace the original monuments destroyed or obliterated during the construction process.

B. Streets. The full width of the cartway of each street shall have an adequate sub-base and shall be improved with an all-weather permanent surface in accordance with the design standards specified by the City.

C. Paving. All streets shall be improved with a concrete or bituminous surface. Streets to be paved shall be surfaced in conformance with the design requirements of the City.

D. Concrete Curb and Gutter. Concrete curb and gutter may be required for all streets.

E. Sidewalks and Pedestrian Ways and Trails. Sidewalks may be required along one or both sides of all streets.

F. Water Supply. Service connections shall be stubbed into the property line and all necessary fire hydrants shall also be provided. Extensions of the public water supply systems shall be designed so as to provide public water service to each lot and shall be in accordance with all applicable City design standards and requirements.

G. Street Lighting. Street lighting of a type approved by the City shall be required at all intersections and other locations within the subdivision.

H. Sewage Disposal. Sanitary sewer main and service connections shall be approved by the City Engineer and installed to serve all the lots in the subdivision and shall be connected to the public sewage system.

I. Drainage. A system that will adequately accommodate the surface water runoff within the subdivision, as required by this Chapter, shall be provided.

J. Street Identification Signs. Street signs of standard design approved by the City Engineer shall be installed at each street intersection.

K. Public Utility Lines. All utility lines for telephone and electrical service shall be placed underground or where appropriate, shall be placed in rear lot line easements when carried on overhead poles.

L. Public Gas Lines. Natural gas lines shall be installed to each individual lot.

**Subd. 2. Responsibility for Improvements; Financial Arrangements**. Prior to the approval of a final plat by the Council, the sub divider shall have agreed, in the manner set forth herein to install, in conformity with approved construction plans and in conformity with all applicable standards and City Code provisions, the required improvements.

A. Payment for Installation of Improvements. The improvements as required under Subdivision 1 of this Section are to be furnished and installed at the sole expense of the sub divider. However, if any improvement installed within the subdivision will be of substantial benefit to lands beyond the boundaries of the subdivision, provision may be made for causing a portion of the cost of the improvement, representing the benefit to such lands, to be assessed against the same. In such a situation, the sub divider will pay only for such portion of the whole cost of said improvements as will represent the benefit to the property within the subdivision.

B. Developer’s Agreement Providing for Installation of Improvements. Prior to the installation of any improvements and prior to approval of the final plat, the sub divider shall enter into a developer’s agreement in writing with the City requiring the sub divider to furnish and construct said improvements at his sold cost and in accordance with plans and specifications and usual contract conditions. This shall include provision for inspection of details of construction by the City Engineer, and shall grant to the City Engineer authority to correlate the work to be done under said contract by any subcontractor authorized to proceed there under and with any other work being done or contracted by the City in the vicinity. The agreement shall require the sub divider to make an escrow deposit, or, in lieu thereof, to furnish a

performance bond, or letter of credit, the amount of the deposit or penal amount of the bond or letter of credit to be equal to 125% of the City Engineer's estimate of the total cost of the improvements to be furnished under the developer's agreement.

C. Construction Plans and Inspection. Construction plans for the required improvements conforming in all respects with City standards and City Code provisions shall be prepared at the sub divider's expense by a professional engineer who is registered in the State of Minnesota, and said plans shall contain his certificate. Such plans together with the quantities of construction items together with his estimate of total costs shall be submitted to the City Engineer for his approval and for the City Engineer's estimate of the total costs of the required improvement. Upon approval, such plans shall become a part of the required developer's agreement. The tracings of the plans approved by the City Engineer plus two (2) prints shall be furnished to the City to be filed as a public record.

1) At the developer's option and with the approval of the Council, the developer may contract with the City for plans and specifications to be prepared by the City Engineer for all public improvements. Prior to the beginning of the City Engineer's work, the developer shall pay to the City an amount to be escrowed, equal to the estimated cost of such engineering services.

2) All required improvements on the site that are to be installed under the provisions of this regulation shall be inspected during the course of construction by the City Engineer at the sub divider's expense, and acceptance by the City shall be subject to the City Engineer's certificate of compliance with the developer's agreement. A cash escrow account to pay for the cost of inspection and engineering services during the construction of improvement is described in Section 12.10 of this Chapter.

D. Alternate Installation and Incomplete Improvements. The Council may elect to install any or all of the required improvements pursuant to a cash escrow agreement or other financial arrangements with the sub divider. Such improvements shall be as provided for in Minnesota Statutes 429.

1) On request of the sub divider, the developer's agreement may provide for completion of part or all of the improvements covered thereby prior to acceptance of the plat. In such event the amount of the deposit, bond or letter of credit may be reduced in a sum equal to the estimated cost of the improvements so completed prior to the acceptance of the plat. The time for completion of the work and the several parts thereof shall be determined by the Council upon recommendation of the City Engineer after consultation with the sub divider. It shall be reasonable with relation

to the work to be done, the seasons of the year, and proper correlation with construction activities in the plat and subdivision.

2) No sub divider shall be permitted to start work on any other subdivision without special approval of the Council if he has previously defaulted on work or commitments.

E. Financial Guarantee. The developer's agreement provided for in Subparagraph B of this Subdivision shall require the sub divider to make an escrow deposit or, in lieu thereof, furnish a performance bond or letter of credit. The escrow deposit, performance bond or letter of credit shall conform to the requirements of this regulation.

1) Escrow Deposit. An escrow deposit shall be made with the City Clerk in a sum equal to 125% of the total cost as estimated by the engineer of all the improvements to be furnished and installed by the sub divider pursuant to the developer's agreement, which have not been completed prior to approval of the plat. The City shall be entitled to reimburse itself out of said deposit for any cost and expense incurred by the City for completion of the work in case of default of the sub divider under said developer's agreement, and for any damages sustained on account of any breach thereof. Upon completion of the work and termination of any liability, the balance remaining in said deposit shall be refunded to the sub divider.

2) Performance Bond or Letter of Credit. In lieu of making the escrow deposit, the sub divider may furnish a performance bond with corporate surety, or a letter of credit, in a penal sum equal to 125% of the total cost as estimated by the City Engineer of all the improvements to be furnished and installed by the sub divider pursuant to the developer's agreement, which have not been completed prior to the approval of the plat. The bond shall be approved as to form by the City Attorney and filed with the City Clerk.

***SECTIONS 12.54 THROUGH 12.59, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 12.60. VARIANCES***. All requests for variances from the provisions of this Chapter shall be made and decided in the following manner:

**Subd. 1. Filing**. The sub divider shall file a request in writing for a variance with the City Clerk, together with the required fee.

**Subd. 2. Variance Request.** The City Clerk shall refer the variance request to the Planning Commission for public hearing held in the same manner as provided in Section 12.10, Subdivision 2, Subparagraph C, Item 4; said hearings may be held simultaneously. The Planning Commission shall submit its report and

recommendation to the Council. Said report shall specifically consider the findings set forth in this Section.

**Subd. 3. Council Decision**. The Council at its next regular meeting after receipt of such report and recommendation shall make its decision at the same or a specified future meeting thereof.

**Subd. 4. Granting of Variance**. The Council may grant a variance only upon finding that an unusual hardship exists, and specifically that:

A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, topography, or other circumstances over which the owners of the property, from the effective date of this Chapter, have had no control.

B. The literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Chapter.

C. That the special conditions or circumstances do not result from the actions of the applicant.

D. That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other owners of lands, structures or buildings within the same district.

E. That the variance requested is the minimum variance which would alleviate the hardship. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of this Chapter.

F. A variance would not be materially detrimental to the purposes of this Chapter, or to other property in the same zone.

G. The proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

***SECTIONS 12.61 THROUGH 12.69, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 12.70. RESTRICTIONS ON FILING AND RECORDING CONVEYANCES***.

**Subd. 1. Registered Land Survey**. Except as provided in Section 12.10, Subdivision 3, no conveyances of land shall be filed or recorded if the land is described in the conveyance by metes and bounds or by reference to an unapproved Registered Land Survey made after April 21, 1961, or to an unapproved plat. The foregoing provision does not apply to a conveyance if the land described:

A. Was a separate parcel of record April 1, 1945, or the date of adoption of subdivision regulations under Laws 1945, Chapter 287, whichever is the latter, or of the adoption of subdivision regulations pursuant to a home rule charter, or,

B. Was the subject of a written agreement to convey entered into prior to such time; or,

C. Was a separate parcel not less than two and one half (2-1/2) acres in area and 300 feet in width on July 1, 1980; or

D. Is a single parcel of commercial or industrial land of not less than five acres and having a width of not less than 300 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than five acres in area or 300 feet in width; or,

E. Is a single parcel of residential or agricultural land of not less than 20 acres and having a width of not less than 500 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than 20 acres in area or 500 feet in width.

**Subd. 2. Unnecessary Hardship**. In any cases in which compliance with the foregoing restrictions will create an unnecessary hardship and failure to comply does not interfere with the purpose of these subdivision regulations the Council may waive such compliance by adoption of a resolution to that effect and the conveyance may then be filed or recorded.

**Subd. 3. Forfeiture.** Any owner or agent of the owner of land who conveys a lot or a parcel in violation of the provisions of this Section shall forfeit and pay to the City a penalty of not less than $100.00 for each parcel so conveyed. The City may enjoin such conveyance or may recover such penalty by civil action in any court of competent jurisdiction.

***SECTION 12.71. REGISTERED LAND SURVEYS***. All registered land surveys in the City shall be presented to the City Clerk in the form of a preliminary plat in accordance with the standard set forth in this Chapter. Tracts to be used as easements or roads shall be designated thereon. As to the registered land surveys containing four or fewer tracts, and Council approval of the arrangement, size and relationship of the proposed tracts, in accordance with standards and procedures for review of administrative subdivisions as heretofore described shall be required. As to

registered land surveys containing more than four tracts, the Planning Commission and Council approval of the arrangement, size and relationship of the proposed tracts, in accordance with standards and procedures for review and of standard subdivisions as heretofore described, shall be required. Absent such required approvals, as herein required, building permits on the proposed tracts shall be withheld, tracts conveyed to the City for streets or roads shall not be accepted and no public monies shall be expended for the installation of utilities or improvements for any such tracts.

***SECTION 12.72. BUILDING PERMITS***. No building permits will be issued by the City for the construction of any building, structure or improvement to the land or any lot in the subdivision, as defined herein, which has been approved for platting until there has been full compliance with all the provisions of this Chapter.

***SECTION 12.73. VIOLATION***. The City may withhold, revoke or deny any permits, approvals or any action required or if there is a violation of this Chapter. Each week during which violation exists shall constitute a separate violation. The City or any person or agency who suffers damage, or is likely to suffer damage, because of a violation of this Chapter may apply to the District Court for injunctive relief.

***SECTIONS 12.74 THROUGH 12.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION***.

***SECTION 12.99. VIOLATION A MISDEMEANOR***. Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

# CHAPTER 13

## STORM WATER MANAGEMENT REGULATIONS

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# CHAPTER 13

# STORM WATER MANAGEMENT REGULATIONS

***SECTION 13.01. PURPOSE AND INTENT.*** This chapter is adopted for the following purposes:

A. To promote a more efficient and desirable utilization of land by recognizing special land features, such as topography, soils, vegetation, wetland areas, and wildlife;

B. Conserving and developing natural resources and maintaining a high standard of environmental quality;

C. Minimizing pollution of all types.

***SECTION 13.02. DEFINITIONS***. The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

A. **"Applicant"** - The owner of land proposed to be subdivided or rezoned, or his/her legal representative.

B. **"Best Management Practice or BMP"** - Erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.

C. **"Control Measure"** - A practice or combination of practices to control erosion and attendant pollution.

D. **"Detention Facility"** - A permanent natural or man-made structure, including wetlands, for the temporary storage of runoff which contains a permanent pool of water.

E. **"Discharge"** - Adding, introducing, releasing, leaking, spilling, casting, throwing, or emitting any pollutant, or placing any pollutant in a location where it is likely to pollute public waters.

F. **"Erosion"** - The process by which ground surface is worn away by action of wind, water, ice, or gravity.

G. **"Flood Fringe"** - The portion of the floodplain outside the floodway.

H. **"Flood Plain"** - The land adjacent to a body of water which has been or may be hereafter covered by flood water, including that land covered by the regional flood.

I. **"Floodway"** - The minimum channel of a watercourse and those portions of the floodplain adjoining the channel that is reasonably required to discharge the regional flood.

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

K. **"Hydric Soils"** - Soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

L. **"Hydrophytic Vegetation"** - Macrophytic plant life growing in water, soil or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

M. **"Illicit Connection"** - Either of the following:

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

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

N. **"Illicit Discharge"** - Any direct or indirect nonstormwater discharge to the storm sewer system, except as exempted herein in section 51.24(B).

O. **"Land Disturbing or Development Activities"** - Any change of the land surface including removing vegetative cover, excavating, filling, grading, and the construction of any structure.

P. **"MPCA"** - The Minnesota Pollution Control Agency.

Q. **"Municipal Separate Storm Sewer System or MS4"** - The system of conveyances (including sidewalks, roads with drainage systems, municipal

streets, catchbasins, curbs, gutters, ditches, manmade channels, or storm drains) owned and operated by the city and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

R. **"NPDES"** - The National Pollutant Discharge Elimination System, which is the program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Section 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Section 1317, 1328, 1342, and 1345 authorizing the discharge of pollutants to water of the United States.

S. **"Person"** - Any individual, firm, corporation, partnership, franchisee, association or governmental entity.

T. **"Pollutant"** - Any substance which, when discharged has potential to or does any of the following:

1) Interferes with state designated water uses;

2) Obstructs or causes damage to public waters;

3) Changes water color, odor, or usability as a drinking water source through causes not attributable to natural stream processes affecting surface water or subsurface processes affecting groundwater;

4) Adds an unnatural surface film on the water;

5) Adversely changes other chemical, biological, thermal, or physical condition, in any surface water or stream channel;

6) Degrades the quality of ground water; or

7) Harms human life, aquatic life, or terrestrial plant and wildlife.

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

U. **"Pollute"** - To discharge pollutants into public waters.

V. **"Pollution"** - The direct or indirect distribution of pollutants into public waters.

W. **"Public Waters"** - Waters of the state, as defined in Minn. Stat. Sec. 103G. 005, Subd. 15.

X. **"Regional Flood"** - A flood that is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of a 100-year recurrence interval.

Y. **"Retention Facility"** - A permanent natural or man-made structure that provides for the storage of storm water runoff by means of a permanent pool of water.

Z. **"Sediment"** - Solid matter carried by water, sewage, or other liquids.

AA. **"State Designated Water Uses"** - Uses specified in state water quality standards.

BB. **"Structure"** - Anything constructed or erected, the use of which requires more or less permanent location on the ground or attachment to something having a permanent location on the ground. When a structure is divided into separate parts by an unpierced wall, each part shall be deemed a separate structure.

CC. **"Storm Sewer System"** - A conveyance or system of conveyances that is owned and operated by the city or other entity and designed or used for collecting or conveying stormwater.

DD. **"Stormwater"** - Defined under Minnesota Rule 7077.0105, subpart 41(b), and means precipitation runoff, stormwater runoff, snow melt runoff and any other surface runoff and drainage.

EE. **"Surface Waters"** - All public waters other than ground waters, which include ponds, lakes, rivers, streams, tidal and nontidal wetlands, public ditches, tax ditches, and public drainage systems except those designed and used to collect, convey, or dispose of sanitary sewage.

FF. **"Wetlands"** - Land which is annually subject to periodic or continuing inundation by water and commonly referred to as a bog, swamp, or marsh.

***SECTION 13.03. GENERAL PROVISIONS***.

**Subd. 1. Applicability.** Even applicant for a building permit, subdivision approval, or a permit to allow land disturbing activities must submit a storm water management plan to the City. No building permit, subdivision approval, or permit to allow land disturbing activities shall be issued until approval of the storm water management plan or a waiver of the approval requirement has been obtained in

strict conformance with the provisions of this ordinance. The provisions of section 13.40 of this ordinance apply to all land, public or private, located within the City of Lexington.

**Subd. 2. Exemptions**. The provisions of this ordinance do not apply to:

A. Any part of a subdivision if a plat for the subdivision has been approved by the City Council on or before the effective date of this ordinance;

B. Any land disturbing activity for which plans have been approved by the watershed management organization within six months prior to the effective date of this ordinance;

C. A lot for which a building permit has been approved on or before the effective date of this ordinance;

D. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles; or

E. Emergency work to protect life, limb, or property.

**Subd. 3. Waiver**. The City Council, upon recommendation of the Planning Commission, may waive any requirement of this ordinance upon making a finding that compliance with the requirement will involve an unnecessary hardship and the waiver of such requirement will not adversely affect the standards and requirements set forth in Section 13.10. The City Council may require as a condition of the waiver, such dedication or construction, or agreement to dedicate or construct as may be necessary to adequately meet said standards and requirements.

***SECTIONS 13.04 THROUGH 13.09, INCLUSIVE, RESERVED FOR FUTURE EXPANSION***.

***SECTION 13.10. STORM WATER MANAGEMENT PLAN APPROVAL PROCEDURES.***

**Subd. 1. Application.** A written application for storm water management plan approval, along with the proposed storm water management plan, shall be filed with the City and shall include a statement indicating the grounds upon which the approval is requested, that the proposed use is permitted by right or as an exception in the underlying zoning district, and adequate evidence showing that the proposed use ill conform to the standards set forth in this ordinance. Prior to applying for approval of a storm water management plan, an applicant may have the storm water management plans reviewed by the appropriate departments of the City.

A. Two sets of clearly legible blue or black lined copies of drawings and required information shall be submitted to the City and shall be accompanied by a

receipt evidencing the payment of all required fees for processing and approval as set forth in Section 13.20, and a bond when required by Section 13.20 in the amount to be calculated in accordance with that section. Drawings shall be prepared to a scale appropriate to the site of the project and suitable for the review to be performed. At a minimum the scale shall be 1 inch equals 100 feet.

**Subd. 2. Storm Water Management Plan**. At a minimum, the storm water management plan shall contain the following information.

A. Existing site map. A map of existing site conditions showing the site and immediately adjacent areas, including:

1) The name and address of the applicant, the section, township and range, north point, date and scale of drawing and number of sheets;

2) Location of the tract by an insert map at a scale sufficient to clearly identify the location of the property and giving such information as the names and numbers of adjoining roads, railroads, utilities, subdivisions, towns and districts or other landmarks;

3) Existing topography with a contour interval appropriate to the topography of the land but in no case having a contour interval greater than 2 feet;

4) A delineation of all streams, rivers, public waters and wetlands located on and immediately adjacent to the site, including depth of water, a description of all vegetation which may be found in the water, a statement of general water quality and any classification given to the water body or wetland by the Minnesota Department of Natural Resources, the Minnesota Pollution Control Agency, and/or the United States Army Corps of Engineers;

5) Location and dimensions of existing storm water drainage systems and natural drainage patterns on and immediately adjacent to the site delineating in which direction and at what rate storm water is conveyed from the site, identifying the receiving stream, river, public water, or wetland, and setting forth those areas of the unaltered site where storm water collects;

6) A description of the soils of the site, including a map indicating soil types of areas to be disturbed as well as a soil report containing information on the suitability of the soils for the type of development proposed and for the type of sewage disposal proposed and describing any remedial steps to be taken by the developer to render the soils suitable;

7) Vegetative cover and clearly delineating any vegetation proposed for removal; and

8) 100 year floodplains, flood fringes and floodways.

B. Site construction plan. A site construction plan including:

1) Locations and dimensions of all proposed land disturbing activities and any phasing of those activities;

2) Locations and dimensions of all temporary soil or dirt stockpiles;

3) Locations and dimensions of all constructions site erosion control measures necessary to meet the requirements of this ordinance;

4) Schedule of anticipated starting and completion date of each land disturbing activity including the installation of construction site erosion control measures needed to meet the requirements of this ordinance; and

5) Provisions for maintenance of the construction site erosion control measures during construction.

C. Plan of final site conditions. A plan of final site conditions on the same scale as the existing site map showing the site changes including:

1) Finished grading shown at contours at the same interval as provided above or as required to clearly indicate the relationship of proposed changes to existing topography and remaining features;

2) A landscape plan, drawn to an appropriate scale, including dimensions and distances and the location, type, size and description of all proposed landscape materials which will be added to the site as part of the development;

3) A drainage plan of the developed site delineating in which direction and at what rate storm water will be conveyed from the site and setting forth the areas of the site where storm water will be allowed to collect;

4) The proposed size, alignment and intended use of any structures to be erected on the site;

5) A clear delineation and tabulation of all areas which shall be paved or surfaced, including a description of the surfacing material to be used; and

6) Any other information pertinent to the particular project which in the opinion of the applicant is necessary for the review of the project.

***SECTIONS 13.11 THROUGH 13.19, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 13.20. PLAN REVIEW PROCEDURE***.

**Subd. 1. Process.** Storm water management plans meeting the requirements of Section 13.10 shall be submitted by the City to the Planning Commission for review in accordance with the standards of Section 13.30. The Commission shall recommend approval, recommend approval with conditions, or recommend denial of the storm water management plan. Following Planning Commission action, the storm water management plan shall be submitted to the City Council at its next available meeting. City Council action on the storm water management plan must be accomplished within 60-120 days following the date the application for approval is filed and accepted by the City.

**Subd. 2. Duration.** Approval of a plan submitted under the provisions of this ordinance shall expire one year after the date of approval unless construction has commenced in accordance with the plan. However, if prior to the expiration of the approval, the applicant makes a written request to the City for an extension of time to commence construction setting forth the reasons for the requested extension, the planning department may grant one extension of not greater than one single year. Receipt of any request for an extension shall be acknowledged by the City within 15 days. The City shall make a decision on the extension within 30 days of receipt. Any plan may be revised in the same manner as originally approved.

**Subd. 3. Conditions**. A storm water management plan may be approved subject to compliance with conditions reasonable and necessary to insure that the requirements contained in this ordinance are met. Such conditions may, among other matters, limit the size, kind or character of the proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, stage the work over time, require alteration of the site design to insure buffering, and require the conveyance to the City of Lexington or other public entity of certain lands or interests therein.

**Subd. 4. Performance Bond.** Prior to approval of any storm water management plan, the applicant shall submit an agreement to construct such required physical improvements, to dedicate property or easements, or to comply with such conditions as may have been agreed to. Such agreement shall be accompanied by a bond to cover the amount of the established cost of complying with the agreement. The agreement and bond shall guarantee completion and compliance with conditions within a specific time, which time may be extended in accordance with Section 13.20.

The adequacy, conditions and acceptability of any agreement and bond shall be determined by the Lexington City Council or any official of the City of Lexington as may be designated by resolution of the Lexington City Council.

**Subd. 5. Fees**. All applications for storm water management plan approval shall be accompanied by a processing fee established by the City.

***SECTIONS 13.21 THROUGH 13.29, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 13.30. APPROVAL STANDARDS.***

**Subd. 1. Approval Standards**. No storm water management plan which falls to meet the standards contained in this section shall be approved by the City Council.

**Subd. 2. Site Dewatering**. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, up flow chambers, hydro-cyclones, swirl concentrators or other appropriate controls as appropriate. Water may not be discharged in a manner that causes erosion or flooding of the site or receiving channels or a wetland.

**Subd. 3. Waste and Material Disposal**. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials or hazardous materials) shall be properly disposed of off-site and not allowed to be carried by runoff into a receiving channel or storm sewer system.

**Subd. 4. Tracking**. Each site shall have graveled roads, access drives and parking areas of sufficient width and length to prevent sediment from being tracked onto public or private roadways. Any sediment reaching a public or private road shall be removed by street cleaning (not flushing) before the end of each workday.

**Subd. 5. Drain Inlet Protection**. All storm drain inlets shall be protected during construction until control measures are in place with a straw bale, silt fence or equivalent barrier meeting accepted design criteria, standards and specifications contained in the MPCA publication “Protecting Water Quality in Urban Areas,” as amended.

**Subd. 6. Site Erosion Control**. Erosion and sedimentation control devices and techniques shall be consistent with the MPCA’s “Protecting Water Quality in Urban Areas,” as amended. The following criteria (a. through d.) apply only to construction activities that result in runoff leaving the site.

A. Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described below. Sheet flow runoff from adjacent areas greater

than 10,000 square feet in area shall also be diverted around disturbed areas, unless shown to have resultant runoff rates of less than 0.5 ft./sec. across the disturbed area for the one year storm. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels.

B. All activities on the site shall be conducted in a logical sequence to minimize the area of bare soil exposed at any one time.

C. Runoff from the entire disturbed area on the site shall be controlled by meeting either subsections land 2 or land 3.

1) All disturbed ground left inactive for fourteen or more days shall be stabilized by seeding or sodding (only available prior to September 15) or by mulching or covering or other equivalent control measure.

2) For sites with more than ten acres disturbed at one time, or if a channel originates in the disturbed area, one or more temporary or permanent sedimentation basins shall be constructed. Each sedimentation basin shall have a surface area of at least one percent of the area draining to the basin and at least three feet of depth and constructed in accordance with accepted design specifications. Sediment shall be removed to maintain a depth of three feet. The basin discharge rate shall also be sufficiently low as to not cause erosion along the discharge channel or the receiving water.

3) For sites with less than ten acres disturbed at one time, silt fences, straw bales, or equivalent control measures shall be placed along all side slope and down slope sides of the site. If a channel or area of concentrated runoff passes through the site, silt fences shall be placed along the channel edges to reduce sediment reaching the channel. The use of silt fences, straw bales, or equivalent control measures must include a maintenance and inspection schedule.

D. Any soil or dirt storage piles containing more than ten cubic yards of material should not be located with a down slope drainage length of less than 25 feet from the toe of the pile to a roadway or drainage channel. If remaining for more than seven days, they shall be stabilized by mulching, vegetative cover, tarps or other means. Erosion from piles which will be in existence for less than seven days shall be controlled by placing straw bales or silt fence barriers around the pile. In-street utility repair or construction soil or dirt storage piles located closer than 25 feet of a roadway or drainage channel must be covered with tarps or suitable alternative control, if exposed for more than seven days, and the storm drain inlets must be protected with straw bale or other appropriate filtering barriers.

E. Construction, inspection and testing. All land disturbing activities shall be subject to inspection by the city. Inspection of land disturbance operations and special testing shall be performed by the applicant as set forth in this chapter.

F. Inspector. The inspector acting on behalf of the applicant shall be a qualified person who shall demonstrate his competence, to the satisfaction of the city, for inspection of the particular type of land disturbing activity, testing procedure or operation requiring inspection.

Duties and responsibilities of the inspector.

1) The inspector shall observe the work assigned for conformance with the reviewed design drawings and specifications.

2) All discrepancies shall be brought to the immediate attention of the contractor for correction, then, if uncorrected, to the proper design authority and to the city.

3) The inspector shall submit inspection reports stating whether the work or test requiring inspection was in conformance with the reviewed plans and specifications. The inspection reports shall be furnished to the city and other designated persons as required in the approved land disturbance plan.

4) Periodic inspection. Some inspections may be made on a periodic basis and satisfy the requirements of continuous inspection, provided this periodic scheduled inspection is performed as outlined in the land disturbance plans and specifications and approved by the city.

G. Storm water pollution prevention plan items shall be inspected as required by this manual. At a minimum, these inspections shall be done weekly by the applicant and within 24 hours after every rainfall event 0.5 inches or greater in 24 hours. Inspection reports shall include , at a minimum, date and time of inspection, name of person conducting inspection, findings of inspection including any recommended corrective actions, corrective actions taken since previous inspection, and the date and amount of rainfall

**Subd. 7. Storm Water Management Criteria For Permanent Facilities.**

A. An applicant shall install or construct, on or for the proposed land disturbing or development activity, all storm water management facilities necessary to manage increased runoff so that the two-year, ten-year, and 100-year storm peak discharge rates existing before the proposed development shall not be increased and accelerated channel erosion will not occur as a result of the proposed land disturbing or development activity. An applicant may also

make an in-kind or monetary contribution to the development and maintenance of community storm water management facilities designed to serve multiple land disturbing and development activities undertaken by one or more persons, including the applicant.

B. The applicant shall give consideration to reducing the need for storm water management facilities by incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales and depressions as they exist before development to the degree that they can accommodate the additional flow of water without compromising the integrity or quality of the wetland or pond.

C. The following storm water management practices shall be investigated in developing a storm water management plan in the following descending order of preference:

1) Natural infiltration of precipitation on-site;

2) Flow attenuation by use of open vegetated swales and natural depressions;

3) Storm water retention facilities; and

4) Storm water detention facilities.

D. A combination of successive practices may be used to achieve the applicable minimum control requirements specified in subsection (A) above. Justification shall be provided by the applicant for the method selected.

**Subd. 8. Design Standards**. Storm water detention facilities constructed in the City of Lexington shall be designed according to the most current technology as reflected in the Environmental Protection Agency's "Nationwide Urban Runoff Program (NTJRP)" and the MPCA publication "Protecting Water Quality in Urban Areas," as amended, and shall contain, at a minimum, the following design factors:

A. A permanent pond surface area equal to two percent of the impervious area draining to the pond or one percent of the entire area draining to the pond, whichever amount is greater;

B. An average permanent pool depth of four to ten feet;

C. A permanent pool length-to-width ratio of 3:1 or greater;

D. A minimum protective shelf extending ten feet into the permanent pool with a slope of 10:1, beyond which slopes should not exceed 3:1;

E. A protective buffer strip of vegetation surrounding the permanent pool at a minimum width of one rod (16.5 feet);

F. All storm water detention facilities shall have a device to keep oil, grease, and other floatable material from moving downstream as a result of normal operations;

G. Storm water detention facilities for new development must be sufficient to limit peak flows in each subwatershed to those that existed before the development for the 10-year storm event. All calculations and hydrologic models/information used in determining peak flows shall be submitted along with the storm water management plan;

H. All storm water detention facilities must have a fore bay to remove coarse grained particles prior to discharge into a watercourse or storage basin.

I. Stormwater Management shall require the use of any combination of BMPs, with highest preference given to Green Infrastructure techniques and practices (e.g ., infiltration, evapotranspiration,reuse/harvesting , conservation design, urban forestry, green roofs, etc .), necessary to meet the following conditions on the site of a construction activity to the Maximum Extent Practicable (MEP).

For new development projects - no net increase from pre-project conditions (on an annual average basis) of:

- Stormwater discharge Volume
- Stormwater discharges of Total Suspended Solids (TSS)
- Stormwater discharges of Total Phosphorus (TP)

For redevelopment projects - a net reduction from pre-project conditions (on an annual average basis) of:

- Stormwater discharge Volume
- Stormwater discharges of TSS
- Stormwater discharges of TP

1) New Development Sites:

(a) Retain a runoff volume equal to one inch times the area of the proposed increase of impervious surfaces on-site.

(b) Design and construct stormwater management practices that manage rainfall on-site, and prevent the off-site discharge of the precipitation from the first one inch of runoff from the new impervious surfaces created by the project. Discharge volume reduction can be achieved by engineered

infiltration, canopy interception, soil amendments, evaporation, rainfall harvesting, and/or evapotranspiration and any combination of the aforementioned practices. This first one inch of rainfall must be 100% managed with no discharge to surface water.

(c) Where re-use of stormwater is implemented, such as use with an irrigation system, volumes captured shall be given equal credit toward the volume reduction requirement by the City . All re-use measures must be fully documented in the post-construction stormwater management program maintained by the City.

2) Redevelopment Sites:

(a) For redevelopment projects, the MS4 Permit requires a net reduction in the amount of TP, TSS and stormwater runoff volume (unless precluded by one of the prohibitions or restrictions listed below) leaving the site as compared with pre-project conditions. Most redevelopment projects contain both impervious and pervious land cover. Impervious cover types include pavement, buildings, gravel, stockpiles and other types of highly impacted cover in which the native hydrology has been greatly altered. The MS4 Permit defines any site with less than 15% of existing impervious surfaces prior to the commencement of construction activity as new development and the new development treatment conditions would apply as if the site had no impervious surfaces prior to construction. The percentage of impervious cover is calculated by dividing the area of the existing impervious cover by the limits of disturbance of the construction activities,not by the size of the property itself.

(b) For redevelopment projects (those with more than 15% impervious surface prior to construction) where the project proposer intends to add more impervious surfaces, the new development treatment requirements must be applied to the net increase of impervious surfaces. Additional treatment must also be included to reduce the volume (unless precluded by the limits or exceptions listed below), TP and TSS loads from the existing impervious surfaces.

(c) Stormwater management prohibitions and restrictions. An applicant shall install or construct, on or for the proposed land disturbing or development activity, all stormwater management facilities necessary to manage increased runoff so that the two-year, ten-year, and 1DO-year storm peak discharge rates existing before the proposed development shall not be increased and accelerated channel erosion will not occur as a result of the proposed land disturbing or development activity. An applicant may also make an in-kind or monetary contribution to the development and maintenance of community stormwater management facilities designed to

serve multiple land disturbing and development activities undertaken by one or more persons, including the applicant.

(d) A key component of maintaining the volume of stormwater leaving a site is practices that allow infiltration to groundwater. For most sites, meeting the volume reduction requirement will require the use of infiltration. However, there can often be physical site constraints that limit the effectiveness of an infiltration system or site conditions in which stormwater infiltration must be prohibited. If construction activity is proposed on a site that meets one of the prohibitions or restrictions listed below, runoff from the limiting areas may be excluded from meeting the full volume reduction component of the MS4 permit. However the full treatment standard for TSS and TP must still be met on-site or mitigated for off-site.

3) Infiltration prohibitions. The use of infiltration as a stormwater treatment method is prohibited as follows:

- Where industrial facilities are not authorized to infiltrate industrial stormwater under an NPDES/SDS Industrial Stormwater Permit issued by the Agency.
- Where vehicle fueling and maintenance occur.
- With less than three (3) feet of separation distance from the bottom of the infiltration system to the elevation of the seasonally saturated soils or the top of bedrock.
- Where high levels of contaminants in soil or groundwater will be mobilized by the infiltrating stormwater.

4) Infiltration restrictions.The City shall restrict the use of infiltration techniques without a detai led engineering review, to prevent adverse impacts to groundwater, when the infiltration device will receive discharges from, or be constructed in the following:

- Areas of predominately Hydrologic Soil Group D (clay) soils.
- Areas with in 1,000 feet up-gradient or within 100 feet down-gradient of active karst features.
- Areas within a Drinking Water Supply Management Area (DWSMA) as defined in Minn. R.4720.5100, subp. 13.
- Areas where soil infiltration rates are more than 8.3 inches per hour.

The restrictions above do not preclude proposers of construction activity from infiltrating stormwater. Rather, the restrictions simply require that a higher level of design and review is needed. There may be opportunities to infiltrate in these areas and not impact groundwater or experience a system failure because of one of the site restrictions.

Exception for meeting the volume control standard. A lesser volume reduction requirement than required if the project meets one of the prohibitions or restrictions listed above and if the owner or operator of the construction activity implements to the Maximum Extent Practicable (MEP) other volume reduction techniques such as evapotranspiration, reuse/harvesting, conservation design, green roofs, etc . on site. If other volume reduction techniques are not used, documentation must be provided on why that decision was made and maintained on file at the City.

5) Mitigation provisions. Mitigation provisions are allowed when owners and operators of a construction activity cannot meet the TSS and/or TP reduction requirements on the site of the original construction activity. The mitigation provisions of the Regulatory Mechanism(s) shall ensure that any stormwater discharges of TSS or TP not addressed on the site of the original construction activity are addressed through mitigation and, at a minimum, shall ensure the following mitigation requirements are met.

6) Mitigation project areas are selected in the following order of preference:

(a) Locations that yield benefits to the same receiving water that receives runoff from the original construction activity.

(b) Locations within the same Department of Natural Resource (DNR) catchment area as the original construction activity.

(c) Locations in the next adjacent DNR catchment area up-stream.

(d) Locations anywhere within the permittee's jurisdiction.

Mitigation projects must involve the creation of new structural stormwater BMPs or the retrofit of existing structural stormwater BMPs, or the use of a properly designed regional structural stormwater BMP.

Routine maintenance of structural stormwater BMPs already required by this permit cannot be used to meet mitigation requirements.

Mitigation projects shall be completed within 24 months after the start of the original construction activity.

The permittee shall determine, and document, who is responsible for long-term maintenance on all mitigation projects.

If the permittee receives payment from the owner and/or operator of a construction activity for mitigation purposes in lieu of the owner or operator of that construction activity meeting the conditions for post-construction stormwater management. The permittee shall apply any such payment received to a public stormwater project.

The permittee must identify priority areas within the various watersheds of its jurisdiction where mitigation projects could occur. If the owner of a construction activity cannot meet the TSS and TP requirements because of site limitations, they may either perform a mitigation project or make an in-lieu-of payment to the City to apply to a mitigation project at a later time.

**Subd. 9. Wetlands.**

A. Runoff shall not be discharged directly into wetlands without presettlement of the runoff

B. A protective buffer strip of natural vegetation at least one rod (16.5 feet) in width shall surround all wetlands.

C. Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value. Replacement must be guided by the Wetland Conservation Act and the following principles in descending order of priority:

1) Avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;

2) Minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;

3) Rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;

4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity; and

5) Compensating for the impact by replacing or providing substitute wetland resources or environments.

**Subd. 10. Steep Slopes.** No land disturbing or development activities shall be allowed on slopes of 18 percent or more.

**Subd. 11. Catch Basins**. All newly installed and rehabilitated catch basins shall be provided with a sump area for the collection of coarse-grained material. Such basins shall be cleaned when they are half filled with material.

**Subd. 12. Drain Leaders**. All newly constructed and reconstructed buildings will route drain leaders to pervious areas wherein the runoff can be allowed to infiltrate. The flow rate of water exiting the leaders shall be controlled so no erosion occurs in the pervious areas.

**Subd. 13. Inspection and Maintenance.** All storm water management facilities shall be designed to minimize the need of maintenance, to provide access for maintenance purposes and to be structurally sound. All storm water management facilities shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in storm water runoff. The director of public works, or designated representative, shall inspect all storm water management facilities during construction, during the first year of operation, and at least once every five years thereafter. The inspection records will be kept on file at the public works department for a period of 6 years. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the storm water management facilities for inspection and maintenance purposes.

**Subd. 14. Models/Methodologies/Computations.** Hydrologic models and design methodologies used for the determination of runoff and analysis of storm water management structures shall be approved by the director of public works. Plans, specification and computations for storm water management facilities submitted for review shall be sealed and signed by a registered professional engineer. All computations shall appear on the plans submitted for review, unless otherwise approved by the director of public works.

**Subd. 15. Watershed Management Plans/Groundwater Management Plans**. Storm water management plans shall be consistent with adopted watershed management plans and groundwater management plans prepared in accordance with Minnesota Statutes section 103B.231 and 103B.255 respectively, and as approved by the Minnesota Board of Water and Soil Resources in accordance with state law.

**Subd. 16. Easements**. If a storm water management plan involves direction of some or all runoff off of the site, it shall be the responsibility of the applicant to obtain from adjacent property owners any necessary easements or other property interests concerning flowage of water.

***SECTIONS 13.31 THROUGH 13.39, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 13.40. LAWN FERTILIZER REGULATIONS.***

**Subd. 1. Use of Impervious Surfaces**. No person shall apply fertilizer to or deposit grass clippings, leaves, or other vegetative materials on impervious surfaces, or within storm water drainage systems, natural drainage ways, or within wetland buffer areas.

**Subd. 2. Unimproved Land Area.** Except for driveways, sidewalks, patios, areas occupied by structures or areas which have been improved by landscaping, all areas shall be covered by plants or vegetative growth.

**Subd. 3. Phosphorus Use Restricted.** A person may not apply a fertilizer containing the plant nutrient phosphorus to turf, except under the following conditions:

A. A tissue, soil, or other test by a laboratory or method approved by the commissioner and performed within the last three years indicates that the level of available phosphorus in the soil is insufficient to support healthy turf growth;

B. The property owner or an agent of the property owner is first establishing turf via seed or sod procedures, and only during the first growing season.

**Subd. 4. Buffer Zone.** Fertilizer applications shall not be made within one rod (16.5 feet) of any wetland or water resource.

***SECTIONS 13.41 THROUGH 13.49, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 13.50 REGULATIONS FOR ILLICIT STORM WATER DISCHARGE AND DETECTION***

**Subd. 1. Findings and Purpose**.

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

B. The purpose of the ordinance is to promote, preserve and enhance the natural resources within the city and protect them from adverse effects occasioned by nonstormwater discharges by regulating discharges that would

have an adverse and potentially irreversible impact on water quality and environmentally sensitive land.

**Subd. 2. Administration**. The city and its authorized representatives are authorized to administer, implement, and enforce the provisions of this section.

**Subd. 3. Illegal disposal and dumping.**

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

B. No person shall intentionally dispose of grass, leaves, dirt, or landscape material into a water resource, buffer, street, road, alley, catchbasin, culvert, curb, gutter, inlet, ditch, natural watercourse, flood control channel, canal, storm drain or any fabricated natural conveyance.

**Subd. 4. Illicit discharges.**

A. No person shall cause any illicit discharge to enter the storm sewer system or any surface water.

B. Exemptions. The following discharges are exempt from this section:

1) Nonstormwater that is authorized by an NPDES point source permit obtain from the MPCA;

2) Firefighting activities or other activities necessary to protect public health and safety;

3) Dye testing for which the city has provided a verbal notification prior to the time of the test;

4) Water line flushing or other potable water sources;

5) Landscape irrigation or lawn watering;

6) Diverted stream flows;

7) Rising ground water;

8) Ground water infiltration to storm drains;

9) Uncontaminated pumped ground water;

10) Foundation or footing drains (not including active groundwater dewatering systems);

11) Crawl space pumps, or sump pumps conforming with section 150.30;

12) Air conditioning condensation;

13) Springs;

14) Noncommercial washing of vehicles;

15) Natural riparian habitat or wetland flows;

16) Dechlorinated swimming pools (for pools to be considered "dechlorinated," water must be allowed to sit seven (7) days without the addition of chlorine to allow for chlorine to evaporate before discharging in an area where drainage to streets or storm sewer systems may occur); or

17) Any other water source not containing a pollutant.

**Subd. 5. Illicit Connections.** No person shall construct, use, or maintain any illicit connection to intentionally convey nonstormwater to the city's storm sewer system. This prohibition expressly includes, without limitation, illicit connections made in the past regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this section if the person connects a line conveying sewage to the storm sewer system, or allows such a connection to continue.

**Subd. 6. General provisions.** All owners or occupants of property shall comply with the following general requirements:

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

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

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

bodies because of existing physical characteristics of the site or the system.

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

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

C. Mobile washing businesses. Business that use significant amounts of water at various locations in the city, such as, but not limited to mobile vehicle washing and carpet cleaning, shall dispose of wastewater into the sanitary sewer at a location permitted by the city. Wastewater must not be discharged where drainage to streets or storm sewer system may occur.

D. Motor vehicle repair and maintenance. Storage of materials, machinery and equipment for motor vehicle repair and maintenance must comply with the following requirements:

1) Motor vehicle parts containing grease, oil or other hazardous substances and unsealed receptacles containing hazardous materials shall not be stored in areas susceptible to runoff.

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

E. Parking lots and private streets. Debris from parking lots and private streets should be swept at least once a year in the spring to remove debris. Such debris shall be collected and properly disposed.

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

**Subd. 7. Industrial activity discharges.** Any person subject to an industrial activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with the permit may be required in a form acceptable to the city prior to the allowing of discharges to the storm sewer system. Any person responsible for a facility that has stormwater discharges associated with industrial

activity, who is or may be the source of an illicit discharge, may be required to implement, at the person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the storm sewer system. These BMPs shall be part of a stormwater pollution prevention plan as necessary for compliance with requirements of the NPDES permit.

**Subd. 8. Notification of spills.** Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the storm sewer system, or public water the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, the person shall notify the city no later than the next business day.

**Subd. 9. Access**. If the city has been refused access to any part of the premises from which stormwater is discharged, and is able to demonstrate probable cause to believe that there may be a violation of this section or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek an administrative search warrant from any court of competent jurisdiction.

**Subd. 10. Suspension of Storm Sewer System Access.**

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

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

***SECTIONS 13.51 THROUGH 13.59, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 13.60. OTHER CONTROLS.***

In the event of any conflict between the provisions of this ordinance and the provisions of an erosion control or shore land protection ordinance adopted by the City Council, the more restrictive standard prevails.

***SECTIONS 13.61 THROUGH 13.69, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 13.70. SEVERABILITY.***

The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.

***SECTIONS 13.71 THROUGH 13.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 13.99. VIOLATION.***

A. A violation of this chapter is a public nuisance. When the city finds that a person has violated a prohibition or failed to meet a requirement of this section, the person is deemed to have created a public nuisance subject to abatement and assessment, as provided under Minnesota Statutes Chapter 429 and other pertinent statues for certification to the County Auditor and collection the following year along with current taxes. In addition, the city may require the following:

1. The performance of monitoring, analysis, and reporting;

2. The implementation of source control or treatment BMPs;

3. Any other requirement deemed necessary.

B. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies. The City may recover all attorney's fees, court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

# CHAPTER 14

## LOCAL IMPROVEMENTS, SPECIAL ASSESSMENTS - FINANCING; TAXING DISTRICTS

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# CHAPTER 14

# LOCAL IMPROVEMENTS, SPECIAL ASSESSMENTS - FINANCING; TAXING DISTRICTS

***SECTION 14.01. PETITIONS FOR PUBLIC IMPROVEMENTS***. Petitions for construction of curb and gutter, bituminous surfacing, base course, grading or graveling of streets, water main and sanitary sewers should be filed with the City Clerk on or before September 1 of the year prior to construction to allow the project to be bid, built, and assessed in a single construction season. Petitions for public improvements received after September 1, may delay the commencement or completion of the project until the following year.

***SECTION 14.02. CLASSIFICATION OF PROJECTS***. Public improvements are divided into three classes specified in the following Subdivisions according to their respective benefit to the whole City and to property specially served by the improvement and taking into account past City practice.

**Subd. 1. Class A.** Class A improvements are those which are of general benefit to the City at large, including (1) public buildings, except a building which is part of an improvement described in one of the following Subdivisions; (2) any public park, playground, or recreational facility; (3) the installation and maintenance of street lighting systems; (4) water wells, pumps, reservoirs, tanks, water treatment facilities; (5) sidewalks, bike trails, hiking trails; (6) street seal coating, sewer cleaning, water main flushing and other periodic maintenance; and, (7) any improvement not described in Minnesota Statutes, Section 429.021, Subdivision 1. Any such improvement shall be financed from City funds other than special assessments.

**Subd. 2. Class B.**. Class B improvements are those which are of both general benefit and special benefit to abutting or nearby property. Class B improvements include:

A. Trunk water mains larger than eight inches;

B. Trunk sanitary sewer mains larger than nine inches;

C. Storm sewers;

D. The construction of off-street parking facilities.

**Subd. 3. Class C.** Class C improvements are those which are primarily if not exclusively of benefit to property abutting or in the area of the improvement, including (1) the construction of water mains no larger than eight inches in diameter; (2) the construction of sanitary sewer mains no larger than nine inches in diameter; (3) the construction of curbs and gutters; (4) grading, graveling, and applying non-

permanent surfacing to streets; (5) permanently surfacing residential streets; (6) the abatement of nuisances and the draining of swamps, marshes and ponds on public or private property and filling the same.

***SECTION 14.03. FINANCING CLASS B AND C IMPROVEMENTS***. It is the policy of the City to finance Class B and C improvements by the methods prescribed in Sections 14.04, 14.05 and 14.06. The apportionment of the cost between benefited property and the City at large and the method of levying assessments prescribed in those Sections shall be followed in each case unless the Council, by resolution, finds that because of special circumstances stated in the resolution, a different policy is necessary or desirable in the particular case. Any local improvement described in Minnesota Statutes, Section 429.02 shall be financed as the Council determines to be most feasible and equitable in each case. In each case, the Council shall examine the assessment roll before approval and adjust any assessment which exceeds the benefit received by the property assessed.

***SECTION 14.04. ASSESSMENT REGULATIONS FOR CLASS B IMPROVEMENTS***.

**Subd. 1. Trunk Water Mains and Sanitary Sewers.** When a water or sewer main is laid across or adjacent to unplatted property, the City shall not defer the assessment against the unplatted property if the assessment would be made for such an improvement in the ease of platted property, but the City shall make the assessment at the time the assessment against other property is made, apportioning the assessment against the unplatted property on the basis of weighted area. When a trunk sewer or water main is constructed and is to serve also as a lateral sewer or water main for abutting property, the abutting property shall be assessed for the cost of a lateral sewer or water main of eight inches plus its proportionate share of the cost of the excess capacity. Other property benefited by the trunk sewer or water main but unable to utilize it until a lateral connected to the trunk sewer or water main has been built to serve the property shall not be assessed for its share of the cost of the trunk sewer or water main until the lateral is built. The assessment for the lateral shall then include the property's share of the trunk sewer or water main. The cost of the trunk sewer or water main in excess of the lateral assessment shall be assessed on the basis of weighted area against all properties benefited. The cost of a lift station shall be assessed on the basis of weighted area against that property actually benefited by the lift station.

**Subd. 2. Storm Sewers.** The Council shall determine a percentage of the cost of constructing storm sewers which shall be paid by the City from general funds. The remainder of the cost shall be assessed against the property in the area served by the sewer on the basis of the weighted area. The area to be assessed shall be determined on the basis of topographic maps and other pertinent data.

**Subd. 3. Off-Street Parking Facilities.** The cost of the construction of off-street parking facilities shall be assessed on the basis of frontage against property benefiting from the parking facility.

***SECTION 14.05. ASSESSMENT RULES FOR CLASS C IMPROVEMENTS.***

**Subd. 1. Water and Sewer.** The cost of lateral water mains not exceeding eight inches in diameter and of lateral sanitary sewer mains not exceeding nine (9) inches in diameter shall be assessed thirty percent (30%) of project costs against abutting property. The remaining seventy percent (70%) of the project costs shall be paid from general funds. The copy of water mains to the assessed includes the service lines, hydrants, and valves. The cost of sewer mains includes service lines.

**Subd. 2. Concrete Curb and Gutters and Street Construction.** The cost of construction of curbs and gutters on any street shall be assessed thirty percent (30%) of project costs against the benefited property. The remaining seventy percent (70%) of the project costs shall be paid from general funds.

**Subd. 3. Streets.** When a street is paved with concrete, bituminous mat, or other permanent surface, the cost of the pavement shall be assessed against the benefited property on the basis of frontage on the street abutting the improvement. When the standards for such paving are higher than those the City would use for a residential street, or a commercial street when constructed in a commercial area, the cost to be assessed shall be based on the cost of paving a residential or commercial street of the same width. The rest of the cost shall be paid from general funds. The cost of grading, graveling and applying non-permanent surfacing to any street, or applying permanent surfaces to residential streets shall be assessed on the basis of frontage.

**Subd. 4. Nuisances**. The cost of abating nuisances and draining of swamps, marshes and ponds on public or private property and filling the same shall be assessed against the benefitting property for thirty percent (30%) of the project costs. The remaining seventy percent (70%) of the project costs shall be paid from general funds. An assessment in any such case may be made against non-abutting property to the extent the property is benefited by the improvement.

***SECTION 14.06. SPECIAL RULES..***

**Subd. 1. Corner Lots.** In any assessment made on the basis of frontage, except one for water or sanitary sewer, corner lots shall be assessed for footage along the front of the lot plus one-third of the side footage; the other two-thirds of the side footage shall be spread among all other assessed properties.

**Subd. 2. Intersections.** The cost of water and sewer improvements in street intersections shall be included as part of the total assessable cost.

**Subd. 3. Adjusted Frontage.**. When the amount of an assessment is determined by frontage, an equivalent front footage shall be determined according to the following rules when an irregular lot requires such an adjustment to maintain fairness in the assessment.

A. Front footage shall be measured at the setback line on cul-de-sac and sharply curved streets and irregularly shaped lots.

B. Equivalent front footage shall be determined by dividing the square footage of the lot by the general lot depth on the subdivision for pie-shaped lots and irregular shaped lots where other rules do not apply.

C. Where frontage curves so greatly as to give a general appearance of a corner, the lot shall be considered a corner lot and equivalent front footage, as well as side footage where required, determined on the basis of an irregularly shaped lot.

D. Where a lot consists of a combination of rectangular and pie-shaped or irregular portions, the equivalent front footage shall be determined as the sum of the straight front footage plus the remainder in accordance with applicable rules.

***SECTION 14.07. FEDERAL, STATE, AND COUNTY AID USE.*** If the City receives financial assistance from the Federal government, the State, or the County to defray a portion of the cost of an improvement project, such aid shall be used first to reduce the share of the project cost which would be met from general City funds according to the assessment formula contained in this Chapter. If such aid is more than the amount of the improvement cost to be borne by the City, the remainder of the aid so received may be used to reduce each individual assessment proportionately.

***SECTION 14.08. DEFERMENT OF SPECIAL ASSESSMENTS FOR SENIOR CITIZENS.***

**Subd. 1. Procedures.** The Council may defer the payment; of any special assessment on homestead property owned by a person who is 65 years of age or older when payment of the assessment would create a hardship upon the property owner as defined in Subdivision 2. The deferment shall be granted upon a certification by the owner on a form prescribed by the County Auditor supplemented by the Clerk to establish the qualification of the owner for such deferment. The application shall be made within thirty (30) days after the adoption of the assessment roll by the Council and shall be renewed three years after the initial application but not later than September 30 of the third year. The Council shall either grant or deny the deferment and if it grants the deferment, it may require the payment of the interest due each year. If the Council grants the deferment, the Clerk shall notify the County Auditor who shall, in accordance with Minnesota Statutes, Section 435.194,

record a notice of the deferment with the County Recorder setting forth the amount of the assessment.

**Subd. 2. Standards of Hardship.**

A. A hardship shall be deemed prima facie to exist when the following apply: The annual gross income of the applicant according to his/her most recent Federal income tax return plus his/her tax-exempt income does not exceed 125 percent (125%) of the latest median income as determined by the U.S. Department of Housing and Urban Development according to family size. If no such return was made, the Clerk shall require the applicant to submit other pertinent information to show that this qualification is met.

B. Notwithstanding the foregoing provisions of this Subdivision, the Council may consider exceptional and unusual circumstances pertaining to an applicant not covered by the above standards; but any determination shall be made in a nondiscriminatory manner and shall not give the applicant an unreasonable preference or advantage over other applicants.

**Subd. 3. Events That Terminate Deferment.** The option to defer the payment of special assessments shall terminate and all amounts accumulated plus applicable interest shall become due upon the occurrence of any one of the following events: (1) the death of the owner when there is no spouse who is eligible for deferment; (2) the sale, transfer, or subdivision of all or any part of the property; (3) loss of homestead status on the property; (4) determination by the Council for any reason that there would be no hardship to require immediate or partial payment; or (5) failure to file a renewal application within the time prescribed by Subdivision 1.

**Subd. 4. Council Action - Termination of Deferment.** Upon the occurrence of one of the events specified in Subdivision 3, the Council shall terminate the deferment. Thereupon, the Clerk shall notify the County Assessor and the County Auditor of the termination, including the amounts accumulated on unpaid installments plus applicable interest which shall be spread over the time remaining on the original assessment.

***SECTION 14.09. BRANCH SERVICE LINES.*** Water and sewer lines shall be installed from the main to the front property line of property to be served before any permanent street surfacing is constructed in the street. The Council shall proceed to have water and sewer service installed and to assess the cost against the property.

***SECTION 14.10. PARTIAL PREPAYMENT.*** After the adoption by the Council of the assessment roll in any local improvement proceeding, the owner of any property specially assessed in the proceeding may, prior to certification of the assessment or the first installment to the County Auditor, pay to the Clerk any portion of the assessment not less than ten percent (10%) of the initial total principal

amount. The remaining unpaid balance shall be spread over the period of time established by the Council for installment payment of the assessment.

***SECTION 14.11. CERTIFICATION OF ASSESSMENTS***. After the adoption of any special assessments by the Council, the Clerk shall transmit a certified duplicate of the assessment roll with each installment, including interest, set forth separately to the County Auditor to be extended on the property tax lists of the County.

***SECTION 14.12. PERMANENT IMPROVEMENT REVOLVING FUND.***

**Subd. 1. Establishment.** There is hereby established a permanent improvement revolving fund of the City to be held and administered by the Clerk, separate and apart from all other funds of the City, for the purpose of financing local improvements.

**Subd. 2. Source of Funds.** The fund shall be a permanent fund of the City and the moneys necessary for its maintenance shall be provided by taxation, by the appropriation of available moneys from other funds of the City, and/or by the issuance and sale of permanent improvement revolving fund bonds of the City as deemed necessary from time to time by the Council.

**Subd. 3. Disposition of Funds.** Moneys in the fund shall be used only as directed by resolution of the Council for the purpose of advancing to local improvement funds the cost of improvements for which assessments are to be levied. All such moneys so advanced to an improvement fund shall be restored as soon as sufficient moneys are received in the improvement fund.

**Subd. 4. Investment.** Whenever there are moneys in the fund not immediately needed for local improvements, such moneys shall be invested by the Clerk under the direction of the Council in any securities authorized for investment of municipal debt service funds by law.

**Subd. 5. Transfer of Surplus.** When the fund accumulates moneys in excess of any amounts reasonably anticipated to be needed for local improvement fund advances, the Council may, by resolution adopted by a four-fifths vote, declare any part of such excess to be surplus and transfer it to the general fund.

***SECTION 14.13. ASSESSMENT MANUAL.*** The Clerk shall prepare an administrative manual specifying more detailed procedures for the conduct of local improvements and the levy of special assessments in supplementation of this Chapter and consistent therewith. Upon approval of the Council by resolution, such manual shall be used with this Chapter in the conduct of all local improvement proceedings to which they apply by their terms.

***SECTION 14.14. STORM SEWER IMPROVEMENT TAX DISTRICT.***

**Subd. 1. Provisions**. The provisions of Minnesota Statutes, Chapter 444, relating to Storm Sewer Improvement Tax Districts and procedures of Minnesota Statutes 429.031 to 429.081 as referenced in M.S. 444, are adopted and made a part of this ordinance as if set out in full.

**Subd. 2. Establishment.** The City of Lexington Storm Sewer Improvement Tax District is hereby established and its area shall include all of the corporate limits of the City of Lexington as recorded in the office of the County Auditor.

**Subd. 3. Purpose.** The purpose of the Storm Sewer Improvement Tax District shall be to finance through a tax the cost of acquisition, construction, reconstruction, extension, maintenance, and other improvements to storm sewer systems and related facilities within the district as prescribed in Minnesota Statutes 444.16 to 444.21.

***SECTIONS 14.15 THROUGH 14.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 14.99. VIOLATION A MISDEMEANOR.*** Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

# CHAPTER 15
## PROPERTY MAINTENANCE REGULATIONS

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# CHAPTER 15

# PROPERTY MAINTENANCE REGULATIONS

## SECTION 15.101. PURPOSE AND INTENT.

**Subd. 1. Purpose**. The purpose of this Chapter is to promote the health, safety, comfort, convenience, and general welfare of the inhabitants of the City. Further, the purposes of this Chapter are to protect the character and stability of residential areas within the City and to correct and prevent housing conditions that adversely affect or are likely to adversely affect the safety, comfort, convenience, general welfare, and health; to provide standards for heating and sanitary equipment and for light and ventilation necessary to protect the health and safety of occupants of buildings; to prevent the overcrowding of dwellings; to provide standards for the maintenance of existing residential buildings and accessory structures and to thus prevent substandard housing and blight; and to preserve the value of land and buildings throughout the City. Wherever any portion of this Chapter shall conflict with any other provisions of any ordinance of the City of Lexington, the stricter or more limited provision shall be deemed to control.

**Subd. 2. Definition**. This Chapter shall be known as the Lexington Property Maintenance Regulations, and may be cited as such, and will be referred to herein as the Housing Code or the LPMR.

## SECTION 15.102. DEFINITIONS.

**Subd. 1. Definitions**. The following definitions shall apply in the interpretation and enforcement of this Chapter.

A. **"Abandonment of a Building or Structure"** – the consequence of ceasing to assert or exercise an interest, right, or title to that building or structure, with the intent of never again resuming or reasserting it.

B. **"Accessory Structure"** – a structure not greater than 3,000 square feet in floor area and not over two stories in height, the use of which is customarily accessory to and incidental to that of the dwelling(s) and which is located on the same lot.

C. **"Adequate"** – sufficient.

D. **"Basement"** – that portion of a building or structure located partly or completely below grade.

E. **“Building”** – a constructed edifice designed to stand more or less permanently, covering a space of land, designed for occupancy, and intended for use in one place.

F. **“Common Areas”** – halls, corridors, passageways, utility rooms, recreational rooms and extensively landscaped areas in or adjacent to a multiple dwelling, not under the exclusive control of one person or family.

G. **“Component”** – a part or fixture of a structure.

H. **“Condominium”** – a form of individual ownership within a multiple family dwelling which entails joint responsibility for maintenance and repairs; in the condominium each apartment or townhouse is owned outright by its occupant.

I. **“Corrected”** – brought into conformance with all applicable standards of the LPMR.

J. **“Cooperative Housing”** – a multiple family dwelling owned and maintained by the residents: the entire structure and real property is under common ownership as contrasted to a condominium dwelling where individual units are under separate individual occupant ownership.

K. **“Damage”** – injury or harm.

L. **“Degradation”** – impairment in respect to some physical property, including damage by weakening or loss of some property, quality, or capability.

M. **“Dilapidation”** – a condition of decay or partial ruin.

N. **“Disaster”** – a sudden or great misfortune.

O. **“Dwelling”** or **“Dwelling Unit”** – a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

P. **“Exclude Dampness”** – to shut out moisture.

Q. **“Exit”** – a continuous and unobstructed means of egress to the outdoors and includes intervening doors, doorways, corridors, ramps, stairways, smoke-proof enclosures, horizontal exits, exit passageways, exit courts and yards.

R. **“Extermination”** – the control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poisoning, spraying,

fumigating, trapping; or by any other recognized and legal pest elimination methods approved by the Health Officer.

S. **"Fire Hazard"** – a thing or condition that might operate against safety from fire, including a possible source of peril, danger, duress, or difficulty, or that tends to create or increase the possibility of loss due to fire.

T. **"Garbage"** – animal and vegetable wastes, including those resulting from the handling, preparation, cooking, and consumption of food, or any other matter in a state of foul decay or decomposition.

U. **"Habitable Room"** – a room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes, but excluding bathrooms, toilet compartments, laundries, furnace rooms, pantries, utility rooms, foyers, corridors, stairways, closets, storage spaces, workshops, hobby and recreation areas, and basements lacking required ventilation, required electrical outlets, or required exit facilities.

V. **"Hazard"** – a thing or condition that might operate against safety, including a possible source of peril, danger, duress, or difficulty, or that tends to create or increase the possibility of loss.

W. **"Health Officer"** – the legally designated health officer or building official of the City of Lexington or his or her authorized representative.

X. **"Hotel or Motel"** – a building or structure or enclosure, or any part thereof, kept, used as, maintained as, or advertised as, or held out to the public to be an enclosure where sleeping accommodations are furnished to the public and furnishing accommodations for periods of less than one week.

Y. **"Inadequate"** – not adequate.

Z. **"Infestation"** – the presence, within or around a dwelling, of any insects, rodents, or pests.

AA. **"Kitchen"** – a space used or intended to be used for food preparation, which contains a sink, adequate space for installing cooking and refrigeration equipment, and space for the storage of cooking utensils.

BB. **"Maintenance"** – preservation from failure or decline.

CC. **"Maintained"** – preserved from failure or decline.

DD. **"Multiple Family Dwelling"** - A dwelling or portion thereof containing two or more dwelling units.

EE. **"Nuisance"** –

1) A public nuisance which may prove detrimental to children whether in a building, on the premises of a building, or upon an unoccupied lot. This includes, but is not limited to, the abandonment of any well, cistern, shaft, basement, or excavation; the abandonment of any refrigerator or freezer in a hazardous condition; an unlicensed or inoperable motor vehicle; or any lumber, garbage, rubbish, or debris which may become a hazard for inquisitive minors; or

2) Overcrowding a room or portion of a dwelling with long-term storage so as to prevent upkeep, maintenance or regular housekeeping. A room may be considered overcrowded when storage covers an excessive amount of the floor area of a room, constitutes a potential excessive fire load, prevents access to windows or doors, prevents access to or obstructs mechanical systems or air movement, effectively eliminates use and access to required electrical devices, impedes access and movement of emergency personnel, blocks hallways, limits the operation of doors or provides potential pest harborage.

FF. **"Obsolescence"** – the process of becoming neglected or the condition of being nearly neglected or worn out.

GG. **"Occupant"** – any person, over one year of age, (including owner or operator) living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit or rooming unit.

HH. **"Operator or Resident Agent"** – the owner or owner's agent who has charge, care, control, or management of a building, or part thereof, in which dwelling units or rooming units are let or offered for occupancy.

II. **"Owner"** – a person who alone, jointly, or severally with others:

1) shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or,

2) shall have charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, administrator, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this Section, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

JJ. **"Owner-Occupied Dwelling"** – a dwelling unit occupied by the property owner, including for purposes of the LPMR, a single-family dwelling or the

discrete portion of a multiple family dwelling where the owner resides in one unit.

KK. **"Premises"** – platted lot(s) or unplatted parcel(s) of land, or any portion thereof, either occupied or unoccupied by any dwelling or non-dwelling structure, including such building, accessory structure, or other structure thereon.

LL. **"Public Areas"** – those areas which are normally open to the general public or the occupants of more than one dwelling unit of a multiple family dwelling.

MM. **"Rental Dwelling or Rental Dwelling Unit"** – any dwelling unit not occupied by the primary homestead owner of record. Such a unit may be a single-family dwelling, a separate and independent housekeeping unit within a single-family dwelling, a group home, one unit of a two-family dwelling or a portion of a multi-family dwelling, any of which are provided or available for actual or potential occupancy whether occupied or vacant by lease, by use, by rent or for any other good and valuable consideration, excluding the portion of a homestead property occupied by a qualified relative, or residential property seasonally occupied by what is commonly referred to as a "house sitter" while the owner of the property is residing elsewhere for a period not to exceed six (6) months. Manufactured homes that are occupied by the owner of the home do not constitute rental dwelling units even though the underlying lot may be leased by the owner occupant.

NN. **"Rodent Harborage"** – a place where rodents are living, nesting, or seeking shelter, or likely to live, nest, or seek shelter.

OO. **"Rodent-Proof"** – a condition where a structure and all parts thereof are protected from rodent, insect and vermin infestation by eliminating ingress and egress openings such as cracks in walls and holes in screens. For the purpose of the LPMR the term "rodent-proof" shall be construed as though it included "insect-proof" and "vermin-proof."

PP. **"Rooming Unit"** – a room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking and eating purposes.

QQ. **"Rubbish"** – solid wastes consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, grass and shrubbery clippings, wood, glass, brick, plaster, bedding, crockery, and similar materials.

RR. **"Safe"** – secure from threat of danger, harm or loss, including but not limited to the threat of unsafe conditions as defined below.

SS. **"Safety"** – the condition of being safe.

TT. **"Sanitary"** – free from or effective in preventing or checking an agent (such as filth or infection) injurious to health.

UU. **"Supplied"** – paid for, furnished, or provided, by or under the control of, the owner or operator.

VV. **"State Building Code"** or **"Building Code"** - those codes adopted by the State of Minnesota for Buildings and Fire, and as thereafter adopted by the City of Lexington.

WW. **"System"** – a group of devices or artificial objects or an organization forming a network especially for distributing something or serving a common purpose.

XX. **"Unsafe"** – not safe, and includes but is not limited to the following applications:

1) when referring to a building or structure, one that is structurally unsafe or not provided with adequate egress that constitutes a fire hazard or that is otherwise dangerous to human life.

2) when referring to a use of a building or a structure, a use that constitutes a hazard to safety, health, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment.

3) when referring to parapet walls, cornices, spires, towers, tanks, statuary, or other appendages or structural members that are supported by, attached to, or a part of a building, one that is in deteriorated condition or otherwise unable to sustain the design loads that are specified in the Guidelines for Rehabilitation of Existing Buildings as modified by Minn. R. Chapter 1311.

YY. **"Yard"** – all ground, lawn, court, walk, driveway, or other open space constituting part of the same premises.

**Subd. 2**. Terms Not Defined. If a term used in Chapter 15 not defined in Chapter 15, but is defined in an applicable Building Code, that term shall have the meaning as defined in that Code.

**Subd. 3**. Undefined Terms. Terms that are not defined in Chapter 15 or in an applicable Building Code shall have their ordinary accepted meanings within the context in which they are used. For undefined terms in any other subdivision of Chapter 15, the on-line version of the Merriam-Webster Collegiate Dictionary,

available at www.m-w.com, shall be considered as providing ordinarily accepted meanings.

**SECTION 15.103. GENERAL REQUIREMENTS.**

**Subd. 1. General Requirements**. No person shall occupy as owner, occupant or let another for occupancy any dwelling or rooming unit for the purpose of living therein which does not comply with the following requirements.

A. Foundations, Exterior Walls, and Roofs. The foundation, exterior walls, and exterior roof shall be substantially watertight and protected against vermin and rodents and shall be kept in sound condition and repair. The foundation element shall adequately support the building at all points. Every exterior wall shall be free of structural deterioration or any other condition which might admit rain or dampness to the interior spaces of the dwelling. The roof shall be tight and have no defects which admit rain and roof drainage and shall be adequate to prevent rain water from causing dampness in the walls. All exterior surfaces, other than decay resistant materials, shall be protected from the elements and decay by paint or other protective covering or treatment. If the exterior surface is unpainted or lacks protective coating or is determined by the Building Official to be deteriorated, the surface shall have a protective covering applied. If the exterior surface of the pointing of any brick, block, or stone wall is loose or has fallen out, the surface shall be repaired.

B. Windows, Doors, and Screens. Every window, exterior door, and hatchway shall be substantially tight and shall be kept in repair. Every window, other than a fixed window or storm window, shall be capable of being easily opened. Every window, door, and frame shall be constructed and maintained in such relation to the adjacent wall construction as to completely exclude rain, vermin and rodents from entering the building.

C. Floors, Interior Walls, and Ceilings. Every floor, interior wall, and ceiling shall be protected against the passage and harborage of vermin and rodents and shall be kept in sound condition and good repair. Every floor shall be free of loose, warped, protruding, or rotting flooring materials. Every interior wall and ceiling shall be maintained in a tight waterproof condition. Toxic paints or materials with a lasting toxic effect shall not be used. Every toilet room and bathroom floor surface shall be capable of being easily maintained.

D. Rodent, Vermin and Insect Proof. Buildings found to be rodent, vermin, or insect infested shall be made rodent, vermin or insect resistant. All openings in the exterior walls, foundations, basements, ground, or first floors, and roofs which have 1/4” diameter or larger opening shall be rodent proofed in a manner approved by the Building Official. Interior floors or basements, cellars, and other areas in contact with the soil shall be paved with concrete or other rodent impervious material.

E. Accessory Structure Maintenance. Accessory structures shall be structurally sound and be maintained in good repair. The exterior of such structures shall be made weather resistant through the use of decay resistant materials such as paint or other preservatives.

F. Outside Storage. The outside storage of materials, equipment or other personal property on or adjacent to any building property shall conform to the following:

1) All materials, equipment or other personal property shall be stored within a building or fully screened by fencing from adjacent properties and the street, except for the following: clothes lines, recreational equipment, patio furniture, firewood and operable and currently licensed automobiles and trucks weighing not more than one ton.

2) No commercial vehicles of over one (1) ton capacity or commercial trailers shall be parked or stored in any residential district except when loading, unloading or rendering a service. All vehicles equipped with truck parking permits shall be exempt.

3) The outside storage of boats, unoccupied boat trailers, unoccupied trailers with a maximum gross weight of 3,000 pounds, and recreational camping vehicles as defined in Section 9.03 of this code, are permissible in the following areas:

(a) Rear yard at least ten (10) feet from the rear property line.

(b) Side yard at least five (5) feet from the side property line.

(c) Front yard at least ten (10) feet from the back curb line on a driveway surface.

(d) In no case shall boats, unoccupied boat trailers, unoccupied trailers with the maximum gross weight of 3,000 pounds or recreational camping vehicles be parked to cause a safety hazard due to poor traffic sight distance or inaccessibility to properties by emergency vehicles or persons.

(e) All trailers stored pursuant to this section may not be used to store materials and equipment on or about the trailer, with the exception that boat trailers may store a boat intended for use with the trailer.

4) The outside storage of firewood shall be restricted to the inside or rear yards provided it is no closer than five (5) feet to any property line. Such

wood shall be stacked in a neat, orderly, safe manner. The maximum height allowed is six (6) feet. Storage of firewood in the front yard shall be permitted for loading and unloading on temporary basis only not to exceed five (5) days.

5) For purposes of this section, materials or equipment existing outside of a building for a period greater than 24 hours shall be considered "stored." Stored materials, equipment or personal property shall not be used for human habitation.

G. Grading and Drainage. Every yard, court, or passageway on the premises on which a dwelling stands shall be graded and drained so as to be free of standing water that constitutes a detriment to health and safety.

H. Yard Cover. Every yard of a premises on which a dwelling stands shall be maintained to prevent dust and erosion.

I. Public Sidewalks and Access Walks. It shall be the responsibility of the owner of any dwelling unit to maintain all public sidewalks abutting the premises occupied by the dwelling unit. All structures containing one or more dwelling units shall be required to provide at least one hard-surface and unobstructed access, path or drive linking each dwelling unit to the adjacent public sidewalk or street.

J. Removal of Snow and Ice. The owner of any rental dwelling shall be responsible for the removal of snow and ice from parking lots and/or driveways, and steps on the premises. Individual snowfalls of three inches or more or successive snowfall accumulations to a depth of three inches must be removed from walkways and steps within 48 hours after cessation of the snowfall. All public sidewalks shall conform to Section 7.05 of this Code.

K. Storage and Disposal of Garbage and Refuse. Every occupant of a dwelling shall store and dispose of all his/her refuse and garbage and any other organic waste which might provide food for insects, vermin and/or rodents as required by this Chapter.

L. Storage and Disposal of Garbage and Refuse – Multiple Family Dwelling. Every owner of a multiple family dwelling shall supply facilities for the storage and/or disposal of refuse, garbage, and recyclable materials that are sufficient for the storage of such materials in a manner that satisfies the requirements of this Code. All garbage, waste material, debris, and recyclables shall be kept in an enclosed building or properly contained in a closed container designed for such purposes. It is unlawful for any person to store refuse on the premises of a multiple family dwelling for more than one week. Such storage shall be in containers as for residential dwellings, except that so-called "dumpsters" with close-fitting covers may be substituted. Refuse

enclosures shall provide screening of containers and have a concrete floor base. Gates may not be required if properly oriented on the site. Design of such facilities shall be reviewed and must be approved by city staff prior to issuance of a building permit. Each owner must make all improvements necessary to bring garbage and refuse disposal facilities into compliance with this section prior to such time as a building permit may be taken for any work on multiple family dwellings, or work on other buildings where the total cost of such work shall exceed the sum of $5,000.00. In the case of single-family dwellings, it is the responsibility of the occupant and/or owner to furnish such facilities as prescribed by city ordinance.

M. Storage and Disposal of Garbage and Refuse – Single Family Dwelling. It is unlawful for any person to store refuse on the premises of a single family dwelling for more than one week. All such storage shall be within closed, five to ninety-six gallon metal or plastic containers with tight-fitting covers, which shall be maintained in a clean and sanitary condition; provided, that tree leaves, weeds and grass clippings may be stored in plastic bags and tree limbs must be stored in bundles weighing no more than seventy-five pounds or no longer than three feet. All metal containers or equivalent shall at all times except on collection days be located behind the rear line of the dwelling, or in the garage, or screened from view from the street and at least ten feet from the abutting property.

N. Maintenance of Grass, Weeds, Trees and Shrubs. Every owner of property abutting on any street shall cause the grass and weeds to be cut from the line of such property nearest to such street to the center of such street. If the grass or weeds in such a place attain a height in excess of six-inches it shall be prima facie evidence of a failure to comply with this Subdivision. Every owner of property abutting on any street shall, subject to the provision herein requiring a permit therefore, trim, cut and otherwise maintain all trees and shrubs from the line of such property nearest to such street to the center of such street.

O. Minimum Exterior Lighting. The owner of a rental dwelling shall be responsible to provide and maintain effective illumination in all exterior parking areas and walkways.

P. Maintenance of Driveway and Parking Areas. The owner of a multiple family dwelling or dwellings shall be responsible to provide and maintain in good condition paved and delineated parking areas and driveways. Each driveway and parking area on any multiple family property existing on or after January 1, 1995, shall be paved with asphalt, concrete, brick, or similar dust free surface at such time as a building permit may be taken for any work on multiple family dwellings.

Q. Ceiling Heights. Every dwelling or rooming unit shall have a ceiling height of not less than seven (7) feet, except as otherwise permitted in this Section. Kitchens, halls, bathrooms, closets, and toilet compartments may have a ceiling height of not less than seven (7) feet measured to the lowest projection of the ceiling.

R. Kitchen Sink. A kitchen sink must be in good working condition and be properly connected to an approved water supply system which at all times provides an adequate amount of heated and unheated running water under pressure. The sink must also be connected to an approved sewer system. These systems must comply with Chapter 3 of this Code and satisfy the State Building Code.

S. Food Storage. Cabinets and/or shelves for the storage of eating, drinking, and cooking equipment and utensils, and of food that does not require refrigeration for safekeeping, and a counter or table for food preparation. The cabinets and/or shelves and counter or table shall be of sound construction furnished with surfaces that are easily cleanable and that will not impart any toxic or deleterious effect to food.

T. Stove and Refrigerator. A stove for cooking food and a refrigerator for the safe storage of food at or below forty (40) degrees Fahrenheit, which are properly installed with all necessary connections for safe, sanitary, and efficient operation. Such stove and refrigerator need not be installed when a dwelling unit is not occupied or when the occupant is expected to provide same on occupancy, in which case sufficient space and adequate connections for the installation and operation of the stove and refrigerator must be provided.

U. Toilet Facilities. Within every dwelling or rooming unit there shall be a non-habitable room which is equipped with a flush toilet in compliance with the Minnesota State Plumbing Code. Such rooms shall have an entrance door which affords privacy. Said flush toilet shall be equipped with easily cleanable surfaces, shall be connected to an approved water system that at all times provides an adequate amount of running water under pressure to cause the toilet to be operated properly, and all shall be connected to a sewer system in compliance with Chapter 3 of this code. Each toilet stool shall be located in a clear space of not less than thirty (30) inches in width. A clear space in front of the toilet stool of not less than twenty-one (21) inches shall be provided.

V. Lavatory Sink. Within every dwelling unit there shall be a lavatory sink. The sink may be in the same room as the toilet, but if located in another room, the lavatory sink shall be located within five feet of the door leading directly into the room in which said toilet is located. The lavatory sink shall be in good working condition and shall be properly connected to an approved water

system and shall provide at all times an adequate amount of heated and unheated running water under pressure and shall be connected to a sewer system which complies with Chapter 3 of this code.

W. Stopcock or Shut-Off Valves. All private water service pipes shall be provided with an accessible, sufficient and working shut-off valve or stop-cock.

X. Bathtub or Shower. Within every dwelling or rooming unit there shall be a non-habitable room which is equipped with a bathtub or shower in good working condition. Such room shall have an entrance door which affords privacy. Said bathtub or shower may be in the same room as the toilet, or in another room, and all shall be properly connected to an approved water supply system and shall provide at all times an adequate amount of heated and unheated water under pressure (which shall in no case by less than forty pounds per square inch) and shall be connected to a sewer system which complies with Chapter 3 of this Code.

Y. Storm and Screen Doors and Windows. The owner of a dwelling, dwelling unit, or rooming unit shall be responsible for providing, maintaining and hanging all screen and storm doors and storm windows whenever the same are required under the provisions of this Code.

Z. Exterior Doors. No owner shall let or rent to another for occupancy any dwelling or dwelling unit unless all exterior doors of the dwelling or dwelling units are equipped with safe, functioning locking devices. Rental dwellings shall be furnished with door locks as follows:

1) Building Access. For the purpose of providing a reasonable amount of safety and promoting the general welfare for persons occupying multiple family dwellings, an approved security system shall be maintained for each multiple family dwelling to control access. The security system shall consist of locking building entrance or foyer doors, and locked doors leading from hallways into individual dwelling units. Dead-latch type door locks shall be provided with releasable lever knobs (or doorknobs) on the inside building entrance doors and with key cylinders on the outside of building entrance. Building entrance door latches shall be of types that are permanently locked.

2) Unit Access. Every door that provides ingress or egress for a dwelling unit within a multiple family dwelling shall be equipped with an approved lock that has a deadlocking bolt that cannot be retracted by end pressure, provided however, that such door can be opened from the inside without the use of a key or any special knowledge or effort.

3) Existing Buildings. All rental dwellings in existence at the time this Section is adopted, which were not previously required to have an

approved security system, shall not be subject to the requirements of Section 15.107, Subdivision (a), until such time as a building permit may be required for any work on multiple family dwellings.

**SECTION 15.104. SUBSTANDARD BUILDINGS**.

**Subd. 1. Conditions**. Any dwelling whose condition or use was not prohibited by any applicable law or code prior to enactment of this housing code but now fails to comply with the requirements of the Lexington Property Maintenance Regulations is a substandard dwelling. All substandard dwellings shall be subject to the following conditions:

A. Expansion of Dwelling. No such structure or use shall be expanded or enlarged except in conformity with the provisions of this Chapter.

B. Alteration, Addition or Repair. No structural alteration, addition or repair to any substandard dwelling over the life of the dwelling shall exceed 50 per cent of the dwelling's assessed value at the time of its becoming a substandard dwelling unless such dwelling is permanently changed to conform to the requirements of this housing code.

C. Discontinued Use. If any substandard use is discontinued for twelve (12) consecutive months, any future use of the dwelling must conform to all the requirements of this chapter.

D. Nuisance. No dwelling or dwelling use which constitutes a nuisance shall be permitted to continue as a substandard use or dwelling.

**SECTION 15.105. ENFORCEMENT AND INSPECTION AUTHORITY**.

**Subd. 1. Inspections**. The Building Official or his/her designee shall administer and enforce the provisions of the Lexington Property Maintenance Regulations and the Building Code. Inspections shall be conducted during reasonable hours and the Building Official shall present evidence of his official capacity to the owner or occupant in charge of the dwelling or rooming unit.

**SECTION 15.106. PROPERTY MAINTENANCE REGULATIONS**.

**Subd. 1. Purpose**. The purpose of the LPMR is to protect, preserve, and promote the public health, safety, and the general welfare of the people of the City; to prevent housing conditions that adversely affect or are likely to adversely affect the life, safety, general welfare, and health, including the physical, mental, and social well-being of persons occupying dwellings within the City; to provide, to the extent permitted by state law, for the enforcement of minimum standards for components or systems of residential structures; to provide for the use and location and amount of

space for human occupancy; and to preserve the value of land and buildings throughout the City.

**Subd. 2. Discrimination and Privacy**. The LPMR is to be enforced in a nondiscriminatory manner and exclusively for the purpose of promoting public as opposed to private welfare. Except as may be specifically provided herein or incidental to the enforcement hereof, the LPMR is not intended to interfere with personal privacy or with private legal rights and liabilities, including without limitation landlord/tenant and lessor/lessee relationships, and in enacting and enforcing the LPMR, the City neither expressly nor by implication assumes any obligations or liabilities respecting such private rights or disputes, including those which involve or arise out of the non-conformity of any premises in the City to the provisions of the LPMR.

**Subd. 3. Applicability**. A building and its premises used in whole or in part as a residence, or as an accessory structure thereof except rest homes, convalescent homes, nursing homes, hotels, and motels, must conform to the requirements of this code. Licensing and inspections of rental dwellings and their premises are governed by this Chapter. These rental dwellings, portions of dwellings, common areas, areas under the exclusive control of a rental dwelling owner, and vacant rental dwelling units, shall comply with this Chapter in its entirety. Condominium and cooperative housing public areas shall be subject to the requirements applicable to rental dwellings if one or more dwellings in such a building is a rental dwelling. Except as otherwise provided in this subdivision, the LPMR establishes minimum standards for erected dwelling units, accessory structures, and related premises.

**Subd. 4. General Responsibilities of Owners**.

A. The owner of a structure is responsible for ensuring that it meets the applicable provisions of the LPMR. The duty to comply with the LPMR cannot be transferred to another person. A contract purporting to transfer the duty of compliance with the LPMR to another person does not relieve the owner, operator or occupant of any duty imposed by the LPMR.

B. No owner or other person shall occupy or let to another person any dwelling unless it and the premises are fit for human occupancy and meets the applicable provisions of the LPMR and the Building Codes.

**Subd. 5. Smoke and Carbon Monoxide Detection**.

A. Definitions.

1) Those terms defined in Minn. Stat. § 299F.362, Subd. 1 shall also carry those meanings when they appear below in smoke detector regulations.

2) Those terms defined in Minn. Stat. § 299F.50 shall also carry those meanings when they appear below in carbon monoxide detector regulations.

3) For purposes of Subd. 5 only, the phrases “single-family home” and “single-family dwelling unit” mean a dwelling unit occupied by:

(a) A person living alone, or any of the following groups living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities:

(1) Any number of people related by blood, marriage, adoption, guardianship or other duly-authorized custodial relationship;

(2) Three unrelated people; or

(3) Two unrelated people and any children related to either of them.

4) When inspecting for compliance with Subd. 5, Building Officials shall presume that any dwelling with only one dwelling unit is a single-family home and a single-family dwelling unit for purposes of Subd. 5, and will not inquire regarding the relationships between occupants, but this presumption may be rebutted by information volunteered by an owner or occupant.

B. In Single-Family Homes or Single-Family Dwellings.

1) Single and multiple-station smoke alarms shall be installed in the following locations:

(a) In each room used for sleeping purposes.

(b) On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

(c) In each story within a dwelling unit, including basements, but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

2) Smoke detectors improperly located or mounted may be required to be relocated or remounted.

3) The dwelling must have an approved and operational carbon monoxide alarm installed within ten feet of each room lawfully used for sleeping purposes.

C. In Residential Structures Other Than Single-Family Homes.

1) For every other dwelling unit within an apartment house or within a dwelling that is not a single-family home:

(a) Each dwelling unit must be provided with a smoke detector meeting the requirements of the State Fire Code, Minn. R. Ch. 7511.

(b) Smoke detectors must be mounted in the location or locations set forth in section (B) (1) of this subdivision.

(c) When activated, the detector must provide an alarm in the dwelling unit.

(d) Where the occupant is not the owner of the dwelling unit, the owner is responsible for maintenance of the smoke detectors. The occupant of a dwelling unit must immediately inform the owner of the dwelling unit of a nonfunctioning smoke detector (within 24 hours) of discovering that the smoke detector in the dwelling unit is not functioning.

2) Effective August 1, 2009, the following regulations apply to multiple family dwellings:

(a) Subject to the exception in subpart 3 below, every dwelling unit in a multiple family dwelling must satisfy at least one of these two standards:

3) It must have an approved and operational carbon monoxide alarm installed within ten feet of each room lawfully used for sleeping purposes; or

(a) It must have approved and operational carbon monoxide alarms installed between 15 and 25 feet of carbon monoxide-producing central fixtures and equipment, provided there is a centralized alarm system or other mechanism for responsible parties to hear the alarm at all times.

(b) An owner of a multiple family dwelling that contains minimal or no sources of carbon monoxide may be exempted from the requirements of subpart 2 above, provided that such owner has certified to the commissioner of public safety that such multiple family dwelling poses no foreseeable carbon monoxide risk to the health and safety of the dwelling units.

**Subd. 6. Conditions of Components or Systems of Existing Residential Structures**.

A. Scope. This subdivision shall govern the conditions of components and systems of existing residential structures.

B. Certified Historic Structures. In a Certified Historic Structure as defined in Minn. R. 1311.0301, the requirements of this subdivision are subject to modifications specifically set forth in Chapter 6 of the Guidelines for Rehabilitation of Existing Buildings as modified by Minn. R. Chapter 1311.

C. Modifications. Where there are practical difficulties involved in carrying out the provisions of Subd. 6, the City may accept compliance alternatives or grant modifications for individual cases. The City shall first find that a special individual reason makes the strict letter of Subd. 6 impractical, and that the compliance alternative or modification is in conformance with the intent and purpose of Subd. 6 and that such compliance alternative or modification does not lessen health, life and the intent of any fire-safety requirements or any degree of structural integrity. The details of any action granting modification or the acceptance of a compliance alternative shall be recorded and entered into the City's files.

D. Safe and Sanitary Condition Required. All buildings and structures and all parts thereof shall be maintained in a safe and sanitary condition.

E. Additional Requirements Applicable to Electrical Components or Systems.

1) The electrical service, lines, switches, outlets, fixtures, and fixture coverings, and supports in every building or structure shall be in good repair.

2) Broken, loose, frayed, inoperative, defective, or missing portions of electrical components or systems shall be repaired or replaced.

3) All unsafe conditions shall be corrected.

F. Additional Requirements Applicable to Plumbing Components or Systems.

1) Leaking drain or supply lines shall be repaired or replaced.

2) All unsafe conditions shall be corrected.

3) Any cross-connections or siphonage between fixtures shall be corrected.

G. Additional Requirement Applicable to Mechanical Systems. Mechanical systems shall have any unsafe conditions corrected.

H. Means of Egress. The structure must meet those requirements of Sections 403.1 through 403.18 of Guidelines for Rehabilitation of Existing Buildings as modified by Minn. Rules Chapter 1311 that, by their wording or phrasing, apply to existing structures without regard to whether alteration, repair or other work is being performed on the structure.

I. Boiler/Central Heating Plant Equipment Rooms and Storage Rooms. In residential occupancies containing more than two dwelling units (including apartment buildings):

1) Rooms containing boilers or central heating plants, and storage rooms with floor area exceeding 100 square feet in size, shall be separated from the rest of the building by not less than a one-hour occupancy separation.

2) When approved by a Building Official, existing wood lath and plaster in good condition or ½ inch (12.7 mm) gypsum wallboard may be accepted where one-hour occupancy separations are required.

(a) In a Certified Historic Structure as defined in Minn. R. 1311.0301, where the existing wall and ceiling finish is wood lath and plaster, 1-hour fire-resistant construction is not required and need not be provided.

3) A separation need not be provided for such rooms with equipment serving only one dwelling unit.

J. Structural Safety.

1) The minimum design loads for the structure shall be the loads applicable at the time the building was constructed, provided that no dangerous condition is created. Structural members that are found to be unsound or dangerous shall comply with the applicable requirements of the Building Code for new construction.

2) A building, structure, or an individual structural member that has any of the conditions or defects described below, as determined by a licensed design professional, shall be replaced or strengthened when:

(a) The stress in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one-half the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose, or location.

(b) Any portion of the building, structure, or member has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that its structural strength or stability is materially less than it was before the catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose, or location.

(c) Any portion of the building, structure, or member has moved, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

(d) The building or structure, or any portion of it, is likely to partially or completely collapse because of (i) dilapidation, deterioration, or decay; (ii) faulty construction; (iii) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay, or inadequacy of its foundation; or (v) any other cause.

(e) The exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

(f) The building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls, or coverings.

(g) Any building or structure which shows damage or deterioration in any non-supporting part, member, or portion less than 50 percent, or in any supporting part, member, or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of newly constructed building or like area, height, and occupancy in the same location.

K. Weather Protection.

1) Every building shall be weather protected to provide shelter for the occupants against the elements and to exclude dampness.

2) The roof of every building or structure shall provide weather protection for the building.

3) All devices that were provided or are required to prevent ponding or flooding or to convey the roof water shall be capable of fulfilling that purpose.

4) All weather-exposed surfaces of every existing building or structure shall provide weather protection.

L. Maintenance and Degradation. All systems, devices, or safeguards that were required by a Building Code under which the building was constructed shall be maintained in conformance with the requirements of that code.

M. Accumulation of Dirt, Filth, Rubbish, or Garbage. An owner, operator or occupant of a dwelling unit may not allow the accumulation of dirt, filth, rubbish, or garbage on or about the premises occupied or controlled in a manner that could create a health hazard to the dwelling occupants or the general public.

N. Rodent Harborages in Occupied Areas.

1) Joint Responsibility. An owner, occupant or operator may not allow formation of rodent harborages in or about the premises he or she occupies or controls.

2) Occupant Responsibility for Extermination. The occupant of a dwelling containing a single dwelling unit is responsible for the extermination of rodents, insects or vermin on the premises. Every occupant of a dwelling unit in a dwelling containing more than one dwelling unit is responsible for such extermination whenever the dwelling unit is the only one infested.

3) Owner Responsibility for Extermination. The owner of a dwelling must maintain a dwelling in a reasonable rodent-proof condition. Failure to do so makes the owner responsible for extermination. Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof is also the responsibility of the owner.

4) Standard: Where subparts 2 or 3 of this subdivision give rise to a duty to undertake extermination, it is a violation of this code if the inspection does not demonstrate that such extermination has been undertaken at least to a degree that is proportionate to the need for it.

O. Nuisance. An owner, operator or occupant of any dwelling unit may not allow the formation or presence of any nuisance in or about the premises.

P. Yard Cover. Exposed areas surrounding (or within) a principal or accessory structure, including street boulevards which are not devoted to parking, drives, sidewalks, patios or other such uses, must be landscaped with grass, shrubs, trees, or other ornamented landscape material. Such landscaping shall be maintained in good condition and free of noxious weeds. Weeds, including tall grass, may not exceed six inches in height.

Q. Snow, Ice, and Stormwater Management.

1) Property owners and occupants shall be responsible to abate the snow and ice from the public sidewalk located on the city boulevard that abuts or fronts their property within 12 hours after such snow or ice has ceased to be deposited.

2) In no case may storm water be channeled into the sanitary sewer system. Storm water, ice, or snow may not be directed onto, or channeled across walkways or streets where it is likely to be a safety hazard.

R. Minimum Temperature Standards for Rental Properties. When the temperature outside the structure is between 20 degrees below zero and 60 degrees Fahrenheit, it is the responsibility of the owner that a minimum temperature of 68 degrees Fahrenheit be maintained in a dwelling unit at a point 3 feet above the floor and 2 feet from exterior walls in all habitable rooms, unless the occupant of that unit chooses to maintain a lower temperature. The installation of one or more portable space heaters shall not be used to achieve compliance with this section.

S. Electrical Cords in Rental Properties. Temporary wiring, extension cords or drop cords may not be used as permanent wiring.

T. Discontinuance of Basic Services or Utilities in Rental Properties. An owner, operator, or occupant may not permit any service or utility needed for a furnace to provide heat to be shut off from or discontinued for any occupied dwelling or dwelling unit let or occupied, except for such temporary interruptions as may be necessary while actual repairs or alterations are in process, or during temporary emergencies.

U. Occupancy Standards. The maximum permissible occupancy of a rental dwelling unit is determined as follows:

1) Minimum space. For the first two occupants, 220 square feet of habitable room floor space and for every additional occupant thereof, at least 100 square feet of habitable room floor space.

2) Maximum occupancy. The total number of occupants may not exceed two times the number of habitable rooms, less kitchen, in the dwelling unit.

**SECTION 15.107. RENTAL DWELLING LICENSING CODE**.

**Subd. 1. Inspection and Licensing of Rental Dwellings.**

A. Rental dwellings license. No person may operate, let, or cause to be let, a rental dwelling unit without first having completed an application and obtained an operating license to do so from the City as hereinafter provided.

1) In order to facilitate an orderly means of beginning the inspection and licensing system set forth in this Chapter the following paragraph shall apply. The owner of a rental dwelling unit must obtain a temporary permit if they have not received an operating license. A temporary permit issued before publication of this ordinance is valid until an operating license is obtained, or two years (twenty-four months) after its issuance, whichever is earlier. A temporary permit issued after publication of this ordinance expires after 24 months (subject to the Building Official's authority to extend the deadline). In no case is a temporary permit valid for more than two years (twenty-four months). During this period the City will institute an inspection program. After an initial inspection is completed and compliance with this Chapter is achieved, each temporary permit shall convert to an operating license. Thereafter the operating license shall conform to the terms of this Chapter as if it was a renewal of an operating license, and applicable fees for renewal shall apply. After publication of this ordinance and expiration of all temporary permits, no temporary permits shall be issued.

2) Each operating license shall be valid for a period of two years (twenty-four months).

3) A license renewal application shall be filed at least 60 days prior to license expiration date, unless the City has already renewed that license based upon a scheduled inspection conducted pursuant to section C below.

B. Permit and License Exemption.

1. The owner of a rental dwelling unit is exempted from the permitting and licensing requirements of this section if the renter of the dwelling unit is related to the owner as a parent, child, sibling, grandparent, grandchild, step-parent, step-child, step-grandparent, or step-grandchild and the owner files an affidavit with the City stating that the renter is one of these relations. The affidavit required in this paragraph must also state the

address of the dwelling and must be renewed at least every two years (twenty-four months).

2. The owner must notify the City in writing within 30 days of this exemption being lost because the renter is not related to the owner as one of the above-referenced relations.

C. Rental Dwelling Inspections. No operating license may be issued or renewed unless the City determines, following an inspection conducted pursuant to this section, that the rental dwelling unit and its premises conform to the LPMR. As more specifically provided below, the Building Official and his/her agents may cause inspections, follow-up inspections, and reinspections on rental dwelling units on all classes of property within the City on a scheduled basis, and on rental dwelling units or owner-occupied residential units on all classes of property when reason exists to believe that a violation of an applicable subdivision of the LPMR exists, has been, or is being committed.

1) The Building Official and his/her agents are authorized to contact owners, tenants and managers of rental dwellings to schedule inspections of rental dwellings at reasonable times. They are also authorized to conduct those inspections once scheduled. These scheduled inspections will be conducted to determine whether the unit and its premises conform to the LPMR so as to inform the City's decision of whether to issue an operating license. The authority to schedule and to conduct these inspections is available even if the owner or owner's agent holds a temporary permit and without regard to whether the owner or owner's agent has filed an application for an operating license.

2) In addition, upon receipt of a properly executed application for an operating license, the Building Official shall cause an inspection to be made of the premises to determine whether the structure is in compliance with the LPMR. Inspections performed pursuant to the authority in subsection A or subsection B are hereinafter described as "Licensing Inspections."

3) In addition, the Building Official and his/her agents are authorized to conduct inspections on rental dwelling units or owner-occupied residential units on all classes of property when reason exists to believe that a violation of an applicable subdivision of the LPMR exists, has been, or is being committed. A complaint or complaints from a tenant of a rental dwelling unit shall be an adequate basis for a reinspection of a rental dwelling unit.

4) To increase the awareness by owners of the likely timing of requested inspections and to conserve public resources, the Building Official may schedule and conduct inspections pursuant to subsection A according to

the area of the City in which the unit is located, dividing the City into zones and endeavoring to perform inspections pursuant to subsection A in one zone before beginning them in a different zone.

5) If a structure or rental dwelling unit is not in compliance, one or more follow-up inspections or reinspections may be conducted to verify that conditions and any corrections conform to the provisions of the LPMR.

6) When the basis for the inspection pursuant to this section is information observed or obtained during a Licensing Inspection, such reinspection or follow-up inspection shall be conducted on a scheduled basis.

7) Owners of rental dwelling units shall report to the City the full names, telephone numbers and addresses of the principal tenant of all rental dwelling units under their ownership or control, and update such information as needed to ensure that it is accurate and current.

8) When scheduling Licensing Inspections pursuant to this section, the Building Official or his/her agents will seek the consent of the owner of the property (if not already received) to inspect those areas outside of rental dwelling units that are not accessible to the general public (including any internal rooms that are inaccessible to the public, such as storage or mechanical rooms) and to unrented dwelling units, and the consent of the primary tenant of the rental dwelling unit (if not already received) to inspect that unit. If the property owner demonstrates to the satisfaction of the Building Official or his/her agents that one or more tenants have consented in writing to the inspection of their units, individual contacts by the City with those tenants may be deemed unnecessary.

9) If the City is unsuccessful in securing consent for an inspection pursuant to this section, the City shall seek permission, from a judicial officer through an administrative warrant, for its Building Official or his/her agents to conduct an inspection. Nothing in this Code shall limit or constrain the authority of the judicial officer to condition or limit the scope of the administrative warrant.

10) The scope of a Licensing Inspection shall be limited to what is necessary to determine in accordance with this subdivision whether the unit and its premises conform to the LPMR. This shall not preclude the Building Official from relying upon observations from a Licensing Inspection in seeking one or more of the remedies provided in Section 15.107.

11) A Licensing Inspection must be scheduled during ordinary business hours (or as otherwise arranged with the owner or tenant). Owners and their agents, and tenants, may at their option request that Licensing Inspections above take place only when they are present, so long as the request

identifies at least one date or time within the two weeks following the date of the request when the requesting party agrees to be present.

12) During inspections conducted pursuant to an administrative warrant, photographs and video recordings may not be taken of areas inside the building, absent further court permission or consent of the tenant (for areas inside the unit) or the landlord (for areas inside the building but outside a tenant's unit, and areas inside an unoccupied unit).

13) Building Officials are not authorized to open containers, drawers, or medicine cabinets, unless the containers, drawers, or medicine cabinets are opened with the consent of the tenant (for areas inside the unit) or the landlord (for areas inside the building but outside a tenant's unit, and areas inside an unoccupied unit). For purposes of this paragraph, a medicine cabinet is a covered cabinet located above a sink in a dwelling unit's bathroom.

14) Building Officials are authorized to open cabinets (other than medicine cabinets) or closets only when it is reasonably necessary in order to inspect for the existence of one or more conditions that violates the LPMR, or when the cabinets or closets are opened with the consent of the tenant (for areas inside the unit) or the landlord (for areas inside the building but outside a tenant's unit, and areas inside an unoccupied unit)

15) The information regarding the condition of the unit or its occupants that Building Officials retain after recording it in any inspection logs or forms shall be limited to descriptions of conditions constituting a violation of the LPMR. Building Officials may record a list of conditions that the landlord or tenant is encouraged to repair or change but which do not constitute a violation of the LPMR, if that list is not retained by the Building Official or City but is instead simply given to the landlord or tenant.

D. Inspection Not Required. Inspection for the issuance or renewal of a license may be waived by the City if the owner of a dwelling unit proves that within the previous 12 months the dwelling unit passed an inspection required by the City, State, or Federal regulations that is at least as stringent as the inspection required under this section. The City has sole discretion to determine when an inspection program is at least as stringent as the inspection required under this section. Inspections conducted as the result of a complaint made to the City may not be waived under this provision.

E. Application Contents. Owners of one or more rental dwelling units who have not yet received a temporary permit or operating license are responsible for applying with the City for either a temporary permit or an operating license. Before any portion of a property is used as a rental dwelling unit, the owner

must first secure either a temporary permit or an operating license. With either application, the owner must supply:

1) Name, physical address, mailing address, email address, and telephone number of dwelling owner, owning partners if a partnership, corporate officers if a corporation;

2) Name, physical address, mailing address, email address, and telephone number of designated resident agent, if any;

3) Name, physical address, mailing address, email address, and telephone number of vendor, if the dwelling is being sold through a contract for deed;

4) Legal address and property identification number of the dwelling;

5) Number of dwelling units within the dwelling;

6) At least one emergency telephone number;

7) The names, telephone numbers and addresses of principal tenants, if any, are required in Section 7 above.

F. Following Acquisition. A new owner must register a newly acquired rental residential property within ten (10) days after acquiring it, by applying for either a temporary license or an operating license. The Building Official must be notified of any address change within ten days.

G. Administrative Charge. Failure to obtain either a temporary permit as required by this section, or an operating license, will subject the owner of a dwelling unit to an administrative service charge up to double the cost of the permit.

H. License and Inspection Fees. The license and inspection fees are charged at the time of the application of the respective license and are due within thirty (30) days of the date of the invoice; in the cases of newly constructed residential unlicensed rental dwelling units, license fees are due upon issuance of the certificate of occupancy; in the cases of licensing periods of less than two (2) years, license fees will be pro-rated monthly. A license fee paid later than ten (10) working days after the prescribed date is subject to an additional administrative service charge double the amount of the license. Once issued, a license is nontransferable and the licensee is not entitled to a refund of any license fee upon revocation or suspension, or transfer of ownership. License and inspection fees shall be as established by the City Council.

I. Resident Agent Required. An operating license may not be issued or renewed for a nonresident owner of rental dwelling units (one who does not reside in any of the following Minnesota counties: Anoka, Chisago, Hennepin, Isanti, Ramsey, Sherburne, Washington) unless such owner designates in writing to the Building Official the name, address, and telephone number of his resident agent (one who does reside in any of the following Minnesota counties: Anoka, Hennepin, Isanti, Ramsey, Sherburne, Washington) who is responsible for maintenance and upkeep and who is legally constituted and empowered to receive service of notice of violation of the provisions of the City Code and to receive orders or process pursuant to law. The Building Official must be notified in writing of any change of resident agent or agent address or telephone number change within ten (10) days. This requirement may be waived if, in the Building Official's determination, the owner not living in one of the above specified counties is nonetheless sufficiently accessible for the purposes of the LPMR.

J. Participation in Crime-Free Multi-Housing Program. All owners of rental dwelling units must participate in the Crime-Free Multi-Housing Program. Participation is a condition precedent to the renewal of an operating license. For the purposes of this section, "participation" means documented attendance at a City-approved educational program that addresses crime prevention and housing issues, and inclusion of a City-approved, Crime Free Rental Housing lease addendum in each rental agreement.

K. Posting of Permit or License. The current temporary permit or operating license of a multiple dwelling unit, or a legible copy thereof, must be conspicuously posted in the main entry way or a conspicuous exterior location of the respective multiple dwelling unit. In the case of one-family and two-family dwelling units, a legible copy of the current temporary permit or operating license must be given to the renter of each unit.

L. License Not Transferable. A temporary permit or operating license is not transferable to another person or to another rental dwelling. Every person holding a temporary permit or operating license must give notice in writing to the building official within 72 hours after having legally transferred or otherwise disposed of the legal control of any permitted or licensed rental dwelling. The notice must include the name and address of the person succeeding to the ownership or control of such rental dwelling or dwellings. The person succeeding to the ownership or control of the rental dwelling or dwellings must obtain a temporary permit or operating license in order to continue operating the rental dwelling or dwellings. An inspection is not required to obtain this temporary permit or operating license unless the rental dwelling or dwellings have not been inspected within two years (twenty-four months) of the transfer of ownership or control.

M. Violation. Any person that maintains a rental dwelling unit without having either a valid temporary permit or a valid operating license, or permits new occupancy in violation of this subdivision, is guilty of a misdemeanor. In addition to criminal sanctions, the City may impose an administrative fee in an amount set in the City Fee Schedule and may give notice of intent to cease providing city services to the dwelling unit. An administrative fee may be appealed pursuant to Section 15.180. Upon the failure to successfully appeal an administrative fee within the period established in Section 15.180 the City may post the dwelling unit as illegal for habitation, and cease providing city services to the dwelling unit. Thereafter, the dwelling unit may not be occupied by anyone other than the primary homestead owner and that person's immediate family until (a) the administrative fee has been paid, (b) city services are restored, and (c) a rental license is obtained or the City is satisfied that the dwelling unit will not be used as a rental dwelling unit. Each day of each violation constitutes a separate offense.

**Subd. 2. Administration and Enforcement**.

A. Administration and Enforcement. The Building Official and his/her designee administer and enforce the provisions of the LPMR. They may enforce the standards of the LPMR through the licensing and inspection programs set forth in Subd. 1 and, where appropriate, through the powers set forth below.

B. Authority. In the absence of a timely appeal under the LPMR or any other applicable provision of law, the Building Official is the final authority in the determination of a violation under the LPMR.

C. License Suspension and Revocation. A temporary permit or operating license is subject to suspension or revocation by the City Council if the holder fails to operate or maintain permitted or licensed rental dwellings and units therein consistent with the provisions of the City Code and the laws of the State of Minnesota. In the event that a permit or license is suspended or revoked by the City Council, or expires without renewal, it is unlawful for the owner or his duly authorized agent to thereafter permit any new occupancy of vacant or thereafter vacated rental dwelling units until such time as a valid license may be obtained or restored by the City Council. During the period dwelling or unit is unlicensed, the City shall discontinue all utility service.

D. Compliance Order. Whenever the Building Official determines that any rental dwelling unit, or the premises surrounding any of these, fails to meet the provisions of the LPMR, the Official may issue a compliance order setting forth the violations of the code and ordering the owner, occupant, operator, or agent to correct such violations.

1) The Compliance Order ("Order") must be in writing and describe the location and nature of the violations of the LPMR;

2) The Order must establish a reasonable time, not to exceed 90 days, for the correction of such violations.

   (a) When a violation of the LPMR constitutes an imminent peril to life, health, or property, an immediate and exact time for the correction of the violation constitutes a “reasonable time” for correction for purposes of this subpart. When this is the case, no stay of proceedings in furtherance of action will be granted on appeal.

   (b) A reasonable time may be longer than ninety (90) days if correction is not possible because of prevailing weather conditions;

3) The Order must include information regarding the owner's right to appeal the order and the procedure to be followed in filing such an appeal pursuant to Section 15.180;

4) The Order must state that in the event the violations are not corrected within the time set in the compliance order, the license may be suspended, city services to the dwelling may be suspended, or that the necessary work may be performed by the City at the expense of the owner and that if the owner does not pay for the expense, the cost of the work will be assessed against the property.

5) The Order must be served upon the owner or his/her agent or the occupant, as the case may require. Such notice shall be deemed to be properly served upon such owner or agent, or upon any such occupant, if a copy thereof is:

   (a) Served personally, or

   (b) Deposited in the U.S. Mail, addressed to the owner or agent at their last known address with first-class postage prepaid, or

   (c) Sent via email to the email address of the owner or agent as declared in the last rental license application or renewal on file with the City.

   (d) Upon failure to affect notice by personal service, by mail, or email, notice may be posted at a conspicuous place in or about the dwelling which is affected by the notice. Failure to affect notice by posting is not a requirement to affect service after a failure of another means of service.

E. Emergency Cases. For purposes of subpart 2(a) above, situations which constitute an imminent peril to life, health, or property include, but are not limited to the following:

1) Heating systems that are unsafe as defined in Section 15.102 due to: burned out or rusted out heat exchanges (fire box); burned out, or plugged flues; lack of proper venting; being connected with unsafe gas supplies; or being incapable of adequately heating the living space.

2) Water heaters that are unsafe as defined in Section 15.102 due to: burned out or rusted out heat exchanges (fire box); burned out, rusted out, or plugged flues; lack of proper venting; being connected with unsafe gas supplies; or lack of temperature and pressure relief valves.

3) Electrical systems that are unsafe as defined in Section 15.102 due to: dangerous overloading; damaged or deteriorated equipment; improperly tapped or spliced wiring; improper or overloaded fuses; exposed uninsulated wires; distribution systems of extension cords or other temporary methods; ungrounded appliances in a hazardous condition.

4) Plumbing systems that are unsanitary due to:

   (a) leaking waste systems fixtures and traps;

   (b) lack of a toilet;

   (c) lack of washing and bathing facilities;

   (d) cross connection of pure water supply with fixtures or sewage lines.

5) Structural systems, walls, chimneys, ceilings, roofs, foundations, and floor systems that are unsafe as defined in Section 15.102.

6) Refuse, garbage, human waste, decaying vermin or other dead animals, animal waste, other materials that are unsanitary.

7) Infestation of rodents, insects, and other vermin.

F. Follow-up Inspection. At the end of the period allowed for the correction of a violation specified in the compliance order, the Building Official shall make, or attempt to make, a follow-up inspection of the premises to determine whether corrective actions have been sufficient to bring the violation(s) into compliance:

   1) If the premises are in compliance with the requirements of this section at the time of the follow-up inspection, a license may be issued in accordance with the requirements of Section 15.107.

2) If the Building Official determines that the violation(s) has not been corrected and the rental unit(s) has not been vacated, the Building Official shall suspend any existing license. Except that no suspension shall be effect unless or until the violator has had, or waived his right to a hearing before the City Council. The Building Official also may issue a citation, or may cause the filing of a formal complaint summoning the responsible party into court. The citation shall reiterate the charge and the ordinance section(s) violated. The City may also take action to correct violations under the provisions of Section 15.107, subdivision 2.

3) After a suspension, the property owner may pay a reinspection fee and request a reinspection and reinstatement of the license. If the Building Official determines that the violation(s) has been corrected and the rental unit(s) and building comply with the LPMR, the license shall be reinstated. Fees for a reinspection may apply as outlined in the City Fee Schedule.

G. Execution of Compliance Orders by Public Authority. Upon the failure to comply with a compliance order within the time set therein, the rental unit(s) not being vacated, and no appeal having been taken, the criminal penalty established hereunder notwithstanding, the City Council may by resolution direct the Building Official to remedy the deficiency (deficiencies) cited in the compliance order. The cost of such remedy shall be a lien against the subject real estate and may be levied and collected as a special assessment in the manner provided by Minnesota Statutes, Chapter 429. Such action will not be taken, however, without a good faith effort on the part of the City to provide the property owner with advance notice of its intention to proceed with repairs and assessment of the costs of repairs to taxes.

H. No Warranty by City. By enacting and undertaking to enforce the LPMR neither the City nor its Council, agents or employees warrant or guarantee the safety, fitness or suitability of any dwelling in the City. Owners or occupants should take whatever steps they deem appropriate to protect their interests, health, safety and welfare. A warning in substantially the foregoing language shall be printed on the face of the license.

**SECTION 15.108. UNSAFE AND HAZARDOUS BUILDINGS, STRUCTURES AND EXCAVATION**.

**Subd. 1. Hazardous Building And Excavations Prohibited**. It is unlawful for the owner of premises to allow a hazardous building or hazardous excavation thereon. Each day such condition is permitted shall constitute a separate offense. For the purpose of this Section, the terms “owner,” “hazardous building," and "hazardous excavation" shall have the meanings and usages ascribed to them in Minnesota Statutes, §§ 463.15 through 463.261 and as set forth in this Chapter. Provided, that this Section shall not be the exclusive remedy, the City may proceed

as the City deems appropriate under said statutory sections for abatement and other remedies therein set forth, or under provisions of the City Code. The filing of criminal charges hereunder or the conviction thereof shall not prohibit, void, or nullify any abatement proceedings or other remedies available to the City.

**Subd. 2. Unsafe Buildings And Structures**.

A. Definition and Abatement. All structures, whether the same be buildings or otherwise, including hazardous buildings as defined in Minn. Stat. § 463.15, which are structurally unsafe or, when applicable, not provided with adequate ingress and egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health, or public welfare, by reason of inadequate maintenance, dilapidation, unsanitary conditions, physical damage, obsolescence, fire hazard, or abandonment; as specified in the Building Code, another provision of the City Code, or any other law or regulation; are, for the purpose of this Section, unsafe structures. All such unsafe structures are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedure specified herein.

B. Notice to Owner. The Building Official or designee shall cause to be examined every structure or portion thereof which is dangerous or damaged and, if such is found to be an unsafe structure, the City shall give to the owner of such structure written notice stating the defects therein, and shall, in detail, indicate the improvements or repairs to be made and may state that if repairs and improvements are impractical and not economically feasible so as to ultimately provide for the public safety and health, that such structure shall be removed. This notice may require the owner or person in charge of the structure or premises, within 48 hours, to commence either the required repairs or improvements or demolition and removal of the structure or portions thereof, and all such work shall be completed within a reasonable period of time as so stipulated in the notice by the City. Such notice may require the structure, or portion thereof, to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the City.

C. Proper service of such notice shall be by personal service upon the owner of record or by registered or certified mail, return receipt requested. The designated period within which said owner is required to comply with the order of the City shall begin as of the date of delivery shown upon the return receipt, or the affidavit of service. If, in the event of an emergency situation the City determines that to protect the public interests of health and safety, precautions and/or repairs or removal must be conducted immediately, the City shall order the immediate barricade of any or all areas surrounding such structure causing the emergency condition and shall notify the owner of

record forthwith and order repairs to be commenced immediately. In the event notice cannot be made effective in sufficient time for the owner to abate the condition or properly barricade the area, the Building Official or designee shall order any necessary precautions to protect the public and notice of such actions shall be made on the owner of record forthwith. It is unlawful for any person owning or controlling a structure within the City to deny access to the City for purposes of this Section, nor shall the City be liable for trespass but the right of entry for the City shall be presumed to exist; and if need be, the Building Official or designee is authorized to obtain a warrant to effectuate performance of the LPMR, or for entry or correction of violations thereof found on the premises.

D. Hearing Procedure. Within twenty (20) days from the date of service, any person upon whom the order is served may request a hearing by the City Council in compliance with such provisions relating to administrative appeals contained in the City Code and by making such request in writing to the , City Administrator, Building Official or their designee. If such a hearing is requested, the execution of the order prepared by the City shall be stayed and the time period as provided in the notice shall not commence until such hearing has taken place and the order of the Council given. (The requirements of this Subdivision, however, shall not infringe upon the rights of the City in the event of an emergency as described in Paragraph C of this Subdivision). If an emergency situation exists as referenced in Paragraph C of this Subdivision, the hearing shall be held forthwith and demand for such hearing must be made within fourteen (14) days by the person upon whom notice is served following receipt of such notice.

E. Posting of Signs. The City shall post notices warning the public of known dangers pursuant to this Chapter. Notices may be posted after the hearing described above, or in the event of an emergency, notices may be posted immediately. The City shall post notices at each entrance and at other points deemed appropriate. The notice should read: DO NOT ENTER, UNSAFE TO OCCUPY, CITY OF LEXINGTON. Such notice shall remain posted until the required repairs, demolition, or removal are completed. Such notice shall not be removed without written permission of the Building Official or designee and no person shall enter the structure except for the purpose of making the required repairs or demolishing the structure.

F. Right to Demolish. In case the owner shall fail, neglect, or refuse to comply with the notice to repair, rehabilitate, or to demolish and remove said building or structure or portion thereof, the Council may order the owner of the structure prosecuted for violation of the provisions of this Section, or order the Building Official or designee to proceed with the work specified in such notice or the demolition of such structure, or both.

G. Costs. The Building Official or designee shall keep an accurate account of the expenses incurred in carrying out the order and of all other expenses theretofore incurred in connection therewith. Such costs shall be charged and assessed to the owner of the premises involved as a special assessment and shall be collected in the manner ordered by the Council provided for by special assessments.

H. Unlawful Act. It is unlawful for the owner of any property to suffer or permit an unsafe building as defined herein to remain thereon. Each day such condition is suffered or permitted shall constitute a separate offense. In cases of multiple or corporate ownership, any person or persons exercising ownership control, either individually or with others, who refuses to order the action required herein shall be deemed to be the owner causing the violation and subject to prosecution and conviction hereunder.

I. Secure Vacated Buildings. The owner of any dwelling, dwelling unit, or rooming unit which is vacant for a period of six (6) days or more, must make same safe and secure so that it is not hazardous to the health, safety, or welfare of the public and does not constitute a public nuisance. Any vacant dwelling open at doors or windows, if unguarded, shall be deemed a hazard to the health, safety, and welfare of the public and a public nuisance within the meaning of this ordinance, and may be secured by the City under the provisions of Minn. Stat. § 463.251.

J. Standards for Boarded Openings. All boarding over windows, doors or other openings shall be covered with ½" or thicker CDX plywood that is primed and painted to a light or matching color. The board(s) shall be the minimum number of pieces needed to cover the opening, well cut to fit and placed so there are no protruding edges. The board(s) shall be mounted in such a manner or sealed at edges so that rainwater is shed away from interior structural components. Fasteners shall be galvanized or anodized finish and shall be placed at board corners and then no further than 12 inches apart around the board perimeter.

**Subd. 3. Hazardous Excavations**. If an excavation for building purposes is left open for more than two months without proceeding with the erection of a building thereon, whether or not completed, or if any excavation or basement is not filled to grade or otherwise protected after a building is destroyed, demolished, or removed, the City Council may order such excavation to be filled or protected or in the alternative that erection of a building must begin forthwith if the excavation is for building purposes. The order shall be served upon the owner by personal service or by registered or certified mail, return receipt requested. If the owner of the land fails to comply with the order within fifteen (15) days after the order is served, the City Council shall order the excavation to be filled to grade or protected. The Building Official or designee shall keep an accurate account of the expenses incurred in carrying out the orders and of all other expenses theretofore incurred in connection

therewith. Such costs shall be charged and assessed to the owner of the premises involved as a special assessment and shall be collected in the manner ordered by the Council provided for by special assessments.

**Subd. 4. Unfit for Human Habitation.**

A. Local Public Health Act. Under the Local Public Health Act, the Anoka County Community Health Board (or its agent) has the responsibility to order an owner or occupant of a property to remove or abate a threat to the public health which is found on the property, such as a public health nuisance (i.e., a garbage house), source of filth, or cause of sickness. Minn. Stat. §§ 145A.01-.17.

B. Building Official. Under the City Code, Building Officials or his/her designee shall order an owner or occupant of a property to remove or abate a threat to the public health which is found on the property which otherwise violates the LPMR. When unabated, the Building Official shall order a dwelling unfit for human habitation.

C. Unfit Dwellings. Any dwelling, dwelling unit, or rooming unit or portion thereof which is damaged, decayed, dilapidated, unsanitary, unsafe, vermin or rodent infested, or which lacks provision for basic illumination, ventilation, or sanitation facilities to the extent that the defects create a hazard to health, safety, or welfare of the occupants or of the public, or which otherwise fails to meet the requirements of this Section, may be declared unfit for human habitation. Whenever any dwelling, dwelling unit, or rooming unit has been declared unfit, the Building Official shall order same vacated within a reasonable time and shall post a placard on same indicating that it is unfit for human habitation, and any registration previously issued for such dwelling shall be revoked.

D. Removal of Declaration Placard. It shall be unlawful for such dwelling, dwelling unit, or rooming unit, or portion thereof, to be used for human habitation until the defective conditions have been corrected and written approval has been issued by the Building Official. No person other than the Building Official shall deface or remove the declaration placard from any such dwelling unit.

***SECTION 15.109 THROUGH 15.179, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

**SECTION 15.180. APPEALS**.

**Subd. 1. Right of Appeal**. Any person aggrieved by a compliance order may appeal the compliance order to the City Council. Such appeals must be in writing, must specify the grounds for the appeal, must be accompanied by a filing fee in cash

or cashier's check, and must be filed with the City Clerk within ten (10) business days after service of the compliance order. If an appeal is not filed within the timelines and in the manner specified herein, the Building Official's decision shall be final. The filing of an appeal shall stay all proceedings in furtherance of the action appealed from, unless such a stay would cause imminent peril to life, health, property or public safety.

**Subd. 2. City Council Decision**. Upon at least five (5) business days' notice to the appellant of the time and place for hearing the appeal, and within thirty (30) days after said appeal is filed, the City Council or the individual or committee designated by the Council as the appeal body, must hold a hearing thereon, at which the applicant may appear and present evidence as to why the compliance order, or any portion thereof, should not be issued. If an individual or committee other than the City Council hears the appeal, it shall make a recommendation to the City Council. The City Council may reverse, modify or affirm, in whole or in part, the compliance order and shall order return of all or part of the filing fee if the appeal is upheld. The City Council or appeal committee or officer may postpone a meeting and hold hearing at a later date, not to exceed sixty (60) days after the appeal is filed, when it is necessary to do so.

***SECTION 15.181 THROUGH 15.198, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.***

***SECTION 15.199. VIOLATION A MISDEMEANOR.***

Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof. Each day of such failure to comply constitutes a separate offense. Criminal prosecution shall be in addition to any other penalty or enforcement mechanism allowed by law or equity.

# CHAPTER 16

## RIGHT-OF-WAY

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# CHAPTER 16

# RIGHT-OF-WAY

***SECTION 16.01. ELECTION TO MANAGE THE PUBLIC RIGHT OF WAY..***

A. To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

B. Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant Minn. Stat. 237.163 Subd. 2(b), to manage rights-of-way within its jurisdiction.

***SECTION 16.02. DEFINITIONS.*** The following definitions apply in this chapter of this code. References hereafter to "sections" are, unless otherwise specified references to sections in this chapter. Defined terms remain defined terms whether or not capitalized.

A. **"Abandoned Facility"** - means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

B. **"Applicant"** - means any person requesting permission to excavate or obstruct a right-of-way.

C. **"City"** - means the city of Lexington, Minnesota. For purposes of section 16.28, city means its elected officials, officers, employees and agents.

D. **"Commission"-** means the State Public Utilities Commission.

E. **"Congested Right-of-Way"** - means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes, section 216D.04. subdivision 3, over a continuous length in excess of 500 feet.

F. **"Degradation"** - means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

G. **“Degradation Cost”** - subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

H. **“Degradation Fee”** - means the estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

I. **“City Inspector”** - means any person authorized by the city to carry out inspections related to the provisions of this chapter.

J. **“Delay Penalty”** - is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

K. **“Emergency”** - means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

L. **“Equipment”** - means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

M. **“Excavate”** - means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

N. **“Excavation Permit”** - means the permit which, pursuant to this chapter, must be obtained before a person may excavate in a right-of-way. An Excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

O. **“Excavation Permit Fee”** - means money paid to the city by an applicant to cover the costs as provided in Section 16.06.

P. **“Facility or Facilities”** - means any tangible asset in the right-of-way required to provide Utility Service.

Q. **“Hole”** - means an excavation in the right-of-way, with the excavation having a length less than the width of the pavement.

R. **“Management Costs”** - means the actual costs the city incurs in managing its rights-of-Way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work;

determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way User for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163 or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 16.21 of this chapter.

S. **"Obstruct"** - means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

T. **"Obstruction Permit"** - means the permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

U. **"Obstruction Permit Fee"** - means money paid to the city by a permittee to cover the costs as provided in Section 16.06.

V. **"Patch or Patching"** - means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the sub-base and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's Street Improvement Plan for reconstruction within the next two (2) years.

W. **"Pavement"** - means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

X. **"Permit"** - has the meaning given "right-of-way permit" in Minnesota Statutes, section 237.162.

Y. **"Permittee"** - means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.

Z. **"Person"** - means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

AA. **"Registrant"** - means any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies

or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way

BB. **"Restore or Restoration"** - means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

CC. **"Restoration Cost"** - means the amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota public Utilities Commission rules.

DD. **"Public Right-of-Way"** - means the area on, below, or above a public roadway, highway, street, cart-way, bicycle lane and public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

EE. **"Right-of-Way Permit"** - means either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.

FF. **"Right-of-Way User"** - means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, Subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

GG. **"Service or Utility Service"** - includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, Subd's. 4 and 6; (2) services or a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minn. Stat. Chapter. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stat., Chapter 308A; and (6) water, sewer, steam, cooling or heating services.

HH. **"Supplementary Application"** - means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

II. **"Temporary Surface"** - means the compaction of sub-base and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of

pavement included in the city's capital improvement plan, and is scheduled for completion within 2 years, in which case it is considered full restoration.

JJ. **"Trench"** - means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

KK. **"Telecommunication Right-of-Way User"** - means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, which is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. SECTION 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this chapter.

***SECTION 16.03. PERMIT REQUIREMENT.***

**Subd. 1. Permit Required.** Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city.

A. Excavation Permit. An excavation permit is required to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing Facilities described therein, to the extent and for the duration specified therein.

B. Obstruction Permit. An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

**Subd. 2. Permit Extensions**. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (i) makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

**Subd. 3. Delay Penalty**. In accordance with Minnesota Rule 7819.1000 Subd. 3 and notwithstanding Subd. 2 of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution.

**Subd. 4. Permit Display**. Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.

***SECTION 16.04. PERMIT APPLICATIONS.*** Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

**Subd. 1. Requirements**. Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:

A. Each applicant's name, Gopher One-Call registration certificate number, address, e-mail address, if applicable, and telephone and facsimile numbers.

B. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

C. A certificate of insurance or self-insurance:

1) Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the City;

2) Verifying that the permittee is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the permittee, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

3) Naming the city and City Engineer as an additional insured as to whom the coverage’s required herein are in force and applicable and for whom defense will be provided as to all such coverage’s;

4) Requiring that the City be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

D. The city may require a copy of the actual insurance policies.

E. If the person is a corporation, a copy of the certificate required to be filed under Minn. Stat. 300.06 as recorded and certified to by the Secretary of State.

F. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

**Subd. 2. Payment.** Payment of money due the city for:

A. permit fees, estimated restoration costs and other management costs,

B. prior obstructions or excavations;

C. any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;

D. franchise fees or other charges, if applicable.

***SECTION 16.05. ISSUANCE OF PERMITS; CONDITIONS.***

**Subd. 1. Permit Issuance.** If the Applicant has satisfied the requirements of this chapter, the City shall issue a permit.

**Subd. 2. Conditions.** The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant there under to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

***SECTION 16.06. PERMIT FEES.*** (Note: Sample fee schedules included in the appendix)

**Subd. 1. Excavation Permit Fee.** The city shall establish an Excavation permit fee in an amount sufficient to recover the following costs:

A. The city management costs.

B. Degradation costs, if applicable.

**Subd. 2. Obstruction Permit Fee.** The city shall establish the obstruction permit Fee and shall be in an amount sufficient to recover the city management costs.

**Subd. 3. Payment of Permit Fees.** No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within thirty (30) days of billing.

**Subd. 4. Nonrefundable.** Permit fees that were paid for a permit that the City has revoked for a breach as stated in Section 16.14 are not refundable.

**Subd. 5. Application to Franchises.** Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

**Subd. 6. Establishment of Fees.** All permit fees shall be established consistent with the provisions of Minnesota Rule 7819, Plates 1 – 13 (see end of chapter).

***SECTION 16.07. RIGHT-OF-WAY PATCHING AND RESTORATION.***

**Subd. 1. Timing.** The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Section 16.08.

**Subd. 2. Patch and Restoration**. Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

A. City Restoration. If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.

B. Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000.

C. Degradation Fee in Lieu of Restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-

way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

**Subd. 3. Standards**. The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819, Plates 1-13 (see back of chapter).

**Subd. 4. Duty to Correct Defects.** The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the City, correct all restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five (5) calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 16.08.

**Subd. 5. Failure to Restore**. If the permittee fails to restore the right-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

***SECTION 16.08. SUPPLEMENTARY APPLICATIONS.***

**Subd. 1. Limitation on Area.** A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

**Subd. 2. Limitation on Dates.** A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

***SECTION 16.09. DENIAL OF PERMIT.***

**Subd. 1. Reasons for Denial**. The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the

denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

***SECTION 16.10. INSTALLATION REQUIREMENTS.***

**Subd. 1. Compliance.** The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes Sees. 237.162 and 237.163.

***SECTION 16.11. INSPECTION.***

**Subd. 1. Notice of Completion.** When the work under any permit hereunder is completed, the permittee shall furnish a Completion Certificate in accordance Minnesota Rules 7819.1300.

**Subd. 2. Site Inspection.** Permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

**Subd. 3. Authority of City**.

A. At the time of inspection the City may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

B. The City may issue an order to the permittee for any work, which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the City that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the permit pursuant to SECTION 16.13.

***SECTION 16.12. WORK DONE WITHOUT A PERMIT.***

**Subd. 1. Emergency Situations.** Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the Emergency.

A. If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

**Subd. 2. Non-Emergency Situations.** Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

***SECTION 16.13. SUPPLEMENTARY NOTIFICATION.***

**Subd. 1. Date Change.** If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the City of the accurate information as soon as this information is known.

***SECTION 16.14. REVOCATION OF PERMITS.***

**Subd. 1. Substantial Breach**. The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

A. The violation of any material provision of the right-of-way permit;

B. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;

C. Any material misrepresentation of fact in the application for a right-of-way permit;

D. The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or

E. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to SECTION 16.07.

**Subd. 2. Written Notice of Breach**. If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance,

rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

**Subd. 3. Response to Notice of Breach**. Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach, permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

**Subd. 4. Reimbursement of City Costs.** If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

***SECTION 16.15. MAPPING DATA.***

**Subd. 1. Information Required.** Each permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100. The information shall be compatible with City Engineer’s mapping software.

***SECTION 16.16. LOCATION OF FACILITIES.***

**Subd. 1. Compliance**. Placement, location, and relocation of facilities must comply with the act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities. (Note: Cities wishing to require the undergrounding of utilities should adopt the separate undergrounding ordinance included with appendix)

**Subd. 2. Corridors**. The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

**Subd. 3. Limitation of Space**. To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the City shall have the power to prohibit or City shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular Utility Service, the condition of the right-of-way, the time of year with respect to essential

utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

***SECTION 16.17. DAMAGE TO OTHER FACILITIES.*** When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the City shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the city's response to an emergency occasioned by that owner's facilities.

***SECTION 16.18. RIGHT-OF-WAY VACATION.***

**Subd. 1. Reservation of Right.** If the city vacates a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

***SECTION 16.19. INDEMNIFICATION AND LIABILITY.*** By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

***SECTION 16.20. ABANDONED FACILITIES.***

**Subd. 1. Removal of Abandoned Facilities**. Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the City.

***SECTION 16.21. APPEAL.***

**Subd. 1. Appeal Process.** A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

***SECTION 16.22. RESERVATION OF REGULATORY AND POLICE POWERS.***

**Subd. 1. Permitee’s Rights**. A permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

COST ESTIMATES FOR FEES

| | | | | Base $ | Quantity | Total |
|---|---|---|---|---|---|---|
| 1. | Excavation Permit Fees | | | | | |
| | A. HOLE | | | 0.25 | 40 | $10.00 |
| | | Administration Verification | | | | |
| | | 1) Plan Review | | 0.5 | 45 | $22.50 |
| | | 2) Inspection | | | | $ - |
| | | | a) Location before work | 0.5 | 30 | $15.00 |
| | | | b) Compliance during work | 0.5 | 30 | $15.00 |
| | | | c) Completion after work | 0.5 | 30 | $15.00 |
| | | | d) Re-inspection | 0.25 | 40 | $10.00 |
| | | 3) Testing Result Review | | | | |
| | | | a) Compaction | 0.083 | 40 | $3.32 |
| | | | b) Material | 0.083 | 40 | $3.32 |
| | | 4) Mapping | | | | |
| | | | a) Review Data | 0.25 | 45 | $11.25 |
| | | | b) Transfer to AutoCAD | 0.25 | 45 | $11.25 |
| | | | c) Insert to overlay to tie in | 0.25 | 45 | $11.25 |
| | | Total Cost | | | | $127.89 |
| | | Proposed Fee | | | | $125.00 |
| | B. EMERGENCY HOLE | | | | | |
| | | Administration | | 0.25 | 40 | $10.00 |
| | | Inspection after completion | | 1.5 | 30 | $45.00 |
| | | Total Cost | | | | $55.00 |
| | | Proposed Fee | | | | $55.00 |
| | C. TRENCH | | | | | |
| | | Administration | | 0.25 | 40 | $10.00 |
| | | Verification 1) Plan Review | | 1.5 | 45 | $10.00 |
| | | 2) Inspection | | | | $ - |
| | | | a) Location before work | 0.5 | 30 | $15.00 |
| | | | b) Compliance during work | 1.5 | 30 | $45.00 |
| | | | c) Completion after work | 1.5 | 30 | $45.00 |
| | | | d) Re-inspection | 0.75 | 40 | $30.00 |
| | | 3) Testing | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Result Review | | | | | |
| | a) | Compaction | 0.083 | 40 | $3.32 |
| | b) | Material | 0.083 | 40 | $3.32 |
| 4) Mapping | | | | | |
| | a) | Review Data | 0.5 | 45 | $22.50 |
| | b) | Transfer to AutoCAD | 0.25 | 45 | $11.25 |
| | c) | Insert to overlay to tie in | 0.5 | 45 | $22.50 |
| Total Cost | | | | | $275.39 |

The average trench in 330 lin. Ft. past the width of the hole.
Therefore, the number of 100 lin. Ft. (or portion thereof) units is 4.
The cost per 100 lin. ft. unit is 275.40/4=$68.85/100' unit

| | |
|---|---|
| Proposed Fees | $70.00/100 lin. Ft. (plus hole fee) |

2. Obstruction Permit Fee

| | | | |
|---|---|---|---|
| A. Administration | 0.25 | 40 | $10.00 |
| B. Recording | 0.25 | 40 | $10.00 |
| C. Review | 0.75 | 45 | $33.75 |
| Minimum Base Coat | | | |
| Proposed Base Fee | | | $53.75 |
| Plus additional fee based on length | | | $50.00 |
| Inspection | | | |
| 1) compliance during work | 1.5 | 30 | $45.00 |
| 2) completion after | 0.25 | 30 | $7.50 |

additional fee on assumed 1000 ft. permit
additional cost per lineal foot = $52.50/1000

| | |
|---|---|
| Proposed Fee | $50.00 plus 0.05 lin. Ft. |

3. Permit Extension Fee

| | | | |
|---|---|---|---|
| A. Administration | 0.25 | 40 | $10.00 |
| B. Recording | 0.083 | 40 | $3.32 |
| C. Review | 1 | 40 | $40.00 |
| Proposed Fee | | | $55.00 |

4. Delay Penalty

| | | | |
|---|---|---|---|
| A. Administration | 1.5 | 40 | $60.00 |

For up to 3 days of non-completion and non-prior notice before specified completion date.
After 3 days, an additional charge of $10/day will be levied.

| | |
|---|---|
| Total Penalty Charge (Up to 3 days late) | $60.00 |
| Each day over 3 days late | Plus $10.00/day |

5. Degradation Fee Formula

This formula covers degradation for depreciation caused by intrusion into the right-of-way. The depreciation applies to the original surface of the right-of-way and to the overlays and seal-coats applied to the surface. The formula includes life expectancy schedules for each and has an estimated cost per square yard based on the quality of the right-of-way surface required for different levels of traffic. This formula creates a degradation fee which is determined by the cost per square yard of street, overlay, and seal-coat, multiplied by the depreciation schedule, multiplied by the area of street patch.

Degradation Fee: (Cost per Square Yard for Street, Overlay, and Seal-coat x Depreciation Schedule Rates) x Area of Street Patch = Degradation Fee

RESTORATION OF RIGHT-OF-WAY

| | PART NUMBER | SUBJECT |
|---|---|---|
| | | UTILITY TRENCH RESTORATION |
| 1 | 7819.9900 Subpart 1 | Pavement 0 to 5 years old |
| 2 | 7819.9900 Subpart 2 | Pavement 0 to 5 years old |
| 3 | 7819.9905 Subpart 1 | Pavement 5 years old to 5 yr. project plan |
| 4 | 7819.9905 Subpart 2 | Pavement 5 years old to 5 yr. project plan |
| 5 | 7819.9910 | Pavement in 5 year project plan |
| 6 | 7819.9915 | Pavement in 2 year project plan |
| | | UTILITY HOLE RESTORATION |
| 7 | 7819.9920 | Pavement 0 to 5 years old |
| 8 | 7819.9925 | Pavement 5 years old to 5 yr. project plan |
| 9 | 7819.9930 | Pavement in 5 year project plan |
| 10 | 7819.9935 | Pavement in 2 year project plan |
| | | MISCELLANEOUS |
| 11 | 7819.9940 | Gravel roads with driveways |
| 12 | 7819.9945 | Gross sections from plate 11 |

| | | |
|---|---|---|
| 13 | 7819.9950 | Road shoulder restoration |

# CHAPTER 17
## USER CHARGE FOR EXCESSIVE CONSUMPTION OF LAW ENFORCEMENT SERVICES

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# CHAPTER 17

# USER CHARGE FOR EXCESSIVE CONSUMPTION OF LAW ENFORCEMENT SERVICES

***SECTION 17.01. PURPOSES***. It is the intent of the city council by the adoption of this chapter to impose on and collect from the owner of a property the city cost for police services and related services which are over and above the cost of providing normal city services and police protection city-wide, if the said excess costs are spent to abate a nuisance which has occurred, or is maintained and permitted, on the property. The collection of the costs for such excess law enforcement services shall be by assessment against the property on which the nuisance, or activity constituting the nuisance. Nothing herein shall prevent the city from using the authority and procedures in any other provision of the city code or statute. The adoption of this chapter is to be consistent with, and addition to the powers conferred by Minnesota Chapter 415.01 allowing the city to charge for emergency services.

***SECTION 17.02. DEFINITIONS.***

**Subd. 1. Definitions.** For the purpose of this chapter, the terms defined in this section shall have the meanings ascribed to them:

A. **"Building"** - means a structure suitable for human shelter, a commercial structure that is maintained for business activities that involve human occupation, any portion of the structure, or the real property on which the structure is located.

B. **"Excessive Law Enforcement Services"** - means those services provided at a specific building or the real property where the building is located, after four (4) or more calls for service for separate nuisance events had occurred in a prior one-month time period, where the owner was notified in writing that subsequent high levels of police and nuisance calls for service would result in a fee being charged for excessive consumption of those services, and where the owner has been provided with thirty (30) days following notice to abate the nuisance generating the high levels of calls for service.

C. **"Interested Party"** - means any known lessee or tenant of a building or affected portion of a building; any known agent of an owner, lessee, or tenant; any known person holding an unrecorded contract for deed, being a mortgagee or vendee in physical possession of the building; or any other person who maintains or permits a nuisance and is known to the city.

D. **"Last Known Address"** - shall be the address shown on the records of the Anoka County Department of Property Taxation or a more recent address known to the police department. In the case of parties not listed in these records, the last known address shall be that address obtained by the police department after a reasonable search. If no address can be found, such address shall be that of the building in which the nuisance occurred, or was maintained or permitted.

E. **"Nuisance"** - means one or more of the following behavioral incidents occurring or committed within a building or on the real property where the building is located:

1. Prostitution or prostitution-related activity committed within the building;

2. Gambling or gambling-related activity committed within the building;

3. Maintaining a public nuisance in violation of Minnesota Statutes, section 609.74, clause (1) or (3);

4. Permitting a public nuisance in violation of Minnesota Statutes; section 609.745;

5. Unlawful sale, possession, storage, delivery, giving, manufacture, cultivation, or use of controlled substances committed within the building;

6. Unlicensed sales of alcoholic beverages committed within the building in violation of Minnesota Statutes, section 340A.401;

7. Unlawful sales of gifts of alcoholic beverages by an unlicensed person committed within the building in violation of Minnesota Statutes, section 340A.503, subdivision 2, clause (1) or unlawful consumption or possession within the building by persons under the age of 21 years in violation of Minnesota Statute, section 340A.503, subdivisions 1 and 3;

8. Unlawful use or possession of a firearm in violation of Minnesota Statutes, section 609.66, subdivision 1a, 609.67, or 624.713, committed within the building;

9. Violation by a commercial enterprise of local or state business licensing regulations, ordinances, or statutes prohibiting the maintenance of a public nuisance as defined in Minnesota Statutes, section 609.74 or the control of a public nuisance as defined in Minnesota Statutes, section 609.745;

10. Actions which constitute a violation of Minnesota Statutes, section 609.72, relating to disorderly conduct;

11. Actions which constitute a violation of chapter 10 of the City Code, or

12. Actions which constitute a public nuisance under local, state, or federal laws.

F. **"Owner"** - means the person or persons identified as the owner of the building and/or real property as recorded with the Anoka County Department of Property Taxation for taxation purposes.

G. **"Personal Service"** - Service by personally handing a copy to the intended recipient or by leaving a copy at the intended recipient's residence or place of business with a person of suitable age and discretion.

***SECTION 17.03. NOTICE OF NUISANCE.***

**Subd. 1. Written Notice of Nuisance.** If the city, through its administrator, chief of police, or city attorney, or his or her designee has reason to believe that a nuisance has occurred, or is maintained or permitted in a building, or on a property, and intends to seek reimbursement for law enforcement services rendered in the future in connection with such nuisance or activities creating a nuisance, he or she shall provide a written notice as required in this section to the owner and each interested party known to him or her.

**Subd. 2. Written Notice Requirements.** The written notice shall:

A. State that a nuisance as defined in this chapter has occurred, or is maintained or permitted in the building, and specify the kind or kinds of nuisance which has occurred, or is being maintained or permitted. ;

B. Summarize the evidence that a nuisance has occurred, or is maintained or permitted, including the date or dates on which nuisance-related activities have occurred or where maintained or permitted, provided, however, that one or more police reports can be used to satisfy this requirement; and

C. Inform the recipient of the notice that (i) he or she has thirty (30) days to abate the conduct constituting the nuisance, and to take steps to make sure that actions constituting a nuisance will not re-occur, (ii) if, after thirty (30) days from the date of service of the notice, the nuisance re-occurs, or actions or conduct constituting a nuisance take place, the city may in its discretion impose the costs of law enforcement services in abating or attempting to abate such nuisance or nuisance-related activities, and (iii) the costs will be collected by assessment against the building or real property as defined herein.

**Subd. 3. Serving Notice.** The written notice shall be served by personal service, or by first class mail on at least one owner and all interested parties known to the city at the last known address for each such person or persons.

***SECTION 17.04. SUBSEQUENT NUISANCE OR NUISANCE-RELATED ACTIVITY; LIABILITY.***

**Subd. 1. Subsequent Nuisance Timetable.** If, within the period commencing thirty-one (31) days after a written notice is served pursuant to this chapter and continuing for one (1) year thereafter, a nuisance occurs or is maintained or permitted in the building or real property, and law enforcement services are rendered to abate or attempt to abate such nuisance, the costs of providing such law enforcement services within the said one year shall be assessed against the real property and collected as provided in this chapter.

**Subd. 2. Costs.** The costs for providing excess law enforcement services shall include but not be limited to the gross salaries including all fringes and benefits which are paid by the city or the Police Department to police officers, city staff, city attorneys or other contractors while responding to, or dealing with the nuisance or nuisance-related activities; the prorata cost of all equipment including vehicles, the cost of repairs to any city equipment and property damaged in responding to such nuisance or nuisance-related activities; the cost of any medical treatment of injured emergency personnel; the cost of prosecution or other legal costs related to enforcement or abatement; and the cost of collecting under this chapter, including legal fees and court costs.

**Subd. 3. Reimbursement.** The city reserves its rights to seek reimbursement for costs and damages not recovered by assessment against the real property using other legal remedies or procedures.

**Subd. 4. Liability.** Nothing in this ordinance shall be construed to require or prevent the arrest and/or citation of any person or persons for violations of federal, state or local laws or ordinances.

***SECTION 17.05. COST OF LAW ENFORCEMENT SERVICES; ANNUAL ASSESSMENT PROCEDURES.***

**Subd. 1. Cost Determination.** The department of police shall maintain a record of the costs per police visit in response to nuisance activities. The cost of providing such services is determined by the gross salaries including all fringes and benefits which are paid by the city for law enforcement staff, while responding to or dealing with these nuisance activities, the prorata cost of all materials and equipment including vehicles, the cost of repairs to any city equipment and property damaged in responding to such nuisance activities, and the cost of any medical treatment of any injured law enforcement officers. These costs shall be recalculated from time to time. In addition to maintaining a record of the costs per police visit, the

department shall maintain a record on individual properties of the cost of police services attributable to nuisances occurring after written notice has been sent to the owner and interested persons. The department of police shall report such information to the city clerk or his or her designee. The city attorney shall maintain a record of costs for its services devoted to each nuisance property. The cost of providing legal services shall be the actual cost incurred by the city as determined by the hours and costs billed by the city attorney, and by the actual costs of other legal fees or court costs. The city attorney shall report such information to the city clerk or his or her designee.

**Subd. 2. Resolution Approving Total, Setting Date of Public Hearing.** On or before October 1st of each year, the city clerk or his or her designee shall notify the city council of the total cost of such excessive law enforcement services performed during the previous year and the portion of such costs to be assessed against each lot and parcel of property that utilized excessive law enforcement services in response to nuisance activity. Upon receipt thereof, the council shall by resolution fix a date for public hearing at which time the council shall consider adopting and levying the service charges. The date of public hearing shall be at least twenty (20) days after adoption of said resolution.

**Subd. 3. Notice of Council Hearing.** Following the adoption of the resolution provided in paragraph (b) above, the city clerk shall publish a notice of the hearing in a daily newspaper of the city at least five (5) days prior to the public hearing. The notice shall state the date, time and place of hearing, the purpose of the hearing, identify the services provided and the property to be assessed a service charge therefore, and shall state the proposed rates of service charges to be considered by the council.

**Subd. 4. Notice to Owner and Interested Parties.** At least ten (10) days before the hearing, notice thereof shall be mailed by first class mail to the owner and any interested party known to the city, at his or her last known address. Such notice shall also inform the recipient of the notice (i) of the procedures he or she must follow under the city code in order to appeal the assessments to the district court, and (ii) of the provisions of Minnesota Statutes, sections 435.193 to 435.195 and the existence of any deferment procedure established pursuant thereto. Notice given by September 15th may be assessed on the following year tax roll.

**Subd. 5. Public Hearing; Adoption of Assessment Roll.** On the date of public hearing the council shall meet to consider the adoption of the proposed service charges. The council shall hear all interested parties concerning the proposed charges. At such meeting or at any adjournment thereof, the council may amend the proposed service charges, and shall, by resolution, adopt the service charges as a special assessment against the properties which utilized excessive law enforcement services in response to nuisance activities. Special assessments levied hereunder shall be payable in a single installment.

**Subd. 6. Certification to County for Collection With Taxes**. After adoption by resolution of the service charges and assessment rates therefore, and no later than October 15th, the city clerk shall transmit a certified copy of said resolution to the county department of property taxation to be extended on the proper tax list of the county and collected the following year along with current taxes.

**Subd. 7. Appeal.** Within twenty (20) days after adoption of the resolution adopting the service charges, any person aggrieved may appeal to the district court in the manner set forth Minnesota Statutes Section 429.081.