

CHAPTER 11: ZONING

SECTION 1100. ZONING GENERAL.

SECTION 1101. PLANNING COMMISSION.

SECTION 1102. DEFINITIONS.

SECTION 1105. PRELIMINARY ADMINISTRATIVE PLAN REVIEW.

SECTION 1110. SCOPE AND INTERPRETATION

SECTION 1115. ZONING DISTRICTS.

SECTION 1120. R-1A SINGLE-FAMILY RESIDENTIAL DISTRICT.

SECTION 1122. R-1B SINGLE-FAMILY RESIDENTIAL DISTRICT.

SECTION 1123. R-1C SINGLE-FAMILY RESIDENTIAL DISTRICT.

SECTION 1125. R-2 SINGLE-FAMILY RESIDENTIAL DISTRICT.

SECTION 1130. C-1 OFFICE AND INSTITUTIONAL DISTRICT.

SECTION 1135. C-2 LAKE RECREATION DISTRICT.

SECTION 1140. GENERAL REGULATIONS.

1140.05. Dwelling / Lot.

1140.10. Accessory Structures and Uses (Primary and Secondary).

1140.15. Height.

1140.17. Stormwater Management.

1140.18. Building Volume.

1140.19. Grading.

1140.20. Yards.

1140.25. Fences.

1140.30. Areas Under Water.

1140.35. Building Access.

1140.40. Signs.

1140.45. Parking and Loading.

1140.46. Driveways.

1140.50. Removal of Soil.

1140.55. Noise, Odors, Vibrations, Smoke, Fumes.

1140.60. Screening, Landscaping, Lighting, Storage and Outdoor Displays.

1140.70. C-1 and C-2 Vehicular and Pedestrian Circulation.

1140.80. Trees.

1140.85. Diseased Trees.

1140.86. Dead, Dying, and Hazard Trees.

SECTION 1145. NONCONFORMING USES.

SECTION 1150. CONDITIONAL USE PERMITS.

SECTION 1155. VARIANCES.

SECTION 1160. ZONING AMENDMENTS.

SECTION 1165. THE ADMINISTRATIVE OFFICIAL.

SECTION 1170. BUILDING AND USE PERMITS.

SECTION 1174. FLOODPLAIN.

SECTION 1175. WETLANDS.

SECTION 1176. SHORELAND MANAGEMENT DISTRICT.

SECTION 1177. CONSTRUCTION SITE RUN-OFF CONTROL.

SECTION 1178. ADULT ESTABLISHMENTS.

SECTION 1179. TELECOMMUNICATIONS FACILITIES.

SECTION 1180. VIOLATIONS AND PENALTIES.

SECTION 1100. ZONING GENERAL.

Section 1100.00. Title.

This ordinance shall be known as the “zoning ordinance” of the City of Greenwood, Minnesota and is referred to in this chapter as “this ordinance” and also referred to as the “zoning code” in this code book.

SECTION 1101. PLANNING COMMISSION.

Section 1101.00. Planning Commission.

Minnesota statutes section 462.355, subdivision 1 enables a municipality to create a planning agency and also to abolish same by two-thirds vote of all members of the governing body. In the event the city council acting pursuant to said statute, and section 220.02 of this code, elects to suspend the operation of the planning commission and assume the duties of same as if no such planning agency exists, then all references in this “zoning ordinance” and / or “zoning code” to “planning commission” shall be read to mean and refer to city council of the city of Greenwood, Minnesota as if this code had been re-written and republished accordingly, until such time as the city council restores the planning commission to full powers and duties under the code. (THIS SECTION ADDED MAY 2014 ORD 231)

SECTION 1102. DEFINITIONS.

Section 1102.00. Definitions.

Definitions that apply to the entire code book are found in chapter 12. For the purpose of the zoning code (chapter 11) certain words are defined as follows:

Abandoned Sign means any sign and / or supporting sign structure which remains without a message or whose display surface remains blank for a period of 1 year or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Signs applicable to a business temporarily suspended because of a change in ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of 1 year or more. Any sign remaining after demolition of a principal structure shall be deemed to be abandoned. Signs that are present because of being legally established nonconforming signs, or signs that have required a conditional use permit or a variance also shall be subject to the definition of abandoned sign. (SIGNS 1140)

Above Grade Basement Volume means the volume of that portion of a principal or accessory building or structure located below the average height of finished foundation (AHFF), measured in cubic feet, being an amount equal to the product of AHFF and the area of the first floor calculated using external dimensions and expressed in square feet.

Above Grade Building Volume means the sum of the above grade basement volume and superstructure volume of the principal buildings or structures on a lot plus the sum of the above grade basement volume and superstructure volume of all accessory buildings or structures on a lot.

Accessory Equipment means the wires, cables, and other equipment or facilities that are used with antennas. (TELECOMMUNICATIONS 1179)

Air Conditioner means a device that lowers the air temperature by compressor, refrigeration cycle, evaporation, or free cooling.

Alley means a public or private right-of-way less than 20 feet in width that affords secondary means of access to abutting property.

Animated Sign means a sign that includes action or motion. (SIGNS 1140)

Antenna means a device used for transmitting or receiving telecommunication, television or radio signals that is used for personal wireless telecommunication service or any other purpose, except a device used for the private enjoyment of those on the premises where it is located, such as amateur radio antennas and antennas receiving television signals for viewing on site. “Antenna” also does not include a lightning rod. (TELECOMMUNICATIONS 1179)

Antenna Support Structure means an existing structure that is a telecommunications tower, high density residential or non-residential building, water tower, or electric transmission tower carrying over 200 kilo volts of electricity, that can be used for the location of antennas without increasing the mass of the existing structure. (TELECOMMUNICATIONS 1179)

Apartments means a room or suite of rooms designed for, intended for, or used as a residence for 1 family or individual and equipped with cooking, bath and living facilities.

Arbor means an open a structure of vertical posts or lattice that supports cross-beams or an archway, often serving as a gate or entrance, and typically covered with trained climbing or trailing plants.

Artificial Obstruction means any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, bridge, conduit, pole, culvert, building, wire fence, fill, other structure or matter, in, along, across or projecting into the protected wetland conservation area. (WETLANDS 1175)

Average Height of Finished Foundation (AHFF) means the difference between the average elevation of the top of finished foundation of a building or structure and the building perimeter grade (BPG) of the building or structure.

Awning means a sheet of canvas or other material attached to a principal or accessory structure that is used to keep the sun or rain off a window, doorway, deck, or patio.

Awning Sign means a building sign or graphic printed on or in some fashion attached directly to the awning material. (SIGNS 1140)

Balloon Sign means a sign consisting of a bag made of lightweight material supported by helium, hot or pressurized air that is greater than 24 inches in diameter. (SIGNS 1140)

Basement means any area of a structure, including crawl spaces having its floor or base below ground level on 1 or more sides, regardless of the depth of excavation below ground level.

Best Management Practices (BMPs) means 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 avoidance of impacts, 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. Individual BMPs are described in the current version of Protecting Water Quality in Urban Areas, Minnesota Pollution Control Agency 2000. BMPs must be adapted to the site and can be adopted from other sources. However, they must be similar in purpose and at least as effective and stringent as MPCA's BMPs. (Other sources include manufacturers specifications, Stormwater Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, U.S. Environmental Protection Agency 1992, and Erosion Control Design Manual, Minnesota Department of Transportation, et al, 1993). (SITE RUN-OFF 1177)

Billboard means a sign erected for the purpose of advertising a product, event, person, or subject not entirely related to the premises on which the sign is located. (SIGNS 1140)

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

- a. part or all of the feature is located in a shoreland area;
- b. the slope rises at least 25 feet above the ordinary high water level of the waterbody;
- c. the grade of the slope from the toe of the bluff to a point of 25 feet or more above the ordinary high water level averages 30 percent or greater; and
- d. the slope must drain toward the waterbody.

An area with an average slope of less than 18% over a distance for 50 feet or more shall not be considered part of the bluff. (SHORELAND 1176)

Bluff, Toe means the lower point of a 50 foot segment with an average slope exceeding 18%. (SHORELAND 1176)

Bluff, Top means the higher point of a 50 foot segment with an average slope exceeding 18%. (SHORELAND 1176)

Bluff Impact Zone means a bluff and land located within 20 feet from the top of a bluff. (SHORELAND 1176)

Boat means a watercraft of whatever character, provided that in the case of shoreland management district regulations (section 1176 et seq.) boats of less than 12 feet in length are excepted. (NOTE: THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

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

Building means any structure for the shelter, support or enclosure of persons, animals, chattel or property of any kind, and when separated by bearing walls without openings, each portion of such building so separated shall be deemed a separate building or structure.

Building Height means the vertical distance measured between the building perimeter grade (BPG) and the roofline of a building or structure.

Building Line means a line parallel to a lot line at the applicable zone building setback, or the foundation line of the principal building on the lot, whichever is greater.

Building Perimeter Grade (BPG) means the average of all elevation measurements taken off the finished grade or surface of the ground, sidewalk or paving around the perimeter of a building or structure at a) points 5 feet distant and perpendicular to the building perimeter commencing at the most northerly corner thereof and thence clockwise at similarly situated points every 10 feet around the building perimeter, b) the point of highest grade within 5 feet of the building perimeter and c) the point of lowest grade within 5 feet of the building perimeter.

Building Sign means any sign attached or supported by any structure used or intended for supporting or sheltering any use or occupancy. (SIGNS 1140)

Cabinet Sign means any wall sign that is not of channel or individually mounted letter construction. (SIGNS 1140)

Canopy means a roof-like cover, often of fabric, plastic, metal or glass on a support, which provides shelter over a doorway. (SIGNS 1140)

Canopy Sign means any sign that is part of or attached to a canopy made of fabric, plastic or structural protective cover over a door or entrance. (SIGNS 1140)

Changeable Copy Sign means a sign or portion thereof that has a reader board for the display of text information in which each alphanumeric character, graphic or symbol is defined by objects not consisting of an illumination device and may be changed or rearranged manually or mechanically with characters, illustrations, letters or numbers that can be changed or rearranged without altering the face or surface of the sign structure. Changeable copy signs do not include signs upon which characters, letters or illustrations change or rearrange only once in a 24-hour period. (SIGNS 1140)

Changeable Copy Sign, Electronic means a sign or portion thereof that displays electronic, non-pictorial text information in which each alphanumeric character, graphic, or symbol is defined by a small number of matrix elements using different combinations or light emitting diodes (LEDs), fiber optics, light bulbs or other illumination devices within the display area. Electronic changeable copy signs include computer programmable, microprocessor controlled electronic displays. Electronic changeable copy signs include projected images or messages with these characteristics onto buildings or objects. Electronic changeable copy signs do not include official signs. (SIGNS 1140)

Commercial Speech means speech advertising a business, profession, commodity, service or entertainment. (SIGNS 1140)

Commercial Use means the principal use of land or buildings for the sale, lease, rental, or trade of products, goods, and services. (SHORELAND 1176)

Commissioner means the commissioner of the Minnesota Pollution Control Agency or the commissioner's designee. (SITE RUN-OFF 1177)

Common Plan of Development or Sale means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur. (SITE RUN-OFF 1177)

Conditional Use means a use that is permitted within a zoning district only when allowed by the city after a public hearing, if certain conditions are met.

Construction Activity includes construction activity as defined in 40 C.F.R. part 122.26(b)(14)(x) and small construction activity as defined in 40 C.F.R. part 122.26(b)(15). This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling and excavating. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more. (SITE RUN-OFF 1177)

Deck means an unenclosed roofless horizontal surface constructed of any material (including class 5 gravel) greater than 2 square feet in area or greater than 10 square feet in a 50 square foot area of a lot. (THIS DEFINITION APPEARS UNDER "PATIO, SLAB" AND "DECK")

Dewatering means the removal of water for construction activity. It can be a discharge of appropriated surface or groundwater to dry and / or solidify a construction site. It may require Minnesota Department of Natural Resources permits to be appropriated and if contaminated may require other MPCA permits to be discharged. (SITE RUN-OFF 1177)

Dock means a platform extending waterward from the shoreline, floating or otherwise, intended for ingress and egress from watercraft or to provide access to deeper water for swimming, fishing, or other water-oriented recreational activities. For purposes of this code, all docks are accessory structures subject to interior side yard setbacks set forth at section 1176.05. (NOTE: THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Dormer means a window set vertically in a structure projecting from a sloping roof. Dormer windows are used to create a usable area in the attic of a building.

Driveway means a horizontal surface constructed of any material greater than 10 square feet in area within any 100 square foot area of a lot that is used for driving or parking vehicles thereon. (THIS DEFINITION APPEARS UNDER "DRIVEWAY" AND "PARKING PAD")

Driveway Monument Post means a an upright shaft or structure of stone, brick, or other material, relatively slender in proportion to its height used as a monument to define the entrance to a driveway. Frequently has a light or finial on top.

Duplex, Triplex, and Apartments means a dwelling structure on a single lot, having 2, three, or more units respectively, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities. (SHORELAND 1176)

Dwelling, Single Family means a detached residential dwelling unit designed for and occupied by 1 family only.

Dwelling Site means a designated location for residential use by 1 or more persons. (SHORELAND 1176)

Dwelling, Two Family means a detached residential building containing 2 dwelling units, designed for occupancy by not more than 2 families.

Dwelling Unit means one room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and (1) physically separated from any other rooms or dwelling units that may be in the same structure, and (2) containing independent cooking and sleeping facilities, but not including trailers, tents, or recreational vehicles.

Dynamic Display means any characteristics of a sign that appear to have movement or that appear to change, caused by any method other than physically removing and replacing the sign or its components, whether the apparent movement or change is in the display, the sign structure or any other component of the sign. This includes displays that incorporate technology or methods allowing the sign face to change the image without having to physically or mechanically replace the sign face or its components as well as any rotating, revolving, moving, flashing, blinking or animated display and any display that incorporates rotating panels, LED lights manipulated through digital input, digital ink or any other method or technology that allows the sign face to present a series or images or displays. (SIGNS 1140)

Eave means that part of a sloping or flat roof that overhangs the wall below (e.g. the portion of a roof that projects out from the sidewall).

Electronic Graphic Display Sign means electronic, static images, static graphics or static pictures, with or without text information, defined by a small number of matrix elements using different combinations of light emitting diodes (LEDs), fiber optics, light bulbs or other illumination devices within the display area where the message change sequence is accomplished immediately or by means of fade, repixelization or dissolve modes. Electronic graphic signs include computer programmable, microprocessor controlled electronic or digital displays. Electronic graphic display signs include projected images or messages with these characteristics onto buildings or other objects. (SIGNS 1140)

Elevation means the view of the side, front or rear of a given structure(s). (SIGNS 1140)

Energy Dissipation means employed at pipe outlets to prevent erosion. Examples include, but are not limited to: concrete aprons, riprap, splash pads, and gabions that are designed to prevent erosion. (SITE RUN-OFF 1177)

Engineer means an engineer licensed by the state of Minnesota, or an engineer acceptable to the city if licensing is not available. (TELECOMMUNICATIONS 1179)

Erect means the activity of constructing, building, raising, assembling, placing, affixing, attaching, creating, painting, drawing or any other way of bringing into being or establishing. (SIGNS 1140)

Erosion Prevention means measures employed to prevent erosion including but not limited to: soil stabilization practices, limited grading, mulch, temporary or permanent cover, and construction phasing. (SITE RUN-OFF 1177)

Event Center means a property, or the buildings thereon, commercially offered, promoted, used, or employed as a venue or site open to the public or available for the conduct of public or private gatherings of people or for the conduct of events thereof of any sort or kind. (THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Family means any number of individuals generally but not necessarily related by blood, living together on the premises as a single non-profit housekeeping unit (except for necessary servants) as distinguished from a group occupying a boarding house, lodging house, hotel, club, fraternity or sorority house. (ZONING CHAPTER 11)

Final Stabilization means that either: 1. All soil disturbing activities at the site have been completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed; For individual lots in residential construction by either: (a) The homebuilder completing final stabilization as specified above, or (b) the homebuilder establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization. (Homeowners typically have an incentive to put in the landscaping functionally equivalent to final stabilization as quickly as possible to keep mud out of their homes and off sidewalks and driveways.) (SITE RUN-OFF 1177)

Finished Grade means the elevation of the planned or actual finished surface of the ground, sidewalk or paving.

Fire Pit means a location in which a contained outdoor fire is made.

First Floor means the floor or level of a building supported by joists resting upon the foundation walls.

Flag means any fabric or similar lightweight material attached at 1 end of the material, usually to a staff or pole, so as to allow movement of the material by atmospheric changes and which contains distinctive colors, patterns, symbols, emblems, insignia or other symbolic devices. (SIGNS 1140)

Flashing Sign means a directly or indirectly illuminated sign that exhibits changing light or color effect by any means, so as to provide intermittent illumination which includes the illusion of intermittent flashing light by means of animation. Also any mode of lighting that resembles zooming, twinkling or sparkling. (SIGNS 1140)

Floodplain means the channel or beds proper and the areas adjoining a wetland, lake or watercourse that have been or hereafter may be covered by the regional flood. Floodplain areas within the city shall encompass all areas designated as Zone A, Zone AE, Zone AO, or Zone AH on the Flood Insurance Rate Map adopted in section 1174.02 of this code.

Forest Land Conversion means the clear cutting of forested lands to prepare for a new land use other than re-establishment of a subsequent forest stand. (SHORELAND 1176)

Foundation means the portion of the building built on grade, typically of poured concrete or concrete block upon which the first floor joists rest. The foundation also may be constructed of other materials that are structurally suitable and have been chemically treated to resist decomposition when placed in contact with the ground. The foundation walls typically extend below the frost line and transfer the building weight load to wider footings and hence to the underlying ground.

Freestanding Sign means any sign that has supporting framework that is placed on, or anchored in, the ground and which is independent from any building or other structure. (SIGNS 1140)

Garage (Private) means an accessory building for storage of self-propelled vehicles and tools and equipment maintained as incidental to a conforming use of the premises.

General Contractor means the party who signs the construction contract with the owner to construct the project described in the final plans and specifications. Where the construction project involves more than one contractor, the general contractor will be the party responsible for managing the project on behalf of the owner. In some cases, the

owner may be the general contractor. In these cases, the owner may contract an individual as the operator who would become the co-permittee. (SITE RUN-OFF 1177)

Generator means a machine or engine that can produce electrical energy.

Grade shall be construed to be the final ground elevation after construction. Earth mounding criteria for landscaping and screening is not part of the final grade for sign height computation. (SIGNS 1140)

Grading means excavating, filling or other change in the earth's natural topography including stockpiling of earth or land.

Gross Density means the number of dwelling units or lots that may be developed on a tract of land as determined by dividing the total of a tract of land, including streets, parks, and open shore by the minimum number of square feet for a premises permitted in a prescribed zoning district.

Ground Sign means any freestanding sign with its face mounted on the ground or mounted on a base at least as wide as the sign and which has a total height not exceeding 8 feet. (SIGNS 1140)

Home Occupation means a business, business office, and / or business related support services housed, located, operated, or conducted from in or about a residence carried on by individuals residing therein as regulated by section 480. (THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Hazard Tree means a dead or dying tree, dead parts of a live tree, or an unstable live tree (due to structural defects or other factors) that is within striking distance of people or property (a target). Hazard trees have the potential to cause property damage, personal injury, or fatality in the event of a failure.

Hotel, Motel means any building or portion of a building where residential use, or occupancy, or sleeping accommodations is offered to persons for short-term or transient use in exchange for compensation on a per-use, per-day, per-week, or less than a per-month basis. (THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Illuminated Sign means any sign, whether exterior or interior, which contains an element designed to emanate artificial light internally or externally. (SIGNS 1140)

Impervious Surface means a surface that either prevents or retards the passage of rainwater through it or causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Impervious surface shall include, but are not limited to, all buildings, driveways, and parking areas (though they be paved or MnDOT class 5 sand and gravel mix), pavers, tennis courts, sidewalks, walkways, patios, boardwalk decks, swimming pools, and plastic landscaping sheets which are not porous.

Interior Sign means a sign that is located within the interior of any building, or within an enclosed lobby or court of any building. (SIGNS 1140)

Junk Yard means land or buildings where waste, discarded, or salvaged materials are bought, sold, exchanged, stored, cleaned, packed, disassembled or handled, including but not limited to scrap metal, rags, paper, rubber products, and products resulting from the wrecking of automobiles or other machinery. (ZONING CHAPTER 11)

Lake Recreation Center means a property, or the buildings thereon, commercially offered, promoted, used, or employed as a venue or site open to the public or available for the conduct of public or private gatherings of people or for the conduct of events thereat of any sort or kind of lake use or lake access related activity, including, but not limited to, the hosting of gatherings or events, the provision of food, refreshments, services of any kind, equipment rentals, swimming, fishing, camping, water skiing, personal water craft use, boat launch or docking services, (of whatever length of term), or charter boat passenger collection point. (THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Lake Recreational Lots are lakeshore lots which fail to meet minimum ordinance requirements or which are not of sufficient size so as to locate residential structure thereon. (SHORELAND 1176)

Legally Established Nonconforming Sign means any sign and its support structure lawfully erected prior to January 22, 2009, which fails to conform to the requirements of this ordinance. A sign erected in accordance with a conditional use permit or variance granted prior to the adoption of this ordinance and does not comply with this ordinance, shall be deemed to be a legal nonconforming sign. A sign unlawfully erected shall be deemed to be an illegal sign. (SIGNS 1140)

Loading Areas means any area where trucks are parked, maneuvered, or loaded or unloaded of materials or equipment.

Lot means a parcel, piece, or portion of land designated by metes and bounds, registered land survey, auditor's plat, or other means typically included in one PID tax number and otherwise legally separated from other parcels or

portions by legal description for the purpose of specially identifying the same. To be a lot, the parcel must abut a public street or a public way or have access to a public street or a public way. The word "lot" shall include the word "plot." For the purposes of the shoreland management district regulations (section 1176), a lot shall be considered to be an individual building site which shall be occupied by no more than 1 principal structure equipped with sanitary facilities. (NOTE: THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Lot Area means the land area within the lot lines.

Lot, Corner means a lot situated at the intersection of 2 or more streets.

Lot Coverage means the number of square feet of the ground floor of the principle and accessory structures divided by the number of square feet of lot area, expressed as a percentage.

Lot Depth means the average distance between the front and rear lot line (the greater frontage of a corner lot shall be deemed its depth and the lesser frontage its width).

Lot, Double Frontage means an interior lot having frontage on 2 streets.

Lot, Interior means a lot other than a corner lot.

Lot Width means the horizontal straight line distance between the side lot lines at the setback line.

Marina means a property, or the buildings thereon, commercially offered, promoted, used, or employed as a venue or site open to the public offering power boat, sailboat or personal watercraft launching, mooring (however temporary), or available for the conduct of any sort or kind of lake use or lake access related activity, including, but not limited to, the provision of food, refreshments, ice, fuel, services of any kind, water-related equipment or boat rentals, swimming, fishing, waterskiing, personal watercraft use, or charter boat passenger collection point.

(THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Monument Sign means any freestanding sign mounted on the ground or mounted on a base that is attached to the ground. (SIGNS 1140)

Multi-Vision Sign means any sign composed in whole or part of a series of vertical or horizontal slats or cylinders that are capable of being rotated at intervals so that partial rotation of the group of slats or cylinders produces a different image and when properly functioning allows on a single sign structure the display at any given time 1 or 2 or more images. (SIGNS 1140)

National Pollutant Discharge Elimination System (NPDES) means the program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, sections 1317, 1328, 1342, and 1345. (SITE RUN-OFF 1177)

Natural Obstruction means any rock, tree, gravel or analogous natural matter that is an obstruction and has been located within the wetland conservation area by a non-human cause. (WETLANDS 1175)

Non-Commercial Speech means dissemination of messages not classified as commercial speech, which include, but are not limited to, messages concerning political, religious, social, ideological, public service and informational topics. (SIGNS 1140)

Nonconforming Building means a building or structure that does not meet the requirements of the zoning district in which it is located.

Nonconforming Lot means a lot that does not meet the requirements of the zoning district in which it is located, or of section 1176 of this code.

Nonconforming Use means a use lawfully in existence on the effective date of the city's original zoning ordinance (1960) and not conforming to the regulations for the district in which it is situated, except that such a use is not nonconforming if it would be authorized under a conditional use permit where located. In the case of shoreland management district regulations (section 1176) a nonconforming use means a use lawfully in existence December 1, 1992.

Non-Riparian Lot means a lot which does not abut public waters but which is located within 1,000 feet of public waters. (SHOREWOOD 1176)

Normal Wetted Perimeter means the area of a conveyance, such as a ditch, channel, or pipe that is in contact with water during flow events that are expected to occur once every year. (SITE RUN-OFF 1177)

Notice of Termination means notice to terminate coverage under a permit after construction is complete, the site has undergone final stabilization, and maintenance agreements for all permanent facilities have been established, in

accordance with all applicable conditions of General Permit Authorization to Discharge Stormwater Permit Associated with Construction Activities (MN R100001). Notice of termination forms are available from the MPCA. (SITE RUN-OFF 1177)

Official Sign means signs of a public, noncommercial nature including public notification signs, safety signs, traffic signs, direction to public facilities when erected by or on behalf of a public official or employee in the performance of official duty. (SIGNS 1140)

Off-Premise Sign means a commercial speech sign which directs the attention of the public to a business, activity conducted, or product sold or offered at a location not on the same premises where such business sign is located. For purposes of the sign ordinance (section 1140.40), easements and other appurtenances shall be considered to be outside such platted parcel of land and any sign located or proposed to be located in an easement or other appurtenance shall be considered an off-premise sign. (SIGNS 1140)

On-Premise Sign means signs that identify or advertise an establishment, person, activity, goods, products or services located on the premises where the sign is installed. On-premise signs located within residential districts are not permitted. (SIGNS 1140)

Operator means the person (usually the general contractor), designated by the owner, who has day-to-day operational control and / or the ability to modify project plans and specifications related to the SWPPP. The person must be knowledgeable in those areas of the permit for which the operator is responsible, (MN R100001: Part II.B. and Part IV.) and must perform those responsibilities in a workmanlike manner. (SITE RUN-OFF 1177)

Ordinary High Water Level (OHWL) means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. The OHWL for Lake Minnetonka has been judicially established at an elevation of 929.4'. (SHORELAND 1176)

Outdoor Fireplace means a brick, stone, or metal-lined structure with a chimney where fuel is burned and is located outdoors. Outdoor fireplaces may be built-in (secured to a foundation or slab), or a freestanding item of movable personal property.

Outdoor Kitchen means a counter with a grill, range, or other heating source located outdoors. Outdoor kitchens may be built-in (secured to a foundation or slab), or a freestanding item of movable personal property.

Owner means the person or party holding legal title, (or their actual legal agent), to land, vehicle, or other personal property (if ownership is titled under state law, or if not formally titled, the person who purports to be, or by past conduct has exercised possessory control of personal property. Lessees and leaseholders have no presumed ownership rights and must demonstrate actual authority to act on behalf of the titled holders before the city may recognize their authority or ownership interest. (NOTE: THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Parapet (Wall) means that portion of building wall that rises above the roof level. (SIGNS 1140)

Parking Pad means a horizontal surface constructed of any material greater than 10 square feet in area within any 100 square foot area of a lot that is used for driving or parking vehicles thereon. (THIS DEFINITION APPEARS UNDER "DRIVEWAY" AND "PARKING PAD")

Patio, Slab means an unenclosed roofless horizontal surface constructed of any material greater than 2 square feet in area or greater than 10 square feet in a 50 square foot area of a lot. (THIS DEFINITION APPEARS UNDER "PATIO, SLAB" AND "DECK")

Pergola means an open a structure of vertical posts or lattice that supports cross-beams, typically covered with trained climbing or trailing plants.

Permanent Cover means final stabilization. Examples include grass, gravel, asphalt, and concrete. (SITE RUN-OFF 1177)

Permittee means a person or persons, firm, or governmental agency or other institution that is granted a permit by the city under this code and shall be presumed to be the responsible party under any such permit. (NOTE: THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Person. The term "person" shall extend and be applied to associations, clubs, societies, firms, partnerships, and bodies politic and corporate as well as to individuals. For the purpose of imposing penalties or fines for violation of any section of this code and whenever the term "person" is used in such section for which a penalty is imposed, the term shall include partners or members of an association, and as to corporations shall include its officers, agents, or members who are responsible for any such violation. (NOTE: THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Planning Agency means the planning commission or planning department as created by the city. (SHORELAND 1176)

Play Structure means a frame for children to play on, typically including one or more swings and a slide. (THIS DEFINITION APPEARS UNDER "SWING SET" AND "PLAY STRUCTURE")

Plot. See "lot."

Pole Sign. See Pylon Sign. (SIGNS 1140)

Political Sign means any sign which includes the name or picture of an individual seeking election or appointment to public office, or pertaining to a forthcoming public election or referendum, or pertaining to or advocating political views or policies, which is erected on private property by a bonafide candidate for political office or by a person or group supporting such a candidate and which contains the name of the person or group responsible for the erection and removal of the sign. (SIGNS 1140)

Porch or Portico (Enclosed) means a structure attached to a building with a floor, roof, structural supports, and which is permanently, seasonally, or temporarily enclosed with solid materials such as glass or Plexiglas, which may be possibly combined with partial walls. Screens, curtains, or latticework made of wire mesh, cloth, paper, strips of wood or metal, or other similar material shall not be considered "solid" for the purpose of this definition. A porch does not need to be heated or insulated to be considered "enclosed."

Porch or Portico (Unenclosed) means a structure attached to a building that has a floor, a roof, and structural supports but not permanently, seasonally, or temporary enclosed with solid materials, such as glass or Plexi-glass.

Portable Sign means any sign that is manifestly designed to be transported, including by trailer or on its own wheels, even though the wheels of such sign may be removed and the remaining chassis or support is converted to another sign or attached temporarily or permanently to the ground since this characteristic is based on the design of such a sign. (SIGNS 1140)

Porte Cochere means a roofed structure or roof-like cover, extending from the entrance of a building and that provides shelter over a doorway. (SIGNS 1140)

Premises When employed in section 1100 et. seq, means a lot or property being employed for a use of any kind. In all other contexts of this code, "premises" shall mean any land or site as referenced in a particular code section, including any, lot, parcel, residence, apartment, or commercial building, sidewalk, boulevard, street, highway, alley, playground, parking lot, dock or other location whether public or private within the corporate limits of the city. (NOTE: THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Projecting Sign means any sign that is affixed to a building or wall in such a manner that its leading edge extends more than 2 feet beyond the surface or such building or wall face. (SIGNS 1140)

Property When employed in section 1100 et seq., "property" means a parcel of land identified by a property tax identification number. In all other contexts of this code, "property" shall mean real, personal, and / or property of mixed character. (NOTE: THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Property Owner means the holder of fee title to a parcel of real estate.

Public Notices means official notices posted by public officers, employees or their agents in the performance of their duties, or as directed by such officers, employees or agents. (SIGNS 1140)

Public Street Right-Of-Way means the planned right-of-way for a public street. (SIGNS 1140)

Public Use means the use of land by the general public or by a public agency on behalf of the general public for any purpose. (SHORELAND 1176)

Public Waters means any waters as defined in Minnesota statutes chapter 105. (SHORELAND 1176)

Pylon Sign means any freestanding sign that has its supportive structure(s) anchored in the ground and which has a face elevated above ground level by pole(s) or beam(s) and with the area below the sign face open. (SIGNS 1140)

Real Estate Sign means a sign pertaining to the sale, lease, or rental of the real estate upon which it is located. (SIGNS 1140)

Residential District means any district zoned for residential uses. (SIGNS 1140)

Riparian Lot means a lot that abuts public waters. (SHORELAND 1176)

Roof When employed in section 1140:40 et seq. (sign regulations), "roof" means the exterior surface and its supporting structure on the top of a building or structure. The structural makeup of which conforms to the roof

structures, roof construction, and roof covering section of the building code. In all other contexts of this code, “roof” means the outside top covering of a building.

Roofline means a horizontal plane defined as follows:

1. For buildings with a flat roof, the roof line is the horizontal plane at the top of the highest coping, cornice, or parapet wall;
2. For buildings with a mansard roof, the roof line is a horizontal plane at the highest point of the mansard roof;
3. For buildings with a pitched or sloping roof, the roof line is the mean height between eaves and ridge of the highest gable on a pitched or hip or gambrel roof;
4. For buildings with a shed roof, the roof line is a the highest point of the highest wall of a shed roof;
5. For a round, dome, arch-type or Palladian-type roof, the roof line is a horizontal plane at the highest point of the highest dome or arch.
6. The roofline of buildings with multiple roof types shall be roofline which when employed yields the greatest building or structure height.
7. The roofline for roofs with projections, not otherwise permitted under this code, above a shed, mansard, flat, gable, hip, pitched, sloping, round, domed, arched or Palladian-type roof is a horizontal plane at the top of the highest point of the building or structure;

provided that when used in the context of sign regulation under section 1140.40 et seq., “roofline” means the upper-most edge of the roof or in the case of an extended façade or parapet, the upper-most height of said façade.

Roof Sign means any sign erected and constructed wholly on and above the roof of a building, supported by the roof structure and extending vertically above the highest portion of the roof. (SIGNS 1140)

Roof Sign (Integral) means any building sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, so that no part of the sign extends vertically above the highest portion of the roof and so that no part of the sign is separated from the rest of the roof by a space of more than 6 inches. (SIGNS 1140)

Rotating Sign means a sign or portion of a sign that turns about on an axis. (SIGNS 1140)

Saturated Soil means the highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information. (SITE RUN-OFF 1177)

Second Floor, Third Floor, Etc. means the floors, in series, above the first floor.

Sediment Control means methods employed to prevent sediment from leaving the site. Sediment control practices include silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins. (SITE RUN-OFF 1177)

Setback means the shortest horizontal distance between the lot line, or ordinary high watermark as applicable, and the foundation wall of a building or the allowable building line as defined by the general yard regulations of this ordinance.

Shimmering Sign means a sign that reflects an oscillating, sometimes distorted, visual image. (SIGNS 1140)

Shore Impact Zone means the land located between the ordinary high water level of Lake Minnetonka and a line parallel to it at a setback of 25 feet from the ordinary high water level of the lake. (SHORELAND 1176 – THIS DEFINITION UPDATED MAR. 2012 ORD. 202)

Shoreland means land located within 1,000 feet from the ordinary high water level of a lake, pond, or flowage. The practical limits of shorelands may be less than statutory limits where such limits are designated by natural drainage divides at lesser distances, shown on the shoreland management district on file at the city offices. (SHORELAND 1176)

Shoreland Setback Zone means the minimum horizontal distance between the ordinary high water level for Lake Minnetonka and the building setback line which is a minimum of 50 feet from the ordinary high water level. (SHORELAND 1176)

Sidewalk, Path, Walkway, Trail (hereinafter “sidewalk”) means a horizontal surface constructed of any building or surfacing material greater than 2 square feet in area or greater than 10 square feet in a 50 square foot area of a lot used for pedestrian traffic including walking, biking, etc.

Sign means any letter, word or symbol, poster, picture, statuary, reading matter or representation in the nature of advertisement, announcement, message or visual communication, whether painted, posted, printed, affixed or

constructed, including all associated brackets, braces, supports, wires and structures, which is displayed for informational or communicative purposes. (SIGNS 1140)

Sign Face means the surface of the sign upon, against, or through which the message of the sign is exhibited. (SIGNS 1140)

Significant Historic Site means any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites. A historic site meets these criteria if it is presently listed in either register or if it is determined to meet the qualifications for listing after review by the Minnesota state archaeologist or the director of the Minnesota Historical Society. (SHORELAND 1176)

Sign Structure means any structure including the supports, uprights, bracing and framework that supports or is capable of supporting any sign. (SIGNS 1140)

Site means a plot or parcel of land, or combination of contiguous lots or parcels of land, which are intended, designated and / or approved to function as an integrated unit. (SIGNS 1140)

Small Construction Activity means small construction activity as defined in 40 C.F.R. part 122.26(b)(15). Small construction activities include clearing, grading and excavating that result in land disturbance of equal to or greater than 1 acre and less than 5 acres. Small construction activity includes the disturbance of less than 1 acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than 1 and less than 5 acres. (SITE RUN-OFF 1177)

Sport Court means a horizontal surface area made of any material on which tennis or other sports are played. (THIS DEFINITION APPEARS UNDER "SPORT COURT" AND "TENNIS COURT")

Stabilized means the exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, wood fiber blanket, or other material that prevents erosion from occurring. Grass seeding is not stabilization. (SITE RUN-OFF 1177)

Standard Plates means general drawings having or showing similar characteristics or qualities that are representative of a construction practice or activity. (SITE RUN-OFF 1177)

Stealth Design means state-of-the-art design techniques used to blend the object into the surrounding environment and to minimize the visual impact as much as reasonably possible. Examples of stealth design techniques include architecturally screening roof-mounted antennas and accessory equipment; integrating telecommunications facilities into architectural elements; nestling telecommunications facilities into the surrounding landscape so that the topography or vegetation reduces their view; using the location that would result in the least amount of visibility to the public, minimizing the size and appearance of the telecommunications facilities; and designing telecommunications towers to appear other than as towers, such as light poles, power poles, flag poles, and trees. (TELECOMMUNICATIONS 1179)

Steep Slope means lands having average slopes of 12% or greater, as measured over horizontal distance of 50 feet or more, that are not bluffs. (SHORELAND 1176)

Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation. (STORMWATER 311, SITE RUN-OFF 1177, THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Stormwater Pollution Prevention Plan (SWPPP) means a document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and / or Receiving Waters to the maximum extent practicable. (STORMWATER 311, SITE RUN-OFF 1177, THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Stormwater Pollution Prevention Plan means a plan for stormwater discharge that includes erosion prevention measures and sediment controls that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution. (SITE RUN-OFF 1177)

Story means that portion of the building included between the surface of any floor and the surface of the next floor above it, or, if there is no floor above it, the space between the floor and the ceiling next above it.

Story (Half) means a story with at least 2 opposite exterior sides meeting a sloping roof not more than 2 feet above the floor of such story.

Street Line means the right-of-way line of a street.

Street Width means the shortest distance between the lines delineating the right-of-way of a street.

Structural Alteration means any change or addition to the supporting members of a building such as bearing walls, columns, beams or girders.

Structure means anything constructed or erected, the use of which requires a location on the ground or attachment to something having a location on the ground. The word “structure” includes the word “building” as defined in this section.

Structure Height means the sum total of building height and the vertical height above the roofline of all structures.

Structure (Floodplain) When used in the context of the floodplain ordinance section 1174, structure means anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, travel trailers / vehicles not meeting the exemption criteria specified in section 1174 and other similar items.

Structure (Primary Accessory) means an uninhabited subordinate building or other subordinate structure that has a footprint that is greater than 36 square feet, is located on the same lot as a principal structure, and the use is clearly subordinate to the use of the principal structure. Examples of accessory structures / uses include, but are not limited to, detached garages, sheds, and storage buildings.

Structure (Principal) means the structure or building which represents the primary building or use of a given lot as permitted under the zoning code.

Structure (Secondary Accessory) means an uninhabited subordinate structure, equipment, or personal property that is located on the same lot as a principal structure whose use or enjoyment is supplementary to the use of a principal structure or a primary accessory structure. Examples of secondary accessory structures / uses include, but are not limited to, patios, decks, slabs, driveways, parking pads, sidewalks, air conditioners, generators, fire pits, outdoor fireplaces, outdoor kitchens, swimming pools, hot tubs, spas, tennis courts, sport courts, play structures, swing sets, monument signs (commercial properties), pergolas, arbors, trellises. (SEE THE ALPHABETICAL LISTINGS IN THIS SECTION 1102 FOR DEFINITIONS OF EACH OF THESE ITEMS)

Structure (Water-Oriented Accessory) Pursuant to Minnesota state rule 6120.2500, water-oriented accessory structure means a small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures include, but are not limited to, boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.

Stringer means a line of string, rope, cording or an equivalent to which is attached a number of pennants. (SIGNS 1140)

Sub-Basement means a level beneath a basement typically reserved for utilities and not capable or intended for human habitation.

Subdivision When used in the context of the subdivision ordinance (section 600 et seq.), “subdivision” means the division of a parcel of land into 2 or more lots or parcels of land for the purpose of transfer of ownership or of building developments. The term also includes re-subdivision; and, when appropriate, the context shall relate to the process of subdividing or to the land subdivided. In all other contexts of this code “subdivision” means a described tract of land which is to be or has been divided into 2 or more lots or parcels, for the purpose of transfer of ownership building development, or if a new street is involved, any division of a parcel of land. The term includes re-subdivision, and, where it is appropriate to the context, relates either to the process of subdivision or to the land subdivided. (NOTE: THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Substandard Use means any use of shorelands, existing prior to December 1, 1992 that is permitted within the applicable zoning district that does not meet the minimum lot area and length of water frontage structure setbacks or other dimensional standards of the ordinance. (SHORELAND 1176)

Superstructure Volume means the volume of that portion of a principal or accessory building or structure located above the average height of finished foundation (AHFF) measured in cubic feet as calculated using external dimensions of the building or structure.

Surface Water or Water means all streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private. (SITE RUN-OFF 1177)

Surface Water-Oriented Commercial Use means the use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conduct of business. (SHORELAND 1176)

Suspended Sign means any building sign that is suspended from the underside of a horizontal plane surface and is connected to this surface. (SIGNS 1140)

Swimming Pool, Hot Tub, Spa means a structure made of any material that is filled with water and used for swimming, soaking, or bathing. Such may be built into the ground or freestanding.

Swing Set means a frame for children to play on, typically including one or more swings and a slide. (THIS DEFINITION APPEARS UNDER "SWING SET" AND "PLAY STRUCTURE")

Telecommunications Facilities means antennas, accessory equipment, and telecommunications towers. (TELECOMMUNICATIONS 1179)

Telecommunications Tower or Tower means a free-standing, self-supporting lattice, guyed, or monopole structure constructed from grade intended to support antennas. (TELECOMMUNICATIONS 1179)

Temporary Erosion Protection means methods employed to prevent erosion. Examples of temporary cover include; straw, wood fiber blanket, wood chips, and erosion netting. (SITE RUN-OFF 1177)

Temporary Sign means any sign, banner, pennant, balance, spinners, balloons or advertising display intended to be displayed for no more than 30 days. (SIGNS 1140)

Tennis Court means a horizontal surface area made of any material on which tennis or other sports are played. (THIS DEFINITION APPEARS UNDER "SPORT COURT" AND "TENNIS COURT")

Theater with Attached Restaurant means a venue for live plays, dramatic and musical performances with on-site licensed commercial kitchen and dining accommodations used primarily for the provision of on-site, sit-down food service. The venue may be licensed for on-sale of intoxicating liquor, but shall not be licensed for off-sale liquor sales. The kitchen facility may be employed for take-out food service or off-site catering services, provided:

- 1) the take-out and catering services combined do not exceed 10% of the operator's annual sales, and
- 2) the take-out and catering services do not significantly increase parking demand at the venue or adversely impact needed available parking for the venue at peak operating times.

Drive-up windows and drive-through food service are prohibited. The venue also may be employed and made available for hire for weddings, and private and corporate events, provided such business and services do not exceed 25% of the operator's annual sales. (ADDED BY ORD 222, DEC 2013; THIS DEFINITION ALSO APPEARS IN CHAPTER 12).

Top of Finished Foundation (Average) means the average of elevations taken at the top of each section of finished foundation wall.

Total Site Signage means the maximum permitted combined area of all freestanding and wall identification signs allowed on a specific property. (SIGNS 1140)

Trellis means a vertical structure made from an open framework or lattice of intersecting pieces of any material typically covered with trained climbing or trailing plants.

Underground Waters means 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 regolith, or in rock formations deeper underground. The term ground water shall be synonymous with underground water. (SITE RUN-OFF 1177)

Use means the purpose or activity for which the land, structure or building thereon is designed, arranged, or intended or which is occupied or maintained.

Use (Accessory) means a use clearly incidental or accessory to the principal use of a lot or a building location on the same lot as the accessory use.

Use (Conditional). See "conditional use."

Uses (Principal) mean the use of land, structure or building most nearly conforming to the use district and distinguished from accessory uses by the proportion of either therein or employees or time, or investment devoted to such use.

Variance means a city council approved modification or variation of the provisions of this ordinance, as applied to a specific piece of property, except that no variance may be granted to the allowable uses within a district. "Variance" has the meaning as that term is defined or described in Minnesota statutes chapter 394 (shoreland management district regulations, section 1176 et seq.) or in Minnesota statutes chapter 462 (zoning regulations, section 1100 et seq.)

Video Display Sign means a sign that changes its message or background in a manner or method of display characterized by motion or pictorial imagery, which may or may not include text and depicts action or a special effect to imitate movement, the presentation of pictorials or graphics displayed in a progression of frames that gives the illusion of motion, including, but not limited to the illusion of moving objects, moving patterns or bands of light, or expanding or contracting shapes, not including electronic changeable copy signs. Video display signs include projected images or messages with these characteristics onto buildings or other objects. (SIGNS 1140)

Visible means capable of being seen by a person of normal visual acuity (whether legible or not) without visual aid. (SIGNS 1140)

Wall means any structure which defines the exterior boundaries of courts or a building or structure and which has a slope of 60° or greater with the horizontal plane. (SIGNS 1140)

Wall Sign means any building sign attached parallel to, but within 2 feet of a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building and which displays only 1 sign surface. (SIGNS 1140)

Water-Oriented Accessory Structure means a small, above ground building or other improvement, except stairways and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include docks and boathouses. (SHORELAND 1176)

Water Quality Volume means 1/2 inch of runoff from the new impervious surfaces created by this project and is the volume of water to be treated in the permanent stormwater management system, as required by this permit except as provided in Appendix A.C.2. (SITE RUN-OFF 1177)

Waters of the State means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state of Minnesota or any portion thereof. (STORMWATER 311, SITE RUN-OFF 1177, THIS DEFINITION APPEARS IN CHAPTERS 11 & 12)

Wetland or Wetlands as defined in Minn. R. 7050.0130, subp. F including those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Constructed wetlands designed for wastewater treatment are not waters of the state. Wetlands must have the following attributes: A predominance of hydric soils; Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition; and under normal circumstances support a prevalence of such vegetation.

Window Sign means any building sign, pictures, symbol or combination thereof, designed to communicate information about an activity, business, commodity, event, sale or service that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window. (SIGNS 1140)

Yard means unobstructed space, subject only to lawfully permitted accessory structures and uses (both primary and secondary) on the same lot with a building, lying between the foundation wall of the principal structure and the lot lines.

The following illustrations show examples of yard locations:



Yard (Front) means the space extending across the full width of the lot and lying between the edge of the public right-of-way open and actually used for travel and the nearest building line of the principal structure. The front property line, not the street pavement, shall be used for measuring the front yard setback. For principal structure or primary accessory structures, the foundation wall shall be used for measuring the setback. For secondary accessory structures, the closest edge of the structure shall be used for measuring the setback.

Yard (Exterior Side) means the space extending across the full width of the lot and lying between the edge of a second public right-of-way open and used for travel and the nearest building line of the principal structure. The property line, not the street pavement, shall be used for measuring the setback. For principal structure or primary accessory structures, the foundation wall shall be used for measuring the setback. For secondary accessory structures, the closest edge of the structure shall be used for measuring the setback. Properties with an exterior side yard(s) are referred to in this code as “corner lots.”

Yard (Lake or Lakeside) means the space extending the full width of the lot and lying between the ordinary high water level of the lake and the nearest building line of the principal structure. In no event shall the lakeside yard be interpreted to coincide with definition of front yard contained herein. For principal structure or primary accessory structures, the foundation wall shall be used for measuring the setback. For secondary accessory structures, the closest edge of the structure shall be used for measuring the setback.

Yard (Rear) means the space between the rear property line and the nearest building line of the principal structure, for the full width of the lot. The rear yard typically is located opposite that of the front yard. For lots that front on 2 or more streets, the zoning administrator shall determine the location of the rear yard. For principal structure or primary accessory structures, the foundation wall shall be used for measuring the setback. For secondary accessory structures, the closest edge of the structure shall be used for measuring the setback.

Yard (Side) means the space between the side property line of the lot and the nearest building line of the principal structure extending the full length of the property. For principal structure or primary accessory structures, the

foundation wall shall be used for measuring the setback. For secondary accessory structures, the closest edge of the structure shall be used for measuring the setback.

(YARD DEFINITIONS AND ILLUSTRATIONS UPDATED JAN 2016, ORD 245)

SECTION 1105. PRELIMINARY ADMINISTRATIVE PLAN REVIEW.

Section 1105.00. Preliminary Administrative Plan Review.

Subd. 1. A person seeking review and comment from city staff regarding a proposed subdivision or development may submit plans and specifications to the attention of the city zoning administrator together with a request for a preliminary administrative plan review. After reviewing the plans and specifications, the zoning administrator may address code compliance issues and may make recommendations as the zoning administrator deems appropriate. This preliminary administrative plan review process is supplemental, and not in the alternative to the review process applicable to variance or conditional use permit applications, if any, should be required. Comments by the zoning administrator shall not constitute city approval of the submitted plans and specifications, nor shall any errors or omissions in the course of such review constitute consent or approval by the city. Preliminary review shall not alleviate an applicant from the obligation to obtain formal subdivision and zoning code approvals including variances and conditional use permits as may be necessary.

Subd. 2. Administrative Plan Review Fee. The city council may establish a fee for preliminary administrative plan review and amend that fee from time to time as set forth in chapter 5 of this code book.

SECTION 1110. SCOPE AND INTERPRETATION.

Section 1100.00. Scope and Interpretation.

Subd. 1. Scope. From and after the effective date of this ordinance, the use of all land and every building and the erection of structural alteration of any building or portion of a building in the city shall be in conformity with the provisions of this ordinance. Any structure or use lawfully existing at the passage of this ordinance but not in conformity with the regulations of the appropriate zoning district may be continued subject to the regulations of section 1150.

Subd. 2. Interpretation. The provisions of this ordinance shall be interpreted as the minimum requirements for the promotion of the public health, safety, morals, convenience and general welfare. Where the provisions of this ordinance impose greater restrictions than those of any statute, other ordinance or regulation, this ordinance shall apply. Where the provisions of any statute, other ordinance or regulation impose greater restrictions than this ordinance, such restriction shall apply.

SECTION 1115. ZONING DISTRICTS.

Section 1115.00. Zoning Districts.

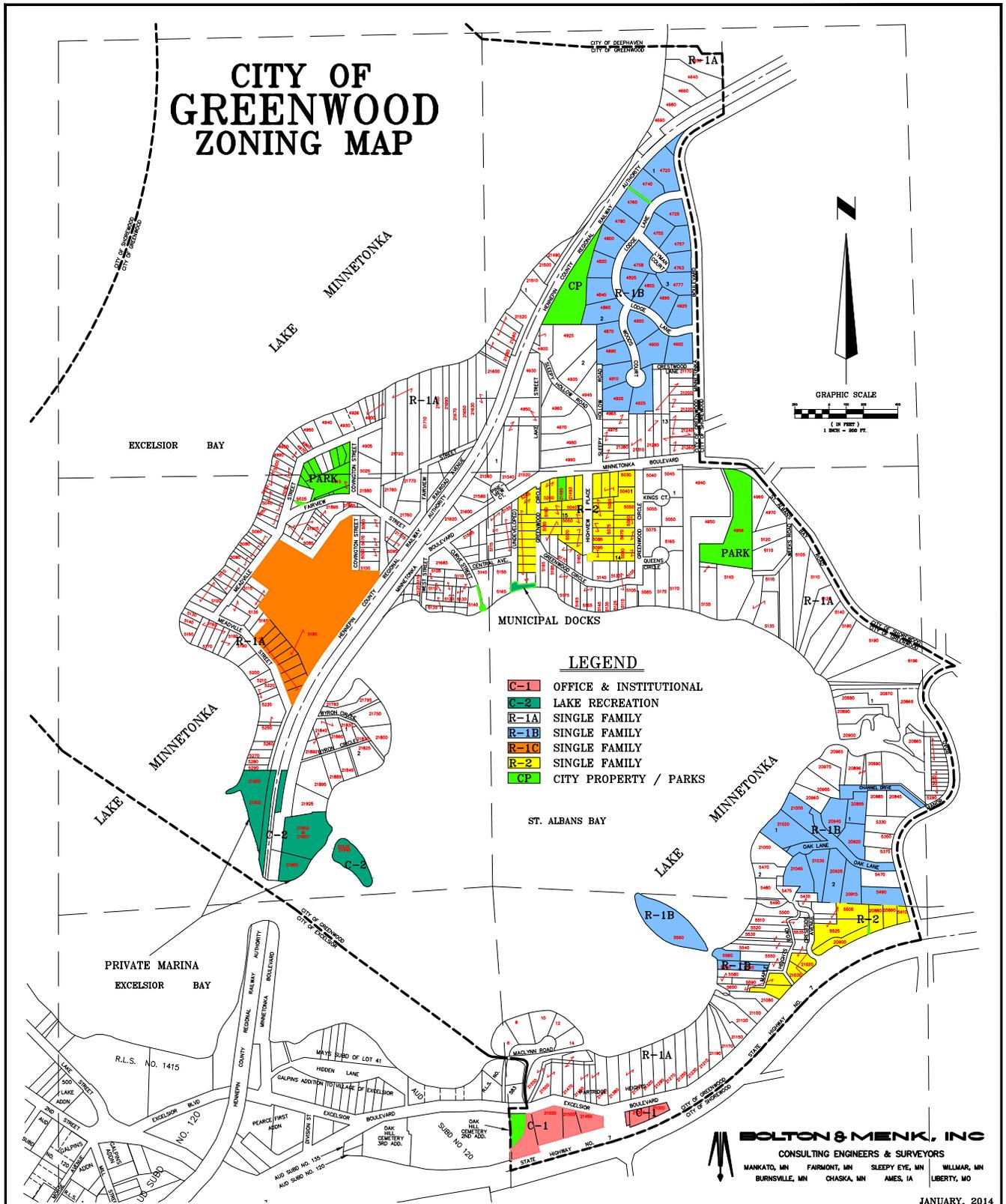
Subd. 1. Establishment of Districts. For the purpose of this ordinance, the city is divided into the following districts:

- R-1A Single-Family Residential District
- R-1B Single-Family Residential District
- R-1C Single-Family Residential District
- R-2 Single-Family Residential District
- C-1 Office and Institutional District
- C-2 Lake Recreation District

Subd. 2. Zoning Map. The boundaries of the districts established by this ordinance are delineated on the zoning map; said map and all notations, references, and data shown thereon are hereby adopted and made part of this ordinance and will be on permanent file, and for public inspection, in the city office of the zoning administrator. It shall be the responsibility of the zoning administrator and staff to maintain said map, and amendments thereto shall be recorded thereon within 30 days after official publication of amendments.

Subd. 3. District Boundaries. The boundaries between districts are, unless otherwise indicated, either the centerlines of streets, alleys, or railroad rights-of-way, or such lines extended or lines parallel or perpendicular thereto. Where

figures are shown on the zoning map between a street and a district boundary line runs parallel to the street at a distance therefrom equivalent to the number of feet stated unless otherwise indicated.



SECTION 1120. R-1A SINGLE-FAMILY RESIDENTIAL DISTRICT.

Section 1120.00. Purpose.

The intent of this district is to provide a use zone for low-density single-family dwellings that will be exclusive of other types of use for the purpose of creating a quality semi-estate district.

Section 1120.05. R-1A Permitted Uses.

No building shall be used or shall hereafter be erected, altered or converted in any manner, except as provided in section 1120 et seq. Permitted uses shall be:

Subd. 1. Principal Uses.

- (a) Single-family detached dwellings (excluding the leasing or renting of rooms).
- (b) Open area, parks and playgrounds owned and operated by a public agency, or by a home association for a subdivision or neighborhood.
- (c) Residential subdivisions, including streets, lighting, sanitary sewer service, and water service.
- (d) Uses mandated in state statutes as permitted uses.

Subd. 2. Primary Accessory Uses.

- (a) Private detached garages.
- (b) Tool house, sheds, and similar storage areas for domestic supplies.
- (c) Commonly accepted municipal playground equipment, and park shelter buildings.
- (d) Boat docks.
- (d) Home occupations as regulated by section 480.
- (e) Signs as regulated in section 1140 et seq.

Subd. 3. Secondary Accessory Uses.

- (a) Off-street parking, driveways, parking pads.
- (b) Play structures, swing sets.
- (c) Patios, decks, slabs, sidewalks.
- (d) Air conditioners, generators.
- (e) Fire pits, outdoor fireplaces, outdoor kitchens for the use and convenience of the resident and their guests.
- (f) Freestanding swimming pools, hot tubs, spas for the use and convenience of the resident and their guests.
- (g) Pergolas, arbors, trellises.

Subd. 4. Conditional Uses.

- (a) Public utilities including such items as electrical distribution station or any such similar structure located above ground.
- (a) Permanent in-ground swimming pools and spas for the use and convenience of the resident and their guests.
- (a) Tennis courts, sport courts.
- (a) Signs as regulated in section 1140 et seq.
- (a) Churches, chapels, synagogues, temples, and similar religious buildings.
- (a) Uses mandated in state statutes as conditional uses.

(THIS SECTION REVISED MAY 2013 ORD 216, FEB 2014 ORD 226, JAN 2016 ORD 245)

Section 1120.10. R-1A Lot Dimensions.

The following required lot area, width, depth, and lot coverage regulations shall be considered as minimum standards for buildings:

	Minimum Lot Area (Sq. Ft.)	Minimum Lot Width (Ft.)	Minimum Lot Depth (Ft.)	Maximum Lot Coverage
Single Family	15,000	75	150	As permitted by shoreland management district ordinance, section 1176

Section 1120.15. R-1A Setbacks.

Subject to the provisions of section 1176 et seq., the following front, side, rear, and lake yard setbacks shall be considered as minimum standards for buildings:

Land Use	Front Yard	Side Yard	Exterior Side Yard (Corner Lot)	Rear Yard	Lake Yard
Single-Family Principal Structure	30 feet	15 feet	30 feet	35 feet	50 feet
Municipal Park Equipment & Buildings	50 feet	50 feet	50 feet	50 feet	Not Allowed
Public & Private Utilities	50 feet	100 feet	50 feet	100 feet	100 feet
Accessory Structures	See section 1140.10 for Accessory Structures and Uses (primary and secondary) Setbacks and General Regulations				

(THIS SECTION REVISED MAR 2011 ORD 190, JAN 2016 ORD 245)

Section 1120.20. R-1A Building Minimum Requirements.

Subd. 1. Principal structures in the district shall:

- (a) not exceed 28 feet in building height and 42 feet in structure height,
- (b) be of a minimum width of 25 feet,
- (c) have a minimum floor space of 800 square feet,
- (d) be supported by foundation walls and frost footings of 42 inches in depth or current state building code, requirements whichever is greater,
- (e) meet all current standards of city building codes and appendices,
- (f) be served with a private garage and hard-surfaced (see section 1140.46) driveway to the public street.

Subd. 2. Primary accessory structures in the district shall:

- (a) be limited to 1 private garage, and 1 tool house shed or similar storage building per principal structure,
- (b) not exceed 15 feet in building height,
- (c) have a maximum combined floor space of all primary accessory structures on the lot of 1,000 square feet and in no event shall the accessory structures of private garage, tool house shed, and similar storage buildings combined exceed 60% of the total at-grade, main floor square footage of the principal structure,
- (d) meet all current standards of city building codes and appendices.

(THIS SECTION AMENDED JAN 2016 ORD 245)

Section 1120.25. R-1A General Regulations.

Additional requirements for the R-1A district are set forth in section 1140 et seq. of this ordinance.

SECTION 1122. R-1B SINGLE-FAMILY RESIDENTIAL DISTRICT.

Section 1122.00. Purpose.

This district establishes a use zone for low-density, single-family dwellings in the plats of Knapp Cool Oaks, Knapp Cool Oaks 2nd Addition, Woods of Lyman Lodge and the following legally described property:

Real property located in Hennepin County, Minnesota described as follows:

Lot 8, Section 35, Township 117, Range 23, the same being an island or peninsula in the Southeasterly part of St. Alban’s Bay, a part of Lake Minnetonka.

That part of Lot 8, “Maple Heights,” lying west of the line erected perpendicular to the north line of said lot from a point therein 250 feet west along said line from the northeasterly corner of said lot; meaning to include as a part of said lot and as a part of the portion above described; the land shown upon the plat at the west end of said lot bounded on the south by the south line of said lot and on the easterly and northerly side by dotted lines and on the northerly side of said tract by the shore line of St. Alban’s Bay, Lake Minnetonka and on the southwesterly side of said tract by the

shore line of St. Alban’s Bay, Lake Minnetonka, according to the plat thereof on file or of record in the office of the register of deeds in and for said Hennepin county.

Lot 9, Maple Heights except that part thereof described as follows: Commencing at the northeast corner of Lot 9, thence southwesterly along the easterly line of Lot 9 to the southeasterly corner thereof; thence west along the south line of Lot 9 a distance of 92 feet; thence at right angles north to the north line of Lot 9; thence east along the north line of Lot 9 to the point of beginning, according to the plat thereof on file or of record in the office of the register of deeds in and for said Hennepin county.

Setting forth standards that were in effect at the time that the areas zoned hereunder were platted and approved by the city.

Section 1122.05. R-1B Permitted Uses.

No building shall be used or shall hereafter be erected, altered or converted in any manner, except as provided in section 1122 et seq. Permitted uses shall be:

Subd. 1. Principal Uses.

- (a) Uses as permitted in the R-1A district.

Subd. 2. Primary Accessory Uses.

- (a) Uses as permitted in the R-1A district.

Subd. 3. Secondary Accessory Uses.

- (a) Uses as permitted in the R-1A district.

Subd. 4. Conditional Uses.

- (a) Uses as permitted in the R-1A district.

(THIS SECTION REVISED MAY 2013 ORD. 216, FEB 2014 ORD 226, JAN 2016 ORD 245)

Section 1122.10. R-1B Lot Dimensions.

The following required lot area, width, depth, and lot coverage regulation shall be considered as minimum standards for buildings:

	Minimum Lot Area (Sq. Ft.)	Minimum Lot Width (Ft.)	Minimum Lot Depth (Ft.)	Maximum Lot Coverage
Single Family	20,000	100	150	As permitted by the shoreland management district ordinance, section 1176

Section 1122.15. R-1B Setbacks.

Subject to the provisions of section 1176 et seq., the following front, side, rear, and lake yard setbacks shall be considered as minimum standards for buildings:

Land Use	Front Yard	Side Yard	Exterior Side Yard (Corner Lot)	Rear Yard	Lake Yard
Single-Family Principal Structure	35	15	35	60	50
Municipal Park Equipment & Buildings	Same as R-1A	Same as R-1A	Same as R-1A	Same as R-1A	Same as R-1A
Public & Private Utilities	Same as R-1A	Same as R-1A	Same as R-1A	Same as R-1A	Same as R-1A
Accessory Structures	See section 1140.10 for Accessory Structures and Uses (primary and secondary) Setbacks and General Regulations				

(THIS SECTION REVISED MAR 2011 ORD 190, JAN 2016 ORD 245)

Section 1122.20. R-1B Building Minimum Requirements.

Subd. 1. Principal structures in the district shall:

- (a) Minimum requirements as listed in the R-1A district.

Subd. 2. Primary accessory structures in the district shall:

- (a) Minimum requirements as listed in the R-1A district.

(THIS SECTION AMENDED JAN 2016 ORD 245)

Section 1122.25. R-1B General Regulations.

Additional requirements for the R-1B district are set forth in section 1140 et seq. of this ordinance. No accessory structure shall be located in any required front yard.

SECTION 1123. R-1C SINGLE FAMILY RESIDENTIAL DISTRICT.

Section 1123.00. Purpose.

The purpose of this district is to provide a zone for low-density, single-family dwellings, and also a zone permitting continuing operation of an established theater with attached restaurant in the manner it has been used historically heretofore and providing for possible enlargement of facilities and / or intensification of established uses by conditional use permit first obtained in a manner that is compatible with the surrounding residential community and provides flexibility to address changing business conditions.

Section 1123.05. Permitted Uses.

No building shall be used or shall hereafter be erected, altered or converted in any manner, except as provided in section 1123 et seq. Permitted uses shall be:

Subd. 1. Principal Uses.

- (a) Uses as permitted in the R-1A district.

Subd. 2. Primary Accessory Uses.

- (a) Uses as permitted in the R-1A district.

Subd. 3. Secondary Accessory Uses.

- (a) Uses as permitted in the R-1A district.

Subd. 4. Conditional Uses.

- (a) Uses as permitted in the R-1A district.
- (b) Theater with attached restaurant.

(UPDATED FEB 2014 ORD 226, JAN 2016 ORD 245)

Section 1123.10. R-1C Lot Dimensions.

The following required lot area, width, depth, and lot coverage regulations shall be considered as minimum standards for buildings:

	Minimum Lot Area (Sq. Ft.)	Minimum Lot Width (Ft.)	Minimum Lot Depth (Ft.)	Maximum Lot Coverage
Single Family	Same as R-1A	Same as R-1A	Same as R-1A	Not more than 30% of lot area shall be occupied by buildings and / or impervious surfacing
Theater with Attached Restaurant	4 acres	600	600	

Section 1123.15. R-1C Setbacks.

Subject to the provisions of section 1176 et seq., the following front, side, rear, and lake yard setbacks shall be considered as minimum standards for buildings:

Land Use	Front Yard	Side Yard	Exterior Side Yard (Corner Lot)	Rear Yard
Single-Family Principal Structure	Same as R-1A	Same as R-1A	Same as R-1A	Same as R-1A
Municipal Park Equipment & Buildings	Same as R-1A	Same as R-1A	Same as R-1A	Same as R-1A
Public & Private Utilities	Same as R-1A	Same as R-1A	Same as R-1A	Same as R-1A
Accessory Structures	See section 1140.10 for Accessory Structures and Uses (primary and secondary) Setbacks and General Regulations			

Land Use	Front Yard (Southerly Yard - Parking Lot)	Side Yard (Easterly Yard - Trail)	Exterior Side Yard (Westerly Yard)	Rear Yard (Northerly Yard - Pond)
Theater with Attached Restaurant	180 feet	15 feet	50 feet	Per Watershed Rules
Theater with Attached Restaurant <u>Primary</u> Accessory Structures	180 feet	10 feet	35 feet	Per Watershed Rules
Theater with Attached Restaurant <u>Secondary</u> Accessory Structures	See section 1140.10 subd. 2C for Setbacks and General Regulations for Secondary Accessory Structures and Uses			

(THIS SECTION AMENDED JAN 2016 ORD 245)

Section 1123.20. R-1C Minimum Building Requirements.

Subd. 1. Principal structures in the district shall:

- (a) Minimum requirements as listed in the R-1A district.

Subd. 2. Primary accessory structures in the district shall:

- (a) Minimum requirements as listed in the R-1A district.

(THIS SECTION AMENDED JAN 2016 ORD 245)

Section 1123.25. Lawful Use or Occupation of the Land or Premises Commonly Known as The Old Log Theater, 5185 Meadville Street, Greenwood, Minnesota, (Hennepin County PID Nos. 26-117-23-31-0028, 26-117-23-31-0036, and 26-117-23-34-0001), Existing at the Time of the Adoption of this Control.

Subd. 1. Findings. After review and investigation, the city adopted resolution 31-13 which sets forth findings on the established use and manner to which the “Theater with Attached Restaurant” property commonly known as the Old Log Theater, 5185 Meadville Street, Greenwood, Minnesota, (Hennepin County PID numbers 26-117-23-31-0028, 26-117-23-31-0036, and 26-117-23-34-0001), has historically been put. Said resolution is intended to serve as the factual basis for the terms and conditions of conditional use regulation under section 1123 et seq. related thereto.

Subd. 2. Authorized Use. The following enumeration of business practices, excerpted from resolution 31-13, describes the manner to which use of the Old Log Theater (described in subd. 1, above), may, as of the adoption of this control (12-04-13), be put:

- (a) Public business hours for theater performances, on-site food service, ticketing, and the business office shall be between 8am and 11pm. Special events may be between 8am and 12midnight.
- (b) Liquor service shall comply with the city's liquor ordinances (section 820).

- (c) With the exception of noise-creating activities, there are no restrictions on hours for supporting activities necessary to the Old Log's operations, including: office, scene shop, cleaning, and food preparation.
- (d) Noise-producing activities such as building, landscaping, and scenery construction, shall be limited to between 8am and 8pm, Monday-Saturday.
- (e) General deliveries, garbage collection, and food service truck deliveries shall be limited to between 8am and 8pm.
- (f) In addition to live theater performances, the Old Log may host special events (e.g. concerts, weddings, and private / public events) on the Old Log campus as desired. However, the parking lot shall not be employed for purposes other than parking. Noise related to special events shall be managed so as not to adversely impact neighboring residential properties. Special event revenue is estimated to be 25% of total annual revenue.
- (g) The Old Log's kitchen, dining room, and bar may offer service to the public independent of theater performances during the public business hours stated in (a) above.
- (h) Box lunches may be consumed on the grounds.
- (i) Parking of all vehicles, including buses, shall be on site 95% of the need. Buses shall be turned off while parked and may idle 10 minutes prior to boarding passengers. Except in cold weather buses may idle more frequently as needed.
- (j) Outdoor events shall not employ amplified music.

Section 1123.30. Events Necessitating a Conditional Use Permit Be Obtained Relative to Section 1123.05, Subd. 3(a) (Theater with Attached Restaurant).

Subd. 1. Conditional Use Permit Required. Subject to the rights granted property owners under Minnesota statute 462.357 Subd.1e (a), which provides, in part, that “any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion,” any one or more the following events related to the “Theater with Attached Restaurant” property commonly known as the Old Log Theater, 5185 Meadville Street, Greenwood, Minnesota, (Hennepin County PID numbers 26-117-23-31-0028, 26-117-23-31-0036, and 26-117-23-34-0001) shall require a conditional use permit be first obtained:

- (A) Request for a building permit or zoning approval for physical expansion of any existing building or the addition of impervious surface to said property beyond what existed as of the adoption of this control.
- (B) Any change to the manner of use of said property as authorized in section 1123.25, subd. 2.

Section 1123.35. R-1C Minimum Building Requirements for Permitted Conditional Uses Under Section 1123.05, Subd. 3(a) (Theater with Attached Restaurant).

Subd. 1. Conditional permitted principal structures and associated accessory structures authorized under section 1123.05, subd. 3(a) shall, in addition to other restrictions of this ordinance and any other applicable ordinances of the city, meet the following standards:

- (1) Principal buildings structures shall be limited to 1 in number and shall not exceed 28 feet in building height or more than 42 feet in structure height and shall be built in conformance with this code and current applicable building code.
- (2) Accessory buildings / structures shall be limited to 4 in number plus 1 gazebo and individually shall not be greater than 15 feet in building height or more than 28 feet in structure height. In no event shall the accessory buildings combined exceed 60% of the total at grade, main floor square footage of the principal theater building / structure,
- (3) Subject to variance, under the practical difficulties standard, all additions to the principal theater building and supporting accessory buildings / structures shall be constructed of the same materials or higher quality materials and shall reasonably conform to the architecture of the buildings in existence as of the adoption of this control (12-04-13).
- (4) All exterior finishes on any building shall be any single one or combination of the following:
 - a. Face brick,
 - b. Natural stone,
 - c. Wood which meets appropriate fire codes and has been reviewed by the planning commission and approved by the city council,
 - d. Any other exterior finish that has been reviewed by the planning commission and approved by the city council, In no event shall precast concrete units, including those with surfaces that have been integrally treated with an applied decorative material or texture be employed for exterior finishes, provided that in no event shall proposed exterior finishes matching an existing building be deemed unacceptable.

- (5) Architectural Compatibility. Building structure, design, and exterior finish materials, including exterior remodeling projects, are subject to review by the planning commission and the city council for acceptability of proposed materials, architectural compatibility with the R-1C district and its established past historic use, and to determine whether the proposal is in keeping with the predominately residential character of the surrounding neighborhoods, local public amenities, and the city in general. Building appearance will be considered from a 360° perspective.

Section 1123.40. Regulation and Imposition of Conditions on Permitted Conditional Uses Authorized Under Section 1123.05, Subd. 3(a).

Subd. 1. Permitted Conditions. In addition to the conditions related to public health, safety, and welfare that the council may impose on conditional uses under section 1150, in considering and issuing or amending a conditional use permit for a “Theater with Attached Restaurant” under section 1123.05, subd. 3(a) the council may impose conditions related to the use of the buildings and structures and operation of any the business operated upon the property including, but not limited to, any of the following:

- A. Odor regulation and management
- B. Noise limits and management
- C. Limits on operational hours
- D. Traffic management and control
- E. Outdoor lighting
- F. Employee parking
- G. Delivery routes and service vehicles including service times and weight restrictions
- H. Refuse collection and related issues including service times and weight restrictions
- I. Carry-out food service
- J. Catering service
- K. Repair and maintenance of public roads burdened by theater related traffic
- L. Alcohol
- M. Outdoor events
- N. Number, size, and location of buildings and accessory structures.

Section 1123.45. R-1C General Regulations.

Additional requirements for the R-1C district are set forth in section 1140 et seq. of this ordinance.

(SECTION 1123 ADDED DEC 2013, ORD. 222)

SECTION 1125. R-2 SINGLE-FAMILY RESIDENTIAL DISTRICT.

Section 1125.00. Purpose.

The purpose of this district is to provide a use zone for medium-density, single-family dwellings and the normal associated uses found in single-family areas. This district also will allow certain uses under special conditions that are not related to single-family usage, which with proper site controls can be allowed without having adverse effects upon adjacent properties.

Section 1125.05. R-2 Permitted Uses.

No building shall be used or shall hereafter be erected, altered or converted in any manner, except as provided in section 1125 et seq. Permitted uses shall be:

Subd. 1. Principal Uses.

- (a) Uses as permitted in the R-1A district.

Subd. 2. Primary Accessory Uses.

- (a) Uses as permitted in the R-1A district.

Subd. 3. Secondary Accessory Uses.

- (a) Uses as permitted in the R-1A district.

Subd. 4. Conditional Uses.

(a) Uses as permitted in the R-1A district.

(THIS SECTION AMENDED MAY 2013 ORD 216, JAN 2016 ORD 245)

Section 1125.10. R-2 Lot Dimensions.

The following required lot area, width, depth and lot coverage regulation shall be considered as minimum standards for buildings:

	Minimum Lot Area (Sq. Ft.)	Minimum Lot Width (Ft.)	Minimum Lot Depth (Ft.)	Maximum Lot Coverage
Single Family	10,000	75	120	As permitted by the shoreland management district ordinance, section 1176
Civic and Government Buildings	3 acres	300	NA	As permitted by the shoreland management district ordinance, section 1176

Section 1125.15. R-2 Setbacks.

Subject to the provisions of section 1176 et seq., the following front, side, rear, and lake yard setbacks shall be considered as minimum standards for buildings:

Land Use	Front Yard	Side Yard	Exterior Side Yard (Corner Lot)	Rear Yard	Lake Yard
Single-Family Principal Structure	30 feet	10 feet	30 feet	35 feet	50 feet
Municipal Park Equipment	Same as R-1A	Same as R-1A	Same as R-1A	Same as R-1A	Same as R-1A
Public & Private Utilities	Same as R-1A	Same as R-1A	Same as R-1A	Same as R-1A	Same as R-1A
Accessory Structures	See section 1140.10 for Accessory Structures and Uses (primary and secondary) Setbacks and General Regulations				

(THIS SECTION REVISED MAR 2011 ORD 190, JAN 2016 ORD 245)

Section 1125.20. R-2 Building Minimum Requirements.

Subd. 1. Principal structures in the district shall:

(a) Minimum requirements as listed in the R-1A district.

Subd. 2. Primary accessory structures in the district shall:

(a) Minimum requirements as listed in the R-1A district.

(THIS SECTION AMENDED JAN 2016 ORD 245)

Section 1125.25. R-2 General Regulations.

Additional requirements for the R-2 district are set forth in section 1140 et seq. of this ordinance.

SECTION 1130. C-1 OFFICE AND INSTITUTIONAL DISTRICT.

Section 1130.00. Purpose.

The C-1 district is intended to provide a district that is related to and may reasonably adjoin other residential districts for the location and development of administrative office buildings and related office uses which are subject to more restrictive controls. The office uses allowed in this district are those in which there is limited contact with the public and no manufacture, exterior display or selling of merchandise to the general public.

Section 1130.05. C-1 Permitted Uses.

No building or land shall be used, altered or converted in any manner except as provided in section 1130 et seq., permitted uses shall, be:

Subd 1. Principal Use:

- a. Professional offices.
- b. Business offices.
- c. Medical offices and clinics.
- d. Banks and financial institutions, including drive-up facilities.
- e. Offices for administrative, executive, professional, research or similar organizations and laboratories having only limited contact with the general public, provided that no merchandise or merchandising services are sold on the premises, except such as are incidental or accessory to the principal use.
- f. Cemeteries.

Subd. 2. Accessory Uses:

- a. Accessory uses customarily incidental to the principal uses.
- b. Off-street parking and loading.
- c. Signs as regulated by Section 1140 et seq.

Subd. 3. Conditional Uses:

- a. Food and dry goods retail sales and service.
- b. Hotel, motel, or apartment hotel.
- c. Mortuaries.
- d. Music studios.
- e. Photographic studios.
- f. Interior decorating studios.
- g. Day nurseries or centers provided that they meet the requirements of the State of Minnesota Department of Public Welfare Standards Rule #3 for group day care of pre-school and school age children.

Section 1130.10. C-1 Lot Dimensions.

The following required lot area, lot coverage and floor area regulations shall be considered as minimum standards for buildings:

Subd. 1. Height Regulations: No building shall hereafter be erected or structurally altered to exceed 3 stories or 35 feet in building height, whichever is greater.

Subd. 2. Front Yard Regulations:

- a. There shall be a front yard setback of not less than 50 feet from the right-of-way line of all highways and roads.
- b. Where a lot is located at the intersection of 2 or more roads or highways, there shall be a front yard setback on each road or highway side of the lot.
- c. There shall be a setback from the lakeshore or not less than 50 feet.

Subd. 3. Side Yard Regulations:

- a. There shall be a side yard having a width of not less than 15 feet on each side of a building, except as modified below.
- b. No building shall be located within 30 feet of any side lot line abutting a lot in any residence district.
- c. For any conditional use allowed in subdivision 2 of this section, there shall be a side yard having a width of not less than 30 feet on each side of a building.

Subd. 4. Rear Yard Regulations: There shall be a rear yard having a depth of not less than 50 feet.

Subd. 5. Floor Area Regulations: Maximum floor area ratio (F.A.R.) shall be 0.4.

Subd. 6. Lot Width Regulations: Every lot or tract shall have a width of not less than 75 feet abutting a public right-of-way.

Subd. 7. Lot Coverage Regulations: Not more than 30% of a lot area shall be occupied by buildings and / or impervious surface, provided that because of the additional hardcover required for typical commercial developments the maximum impervious surface may be increased to a maximum of 75% under a conditional use permit first obtained under section 1150 of the this code, supported by an applicant prepared stormwater management plan meeting the approval of the city engineer. The city engineer, planning commission, and / or city council may require an applicant to implement stormwater management practices deemed necessary to control and minimize or control

stormwater and off site runoff, including but not limited to, rain gardens, holding ponds, reductions in proposed impervious surfaces, and other accepted stormwater management techniques and methods.

Subd. 8. Lot Area Regulations: Minimum required lot area shall be 20,000 square feet.

Section 1130.15. C-1 Building Design and Construction.

Subd. 1. Building Materials. In addition to other restrictions of this ordinance and any other ordinance of the city, any building or structure within the C-1 district shall meet the following standards. All exterior finishes on any building shall be any single one or combination of the following:

- (a) Face brick
- (b) Natural stone
- (c) Specially designed precast concrete units, if the surfaces have been integrally treated with an applied decorative material or texture and the material has been reviewed by the planning commission and approved by the city council.
- (d) Wood which meets appropriate fire codes and has been reviewed by the planning commission and approved by the city council.
- (e) Any other exterior finish that has been reviewed by the planning commission and approved by the city council.

All additions and outbuildings constructed after the erection of any original building or buildings shall be constructed of the same materials as the original construction and shall be designed in a manner conforming to the original architectural design and general appearance.

Subd. 2. Architectural Compatibility. Building structure, design, and exterior finish, including remodeling projects, are subject to review by the planning commission and the city council for, acceptability of proposed materials, architectural compatibility with the commercial district, and to determine whether the proposal is in keeping with the predominately residential character of the city. Building appearance will be considered from a 360° perspective.

Section 1130.20. C-1 Site Plan Review.

No building permit will be issued for improvements within the C-1 district until a site plan has been reviewed by the planning commission and approved by the city council. The notices and review process shall be the same as for a conditional use permit. A site plan submitted for review must contain the following:

- (a) Proposed site development plan, map, survey, and verbal description, including location (and intended uses of) building and accessory structures, driveways, walkways, parking spaces, lot dimensions, area, and yard dimensions.
- (b) Landscaping plans, including species, and plantings size and expected size of trees and shrubs when mature.
- (c) Stormwater drainage systems sufficient to drain and dispose of all surface water accumulations within the planned development.
- (d) Plans and specifications for all exterior finishes for both principal and accessory structures.
- (e) Storage areas for waste and garbage.
- (f) Screening for where the property abuts a residential district or other neighboring use which, in the opinion of the city council, would benefit from screening.
- (g) Building plans, including elevation drawings for all sides of the building and illustrations of planned accessory structures.

Section 1130.25. C-1 General Regulations.

Subd. 1. Additions and Alterations. All subsequent additions and exterior alterations built after construction of a principal structure shall be of the same materials as those used in the principal structure and shall be designed to conform to the original architectural concept and general appearance. This provision shall not prevent the upgrading of the quality of materials used in a remodeling or expansion project.

Subd. 2. Other Structures. Accessory structures, screen walls, exposed areas of retaining walls, signs, supporting structures and other areas of exposed permanent materials shall be of similar type, quality, and appearance as that of the principal structure. This provision shall not prevent the upgrading of the quality of materials used in a remodeling or expansion project.

Subd. 3. Paving and Curbing. All parking areas and driveways shall be constructed of concrete, blacktop, precast colored concrete pavers, or other similar durable hard-surface dust-free material. The periphery of all parking areas

and drives shall be constructed with poured in place concrete curbing. Where necessary to facilitate drainage to rain gardens or drainage swales, curbing requirements may be waived by the city building official.

Subd. 4. Loading Service Areas. All loading of service areas shall be completely screened from eye level view of adjacent residential property and streets, except at driveway access points.

Subd. 5. Utility Equipment. All utility equipment such as heating and ventilating equipment, meters, and other devices shall be completely screened from eye level view of adjacent residential property and streets. If on the ground, the equipment shall be screened with a screen wall, berm, or landscaping. If on the roof, the equipment shall be screened with a parapet or screen wall of materials compatible with the principal structure. Vertical or horizontal wood slats, fencing, or similar materials are not acceptable screening material.

Subd. 6. Trash Handling. Dumpsters, trash, trash handling equipment and recycling equipment shall be stored within the principal structure or within an accessory structure of the same materials as the principal structure which is completely enclosed with closed doors and a roof. Trash handling and the operation of trash handling or hauling equipment is prohibited between the hours of 9 P.M. and 7 A.M.

Subd. 7. Lighting. Lighting fixtures shall be a downcast, full cut-off type concealing the light source from view and preventing glare from spilling into residential areas or onto the waters of Lake Minnetonka. No light standards in excess of 13 feet shall be permitted. Lighting levels shall be measured in foot candles 5 feet off the ground or at floor level, whichever is applicable.

The following light levels, stated in foot candles, shall be met:

1. Lot Line of Adjacent Residential Property: 0.5 foot candle maximum
2. Open Parking Areas:
 - a. Residential – an average of 0.5 foot candles with no more than 0.25 foot candles measured at the property line
 - b. Commercial – an average of 1.0 foot candles with no more than 0.5 foot candles measured at the property line
3. Covered Parking Facility (Minimum):
 - a. General Parking and Pedestrian Areas: 5 foot candles
 - b. Ramps and Corners: 5 foot candles (10 foot candles daytime)
 - c. Entrances and Exits: 5 foot candles (50 foot candles daytime)
 - d. Stairwells: 20 foot candles.

Subd. 8. Signs. Signs as regulated pursuant to section 1140.40 et seq.

Subd. 9. Screening / Landscape Requirements.

A. *Purpose*:

1. The purpose of this subdivision is to establish performance standards and minimum requirements for landscaping, buffering, and screening that will enhance the visual, environmental and aesthetic character of property and site developments within the C-1 district. The city staff, planning commission and city council will utilize these standards in the review and evaluation of subdivision, site plans and development proposals.
2. The objectives of these requirements are to establish and maintain forestation of the city; to provide appropriate ground cover, vegetation for controlled soil erosion; to preserve and enhance, when necessary, the natural environment, particularly in instances where natural environment is destroyed during the course of development; and to establish standards for utilization of natural and other materials to achieve desired screening, buffering and landscaping.
3. This subdivision sets forth minimum requirements of landscaping, and reforestation and technical limitations to ensure that the result is consistent with reasonable maintenance requirements on a long-term basis and to assure that the results provide landscape amenities to the urban environment. In the event of a conflict with standards found in section 1140 et seq. or other zoning code sections, these standards shall control.
4. This subdivision is intended to provide standards that allow flexibility in design and individual site needs. Designers are encouraged to utilize a variety of site landscape elements (e.g. trees, shrubs, ground covers, flowers, rain gardens, berms, ground form, fences, walls, existing topography and vegetation, art forms, and other similar items) in creative ways that are aesthetically proven and yet functional where required.

B. *Plan Review Standard*: Plan review by city staff, planning commission, or city council, may include such items as choice of materials, especially plantings, to determine if they are functionally appropriate for the intended purpose; hardiness; disease resistance; compatible choice and mix of materials; whether materials complement and / or

provide pleasing contrast to on-site and off-site conditions to maintain interest; and other issues as site appropriate. Specific site plans may be required to go beyond the minimum requirements to meet the purpose and objective to this ordinance due to unique or exceptional circumstances or conditions which are existing or proposed.

C. *Application:*

1. These requirements apply to all uses within the C-1 district.
2. Existing uses shall comply with this subdivision when a building permit is issued for the expansion or remodeling.

D. *General Provisions and Landscape Requirements:*

1. To help assure the best possible results, plans must be prepared and certified by a registered landscape architect in the state of Minnesota.
2. The quantity of plant material shown on a landscape plan of a proposed development shall meet or exceed the minimums defined herein.
3. The city requires landscape treatment of the whole site to include the following elements: (a) The site perimeter; (b) The "entry" focal areas of a development or property (e.g. major entry drives, corner areas, signage locations and similar focal points); (c) The parking lot landscape; (d) Screening of mechanical equipment, exterior storage; loading docks; trash storage or visual clutter as identified by the city in review process.
4. The plant materials used must meet or exceed city standards of size and specie in order to qualify for credits towards the landscape requirement. Additional plant materials smaller than required herein may be appropriate and necessary to achieve the design and effect.
5. Preservation of existing vegetation on site, if it can successfully be incorporated into the landscape plan, is encouraged, and will be credited towards the landscape requirement. Existing plant material must meet or exceed the city standard in order to qualify for a one-to-one substitution credit.
6. Plantings for street intersections shall not block visibility within a 30-foot clear view triangle.
7. Plantings shall not interfere with drainage patterns, create unreasonable conflict with utilities or restrict access to any utilities.
8. Landscape coverage shall be defined as all ground areas surrounding the principal building and accessory buildings, if any, which are not garden areas, driveways, parking lots, sidewalks or patios. All ground areas shall be landscaped with grass, shrubs, trees, or other improved ornamental landscape material.

E. *Calculation of Requirements, Credits, and Sizes:*

1. The planting requirement shall be the sum of the following separate requirements. These formulas are only intended as a method to generate a quantitative performance level and not a design, instruction, or solution. Creativity of design is encouraged and expected to provide specific solutions.
 - (a) Perimeter tree calculation: All C-1 sites shall contain, at a minimum, the greater of: 1 tree per 40 feet of site perimeter – and any event not less than 2 trees per residential dwelling unit or 2 trees per 1500 square feet of gross rentable area, whichever is applicable.
 - (b) Entry plantings: Each "entry" and focal area of a development or property shall be treated with landscape, development (trees, shrubs, etc). No numerical requirement of plants is provided, but the landscape plans shall reflect the proposed treatment. Trees required on the perimeter calculation are not applicable to this design feature.
 - (c) Parking lot landscape: Parking lot islands and screening shall be provided. No numerical requirements of plants is provided but use of canopy trees to provide shade and shrubs to soften the internal site lines and screen small storage areas is required.
 - (d) Other screening: Developers / property owners shall make design efforts to fully screen service areas, trash storage, loading, mechanical equipment and other similar areas from view by the general public or adjacent residential areas. The parking lot shall be screened from public thoroughfares by using berm or other elements. Each site will be evaluated as to its specific needs and solutions that may exceed these minimum standards.
2. Plant Sizes: Plants provided by a developer / property owner as credit for meeting the landscape requirements shall meet the following size criteria:
 - (a) Deciduous canopy trees: 2-1/2 inch caliper at 6 inches above ground;
 - (b) Coniferous trees: 6-foot high;

- (c) Ornamental or half trees: 1-3/4 inch caliper can substitute for canopy trees at a ratio of 2 ornamental (dwarf) trees for 1 canopy tree.
 - (d) Other shrubs: no minimum except that they must meet stated purpose (screening, etc.).
 - (e) All plantings shall be appropriate to the hardiness zone and physical characteristics of the site. They shall conform to the size and quality standards in the most current edition of American Standard for Nursery Stock as published by American Association of Nurseryman.
 - (f) All deciduous trees proposed to meet the minimum requirement shall be long-lived hard wood species.
 - (g) The complement of trees for filling the minimum requirement shall typically not be less than 25% deciduous, not less than 25% coniferous, to maintain a mix of plant types. Any proposed modification to this requirement will be considered a site-specific design solution if site conditions are deemed appropriate and other requirements (screening) are met.
 - (h) Installation will be in accordance with professional horticultural standards as established by the most current edition of the Landscape Construction Reference Manual as published by American Nursery Landscape Association.
3. Credit for Existing Materials: The developer / property owner may request credit for plant materials preserved on site provided the developer has demonstrated that the plant material has been accurately identified by specie and location on a survey.
 4. Variation of Plant Sizes:
 - (a) For all landscape plans, at least 10% of the coniferous or deciduous canopy trees must exceed the minimum size (8 feet high and 3-1/2 inches caliper respectively) to establish diversity and size.
 - (b) For multi-family projects, 20% of the required plan shall be of the larger sizes. These plants shall be used in areas for strategic screening, softening of buildings, focal point enhancement adjacent to recreational areas for shade, etc.

F. *Parking Lot Landscape:*

1. The landscaping of parking lot islands shall include some combination of mulch, lawn, shrubs and / or trees. The intent is to provide shade, focus, or promote traffic patterns (define drive aisles and rows of parking), limit rows of visually uninterrupted parking stalls, soften the appearance of parking from the waters of Lake Minnetonka; soften ground level views and maintain appropriate visibility for safety.
2. Parking lot screening shall be provided on the perimeter of any new parking lot:
 - (a) Screening shall be provided using a combination of shrubs, coniferous trees, fencing, rain gardens, berming, etc. to minimize the effect of headlights and reflective lights from bumpers, grills, and headlights as viewed from off-site, including from the waters of Lake Minnetonka. Screening must attempt to address at least 60% of the perimeter where views of the parking lot could originate.
 - (b) The effectiveness of screening, other than rain gardens, shall be 80% opacity year-round.
 - (c) Plant materials must be spaced no more than 30 inches apart on single rows of deciduous shrubs, 48 inches apart on double staggered rows of deciduous shrubs, with initial planted height of at least 2 feet (spacing may vary subject to species used).
 - (d) Coniferous trees must be placed no further than 8 feet apart to be counted as screening.

G. *Grounds and Lawn:*

1. All areas must be finished off with stable landscape: trees, shrubs, turf, mulch, etc. or hard surface (concrete, bituminous, pavers). No site area can be left unfinished or subject to erosion. Landscape rock, or bark / wood chip mulch may be substituted for sod in shrub and flower planting beds and building maintenance strips.
2. All lawn areas shall be sodded. At least a 2-foot width of sod shall be provided between all paved / curbed areas and seeded / natural / native areas to provide a finish edge and control erosion except where rain gardens may be used in the alternative. Seeding or reseeding is allowed for less visible or large or remote portions of a site that are unused or subject to future development. Seed mixes could include prairie grass or other appropriate low maintenance mixes.
3. Manmade slopes in excess of 3:1 will not be allowed in areas intended for maintained turf. Slopes of up to 1:1-2:1 will be allowed with a slope stabilization plan approved by the city engineer. Otherwise, terracing and / or retaining walls will be required.
4. All areas to be lawn and landscape shall have a built in irrigation system. An irrigation plan shall be required at the time of obtaining a building permit. The system shall be prepared by a qualified designer with experience designing systems for similar uses. Permanent underground irrigation is not required for existing, new, or re-established natural or native plant communities.

5. Areas proposed for rain gardens shall have a full detailed description of all plant types including cross sections and a system by which these areas will be re-established and refurbished from time to time as sediments and rejuvenation of plant species is required. Any conditional use permits granted contingent on the establishment of rain gardens shall be subject to orders of the city directing the refurbishing of such rain gardens from time to time as the city deems necessary.

H. *Maintenance Standards:*

1. All cultivated landscaped areas shall be maintained by the property owner to present a healthy, neat and orderly area. This shall include:
 - (a) Maintain a healthy, pest-free condition;
 - (b) Remove dead, diseased or dangerous trees or shrubs or parts thereof;
 - (c) Provide appropriate pruning per National Arborist Association and American Nurseryman Association standards.
 - (d) Mowing and / or removal of noxious weeds and grasses.
 - (e) Removal of all trash and other debris.
 - (f) Watering to ensure plant growth and survival.
2. Natural native plant communities or rain gardens shall be managed in order to maintain the plant community / rain garden for the purpose that it was preserved or created. This includes trimming as needed of all noxious vegetation, mowing grasses, removal of trash or other debris and other horticulturally appropriate maintenance methods for the specific type of plant community.

I. *Performance Guarantee:*

1. All plants shall be guaranteed by the developer for 2 years after total project acceptance.
2. The irrigation system shall be guaranteed 2 years concurrent with the plant guarantee.
3. The developer / owner shall post a letter of credit with the city for the complete landscape and irrigation system installation when the building permit is issued. The letter of credit shall be held by the city and used if necessary to affect satisfactory completion of the project in the event of incomplete or failed work. The value of the letter of credit shall be 100% of the estimated construction costs for plants, irrigation system, mulch, and edgers. The city may, at its sole election, release up to 2/3 of the letter of credit after installation of initial landscape plan.

J. *Submission Requirements:*

1. Landscape plans must be drawn to scale for proposed plants (quantities and sizes), seed / sod areas / limits, etc. Plans must include the entire project area, include project name, developer, registered landscape architect or landscape designer, architect dates, existing site conditions (topography, vegetation, ponding areas or water bodies, utilities, boundary data, walks, etc.), proposed site conditions (grading plan, tree preservation / protection plan, etc.), site lighting, off-site conditions approximately 100 feet beyond site and other site conditions that would be expected to affect landscaping.
2. Calculations to evaluate compliance with the ordinance provisions including area and square footage, the percentage in total area of building, parking lot (including driveways), landscaped area, lighting zone, and total area, quantities of trees and shrubs required, planted or preserved.
3. Supportive Plans. Detailed written narrative notes, cross sections or other information that may be required by the city staff necessary to demonstrate the design intent and general compliance with this ordinance should be provided by developer.
4. 3 copies of the plan shall be submitted.

Subd. 10. Additional Regulations. Additional requirements for signs, parking and other regulations in the C-1 district are set forth in section 1140 et seq.

SECTION 1135. C-2 LAKE RECREATION DISTRICT.

Section 1135.00. Purpose.

The C-2 lake recreation district is intended to provide a district that will allow commercial activity to serve the recreational needs of residents in conjunction with lake activities and to otherwise permit as conditional use, general offices, retail uses, and multi-family residential uses that meet specific standards and which will otherwise prevent and buffer interference with residential areas.

Section 1135.05. C-2 Permitted Uses.

No building or home should be used, altered, or converted in any manner except as provided in section 1135 et seq. Permitted uses within the C-2 zone shall be:

Subd. 1. Principal Uses:

- A. Marinas (as defined at section 1135.35, subdivision 4); and
- B. General Offices.

Subd. 2. Accessory Uses:

- A. Off-street parking and loading;
- B. Signs as regulated in section 1140 et seq.; and
- C. Multiple docks and / or mooring areas in conjunction with operation of a LMCD licensed marina or multiple-family residential use.

Subd. 3. Conditional Principal Uses:

- A. Retail uses that are marina or water related;
- B. Multi-family residential uses (including the platting of condominiums within multi-family buildings with a minimum of not less than 1,500 square feet per residential unit subject to performance standards set forth at section 1135.00 et seq. and section 1140.00 et seq.);
- C. Restaurants (as defined at section 1135.35, subdivision 5); and
- D. Multiple permitted principal or conditional principal uses, other than multi-family, on a single tax parcel.

(THIS SECTION UPDATED DEC. 2011, ORD. 198)

Section 1135.10. C-2 Lot Dimensions.

The following height, yard lot width and coverage regulations shall be considered minimum standards.

Subd. 1. Height Regulations: The maximum building height for multi-family residential structures of 8 units or greater shall be not more than 32 feet for structures with gable roofs of not less than 5/12 pitch; all other roof / building designs or uses shall not exceed 30 feet in building height.

Subd. 2. Front Yard Regulations:

- A. There shall be a front yard setback of above grade structures (except entrance monuments) not less than 50 feet from the right-of-way line of all public highways and roads.
- B. Where a lot is located at the intersection of 2 or more roads or highways, there shall be a front yard setback on all streets.
- C. There shall be a setback from the lakeshore of not less than 50 feet.

Subd. 3. Side Yard Regulations:

- A. There shall be a side yard of not less than 15 feet on each side of a building except as modified below.
- B. No building used for commercial purposes shall be located within 30 feet of any lot line abutting a residential district.

Subd. 4. Lot Depth Regulations: There shall be a rear yard having a depth of not less than 50 feet.

Subd. 5. Lot Width Regulations: Every lot or tract shall have a width of not less than 75 feet abutting a public right-of-way.

Subd. 6. Lot Coverage Regulations: Not more than 30% of a lot area shall be occupied by buildings and / or impervious surface, provided that because of the additional hardcover required for typical commercial developments the maximum impervious surface may be increased to a maximum of 75% under a conditional use permit first obtained under sections 1150 / 1176 of this code, supported by an applicant prepared stormwater management plan meeting the approval of the city engineer. The city engineer, planning commission, and / or city council may require an applicant to implement stormwater management practices deemed necessary to control and minimize or control stormwater and off site runoff, including but not limited to, rain gardens, holding ponds, reductions in proposed impervious surfaces, and other accepted stormwater management techniques and methods.

Subd. 7. Lot Area. The minimum buildable lot shall be not less than 1 acre.

Section 1135.15. Performance Standards for Uses Within the C-2 District.

The following standards shall apply to all uses within the C-2 district.

Subd. 1. Building Materials. Building materials of all structures, including accessory structures shall be one or a combination of the following:

- (a) Face brick
- (b) Natural stone
- (c) Specially designed precast concrete units, if the surfaces have been integrally treated with an applied decorative material or texture and the material has been reviewed by the planning commission and approved by the city council.
- (d) Wood which meets appropriate fire codes and has been reviewed by the planning commission and approved by the city council.
- (e) Any other exterior finish that has been reviewed by the planning commission and approved by the city council.

Subd. 2. Architectural Compatibility. The following building and / or materials are prohibited: pre-engineered buildings; pole barns; metal siding; vinyl siding; architecturally treated concrete; decorative (colored and textured) concrete block and / or flat sided (painted or unpainted) concrete block.

Building structure, design, and exterior finish, including remodeling projects, are subject to review by the planning commission and the city council for, acceptability of proposed materials, architectural compatibility with the commercial district, and to determine whether the proposal is in keeping with the predominately residential character of the city. Building appearance will be considered from a 360° perspective.

Section 1135.20. C-2 Site Plan Review.

No building permit will be issued for improvements within the C-2 district until a site plan has been reviewed by the planning commission and approved by the city council. The notices and review process shall be the same as for a conditional use permit. A site plan submitted for review must contain the following:

- (a) Proposed site development plan, map, survey, and verbal description, including location (and intended uses of) building and accessory structures, driveways, walkways, parking spaces, lot dimensions, area, and yard dimensions.
- (b) Landscaping plans, including species, and plantings size and expected size of trees and shrubs when mature.
- (c) Stormwater drainage systems sufficient to drain and dispose of all surface water accumulations within the planned development.
- (d) Plans and specifications for all exterior finishes for both principal and accessory structures.
- (e) Storage areas for waste and garbage.
- (f) Screening where the property abuts a residential district or other neighboring use which, in the opinion of the city, would benefit from screening.
- (g) Building plans, including elevation drawings for all sides of the building and illustrations of planned accessory structures.

Section 1135.25. C-2 General Regulations.

Subd. 1. Additions and Alterations. All subsequent additions and exterior alterations built after construction of a principal structure shall be of the same materials as those used in the principal structure and shall be designed to conform to the original architectural concept and general appearance. This provision shall not prevent the upgrading of the quality of materials used in a remodeling or expansion project.

Subd. 2. Other Structures. Accessory structures, screen walls, exposed areas of retaining walls, signs, supporting structures and other areas of exposed permanent materials shall be of similar type, quality, and appearance as that of the principal structure. This provision shall not prevent the upgrading of the quality of materials used in a remodeling or expansion project.

Subd. 3. Paving and Curbing. All parking areas and driveways shall be constructed of concrete, blacktop, precast colored concrete pavers, or other similar durable hard-surface dust-free material. The periphery of all parking areas and drives shall be constructed with poured in place concrete curbing. Where necessary to facilitate drainage to rain gardens or drainage swales, curbing requirements may be waived by the city building official.

Subd. 4. Loading Service Areas. All loading of service areas shall be completely screened from eye level view of adjacent residential property and streets, except at driveway access points.

Subd. 5. Utility Equipment. All utility equipment such as heating and ventilating equipment, meters, and other devices shall be completely screened from eye level view of adjacent residential property and streets. If on the ground, the equipment shall be screened with a screen wall, berm, or landscaping. If on the roof, the equipment shall be screened with a parapet or screen wall of materials compatible with the principal structure. Vertical or horizontal wood slats, fencing, or similar materials are not acceptable screening material.

Subd. 6. Trash Handling. Dumpsters, trash, trash handling equipment and recycling equipment shall be stored within the principal structure or within an accessory structure of the same materials as the principal structure which is completely enclosed with closed doors and a roof. Trash handling and the operation of trash handling or hauling equipment is prohibited between the hours of 9 PM and 7 AM.

Subd. 7. Lighting. Lighting fixtures shall be a downcast, full cut-off type concealing the light source from view and preventing glare from spilling into residential areas or onto the waters of Lake Minnetonka. No light standards in excess of 13 feet shall be permitted. Lighting levels shall be measured in foot candles 5 feet off the ground or at floor level, whichever is applicable.

The following light levels, stated in foot candles, shall be met:

1. *Lot Line of Adjacent Residential Property*: 0.5 foot candle maximum
2. *Open Parking Areas*:
 - a. Residential – an average of 0.5 foot candles with no more than 0.25 foot candles measured at the property line
 - b. Commercial – an average of 1.0 foot candles with no more than 0.5 foot candles measured at the property line
3. *Covered Parking Facility (minimum)*:
 - a. General Parking and Pedestrian Areas: 5 foot candles
 - b. Ramps and Corners: 5 foot candles (10 foot candles daytime)
 - c. Entrances and Exits: 5 foot candles (50 foot candles daytime)
 - d. Stairwells: 20 foot candles.

Subd. 8. Signs. Signs as regulated pursuant to section 1140.40 et seq.

Subd. 9. Screening / Landscape Requirements.

A. *Purpose*:

1. The purpose of this subdivision is to establish performance standards and minimum requirements for landscaping, buffering, and screening that will enhance the visual, environmental and aesthetic character of property and site developments within the C-2 district. The city staff, planning commission and city council will utilize these standards in the review and evaluation of subdivision, site plans and development proposals.
2. The objectives of these requirements are to establish and maintain forestation of the city; to provide appropriate ground cover, vegetation for controlled soil erosion; to preserve and enhance, when necessary, the natural environment, particularly in instances where natural environment is destroyed during the course of development; and to establish standards for utilization of natural and other materials to achieve desired screening, buffering and landscaping.
3. This subdivision sets forth minimum requirements of landscaping, and reforestation and technical limitations to ensure that the result is consistent with reasonable maintenance requirements on a long-term basis and to assure that the results provide landscape amenities to the urban environment. In the event of a conflict with standards found in section 1140 et seq. or other zoning code sections, these standards shall control.
4. This subdivision is intended to provide standards that allow flexibility in design and individual site needs. Designers are encouraged to utilize a variety of site landscape elements (e.g. trees, shrubs, ground covers, flowers, rain gardens, berms, ground form, fences, walls, existing topography and vegetation, art forms, and other similar items) in creative ways that are aesthetically proven and yet functional where required.

B. *Plan Review Standard*: Plan review by city staff, planning commission, or city council, may include such items as choice of materials, especially plantings, to determine if they are functionally appropriate for the intended purpose; hardiness; disease resistance; compatible choice and mix of materials; whether materials complement and / or provide pleasing contrast to on-site and off-site conditions to maintain interest; and other issues as site appropriate. Specific site plans may be required to go beyond the minimum requirements to meet the purpose

and objective to this ordinance due to unique or exceptional circumstances or conditions which are existing or proposed.

C. *Application:*

1. These requirements apply to all uses within the C-2 district.
2. Existing uses shall comply with this subdivision when a building permit is issued for the expansion or remodeling.

D. *General Provisions and Landscape Requirements:*

1. To help assure the best possible results, plans must be prepared and certified by a registered landscape architect in the state of Minnesota.
2. The quantity of plant material shown on a landscape plan of a proposed development shall meet or exceed the minimums defined herein.
3. The city requires landscape treatment of the whole site to include the following elements: (a) The site perimeter; (b) The “entry” focal areas of a development or property (e.g. major entry drives, corner areas, signage locations and similar focal points); (c) The parking lot landscape; (d) Screening of mechanical equipment, exterior storage; loading docks; trash storage or visual clutter as identified by the city in review process.
4. The plant materials used must meet or exceed city standards of size and specie in order to qualify for credits towards the landscape requirement. Additional plant materials smaller than required herein may be appropriate and necessary to achieve the design and effect.
5. Preservation of existing vegetation on site, if it can successfully be incorporated into the landscape plan, is encouraged, and will be credited towards the landscape requirement. Existing plant material must meet or exceed the city standard in order to qualify for a one-to-one substitution credit.
6. Plantings for street intersections shall not block visibility within a 30-foot clear view triangle.
7. Plantings shall not interfere with drainage patterns, create unreasonable conflict with utilities or restrict access to any utilities.
8. Landscape coverage shall be defined as all ground areas surrounding the principal building and accessory buildings, if any, which are not garden areas, driveways, parking lots, sidewalks or patios. All ground areas shall be landscaped with grass, shrubs, trees, or other improved ornamental landscape material.

E. *Calculation of Requirements, Credits, and Sizes:*

1. The planting requirement shall be the sum of the following separate requirements. These formulas are only intended as a method to generate a quantitative performance level and not a design, instruction, or solution. Creativity of design is encouraged and expected to provide specific solutions.
 - (a) Perimeter tree calculation: All C-2 sites shall contain, at a minimum, the greater of: 1 tree per 40 feet of site perimeter – and any event not less than 2 trees per residential dwelling unit or 2 trees per 1500 square feet of gross rentable area, whichever is applicable.
 - (b) Entry plantings: Each “entry” and focal area of a development or property shall be treated with landscape, development (trees, shrubs, etc). No numerical requirement of plants is provided, but the landscape plans shall reflect the proposed treatment. Trees required on the perimeter calculation are not applicable to this design feature.
 - (c) Parking lot landscape: Parking lot islands and screening shall be provided. No numerical requirements of plants is provided but use of canopy trees to provide shade and shrubs to soften the internal site lines and screen small storage areas is required.
 - (d) Other screening: Developers / property owners shall make design efforts to fully screen service areas, trash storage, loading, mechanical equipment and other similar areas from view by the general public or adjacent residential areas. The parking lot shall be screened from public thoroughfares by using berm or other elements. Each site will be evaluated as to its specific needs and solutions that may exceed these minimum standards.
2. Plant Sizes: Plants provided by a developer / property owner as credit for meeting the landscape requirements shall meet the following size criteria:
 - (a) Deciduous canopy trees: 2-1/2 inch caliper at 6 inches above ground;
 - (b) Coniferous trees: 6-foot high;
 - (c) Ornamental or half trees: 1-3/4 inch caliper can substitute for canopy trees at a ratio of 2 ornamental (dwarf) trees for 1 canopy tree.
 - (d) Other shrubs: no minimum except that they must meet stated purpose (screening, etc.).

- (e) All plantings shall be appropriate to the hardiness zone and physical characteristics of the site. They shall conform to the size and quality standards in the most current edition of American Standard for Nursery Stock as published by American Association of Nurseryman.
 - (f) All deciduous trees proposed to meet the minimum requirement shall be long-lived hard wood species.
 - (g) The complement of trees for filling the minimum requirement shall typically not be less than 25% deciduous, not less than 25% coniferous, to maintain a mix of plant types. Any proposed modification to this requirement will be considered a site-specific design solution if site conditions are deemed appropriate and other requirements (screening) are met.
 - (h) Installation will be in accordance with professional horticultural standards as established by the most current edition of the Landscape Construction Reference Manual as published by American Nursery Landscape Association.
3. Credit for Existing Materials: The developer / property owner may request credit for plant materials preserved on site provided the developer has demonstrated that the plant material has been accurately identified by specie and location on a survey.
4. Variation of Plant Sizes:
- (a) For all landscape plans, at least 10% of the coniferous or deciduous canopy trees must exceed the minimum size (8 feet high and 3-1/2 inches caliper respectively) to establish diversity and size.
 - (b) For multi-family projects, 20% of the required plan shall be of the larger sizes. These plants shall be used in areas for strategic screening, softening of buildings, focal point enhancement adjacent to recreational areas for shade, etc.

F. *Parking Lot Landscape:*

- 1. The landscaping of parking lot islands shall include some combination of mulch, lawn, shrubs and / or trees. The intent to is provide shade, focus, or promote traffic patterns (define drive aisles and rows of parking), limit rows of visually uninterrupted parking stalls, soften the appearance of parking from the waters of Lake Minnetonka; soften ground level views and maintain appropriate visibility for safety.
- 2. Parking lot screening shall be provided on the perimeter of any new parking lot:
 - (a) Screening shall be provided using a combination of shrubs, coniferous trees, fencing, rain gardens, berming, etc. to minimize the effect of headlights and reflective lights from bumpers, grills, and headlights as viewed from off-site, including from the waters of Lake Minnetonka. Screening must attempt to address at least 60% of the perimeter where views of the parking lot could originate.
 - (b) The effectiveness of screening, other than rain gardens, shall be 80% opacity year-round.
 - (c) Plant materials must be spaced no more than 30 inches apart on single rows of deciduous shrubs, 48 inches apart on double staggered rows of deciduous shrubs, with initial planted height of at least 2 feet (spacing may vary subject to species used).
 - (d) Coniferous trees must be placed no further than 8 feet apart to be counted as screening.

G. *Grounds and Lawn:*

- 1. All areas must be finished off with stable landscape: trees, shrubs, turf, mulch, etc. or hard surface (concrete, bituminous, pavers). No site area can be left unfinished or subject to erosion. Landscape rock, or bark / wood chip mulch may be substituted for sod in shrub and flower planting beds and building maintenance strips.
- 2. All lawn areas shall be sodded. At least a 2-foot width of sod shall be provided between all paved / curbed areas and seeded / natural / native areas to provide a finish edge and control erosion except where rain gardens may be used in the alternative. Seeding or reseeding is allowed for less visible or large or remote portions of a site that are unused or subject to future development. Seed mixes could include prairie grass or other appropriate low maintenance mixes.
- 3. Manmade slopes in excess of 3:1 will not be allowed in areas intended for maintained turf. Slopes of up to 1:1-2:1 will be allowed with a slope stabilization plan approved by the city engineer. Otherwise, terracing and / or retaining walls will be required.
- 4. All areas to be lawn and landscape shall have a built in irrigation system. An irrigation plan shall be required at the time of obtaining a building permit. The system shall be prepared by a qualified designer with experience designing systems for similar uses. Permanent underground irrigation is not required for existing, new, or re-established natural or native plant communities.
- 5. Areas proposed for rain gardens shall have a full detailed description of all plant types including cross sections and a system by which these areas will be re-established and refurbished from time to time as sediments and rejuvenation of plant species is required. Any conditional use permits granted contingent on

the establishment of rain gardens shall be subject to orders of the city directing the refurbishing of such rain gardens from time to time as the city deems necessary.

H. *Maintenance Standards:*

1. All cultivated landscaped areas shall be maintained by the property owner to present a healthy, neat and orderly area. This shall include:
 - (a) Maintain a healthy, pest-free condition;
 - (b) Remove dead, diseased or dangerous trees or shrubs or parts thereof;
 - (c) Provide appropriate pruning per National Arborist Association and American Nurseryman Association standards.
 - (d) Mowing and / or removal of noxious weeds and grasses.
 - (e) Removal of all trash and other debris.
 - (f) Watering to ensure plant growth and survival.
2. Natural native plant communities or rain gardens shall be managed in order to maintain the plant community / rain garden for the purpose that it was preserved or created. This includes trimming as needed of all noxious vegetation, mowing grasses, removal of trash or other debris and other horticulturally appropriate maintenance methods for the specific type of plant community.

I. *Performance Guarantee:*

1. All plants shall be guaranteed by the developer for 2 years after total project acceptance.
2. The irrigation system shall be guaranteed 2 years concurrent with the plant guarantee.
3. The developer / owner shall post a letter of credit with the city for the complete landscape and irrigation system installation when the building permit is issued. The letter of credit shall be held by the city and used if necessary to affect satisfactory completion of the project in the event of incomplete or failed work. The value of the letter of credit shall be 100% of the estimated construction costs for plants, irrigation system, mulch, and edgers. The city may, at its sole election, release up to 2/3 of the letter of credit after installation of initial landscape plan.

J. *Submission Requirements:*

1. Landscape plans must be drawn to scale for proposed plants (quantities and sizes), seed / sod areas / limits, etc. Plans must include the entire project area, include project name, developer, registered landscape architect or landscape designer, architect dates, existing site conditions (topography, vegetation, ponding areas or water bodies, utilities, boundary data, walks, etc.), proposed site conditions (grading plan, tree preservation / protection plan, etc.), site lighting, off-site conditions approximately 100 feet beyond site and other site conditions that would be expected to affect landscaping.
2. Calculations to evaluate compliance with the ordinance provisions including area and square footage, the percentage in total area of building, parking lot (including driveways), landscaped area, lighting zone, and total area, quantities of trees and shrubs required, planted or preserved.
3. Supportive Plans. Detailed written narrative notes, cross sections or other information that may be required by the city staff necessary to demonstrate the design intent and general compliance with this ordinance should be provided by developer.
4. Multiple copies of the plan shall be submitted.

Subd. 10. *Additional Regulations.* Additional requirements for signs, parking and other regulations in the C-2 district are set forth in section 1140 et seq.

Section 1135.30. C-2 Multi-Family Residential Uses, Additional Conditions.

Subd. 1. Density greater than 11 units per acres shall be prohibited.

Subd. 2. No multiple housing may be constructed on a lot smaller than 1.5 acres in area.

Subd. 3 Two-thirds of required parking spaces must be underground and entirely screened from view from adjoining properties.

Subd. 4. A minimum of 2-1/2 parking spaces per unit shall be provided. This parking requirement shall supersede parking required under section 1140 et seq.

Subd. 5. Sites 1.5 acres or greater in area may be host to up to but not more than 2 principal buildings used for residential housing units without violating the prohibition of section 1140.05 against multiple or mixed uses. No multi-family use shall be permitted on the same tax parcel as an existing legal or illegal nonconforming commercial use.

Subd. 6. The development of multi-family housing otherwise meeting the requirements of this ordinance shall justify the grant of a conditional use permit for hardcover in excess of 30%, but not greater than 40% pursuant to the shoreland management district ordinance.

Section 1135.35. C-2 Special Regulations.

Subd. 1. Boat Storage. No property or use within the C-2 district shall be used for the storage of boats off-season (winter months – October through April) except properties whose sole principal use, or conditional use is the operation of a marina as permitted at section 1135.05, subdivision 1(A). No property or use within the C-2 district shall be used for the mooring, on-site service, “port of call,” or storage of charter boats on season or off-season.

Subd. 2. Multiple Commercial Uses. No more than 4 principal (or conditional) uses per tax parcel shall be permitted by conditional use permit under section 1135:05, subdivision 3(D). In no event shall multiple principal uses be permitted in combination with a multi-family residential use. Conditional use permits for multiple commercial use on a single tax parcel may be denied for non-compatibility competing parking needs or congestion, non-compliance with hard cover, inadequate parking, landscaping, buffering or any other regulation of this code.

Subd. 3. Maintenance Assurances. Appropriate conditions, covenants, restrictions, easements, and homeowner’s association documentation shall be required to ensure maintenance, repair, renewal, replacement and management of private and collective facilities and preservation of code compliance meeting city approval. A development agreement between city and developer / owner shall be executed to protect city interests and ensure compliance with city code and conditional use permit conditions.

Subd. 4. Marina and Retail Uses that are Marina or Water Related. “Marina” and “retail uses that are marina or water related” as used in section 1135 et seq. mean the offering of watercraft dock rental space and the servicing of watercraft including the sale of parts and related goods. “Marina” and “retail uses that are marina or water related” do not include the operation or conduct of 1) charter boat business, 2) gasoline sales, 3) personal watercraft, motor vehicle or snowmobile sales or 4) the rental of motor vehicles, watercraft, snowmobiles, personal watercraft or sailboats.

Subd. 5. Restaurants. “Restaurant” as used in section 1135 et seq. means a property with on-site licensed commercial kitchen facilities used exclusively for the delivery of sit-down food service to the general public on site. A restaurant may be licensed for on-sale of intoxicating liquor but shall not be licensed for off-sale liquor sales. A licensed kitchen facility of a restaurant may be employed for take out food service or catering services provided 1) the delivery of the service does not increase on-site parking demand or reduce available parking to the restaurant and other businesses operating on the site, and 2) the catering business does not exceed 25% of the total volume of the restaurant trade or business. Drive-up windows or drive through food service are prohibited.

Subd. 6. Charter Boat. “Charter Boat” as used in section 1135 et seq. means a watercraft licensed by the Lake Minnetonka Conservation District for commercial purposes, including, but not limited to, transport of the general public for hire.

Subd. 7. Prohibition of Motor Vehicle and Watercraft Rentals. No property or use within the C-2 district shall be employed to offer, operate, conduct or engage in the business of rental of motor vehicles, watercraft, snowmobiles, personal watercraft or sailboats.

Subd. 8. Prohibition of Charter Boat Services within C-2 District. No property or use within the C-2 district shall be employed to offer, operate, conduct, or engage in the business of charter boat services or otherwise serve as an embarkation point, disembarkation point, parking lot, loading location, or unloading location of charter boat guests, customers, invitees, or the general public.

Section 1135.40. Recovery of Legal and Administrative Costs in Conditional Use Permit Requests.

In addition to the initial application fee as may be established from time to time by resolution of the city council, the applicant making an application for a conditional use permit in the C-2 district, agrees to pay all legal fees, engineering fees, consultant fees, and other administrative costs the city may incur in conjunction with the processing of the conditional use permit application. No building permit shall issue on a conditional use permit until such costs have been paid in full.

SECTION 1140. GENERAL REGULATIONS.

Section 1140.00. Scope of Regulations.

Subd. 1. Except as may otherwise be provided in section 1145 et seq. nonconforming uses, all buildings erected hereafter, all uses of land or buildings established hereafter, all structural alterations or relocation of existing buildings occurring hereafter, and all enlargements or additions to existing uses occurring hereafter shall be subject to all regulations of this ordinance which are applicable to the zoning districts in which such buildings, uses or land shall be located.

Subd. 2. No application for a building permit or other permit or license, or for a certificate of zoning compliance shall be approved by the zoning administrator and no permit or license shall be issued by any other city department which would authorize the use or change in use of any land or building contrary to the provisions of this ordinance, or the erection, moving, alteration, enlargement, or occupancy of any building designed or intended to be used for a purpose or in a manner contrary to the provisions of this ordinance.

Subd. 3. Lot Area Regulations: No lot area shall be so reduced or diminished that the yards or other open spaces shall be smaller than prescribed by this ordinance, nor shall the density of population be increased in any manner except in conformity with the area regulations as hereinafter provided, nor shall the area of any lot be reduced below the minimum requirements herein established.

Section 1140.02. Changes of Principal Use - Administrative Review.

An established use of a property may not be changed to an alternate use except after administrative review for zoning code compliance. Such review requires a payment of an administrative review fee set forth in chapter 5.

(THIS SECTION ADDED APR. 2011 ORD. 193)

Section 1140.05. Dwellings / Lot - Prohibited Uses.

Subd. 1. Dwellings / Lot. In any residence district not more than 1 dwelling shall be permitted to be erected on a single lot. Grouping of buildings designed for dwelling purposes may only be permitted through a conditional use.

Subd. 2. Prohibited Uses, All Districts. No property or lot of record may be put to a use or employed for a use or purpose other than those specifically enumerated as permitted uses, accessory uses, or conditional uses under the applicable respective zoning code regulations for the district host to such property or lot.

Subd. 3. Specifically Prohibited Uses and Activities in Residential Districts. No property or lot of record zoned residential (R-1A, R-1B, or R-2) may be employed for used for or as (1) a "Hotel, Motel," (2) an "Event Center," (3) a "Marina," or (4) a "Lake Recreation Center."

Subd. 4. Leasehold Term Minimums. To preserve the residential character and assure that the city's single-family residential districts will be exclusive of other types of uses, no residentially-zoned property may be leased to third parties for any purpose other than single-family residential use and in no event shall such leaseholds or sub-leaseholds be for an initial term of less than 30 days nor may such properties be leased to more than 2 tenant occupant groups in any one 4-month period.

Subd. 5. Temporary Family Health Care Dwellings. Pursuant to authority granted by Minnesota statutes section 462.3593, subdivision 9, the city of Greenwood opts out of the requirements of Minnesota statutes section 462.3593, which defines and regulates temporary family health care dwellings. (THIS SUBDIVISION ADDED AUG 2016 ORD 258)

(THIS SECTION AMENDED MAY 2013 ORD 216)

Section 1140.10. Setbacks and General Regulations for Accessory Structures and Uses (Primary and Secondary).

Subd. 1. Purpose. To preserve (1) the public safety and welfare, (2) the enjoyment of property, (3) property values, and (4) to prevent adverse impacts arising from overcrowding or competing uses associated with the placement of accessory structures and uses, the city has determined that the below setbacks and regulations are necessary to protect the public welfare of the city.

Subd. 2. Setback Standards for Accessory Structures and Uses (Primary and Secondary).

- A. **Unobstructed Green Space Perimeter Requirement.** All lots shall establish and maintain a 2-foot wide green space perimeter of open yard space along all lot lines (boundary lines) free of all accessory structures and uses (primary and secondary), subject only to (a) the right angle traversing of same by driveway, parking pad, or sidewalk, (b) code compliant authorized fences, and (c) code compliant authorized lakeside improvements.
- B. **Primary Accessory Structures and Uses Setback Minimums - Residential Zones.** Subject to the Unobstructed Green Space Perimeter Requirement (subd. 2A above), the minimum yard setback for all primary accessory structures / uses in residential zones R-1A, R-1B, R-1C, and R-2, inclusive, (as same are defined in this code including sections 1120, 1122, 1123, and 1125), are as follows:

	Front Yard Setback	Side Yard Setback	Exterior Side Yard Setback (Corner Lot)	Rear Yard Setback	Lakeside Yard Setback
Primary Accessory Structures - Residential Zones (see sections 1120.20, 1122.20, 1123.20, 1125.20 for more regulations)	100 feet	10 feet	30 feet	10 feet	50 feet

- C. **Secondary Accessory Structures and Uses Setback Minimums.** Subject to the Unobstructed Green Space Perimeter Requirement (subd. 2A above), for each of the specific secondary accessory structures / uses identified in the table below, the minimum yard setbacks stated therein shall control and supersede the setback minimums for primary accessory structures stated in subd. 2B above. See section 1102 for definitions.

	Front Yard Setback	Side Yard Setback	Exterior Side Yard Setback (Corner Lot)	Rear Yard Setback	Lakeside Yard Setback
Driveways, Parking Pads (see section 1140.46)	0 feet	5 feet	0 feet	10 feet	50 feet
Driveway Monument Posts (see subd. 8 below)	2 feet	5 feet	2 feet	Not allowed	Not allowed
Fire Pits (built-in or freestanding)	50 feet	5 feet	30 feet	10 feet	10 feet
Monument Signs (for commercially-regulated properties only, see section 1140.40 subd 8(d) for more regulations)	2 feet	10 feet	2 feet	Not allowed	Not allowed
Outdoor Fireplaces, Outdoor Kitchens (built-in or freestanding)	50 feet	5 feet	30 feet	10 feet	35 feet
Patio, Deck, Slabs – less than 30 inches in height at all points, excluding railing, pergola, etc.	50 feet	5 feet	30 feet	10 feet	35 feet
Patio, Deck, Slabs – 30+ inches in height at any point, excluding railing, pergola, etc.	50 feet	10 feet	30 feet	10 feet	50 feet
Pergolas, Arbors, Trellises (see subd 4 below)	20 feet	5 feet	30 feet	10 feet	35 feet
Sidewalks (see subd. 5 below)	0 feet	5 feet	0 feet	10 feet	0 feet
Sport Courts, Tennis Courts (see subd. 6 below)	50 feet	10 feet	30 feet	10 feet	50 feet
Swimming Pools, Hot Tubs – freestanding	50 feet	10 feet	30 feet	10 feet	35 feet
Swimming Pools, Spas – in-ground (see subd. 7 below)	50 feet	10 feet	30 feet	10 feet	50 feet
Miscellaneous Secondary Accessory Structures Not Listed Above – with a footprint of 2 sq ft or greater	50 feet	10 feet	30 feet	10 feet	50 feet

Subd. 3. **Proximity and Attachment of Primary Accessory Structures to Principal Structures.** If a primary accessory structure is attached or physically connected to the main principal structure by any means, utility connections excepted, it shall be deemed a part of the main principal structure and shall comply in all respects with the requirements of the zoning ordinance applicable to the principal structure. No primary accessory structure shall be closer than 5 feet to the principal structure. No primary accessory structure may be attached to and / or made a part of the principal structure, if so doing would cause the principal structure to become noncompliant with the setbacks applicable to the principal structure.

Subd. 4. **Pergolas, Arbors, and Trellises.** Must meet the setback requirements in subd. 2C above. The maximum height for a pergola or arbor is 12 feet. The maximum total combined footprint per property for pergolas or arbors located in a garden, in a grassy area, or over a sidewalk is 100 square feet. The maximum total combined square foot per property for pergolas located over decks or patios that are compliant with the setbacks in subd. 2C above is 400 square feet. Trellises may be included as a decorative element to a code compliant fence.

Subd. 5. Sidewalks. Must meet the setback requirements in subd. 2C above. Sidewalks may exceed 4 feet in only one direction. If adjacent to lakeshore, sidewalks must be perpendicular (not parallel) to the shoreline.

Subd. 6. Sport Courts and Tennis Courts. Must meet the setback requirements in subd. 2C above. A conditional use permit is required for all sport courts and tennis courts subject to reasonable conditions for the protection of public safety, health, and welfare.

Subd. 7. In-Ground Swimming Pools and In-Ground Spas. Must meet the setback requirements in subd. 2C above. All equipment related to operation or maintenance of an in-ground pool or in-ground spa must comply with the setbacks. A conditional use permit is required for all in-ground pools and in-ground spas subject to reasonable conditions for the protection of public safety, health, and welfare.

Subd. 8. Driveway Monument Posts. Must meet the setback requirements in subd. 2C above. A maximum of 2 posts are allowed per driveway entrance (1 post on each side of the driveway). The maximum dimensions for each driveway monument post is 3 feet wide, 3 feet deep, 7 feet tall including a light or finial.

(THIS SECTION REVISED JAN 2016 ORD 245)

Section 1140.15. Height Regulations.

Subd. 1. Walkout Levels. Where the average slope of a lot is greater than 1 foot rise or fall in 7 feet of horizontal distance from the established street elevation of the property line, 1 story in addition to the number permitted in the district in which the lot is situated shall be permitted on the downhill side of any buildings.

Subd. 2. Height of Structural Elements.

(1) *Chimneys and Flues*. Building height and structure limits established in each zoning district shall not apply to chimneys or flues of a building, provided that in no event shall a chimney or flue extend more than 5 feet above the highest gable of a gable roofed building or structure or 5 feet above the "roof line" of non-gable roof building or structure.

(2) *Architectural Elements and Structures - Conditional Use Permit Requirements and Height Limitations*.

The following architectural elements and structures, (Sets 1 and 2, listed below), require a conditional use permit first obtained:

- Set 1:
- a. Belfries,
 - b. Cupolas,
 - c. Domes,
 - d. Elevator penthouses.

In no event may the structures listed in Set 1 above,

- 1) Occupy more than 10% of the area of the roof of the building of which it is a part,
- 2) Extend more than 10 feet above the roof line, or
- 3) Contain habitable space.

- Set 2:
- a. Municipal water towers.
 - b. Radio transmission towers owned or leased by public utilities to serve the general public.
 - c. Civil defense structures.

In no event may the structures listed in Set 2 above exceed twice the maximum permitted building height of the zoning district.

(3) *Standard of Review*. In reviewing a conditional use permit application hereunder, the planning commission and board of appeals and adjustments (city council), shall apply the standards set forth in section 1150 and, in addition thereto, may impose a) design related conditions, b) limitations on height, size or mass, c) restrict the height of the architectural elements and the structure as a whole, and d) impose such additional conditions as may be deemed to be in the interest of the public health, safety, or the general welfare.

Subd. 3. Structure Height. The maximum permitted structure height of a principal structure in a residential district is 42 feet.

Section 1140.17. Stormwater Management.

Subd. 1. *Purpose*. The purpose of this ordinance is to protect and safeguard the health, safety, and welfare of the public by regulating stormwater runoff rates and volumes that can lead to flooding, flood damage, and erosion.

This ordinance seeks to meet this purpose by:

- (a) Reducing flooding, erosion, and water quality degradation;
- (b) Minimizing the total annual volume of surface water runoff that flows from any specific site to the maximum extent practicable; and
- (c) Ensuring that these management controls are properly maintained and pose no threat to public safety.

Subd. 2. *Applicability*. This ordinance shall apply to any construction, alteration, or improvement (“the project”) which results in increased impervious surface coverage of 200 square feet or more over existing conditions or any increase for which the impervious surface coverage after completion of the project will exceed that permitted without a variance or conditional use permit in its Zoning District.

Subd. 3. *Performance Criteria*. All applicable activities subject to subd 2 of this ordinance shall establish permanent stormwater management practices that convey, store, or retain stormwater runoff before discharge onto adjacent properties and public rights-of-way according to the following standards:

- (a) Manage volume of runoff for the equivalent of at least a 2-inch / 24-hour rainfall event for the proposed impervious surface expansion so that the volume does not increase as a result of the project; or
- (b) Manage the rate of runoff for the equivalent of at least a 2-inch per hour rainfall event for the proposed impervious surface expansion so that the rate does not increase as a result of the project; or
- (c) Demonstrate through topographic features that water will be conveyed towards naturally occurring water features such as lakes, wetlands, creeks, or channels without impacting neighboring properties.

Subd. 4. *Approval Required Prior to Permit*. No landowner or land operator shall receive a building permit, grading permit, or approval for any property construction, alteration, or improvement subject to this ordinance until first meeting the requirements of this ordinance.

Subd. 5. *Application Requirements*. Unless otherwise exempted by this ordinance, an application shall be submitted to meet the required performance criteria under subd 3. The application shall include the following as a condition of its consideration:

- (a) When a certified site survey is required by code, the survey shall include:
 - i) An impervious surface calculation for existing and proposed impervious surface conditions.
 - ii) The location of proposed activities.
 - iii) Plans, specifications, and calculations showing compliance with all required stormwater management performance practices and compliance with section 1140.17 subd 3.
- b) When a certified site survey is not required by code, the applicant shall provide:
 - i.) An impervious surface calculation worksheet with existing and proposed impervious surface conditions.
 - ii.) A site plan or drawing showing the location of proposed activities.
 - iii.) Plans, specifications, and calculations showing compliance with all required stormwater management performance practices and compliance with section 1140.17 subd 3.

Subd. 6. *Application Review Procedure*. Applications meeting the requirements of subd 5 of this ordinance shall be submitted to the city zoning administrator and city engineer for review to determine whether the performance criteria of this ordinance will be met. The city zoning administrator may:

- (a) Approve,
- (b) Approve with conditions,
- (c) Reject for resubmission meeting zoning administrator requirements,
- (d) Recommend approval by the city council subject to issuance of a conditional use permit containing conditions, reasonable and necessary to ensure that the performance criteria of this section 1140.17 are met,
- (e) Deny, or
- (f) Otherwise refer the matter to the city council.

Subd. 7. *Conditional Use Permits*. In the event the city zoning administrator recommends approval subject to the issuance of a conditional use permit per subd. 7 (d) above or the application includes construction of a stormwater management system that requires continuing physical maintenance, the applicant shall apply for and obtain a conditional use permit prior to the issuance of a building permit, grading permit, or approval for any construction, alteration, or improvement. All such conditional use permits may impose conditions deemed reasonably necessary to

assure the performance criteria hereof are met and the continuing maintenance and serviceability of all proposed stormwater improvements. Conditional use permits shall be recorded with the county as required by law. Prior to a sale or transfer of the property, the conditional use permit must be disclosed by the selling party to the buyer. The selling party shall contact the city to request an inspection. Any repair or reconstruction deemed necessary by the city to maintain the effectiveness of the stormwater system must be completed by the selling party prior to closing.

(SECTION 1140.17 ADDED PER ORD 252, APR 2016)

Section 1140.18. Building Volume Structure Limitations.

Subd. 1. Purpose. The purpose of this section is to promote the public health, safety, and general welfare by providing for the wise use and development of residential zones within the boundaries of the city. It is the specific intent of this section to preserve and enhance the quality of residential neighborhoods, preserve the economic and natural environmental values of neighborhoods, and provide for the wise utilization of land resources. The unique character of the residential neighborhoods in Greenwood rests largely on the diversity of style and design of houses as well as the general uniformity in the scale of houses located on similarly sized lots in neighborhoods throughout the community. The ratio of “green” area relative to the “built area” and the scale of homes contribute significantly to Greenwood’s character. The trend of tearing down existing houses and replacing them with much larger houses and / or the building of large additions to existing houses has come to be known as “mansionization.” That phenomenon threatens to substantially and negatively alter the appearance and general character of our existing neighborhoods and adversely impacts upon the health, safety, welfare and quality of life in Greenwood. This section establishes maximum above grade building volume as a function of lot area for all residential zones. It is the intent of this section to encourage both new houses and expansions or alterations to existing houses that will be in scale with existing homes while preserving the green space and openness of the community. The above grade building volume provisions are intended to be applied together with other provisions of the city code, including the provisions regulating yard set backs and impervious surface coverage.

Subd. 2. Total Above Grade Building Volume and Building Plan Review.

- (1) *Sworn Statement Required*. In addition to all other requirements of this code, the shoreline management district ordinance, and the current building code, any person desiring to build or alter a residential building, structure or an accessory building or structure shall submit to the city zoning administrator a sworn statement setting forth the above grade building volume calculation prepared in conformance with the provisions of this code together with a lot survey showing lot dimensions, all structures, yard set backs (existing and proposed), impervious surface (existing and proposed), topographic map (2-foot contours) including current and proposed final grades and current and proposed elevation points needed to calculate the building perimeter grade (as defined in section 1102.00) all encroachments, adjacent public right-of-way, structures within 100 feet of the lot, and all survey content required under section 1176 together with a full set of building plans and building elevation drawings for the building or structure or accessory use proposed. The zoning administrator review of the existing and proposed above grade building volume shall not relieve the applicant of responsibility to comply with any and all requirements of this section and the zoning code in general.
- (2) *Exception for Small Projects*. For improvements to existing structures involving an area equal to 20% or less of the area of the first floor of the principal structure, and the applicant has demonstrated to the satisfaction of the zoning administrator that the above grade building volume, when the improvements are complete, will not exceed 80% of the above grade building volume permitted under this code, and that no conditional use permit is required under section 1140.19, the zoning administrator may waive the submission of a survey otherwise required under paragraph (1) above.
- (3) *Zoning Administrator Review for Completeness*. The zoning administrator shall review the applicant’s submission and representations for adequacy, completeness, and accuracy. If the applicant’s submission or representations are, in the sole judgment of the zoning administrator inadequate, incomplete or inaccurate, the application shall be rejected and no action taken thereon until the submissions and representations are revised, corrected, as deemed necessary by the zoning administrator.
- (4) *Assumption of Risk*. All data and calculations submitted by an applicant or the applicant’s agents shall be supported by a sworn statement certifying the accuracy of the data, calculations and representations made to the city. In the event of inaccuracies, misstatements, incomplete information, or errors in the application and / or supporting materials, the city may issue stop work orders, or delay action on applications pending receipt of corrected or additional information. The applicant assumes all risk of loss or expenses caused by any such deficiency, delay, or structural changes required to cause the structure to come into code compliance.

- (5) *Zoning Administrator Review for Code Compliance.* The zoning administrator review shall determine whether the applicant's proposed improvement or use is permitted under the shoreland management district ordinance, zoning code, and building code, and whether conditional use permits, variances, or building permits are required.
- (6) *As-Built Survey Required.* Prior to a certificate of occupancy being issued, applicant shall submit a sworn as-built construction statement, supported by as-built plans, verifying the above grade building volume of the structure conforms to this code.

Subd. 3. Maximum Permitted Above Grade Building Volume in Residential Zones. Subject to all other restrictions on structures imposed by this code, including but not limited to required yard setbacks, maximum permitted impervious surface, lot area, and maximum structure height, no lot in the residential zones of the city may be host to principal and accessory buildings and structures whose above grade building volume (expressed in cubic feet) is greater than the following maximums:

- (1) Lots of 7500 square feet or less in area may be host to buildings, structures, and accessory structures whose above grade building volume is not greater than a volume equal to 6 times the lot area.
- (2) Lots between 7500 square feet and 15,000 square feet in area may be host to buildings, structures, and accessory structures whose above grade building volume is not greater than a volume equal to 42,000 cubic feet plus a volume of cubic feet equal to a figure 4 times (lot area minus 7500 square feet).
- (3) Lots greater than 15,000 square feet in area may be host to buildings, structures, and accessory structures whose above grade building volume is not greater than a volume equal to 75,000 cubic feet plus a volume of cubic feet equal to a figure 2 times (lot area minus 15,000 square feet).

The foregoing maximum permitted above grade building volumes allowed in residential zones do not grant a lot owner the legal right to build a structure(s) whose above grade building volume is equal to the stated maximums, if restrictions under this code otherwise limit the maximum structure size, nor does this code section imply a legal right to a variance to required yard setbacks, maximum permitted impervious surface, lot area, maximum structure height, or any other bulk or structure placement regulations imposed by this code.

(THIS SUBDIVISION AMENDED BY ORD. 215, MAY 2013)

Subd. 4. Special Above Grade Building Volume Exclusions and Inclusions.

- (1) *Exclusions.* All space above unroofed structures such as decks, patios, and wholly in-ground, at grade, pools with no exposed sides shall be excluded from the calculation of building volume.
- (2) *Inclusions.* Enclosed or unenclosed porches or porticos shall be included in the total volume of the building.

Section 1140.19. Grading Regulation & Restrictions.

Subd. 1. Purpose. The purpose of this ordinance is to review significant grading projects in order to determine and mitigate impacts related to site drainage and stormwater and adherence to the city's height regulations.

Subd. 2. Grading Permit Required. No disturbance of the existing surface of land or the grading or alteration of the topography of land or of a lot shall be performed without a permit first obtained.

Subd. 3. Grading Permit Application. Application for a grading permit shall be made to the zoning administrator. In support of a grading permit the applicant shall set forth in writing a full description of the grading or site / lot topography alteration to be performed, including:

- (a) the total surface area to be moved, disturbed, cut or filled,
- (b) the total volume of soil or earth to be moved, disturbed, cut or filled,
- (c) the reason why the grading or topography alteration is required,
- (d) whether the work is required for the remodeling of an existing structure or construction of a new structure, whether the grading or topography alteration or disturbance is due to drainage issues related to existing
- (e) topography or structures,
- (f) whether the grading or topography alteration or disturbance is or due to circumstances not related to the land or existing drainage issues but due to an election by the property owner to make an addition to a principal or accessory structure,
- (g) the cubic feet of material to be disturbed, added and removed,
- (h) the surface area in square feet to be disturbed.

If upon review, the zoning administrator is satisfied a) that the application is complete, b) that the application is supported by a statement of accuracy, c) that the grading or site / lot topography alteration request does not involve

more than 200 square feet of surface area, and d) that the grading or site / lot topography alteration does not involve or more than 7 cubic yards of material, and e) the grading or site / lot alteration will not alter the existing drainage pattern or concentrate or accelerate the flow of water off the lot, a grading permit may be issued without a conditional use permit first obtained. All other grading permit requests shall require a conditional use permit application pursuant to section 1150 of this code.

Subd. 4. Additional Information Required in Support of Grading Conditional Use Permit Applications. Grading conditional use permits, shall, in addition to all of the information required in subdivision 2 above and all information required under section 1150, be supported by i) a current topographic survey by a licensed surveyor illustrating the existing topography of the entire lot in 2-foot contours, existing drainage pattern, existing drainage volumes, existing mean lot grade, ii) a topographic of the entire lot showing proposed topography in 2-foot contours post grading, proposed drainage pattern, proposed drainage volumes, the proposed mean lot grade, and the proposed Building Perimeter Grade, and iii) a stormwater management plan for the entire lot post grading prepared by a civil engineer meeting the approval of the city engineer.

Subd. 5. Grading Limitations. In considering the issuance of a conditional use permit application for grading or site / lot alteration, the city may impose reasonable restrictions to protect property, both public and private, from concentrated or redirected stormwater flow, inundation, flooding, erosion, water hazard, ponding, or damage. The city may impose stormwater management and drainage controls, including but not limited to, holding ponds or other water management methods recommended by the city engineer, and such other requirements as are deemed necessary to protect the public health safety and welfare against actual or potential, harm or other damage related to the proposed grading or site / lot alteration. In granting a grading conditional use permit the city may require that the proposed above grade building volume, building height, and structure height be determined using and limited by the existing building perimeter grade or a previous estimated building perimeter grade, if the site has had previous grading performed instead of the proposed building perimeter grade.

Subd. 6. Grade Alteration. The existing grade of a lot shall not be altered by the addition or removal of fill or by grading so as to increase or decrease the average elevation of the land by more than 1 foot in any area greater than 100 square feet without the approval of the city engineer. The measurements shall be calculated by averaging the lowest point of elevation and highest point of elevation in the square foot area on the existing survey compared to the proposed survey.

(THIS SECTION AMENDED BY ORD 261 SEP 2016)

Section 1140.20. Yard Regulations.

The following requirements qualify or supplement, as the case may be, the district regulations appearing elsewhere in this ordinance. Measurements shall be taken from the nearest point of the structure (foundation wall of a building) to the lot line in question, subject to the following qualifications:

Subd. 1. Determination of Yard Locations. For lots that front on 2 or more public right-of-ways (corner lots), the zoning administrator shall determine the location of the front yard, exterior side yard, and rear yard.

Subd. 2. Limit on Front Yard and Exterior Side Yards. No lot shall be required to provide more than 1 front yard or more than 1 exterior side yard setback.

Subd. 3. Buildable Width of Lots. The front yard setback requirements shall be observed on each street side of a corner lot; provided, however, that the buildable width of a lot shall not be reduced to less than 30 feet.

Subd. 4. Yards for Open Land Uses. Where a lot is to be occupied for permitted use without buildings or structures thereon, the side yards and front yards required herein for the zone within which such lot is located, shall be provided and maintained between such use and the respective lot lines; provided that side and rear yards shall not be required on lots without buildings or structures, used for garden purposes or public playgrounds.

Subd. 5. Regulations of Obstructions in Required Yards.

- A. *Obstructions in Front or Exterior Side Yards.* The required front yard or exterior side yard (corner lots) shall not contain any wall, fence, structure, tree, shrub, or other growth that may cause danger to traffic on a public street by obscuring the view.
- B. *Air Conditioners and Generators.* Must be located within 5 feet of the wall of a principal structure or accessory structure. May encroach into a required yard setback as long as there is a minimum of a 5-foot setback from

the property line. Generators over 20kw require a conditional use permit subject to reasonable conditions for the protection of public safety, health, and welfare.

- C. *Awnings*. Must extend no more than 4 feet from the wall of a principal structure or accessory structure. May encroach into a required yard setback as long as there is a minimum of a 5-foot setback from the property line.
- D. *Eaves and Gutters*. Eaves and gutters encroaching into a required yard setback may extend no more than 30 inches from the wall of a principal structure or accessory structure. Eaves and gutters may encroach into a required yard setback as long as there is a minimum of a 7.5-foot setback from the property line. Gutter downspouts may encroach up to 5 feet into a yard setback.
- E. *Fire Escapes*. Open or lattice enclosed fire escapes or fireproof outside stairways may project into a required yard setback up to 2 feet as long as there is a minimum of a 8-foot setback from the property line.

(THIS SECTION AMENDED JAN 2016 ORD 245)

Section 1140.25. Fences.

Subd. 1. Fences, Accessory Structure. Fences shall be deemed an accessory structure and as a permitted exception to standard yard setback for structures as specifically provided hereunder.

Subd. 2. Maximum Permitted Heights, Panel Dimensions and Side Yard Setback Requirements.

- a. All fences shall be located entirely on the property of the fence owner.
- b. Fence height shall be measured from the bottom of the fence panel to the top of the fence panel. The maximum permitted height for fences in the city and the required side yard setbacks are as set forth in the table below.

Location	Maximum Permitted Height (inches)	Requisite Yard Setback (inches)
Front Yard	36	6
Side Yard	72	6
Rear Yard	72	6
Lakeside*	36	6

* Lakeside yard fences are permitted by variance only.

- c. Fences may be constructed on common side and rear property lines when an agreement, in writing, has been submitted to the city by the adjacent property owners. This agreement must be submitted to the city prior to fence construction. In the absence of such an agreement, the fence shall comply with the setback requirements set forth in the table above.
- d. Separation from grade shall not exceed 3 inches to the bottom of a fence panel. If the separation from grade exceeds 3 inches to the bottom of the fence panel, the maximum permitted fence height will be reduced by the amount that the separation from grade exceeds 3 inches. Finished grade as defined by section 1110.00 (2) (21) surrounding a fence shall not exceed 6 inches from existing grade.
- e. The height of a fence post shall not exceed 15 inches above the top of the fence panel. The maximum post dimension shall not exceed 16 inches in width by 16 inches in depth.
- f. The minimum distance between fence posts shall be 4 feet and shall not exceed 8 feet. The zoning administrator may approve a shorter or longer separation distance between posts to accommodate a gate or other special circumstances such as grade.

Subd. 3. Shore Impact Zone and Bluff Impact Zone. No fence shall be constructed in the shore impact zone or the bluff impact zone without variance first obtained. In no event shall any fence be authorized in such zone greater than 3 feet in height.

Subd. 4. Public Right-of-Way. No fence shall be placed or extend into a public right-of-way.

Subd. 5. Lake Minnetonka and Wetlands. No fences shall be permitted within 50 feet of the ordinary high water mark of a wetland or Lake Minnetonka except by variance first obtained and in no event shall such fences be greater in height than 3 feet.

Subd. 6. Buffers. No fence shall be constructed between a city mandated or zoning code mandated landscape buffer and public street.

Subd. 7. Finished Appearance of Fences. With the exception of fences which are identical in appearance on both sides, all fences shall be constructed so that the side containing framing, supports, and cross pieces faces the fence owner's lot interior and that the finished side or "face" is viewed by the abutting property.

Subd. 8. Preservation of Public Health, Safety and Welfare. Any fence which is determined to endanger the public health, safety and welfare shall be considered a public nuisance and, if after 10 days advance written notice by the city to the property owner such fence has not been repaired or the nuisance related thereto otherwise abated, the city may take such action as it deems necessary to cause the removal of the fence. Chain-link fences shall be constructed in the manner such that no barbed ends are exposed. No barbed wire or electric fences are permitted.

Subd. 9. Corner Lot Restrictions. The required front yard of corner lot shall be unobstructed above a height of 2-1/2 feet above road grade in a triangular area, 2 sides of which are lines running parallel with and at the edge of the surface roadway, a distance of 50 feet from the point of intersection, the third side of which is a line between the later 2 points.

Subd. 10. Signage on Fences. With the exception of an address sign not greater than 2 square feet in area identifying the street address and / or property owner / resident thereof, no signage or written message shall be posted on any fence.

Subd. 11. Fences Required for Commercial Screening or Storage Purposes. When a commercial zone abuts a residential zone an opaque fence of not less than 6 feet nor greater than 8 feet shall be placed between the residential and the commercial zone by the owner of the commercial property as a condition of permitted use if the city determines that a commercial use conflicts with the neighboring residential use or the commercial property is used for the outdoor storage of goods, equipment, refuse, or debris.

Subd. 12. Tennis Courts. Chain link fences to a maximum height of 10 feet may be permitted within a side or rear (but not lakeside) yard by conditional use permit if associated with a tennis court or other accessory necessitating a fence for security or sport. In no event, however, shall any such fence be constructed in the lakeside yard or between the principal structure and the ordinary high water mark of navigable water.

Section 1140.30. Areas Under Water.

All areas within the corporate limits of the city which are under water and not shown as included within any zone shall be subject to all of the regulations of the zone which immediately adjoins the water area. If the water area adjoins 2 or more zones, the boundaries of each zone shall be construed to extend into the water area in a straight line until they meet the other district at a halfway point.

Section 1140.35. Building Access.

Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to an approved private street, and all buildings shall be so located on lots as provide safety and convenient access for servicing, fire protection, and required off-street parking.

Section 1140.40. Regulation of Signs

Subd. 1. Findings, Purpose and Effect.

A. *Findings*. The city council hereby finds as follows:

1. Exterior signs have a substantial impact on the character and quality of the environment.
2. Signs provide an important medium through which individuals and organizations may convey a variety of messages.
3. Signs can create traffic hazards, aesthetic concerns and detriments to property values, thereby threatening the public health, safety and welfare.
4. The city's ordinances have included the regulation of signs in an effort to provide adequate means of expression and to promote the economic viability of the business community, while protecting the city and its citizens from a proliferation of signs of a type, size, location and character that would adversely impact upon the aesthetics of the community and threaten the health, safety and welfare of the community. The regulation of the physical characteristics of signs within the city has had a positive impact on traffic safety and the appearance of the community.

- B. *Purpose and Intent.* It is not the purpose or intent of this sign ordinance to regulate the message displayed on any sign; nor is it the purpose or intent of this article to regulate any building design or any display not defined as a sign, or any sign which cannot be viewed outside a building. The purpose and intent of this article is to:
1. Regulate the number, location, size, type, illumination and other physical characteristics of signs within the city in order to promote the public health, safety and welfare.
 2. Maintain, enhance and improve the aesthetic environment of the city by preventing visual clutter that is harmful to the appearance of the community.
 3. Improve the visual appearance of the city while providing for effective means of communication, consistent with constitutional guarantees and the city's goals of public safety and aesthetics.
 4. Provide for fair and consistent enforcement of the sign regulations set for herein under the zoning authority of the city.
- C. *Effect.* A sign may be erected, mounted, displayed or maintained in the city if it is in conformance with the provisions of these regulations. The effect of this sign ordinance, as more specifically set forth herein, is to:
1. Allow a wide variety of signs types in commercial zones, and a more limited variety of signs in other zones, subject to the standards set forth in this sign ordinance.
 2. Allow certain small, unobtrusive signs incidental to the principal use of a site in all zones when in compliance with the requirements of this sign ordinance.
 3. Prohibits signs whose location, size, type, illumination or other physical characteristics negatively affect the environment and where the communication can be accomplished by means having lesser impact on the environment and the public health, safety and welfare.
 4. Provide for the enforcement of the provision of this sign ordinance.

Subd. 2. Definitions. See section 1102 for definitions.

Subd. 3. Administration and Enforcement.

1. *Compliance with Section 1140.40 and Code.* No person shall erect or cause to be erected, placed, altered or moved, any sign, unless in conformity with section 1140.40. Nothing in this section will relieve any person from complying with the provisions of any other ordinance of the city or other provisions of this code.
2. *Permit Required.* No sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a conditional use permit from the city in accordance with section 1150 of the city's ordinances. The content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit. Application for a permit shall be in writing addressed to the zoning administrator and shall contain the following information:
 - (a) Names and addresses of the owners of the display structure and property.
 - (b) The address at which any signs are to be erected.
 - (c) The lot, block and addition at which the signs are to be erected and the street on which they are to front.
 - (d) A complete set of plans showing the necessary elevations, distances, sizes and details to fully and clearly represent the construction and place of the signs.
 - (e) The cost of the sign.
 - (f) The type of sign (e.g. wall sign, monument sign, etc.)
 - (g) Certification by applicant indicating the application complies with all requirements of the sign ordinance.

The city shall approve or deny the sign permit in an expedited manner no more than 60 days from the receipt of the complete application, including applicable fee, subject to additional review time claimed by city pursuant to Minnesota statutes chapter 15. The fee for a conditional use permit shall be determined by the city council and set forth in chapter 5 of this code book. No conditional use permit for a sign may be transferred or assigned to anyone other than the owner of the property on which the sign is located.

3. *Placement Provisions Applicable To All Signs.*
 - (a) No sign may be placed or maintained on rocks, fences, or trees, nor so as to interfere with any electric lights, or electrical or telephone wires or their supports, or placed in a manner which is deemed a detriment to public safety.
 - (b) No sign shall be attached or be allowed to hang from any building until all necessary wall and roof attachments have been approved by the city building official.

- (c) Illuminated signs shall be shielded to prevent lights from being directed at oncoming traffic. Nor shall such signs interfere with or obscure an official traffic sign or signal. This includes indoor signs that are visible from public streets.
 - (d) No sign shall be placed within any drainage or utility easement or within the public right-of-way except by the issuance of a license agreement with the city.
 - (e) No sign or sign structure shall be erected or maintained that prevents free ingress or egress from any door, window or fire escape. No sign or sign structure shall be attached to a standpipe or fire escape.
 - (f) A freestanding sign or sign structure constructed so that the faces are not back to back shall not have an angle separating the faces exceeding 20 degrees unless the total area of both sides added together does not exceed the maximum allowable sign area for that district.
 - (g) No sign or sign structure shall be placed on or protrude over the public right-of-way except wall (maximum protrusion 18 inches), canopy, awning, or marquee. All signs located over public right-of-way or over any public or private access route (sidewalk, etc.) shall be located a minimum of 8 feet above surface grade.
 - (h) The top edge of a wall sign shall not extend above the mean level of the roof, except where there is a mansard roof, in which case the sign shall not exceed the height of the mansard.
 - (i) If a sign is not a part of the principal structure or attached thereof, the sign shall conform to the zoning ordinance setback requirements.
4. *Maintenance.* Signs and sign structures shall be properly maintained and kept in a safe condition. Sign or sign structures which are rotted, unsafe, deteriorated, or defaced shall be reprinted, repaired, or replaced by the owner or agent of the building or property upon which the sign stands. The ground around any sign shall be kept mowed and free of weeds, debris, and litter. Failure to comply with this section shall constitute a nuisance under this code.

Subd. 4. Exemptions. The following signs shall not require a permit. These exemptions, however, shall not be construed as relieving the owner of the sign from the responsibility of its erection and maintenance, and its compliance with the provisions of this ordinance or any other law or ordinance regulating the same.

- a. *Display Surface.* The changing of the display surface on a painted or printed sign only. This exemption, however, shall apply only to poster replacement and / or on-site changes involving sign painting elsewhere than directly on a building.
- b. *Signs Less than 6 Square Feet.* Signs 6 square feet or less in size, approved by zoning administrator.
- c. *Political Signs.* Freestanding political signs, not exceeding a sign surface area of 12 square feet each, displayed for a period of not more than 8 weeks prior to the pertinent election date and not more than 1 week after that election date.
- d. *Residential Identification Sign.* One identification sign per residential dwelling unit, which sign must not exceed a sign surface area of 4 square feet.
- e. *Garage Sale Signs.* Freestanding signs for garage sales or similar events occurring within the corporate limits of the city, not exceeding 4 square feet in sign surface area, erected on private property with permission of the landowner.
- f. *Signs at Construction Sites.* Signs denoting the architect, engineer, or contractor, when placed upon work under construction, provided that the total sign surface area of all such signs does not exceed 32 square feet in a district zoned for commercial uses or 6 square feet in a district zoned for residential uses, and provided that the sign is removed upon completion of construction or prior to a date 6 months after the sign is first placed on the property, whichever is earlier.
- g. *Temporary Signs.* Temporary signs (other than political signs) pertaining to drives or events of civic, philanthropic, educational or religious organizations, provided permission of the council must be obtained to erect such signs upon or over streets or other public property, and provided further that such signs must not be erected or posted for a period of more than 14 days prior to the date of the event and must be removed within 3 days after the event.
- h. *Real Estate Signs.* Real estate signs, provided the total sign surface area for real estate signs on a property is not greater than 6 square feet and the sign is located on the property to be leased or sold. Real estate signs must be removed within 3 days after closing of the sale or leasing of the property on which they are located.
- i. *Interior Signs.* Non-illuminated sign within the interior of a building, so long as it is not a prohibited sign under subdivision 5 below.
- j. *Business Identification Signs.* One business identification sign which is designed to replace an existing business identification sign for which a valid sign permit exists, so long as the new sign has the same dimensions and is in the same location as the existing sign, and is neither a lighted sign or a prohibited sign under subdivision 5 below.
- k. *Official Signs.*

Subd. 5. Prohibited Signs. Unless a sign is specifically permitted under this section, or a temporary sign permit has been issued for the sign under this section, or a conditional use permit has been issued for the sign under the city's zoning ordinance, the sign is prohibited. By way of example and not by way of limitation, the following signs are specifically prohibited:

- (a) Billboards.
- (b) Flashing signs, searchlights, flags, or whirling devices.
- (c) Animated signs.
- (d) Signs that emit sound, odor or visible matter.
- (e) Signs attached to or trailered by a vehicle parked primarily for use as a sign for any period of time.
- (f) Balcony signs and signs mounted or supported on a balcony.
- (g) Any sign that obstructs any part of a doorway, stairway or fire escape.
- (h) Signs within the public right-of-way, public property or public easement.
- (i) Any sign projecting above the roofline of the structure to which it is affixed.
- (j) Signs that project beyond the property line of the property upon which the sign is located.
- (k) Signs that have a structural member or other portion closer than 10 feet to a side lot line, permitted conditional use businesses in residential zones are excepted from this provision. (THIS PARAGRAPH AMENDED SEPT 2014, ORD 239)
- (l) Signs intended to be for the purpose of business advertising in any residentially zoned areas, including window signs, permitted conditional use businesses are excepted from this provision. (THIS PARAGRAPH AMENDED SEPT 2014, ORD 239)
- (m) Any sign which by reason of its location, color, or intensity, creates a hazard to the safe and efficient movement of vehicles or pedestrian traffic, including any sign which might be construed as a traffic control or which otherwise resembles any official marker erected by a governmental body or agency.
- (n) Window signs which obstruct the window to the point where the interior of the building cannot be observed by police or other security personnel.
- (o) Wall signs having a sign surface area exceeding 15% of the area of the wall surface (including doors and windows) to which it is affixed.
- (p) Signs constructed so that the message or communication is not flat against the sign structure.
- (q) Off-premise commercial signs whether located in a commercially or residentially zoned property, permitted conditional use businesses are excepted from this provision with the approval of the regulatory authority in control of the property in which the signage will be placed. (THIS PARAGRAPH AMENDED SEPT 2014, ORD 239)
- (r) On-premise sign located within residential districts, permitted conditional use businesses excepted, identifying or advertising an establishment, person, activity, goods, products or services located on the premises where the sign is installed. (PARAGRAPH R AMENDED JUN 2014, ORD 232)
- (s) Changeable copy signs – electronic, multi-vision signs, portable signs, rotating signs, shimmering signs, stringers or suspended signs.
- (t) Content classified as obscene as defined by Minnesota statutes chapter 617.
- (u) Abandoned signs as defined by section 1140.40 Subd 7 (2)(e).
- (v) Dynamic display signs.
- (w) Electronic graphic display signs.
- (x) Video display signs.

Subd. 6. Temporary Sign Permit.

1. *Issuing Authority*. The zoning administrator will have the authority to issue permits for temporary signs upon payment of the temporary sign permit fee specified in chapter 5 if the sign is:

- (a) in keeping with the character and development of the property on which it is located;
- (b) is reasonably necessary for the proposed use of the property on which it is located; and
- (c) not likely to have a detrimental effect on values of property in the surrounding area.

No individual property, leased space or business may obtain more than 6 temporary sign permits in a calendar year. Each temporary sign permit shall be valid for a period of 30 days.

2. *Application Requirements*. Application for a temporary sign permit will be provided by the zoning administrator and all valid applications shall include the following information:

- (a) Name, address and phone number of individual placing the sign.

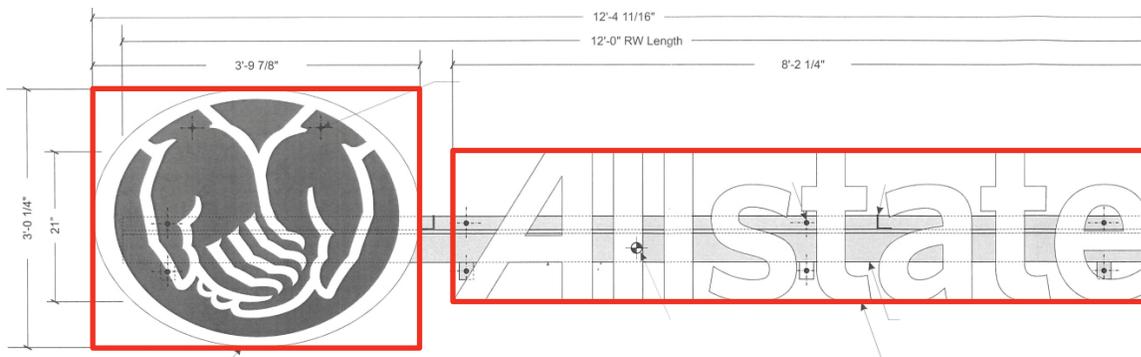
- (b) Name and phone number of sign contractor.
 - (c) Type of construction.
 - (d) Type of sign: ground, wall, projecting, etc.
 - (e) Type of proposed illumination and hours of illumination.
 - (f) Dimensions and area of sign.
 - (g) Proposed location on property of proposed sign.
 - (h) A sketch of proposed sign, including dimensions, lettering / message and colors to be used on the proposed temporary sign.
3. *Assignment and Transfer.* No temporary sign permit may be assigned or transferred to anyone other than the owner of the property on which the sign is located.

Subd. 7. Nonconforming Signs.

- 1. *Existing Signs that Comply with Section 1140.40.* Signs existing before January 22, 2009 which conform to the requirements of this ordinance and which do not require a permit may be maintained so long as they continue to comply with this ordinance, as it may from time to time be amended.
- 2. *Existing Signs that Do Not Comply with Section 1140.40.* Signs existing before January 22, 2009 which would be prohibited by this ordinance, or which would require a conditional use permit under this ordinance but which have not received a permit under this ordinance or prior ordinances, will be deemed to be legal nonconforming signs. Legal nonconforming signs may continue to exist without a permit and without constituting a violation of this section until one or more of the following occurs:
 - (a) The sign is structurally altered (except for normal maintenance) in a way which makes the sign less in compliance with this section than it was before the alteration.
 - (b) The sign is relocated to a position making it less in compliance with this section than it was before the relocation.
 - (c) The sign is replaced.
 - (d) Any new primary sign is erected or placed in connection with the enterprise using the legal nonconforming sign.
 - (e) The sign is not used for a period of 6 months.

Subd. 8. General Provisions.

- (a) The size of a sign may not exceed 15% of the wall area of the façade of the structure in which it is located and in no case exceed 75 square feet for all types of signs.
- (b) For wall signs, the area including the frame shall be used to calculate the square footage. If letters or graphics are mounted directly on a wall or fascia in such a way as to be without a frame, the dimensions for calculating the square footage shall be the rectangle formed around the letters and / or graphics (see example A below). Each surface utilized to display a message or to attract attention shall be measured as a separate sign and shall be calculated in the overall 75 square footage allowed.

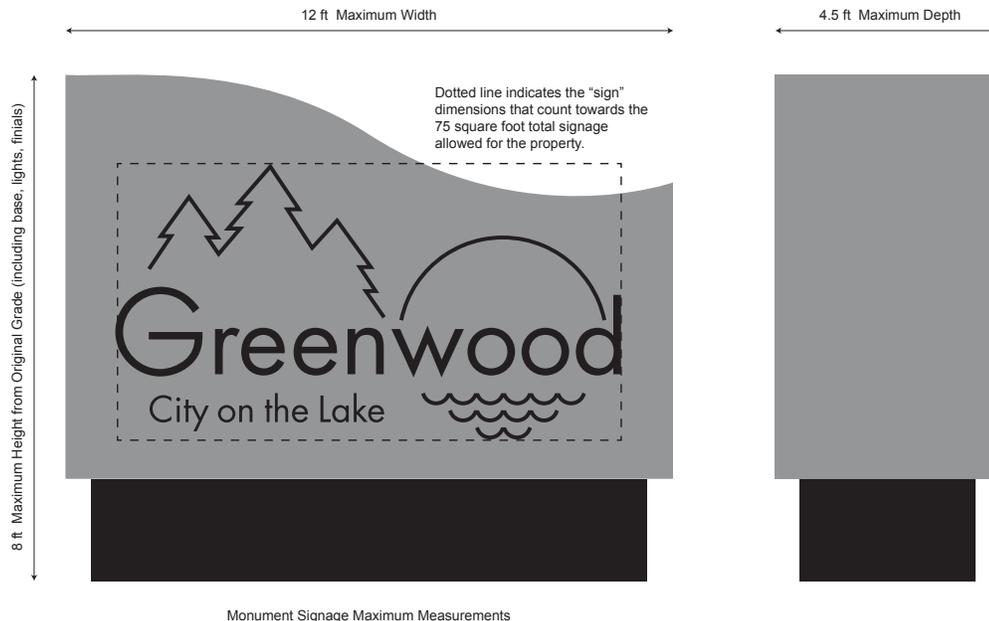


A. 25.87 square feet

- (c) Symbols, flags, pictures, wording, figures or other forms of graphics painted on or attached to windows, walls, awnings, free-standing structures, suspended by balloons, or kites or on persons, animals, or vehicle, or placed

within a structure and visible from outside the structure shall be considered a sign and are included in calculation the overall square footage.

- (d) Monument and V-shaped monument sign structures shall be permitted only by conditional use permit. Monument and V-shaped structures shall not exceed 12 feet in width, 8 feet in height (measured from the original grade, including base, lights, finials), and 4.5 feet in depth (2.25 feet for each leg of a V-shaped monument structure). The V in V-shaped monument structures shall not exceed 30 degrees. The dotted line in the below example indicates the “sign” dimensions that shall count towards the 75 square foot total signage allowed for the property. Lettering or graphics on all faces of the monument or V-shaped structure shall count towards the 75 square foot total signage allowed for the property.



- (e) Signs located on canopies and fixed awnings shall be measured using the same method in (b) for wall signs. Lettering or graphics on all faces of canopies and awnings shall count towards the 75 square foot total signage allowed for the property.
- (f) The installation of electrical signs shall be subject to the state’s electrical code. Electrical service to such signs shall be underground.
- (g) The owner or agent of the building and / or property shall remove any sign that has become obsolete by reason of termination of the business or vacation of the premises.
- (h) The owner, lessee, or manager of the property where a sign is located shall remove or correct a sign within 30 days of the receipt of written notice from the zoning administrator that the sign is in violation or prohibited by the ordinance.
- (i) A multiple tenant commercial property shall be allowed 75 square feet of total signage for the property.

(SUBD 8 REVISED NOV 2015, ORD 246)

Subd. 9. Enforcement. If a sign is in violation of this section, or is rotted or in danger of falling, or is otherwise unsafe or unsightly, the city building inspector may give to the owner of the property on which the sign is located written notice specifying the violation, and requiring either the removal of the sign or remedial work in the time and manner specified in the notice. In the event of failure to comply with the notice within 30 days, the city may remove the sign or cause such remedial work to be done, and the cost of the work will be paid to the city by the owner of the property on which the sign is located. If payment is not made within 30 days after a statement for such costs is sent to the owner, the costs may be assessed against the property by certifying the costs to the county treasurer for collection in the same manner as the real estate taxes. If a sign that has been removed is not reclaimed and costs paid within 30 days

after its removal, the sign may be sold or otherwise disposed of by the city. If a sign is found to be an immediate danger to the public because of its unsafe condition, it may be removed without notice, and written notice of removal and reasons for such will be given to the owner of the property on which it is located as soon as possible.

Subd. 10. Penalty. Violation of this section is a misdemeanor and subject to the process outlined in chapter 12.

Section 1140.45. Parking and Loading Requirements.

All parking hereafter constructed or maintained shall conform with the provisions of this section and any other ordinances or regulations of the city.

Subd. 1. Minimum Size Regulations. Each parking stall shall contain a minimum area of not less than 200 square feet, and shall have a width of not less than 8-1/2 feet and a depth of not less than 20 feet. Each stall shall be adequately served by access drives. All loading areas shall be sufficient to meet the requirements of each use and shall provide adequate space for storage and maneuvering of the vehicles they are designed to serve.

Subd. 2. Reduction and Use of Parking and Loading Space. Existing on-site parking facilities shall not subsequently be reduced to an amount less than that required under this ordinance for a similar new building or use. On-site parking facilities provided to comply with provisions of this ordinance shall not subsequently be reduced below the requirements of this ordinance. Such required parking or loading space shall not be used for storage of goods or for storage of vehicles that are inoperable or for sale or rent.

Subd. 3. Computing Requirements. In computing the number of such parking spaces required, the following rules shall govern:

- a. Where fractional space result, the parking spaces required shall be construed to be the nearest whole number.
- b. The parking space requirement for a use not specifically mentioned therein shall be the same as required for a use of similar nature, as determined by the planning commission.

Subd. 4. Yards. On-site parking and loading facilities shall not be subject to the front yard, side yard and rear yard regulations for the use district in which parking is located, except that in a C-1 and C-2 district, no parking or loading space shall be located within 10 feet of any property line that abuts a road or highway rights-of-way, or any residential district.

Subd. 5. Buffer Fences and Planting Screens. On-site parking and loading areas near or abutting residential districts shall be screened according to section 1140.60.

Subd. 6. Access.

- a. Parking and loading space shall have adequate and serviceable access to and from a public right-of-way meeting commonly accepted civil engineering standards necessary for traffic management and public safety.
- b. Subject to subparagraph (c) below, the width of access drives / curb-cuts shall not exceed 24 feet in width. The number of access drives / or curb-cuts to the public street shall be limited to not more than 1 access drive / curb-cut per lot per street. In no event shall street access drives / curb-cuts be permitted on lot frontage of less than 50 feet in length, and in no event shall more than 2 curb-cuts per lot be permitted. The city may require access drives / curb-cuts to be narrowed or moved if civil engineering standards, traffic management, and / or public safety require to avoid the creation of traffic hazards.
- c. Access drives / or curb-cuts to the public street from C-1 zoned properties located across from a residential district are permitted only by conditional use permit first obtained and are subject to the terms and conditions of this subdivision and any other conditions permitted under section 1150 of this code.

Subd. 7. Location of Parking Facilities and Combined Facilities. Required on-site parking space shall be provided on the same lot as the principle building or use, except that combined or joint parking facilities may be provided for 1 or more buildings or uses in commercial districts, provided that the total number of spaces shall equal the sum of the requirements for each building or use.

Subd. 8. Construction or Maintenance.

- a. In commercial districts, parking areas and access drives shall be covered with a dust-free, all-weather surface with proper surface drainage as required by the city engineer.
- b. The operator of the principle building or use shall maintain parking and loading areas, access drives and yard areas in a neat and adequate manner.

Subd. 9. Lighting. Lighting shall be reflected away from the public right-of-way and nearby or adjacent residential districts as directed in section 1140.60.

Subd. 10. Required Site Plan. Any application for a building permit shall include a site plan or plot plan drawn to scale and dimension, showing on-site parking and loading space to be provided in compliance with this ordinance.

Subd. 11. Required Number of On-Site Parking Spaces. On-site parking areas of sufficient size to provide parking for patrons, customers, suppliers, visitors and employees shall be provided on the premises of each use. The minimum number of required on-site parking spaces for the following uses shall be as follows:

- a. *Single and duplex family dwellings* – 2 parking spaces per dwelling unit. No garage shall be converted into living space unless other acceptable on-site parking space is provided. No permits shall issue for any construction or remodeling if this paragraph is not complied with.
- b. *Marinas* – 6 spaces for every 10 docks.
- c. *Churches* – 1 parking space for each 4 seats, based on the design capacity of the main seating area.
- g. *Theater* – 1 parking space for each 4 seats plus 1 space for each 2 employees.
- h. Professional offices, medical and dental clinics and animal hospitals – 1 parking space for each 330 square feet of floor area.
- i. *Office buildings* – 1 parking space for each 330 square feet of gross floor area.
- j. *Common parking area* – Where the code otherwise permits, and it is proposed that multiple permitted uses be located upon a single lot or tax parcel, the owner / applicant shall prepare and submit to the city, together with a preliminary administrative review fee (set forth in chapter 5), a scaled parking plan for the whole lot or tax parcel setting forth the number of parking spaces required under this code for each proposed individual use / rental / condo unit thereat. Rental / condo units shall be illustrated and each unit's square footage stated. In the event that total available on site parking spaces in the proposed parking plan based on each individual use are fewer than this code otherwise requires, the owner / applicant may make application for a parking conditional use permit (CUP) to allow fewer on-site parking spaces for the proposed use mix than the code requires. Such application shall include the payment of a conditional use permit fee (set forth in chapter 5). A parking CUP may be issued subject to the terms and conditions of section 1150 and the following additional conditions: The owner / applicant must demonstrate to the satisfaction of the city council that reasonable anticipated day-to-day parking demand, including peak demand, is less than the code otherwise requires because of either (a) exigent circumstances unique to the planned uses, or (b) demand for parking varies between the various planned uses can be met with fewer than the total parking required by the code through limiting and controlling the mix of permitted uses, the amount of their individual business activity, and the hours of permitted use. Upon a finding by the city council that a parking CUP if granted hereunder will not adversely impact the public health safety and welfare, and the planned uses are otherwise code compliant, a parking CUP may be issued on such terms and conditions as the city deems appropriate provided that in any event a parking CUP shall be subject to a reservation of rights in favor of the city, including but not limited to, the right of the city to review on 60 days written demand all related use activity, mix of uses, changes in use, or hours / days of parking demand and the right of the city to amend or impose new and / or additional parking space requirements or other conditions for the existing or planned uses or otherwise cause the owner to bring to an end certain uses or mix of uses on one year advance written notice. The terms of a parking CUP meeting with the approval of the city attorney shall be memorialized by developer / owner agreement with the city and also incorporated into conditions and covenants filed on record against the subject property. All expenses and filing fees that the city may incur in conjunction with the processing of a parking CUP application and the preparation of related developer agreements and conditions and covenants shall be paid by the owner / applicant in full prior to issuance thereof. The city may charge for the expenses of its city staff, city attorney, and city engineer.
- k. *Automobile service station* – 4 parking spaces, plus 2 parking spaces for each service stall, such parking spaces shall be in addition to parking space required for the pump areas.
- l. Auto sales, trailer sales, marine and boat sales, implement sales, garden supply store, building materials sale, auto repair – 1 parking space for each 500 square feet of floor area.
- m. *Bowling alley* – 5 parking spaces for each bowling lane.
- n. *Drive-in restaurant* – 20 parking spaces or 1 space for each 20 square feet of floor area, whichever is greater.
- o. *Assembly or exhibition hall, auditorium or sports arena* – 1 parking space for each 4 seats, based upon design capacity.
- p. *Restaurant, cafe, nightclub, tavern or bar* – 1 parking space for each 75 square feet of gross customer floor area.
- q. *Retail stores and service establishment* – 6 parking spaces for each 1,000 square feet of retail floor area.

- r. *Research, experimental or testing stations* – 1 parking space for each employee on the major shift 1 off-street parking space for each 500 square feet of gross floor area within the building, whichever is greater.
- s. *Storage, wholesale or warehouse establishments* – 1 parking space for each 2 employees on the major shift or 1 parking space for each 2000 square feet of floor area, whichever is greater, plus 1 space for each company motor vehicle when customarily kept on the premises.
- t. *Motel or motor hotel* – 1 parking space for each rental room or suit.

(THIS SUBDIVISION AMENDED APRIL 2011 ORD. 193)

Subd. 12. Off-Street Loading Design and Maintenance.

- a. *Location* -- All required loading or unloading into or out of trucks in excess of 3/4 ton capacity, shall be conducted at facilities specifically designed or designated for that purpose. Those loading areas shall be located upon the premises of the principle uses requiring them.
- b. *Access* -- Each required loading area shall be so designed as to avoid undue interference with other vehicular access or use of public streets, alleys, or other public transport systems.
- c. *Surfacing* -- All loading areas shall be surfaced with a hard, all-weather, dust-free durable surfacing material and shall be well drained and landscaped and shall be maintained in a sightly and well-kept condition.
- d. *Landscaping and Screening* -- All loading areas shall be screened from view from the property street frontage and / or from the zoning district boundary when the adjacent property or property across the street frontage or side street frontage is zoned or used for residential purposes. Screening shall be in accordance with the zoning code. Screen plantings may be substituted for the prescribed wall, however, such plantings must not be less than 2-1/2 inches in diameter and of such type as to permit a minimum of 90% opacity during all months of the year.
- e. *Design* – 50% of the required number of loading areas shall be 50 feet in length, 12 feet in width and 15 feet in height. All loading areas shall consist of a maneuvering area in addition to the berth and shall not use any of that portion of the site containing parking stalls. Maneuvering areas shall be of such size as to permit the backing of truck tractors and coupled trailers into a berth, without blocking the use of other berths or drive or maneuvering areas.
- f. *Required Loading Areas.* The following required loading and unloading spaces are required:

Use	Required Spaces
Motels, private clubs, and lodges	1 for each 20,000 sq. ft. of floor area
Light and heavy commercial uses except where otherwise specified	1 for the 1st 10,000 sq. ft. of floor area, and 1 for each additional 50,000 sq. ft. of floor area
Auditorium, theater, stadium, gymnasium, community centers, and religious institutions, and schools (public and private)	1 for each structure over 100,000 sq. ft.
Office building and professional offices (other than doctor and dentist), banks	1 for buildings between 30,000 and 100,000 sq. ft. of floor area, and 1 for each additional 100,000 sq. ft. of floor area
Restaurants and other food-dispensing establishments except drive-in restaurants	1 for each structure over 10,000 sq. ft. of floor area
Automobile and boat sales and appliance sales	1 plus 1 additional space for each 25,000 sq. ft. of floor area

Subd. 13. Storage of Regulated Motor Vehicles and Regulated Watercraft in R-1A, R-1B, and R-2 Residential Districts.

- A. *Residential Storage of Vehicles and Watercraft.* The city has determined that the parking and storage on or adjacent to residential zoned properties of:
 1. Large numbers of vehicles, boats or commercial equipment;
 2. Parts or supplies for vehicles, boats or commercial equipment;
 3. Vehicles, boats or equipment used for commercial purposes; and / or
 4. Abandoned, wrecked, junked, partially dismantled, or inoperative vehicles; boats and commercial equipment; adversely impact the residential properties of the city because they:

- (a) Reduce the value of private property by introducing commercial and mixed uses into exclusive residential zones;
 - (b) Introduce commercial advertising signs into areas where commercial advertising signs are otherwise prohibited;
 - (c) Introduce commercial activity into residentially zoned property;
 - (d) Decrease adjoining landowners and occupants' enjoyment of their property and neighborhood.
- B. *Parking and Storage Prohibition.* No person shall cause, undertake, permit or allow:
- 1. Regulated motor vehicles to be parked or allowed to stand longer than 24 hours upon, in front, or beside any R-1A, R-1B or R-2 single-family residential district property, except for the purpose of loading or unloading such regulated motor vehicle, unless such shall be stored wholly within a building upon the premises.
 - 2. Regulated watercraft to be docked, moored, or tied to a dock or mooring emanating from an R-1A, R-1B or R-2 property in the city; or to be otherwise anchored, stored, or trailered upon, in front, or beside a R-1A, R-1B or R-2 single-family residential district property longer than 12 hours in any 72-hour period.
- C. *Regulated Motor Vehicles.* Regulated motor vehicles include the following vehicle types:
- a) Unlicensed Motor Vehicles. Any motor vehicle licensed for operation on the highways of the state of Minnesota but does not display current license plates or tabs.
 - b) Bus. Any motor vehicle designed and used for the carrying of more than ten persons, including school buses converted forever to private use and employed for any purpose.
 - c) Mobile Home or House Trailer. Any trailer or semi-trailer designed, constructed and equipped for use as a human dwelling place, living abode, or living quarters except house trailers. House trailer means any trailer or semi-trailer which is not more than eight 8 feet in width and not more than 35 feet in length and which is designed, constructed, and equipped for use as a human dwelling place, living abode, or living quarters.
 - d) Truck. Any motor vehicle having a gross weight of more than 7000 lbs. designed and used for carrying things other than passengers.
 - e) Tractor. Any motor vehicle designed or used for drawing other vehicles but having no provisions for carrying loads independently.
 - f) Truck-Tractor. Any motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.
 - g) Semi-Trailer. Any vehicle of the trailer type so designed and used in conjunction with a truck-tractor that a considerable part of its own weight or that of its load rests upon and is carried by the truck-tractor and shall include a trailer drawn by a truck-tractor semi-trailer combination.
- D. *Regulated Watercraft.* Regulated watercraft include the following:
- a) Commercial Watercraft. No boat or other watercraft used for commercial purposes on Lake Minnetonka, including but not limited to dredging barges, weed cutters, and charter boats licensed by the Lake Minnetonka Conservation District or any other watercraft licensed for commercial purposes on the waters of Lake Minnetonka shall be docked or stored at, on, or adjacent to a residential property except when servicing a residence. All such watercraft shall be moored, docked, stored or kept at a licensed marina within a C-1 or C-2 zone of the city or otherwise outside of residentially zoned property in the city.

Section 1140.46. Driveways and Parking Pads.

Subd. 1. Purpose. The city finds that sand, gravel, and dirt from driveways and parking pads are a source of uncontrolled eroded sediment and outwash upon the streets and roads of the community. Furthermore, that such uncontrolled material is a hazard to pedestrians, vehicles, and the public welfare in general by creating an uncertain and varied surface on the traveled portion of the community streets and roads; that the material is carried by surface waters and deposited upon lowlands, wetlands and lakes of the community, thereby adding unnecessary sediment and deleterious material to the community water sources. Wherefore the lowlands, wetlands, and lakes of the city and the safety of travelers upon the community streets and roads must be protected in the interest of the public health, safety and welfare. Therefore, the city has determined that the standards set forth below are necessary to protect the health, safety, and welfare of the city.

Subd. 2. Standards for Driveways and Parking Pads. Each residential lot shall be limited to one 24-foot curb cut for a driveway. If curb cuts are a minimum of 48 feet apart, an additional 24-foot curb cut for a driveway or parking pad may

be allowed with a conditional use permit subject to reasonable conditions for the protection of public safety, health, and welfare.

Subd. 3. Surface Materials for Driveways and Parking Pads. All driveways and parking pads that abut public streets shall be constructed with bituminous blacktop, cement, brick pavers, or similar material in such a manner as to eliminate areas of open sand, gravel, or dirt.

(THIS SECTION AMENDED JAN 2016 ORD 245)

Section 1140.50. Removal of Soil, Sand or Other Material.

Subd. 1. Temporary Excavation District. The use of land for the removal of topsoil, sand, or gravel, and other material from the land is not permitted in any zone except by the granting of a temporary excavation permit by the council upon favorable recommendation by the planning commission. Permits shall be issued for a maximum period of 1 year and shall be subject to review and rehearing at that time.

Subd. 2. Future Use of the Land. The persons applying for a temporary excavation permit must submit a plan of intent as to the future use of the property being excavated as well as development plans showing proposed elevations, drainage, access routes to be used in hauling to and / or from the site and daily hours intended for operation as well as projected period of excavation.

Subd. 3. Safety Precautions. If during the excavation work, it becomes necessary for the person excavating to create a condition of grade or drainage not in the interest of health or safety, it shall become that person’s duty to correct, immediately, the dangerous situation created, as well as fence such area from the general public during the period of danger.

Subd. 4. Bonding. It shall be necessary for the person securing temporary excavation permit to present adequate proof of bonding to the city in the form of a performance bond, sufficient in value to cover the expense of the completion of the development plan or to bring such portion of the completed project to a safe grade and elevation so as to be healthful and safe to the general public and to provide safe and adequate drainage of the site. The permit fee shall be determined by the council and set forth in chapter 5 of this code book.

Section 1140.55. Noise, Odors, Vibrations, Smoke, Fumes.

In order to ensure compliance with the performance standards set forth below, the council may require the owner or operator of any permitted use to have made such investigations or tests as may be required to show adherence to the performance standards. Such investigation or tests as are required shall be carried out by an independent testing organization selected by the city. Such investigations or testing shall be ordered by the owner or operator; the cost of same shall be shared equally by the owner or operator and the city.

Subd. 1. Noise. At any property line the sound pressure level of noise radiated from an operation shall not exceed the values given in the table below. The sound pressure level shall be measured with a sound level meter and an associated octave band analyzer, both of which are manufactured to specifications published by the American Standards Association for an octave band filter set for the analysis of noise and other sounds.

FREQUENCY MAXIMUM PERMITTED SOUND	
Band Cycles Per Second	Levels (Decibels)
20-75	72
76-150	67
151-300	59
301-600	52
601-1200	46
1201-2400	40
2401-4800	34
Over 4800	32

Subd. 2. Odors. No odors shall be detectable beyond the limits of the premises.

Subd. 3. Vibration. No vibration shall be discernible at any property line to the human sense of feeling for an accumulated total of 3 or more minutes during any hour.

Subd. 4. Smoke or Dust. No smoke or dust shall be emitted except in conformance with the regulations of the Minnesota Pollution Control Agency.

Subd. 5. Fumes or Gases. Fumes or gases shall not be emitted at any point in concentrations or amounts that are noxious, toxic, or corrosive. Detailed plans for the elimination of fumes or gases may be required before the issuance of a building permit.

Section 1140.60. Regulations on Screening, Landscaping, Lighting, Storage and Outdoor Displays.

Subd. 1. Screening. All principle and accessory uses in a C-1 and C-2 district, except business signs, which are situated within 50 feet of a residential district, shall be screened from such district by a wall or fence of not less than 90% opacity and not less than 5 feet nor more than 7 feet in height above the level of the residential district property at the district boundary. Walls or fences of lesser heights or planting screens may be permitted by the city council if there is a finding that the nature or extent of the use being screened is such that a lesser degree of screening will adequately promote and protect the use and enjoyment of the properties within the adjacent residential district, or there is a finding that a screening of the type required by this ordinance would interfere with the provisions of adequate amounts of light and air to same said properties. Loading docks and refuse areas in the C-1 and C-2 districts shall be screened so as not to be visible from any public street right-of-way within a residential district. All required screening devices shall be designed so that they are architecturally harmonious with the principal structures on the site and they shall be properly maintained so as not to become unsightly, hazardous, or less opaque than when originally constructed.

Subd. 2. Landscaping.

- A. *Landscaping Required*. Within all zoning districts, exposed ground areas surrounding a principal or accessory use, including street boulevards, which are not devoted to drives, sidewalks, patios, or other such uses shall be landscaped with grass, shrubs, trees, or other ornamental landscaping material deemed adequate by the zoning administrator to secure the top soils and prevent accelerated or undue runoff. The property owner shall maintain all landscaped areas to be compatible with the neighborhood. No landscaped area in the C-1 and C-2 districts shall be used for the parking of vehicles or the storage or display of materials, supplies, or merchandise.
- B. *Landscaping Security Deposit*. No "occupancy permit" (new construction) or "final inspection" (remodeling) shall be issued unless landscaping required hereunder is completed or the property owner first submits to the city clerk a Landscaping Security Deposit by cashier's check or certified check in the amount of set forth in chapter 5 payable to the city as security for the completion of the required landscaping within 12 months from the date of the occupancy permit / final inspection to be then issued. The deposit is refundable if the required landscaping is completed within 12 months.
- C. *Landscaping Security Agreement*. As an alternative to a Landscaping Security Deposit as provided in paragraph B above, the property owner may enter into a Landscaping Security Agreement in form as provided by the city. By entering into Security Agreement the property owner agrees that if the landscaping is not completed within 12 months of the issuance of the occupancy permit (new construction) or final inspection (remodeling projects), whichever is applicable, then all applicable fees and fines may be certified to the county to be collected with property taxes. No fees or fines will be certified to the county if the required landscaping is completed within 12 months.
- D. *Non-Performance*. In the event a property owner fails to complete the required landscaping within 12 months of the date of the Landscaping Security Deposit or Landscaping Security Agreement, a portion of said deposit / security amount shall be deemed forfeited to the city as a fine in the amount set forth in chapter 5 and shall be duly imposed and due and payable to the city for lack of timely performance. For each month thereafter (or part thereof) during which the required landscaping remains uncompleted in a manner satisfactory to the city zoning administrator, the city may impose a like fine and the same will be forfeited to the city. The property owner shall, within 10 days of written demand directed to the property owner's last known address of record, pay said amount to the city. In the event the property owner fails to timely pay, the fine amount shall be certified to the county for assessment and collection with the property taxes due on the subject property. In that event, the city may add thereto an administrative processing fee as provided in chapter 5. The annual public hearing held prior

to certification of unpaid assessments and service fees shall be the due process hearing at which the property owner may object to the fine / forfeiture / assessment hereunder in whole or part.

- E. *Prosecution, Civil Enforcement, and Injunctive Relief for Non-Performance.* Non-performance of the required landscaping is hereby deemed a violation of the zoning code and is subject to prosecution. No term or condition of a Security Deposit or Security Agreement shall bar the city from prosecuting individuals for non-performance of the terms and conditions of the required landscaping. The city may take such enforcement action as it deems necessary and appropriate to prosecute violations of same and also may seek civil injunctive relief, including an order for specific performance, for failure to complete the required landscaping as the city may deem necessary. The fact that a property owner has entered into a Security Deposit or Security Agreement shall not be a defense to, nor bar or prevent municipal prosecution or civil court action against same in the event of a property owner's non-performance of required landscaping.

(THIS SUBDIVISION AMENDED JAN 2016 ORD 249)

Subd. 3. Lighting.

1. *Purpose.* To balance the desire to see the night sky with the desire for safety and security, and the need to light after-dark activities.
2. *Limitations on Illumination.* Within all zoning districts, sources of artificial light (including floodlights, spotlights, and decorative lighting) shall be so fixed, directed, designed, or sized that the sum total of their illumination will not increase the level of illumination at the property line of any nearby residential property by more than .4 foot candles. The foot-candle level of a light source shall be taken not earlier than one hour after sunset employing a light meter.
3. *Controlled Lighting.* With the exception of floodlights / spotlights and decorative lighting, all exterior light sources shall employ hooded fixtures or be controlled, shaded, or frosted in a manner so that the light bulb filament cannot be viewed at eye level from the adjacent property or public right-of-way.
4. *Restrictions on Floodlights and Spotlights.* Spotlights and floodlights shall not be directed at neighboring properties or public right-of-way, nor shall they be permitted to cause direct or sky reflected glare. The time permitted for lighting of floodlights and spotlights:
 - Sunset to 11 PM – Lights may be on for 2 hours
 - 11 PM to 6 AM – Lights may be on for 15 minutes
5. *Restrictions on Decorative Lighting.* For the purpose of this ordinance, “decorative lighting” means string lights, icicle lights, rope lighting, or other lighting commonly used for holiday or seasonal decoration or celebration also commonly known as “Christmas or holiday tree lights.” In no event shall exterior decorative lighting employ bulbs greater than a brightness equivalent of 7 watts incandescent (40 lumens) each. Exterior decorative lighting shall not be lit between the hours of 11 PM and 6 AM. Decorative lighting must be installed so it is clear that it is strictly decorative in nature and not being used to circumvent the purpose of this section 1140.60.

Subd. 4. Storage - Displays. All materials, supplies, merchandise or other similar matter not on display for a direct sale, rental or lease to the ultimate consumer or user shall be stored within a completely enclosed building within the C-1 and C-2 districts, or within the confines of a 100% opaque wall or fence no less than 5 feet high. Merchandise which is offered for sale as described above may be displayed beyond the confines of a building in the C-1 and C-2 districts, but the area occupied by such outdoor display shall not constitute a greater number of square feet than 10% of the ground floor area of the building housing the principle use, unless such merchandise is of a type customarily displayed outdoors such as garden supplies. No storage of any type shall be permitted within 1/2 of the required front or side street setback nearest the street. Merchandise shall not be displayed for sale in the rear yard.

Section 1140.70. C-1 and C-2 Requirements for Vehicular and Pedestrian Circulation.

Subd. 1. Traffic and Circulation. All commercial buildings or structures and their accessory uses shall be accessible to and from nearby public streets and sidewalks by driveways and walkways surfaced with a hard, all-weather, durable, dust-free material which is properly drained. Vehicular traffic generated by a commercial use shall be channeled and controlled in a manner that will avoid congestion on the public street, traffic hazards, and excessive traffic through residential areas, particularly truck traffic. The adequacy of any proposed traffic circulation system to accomplish these objectives shall be determined by the city engineer who may require such additional measures for traffic control as they may deem necessary, including but not limited to the following: directional signalization, channelization, stand-by turn lanes, illumination, and storage area and distribution facilities within the commercial site to prevent back-up of vehicles on public streets.

Subd. 2. Design Standards. No area used by motor vehicles other than driveways serving as ingress and egress to the commercial site shall be located within the public street right-of-way. The following design standards shall apply:

- a. Driveway Widths (measurement between roadway edges):
 One-way: 20 ft. maximum, 12 ft. minimum
 Two-way: 30 ft. maximum, 24 ft. minimum
- b. Minimum Driveway Angle to Street: 30° when street is one-way or divided, otherwise 60°.
- c. Minimum Distance Between Driveways: 20 feet, between roadway edges measured along street curb line.
- d. Minimum Distance of Driveway from Street Intersections (measured along street curb line between nearest driveway edge and intersecting street curb lines):

If the driveway enters a street classified as:	and the intersecting street is classified as:	then the following shall apply:	
		Approaching (feet)	Leaving* (feet)
Minor Street	Minor Street	15	15
	Collector Street or Minor Arterial	20	15
Collector Street	Minor Street	20	15
	Collector Street or Minor Arterial	25	15
Major Arterial	Major Arterial	35	20
	Minor Street	20	15
	Collector Street or Minor Arterial	25	15
	Major Arterial	40	20

* Note: Minimum distance to be the same as that specified for approaching lane if left turns are permitted into or out of driveway.

Section 1140.79. City Forester and Certified Tree Inspector.

Subd. 1. Position of City Forester. The position of city forester is hereby created. The city council shall designate from time to time the person who shall perform the duties of city forester.

Subd. 2. Certified Tree Inspector. The city council or city clerk may designate one or more persons who are certified by the commissioner of agriculture of the state of Minnesota to serve as certified tree inspector(s) for the city.

(THIS SECTION ADDED JAN 2016 ORD 251)

Section 1140.80. Tree Preservation.

Subd. 1. Public Purpose. The protection of the public welfare requires the preservation of an urban forest in and amongst the commercial buildings, homes, and streets of the city. Among the benefits of an urban forest are soil stabilization, control of water pollution, tempering noise, provision of a habitat for wildlife, and shade and beauty. Indiscriminate removal of trees deprive the community of these benefits. It is in the interest of the general public welfare, the city and its residents to prevent the indiscriminate removal of trees and the unregulated clearing of vegetation.

Subd. 2. General.

A. Tree or Trees as used herein includes:

- (1) A coniferous / evergreen tree, being a woody plant of at least 6 feet in height which at maturity is at least 12 feet or more in height, having foliage at the outermost portion of the branches year round; or
- (2) A deciduous tree, either hardwood or softwood, being a woody plant with a trunk of 3" diameter (9" circumference) or greater for hardwood, or 4" diameter (13" circumference) or greater for softwood, and which at maturity is at least 15 feet or more in height, having a defined crown and which loses leaves annually. The trunk diameter shall be measured at 48" above grade or at the top of the remaining stump if already cut or harvested.

B. Hardwood Deciduous Tree examples are Ash, Birch, Catalpa, Elm, Hickory, Ironwood, Maple (hard), Oak, and Walnut.

- C. *Softwood Deciduous Tree* examples are Poplars, Aspen, Silver Maple, Basswood, and Willow.
- D. *Significant Tree* is a healthy tree, measuring a minimum of 10" in diameter (31" circumference) or greater for hardwood deciduous trees, 14" in diameter (44" circumference) or greater for softwood deciduous trees, or 12" in diameter (38" circumference) or greater for conifer / evergreen trees. The trunk diameter of significant trees shall be measured at 48" above grade or at the top of the remaining stump if already cut or harvested.
- E. *Noxious Trees* are Buckthorn, Sumac, Box Elder, Siberia Elm, Green Ash, and Prickly Ash.
- F. *A Tree Preservation Plan* is a plan which meets the requirements of subdivision 5 of this section.
- G. *Intentional Harm* to a tree shall include the cutting, poisoning, damaging, killing, or causing of disease or other act intended to damage, disease, or kill a tree.

Subd. 3. Property Owner Restrictions on Cutting of Trees.

- A. *Annual Permitted Tree Harvest* - No property owner or their employees, independent contractors, or agents, shall cut, kill, disease, or permit the killing or cutting or infection of significant trees (as defined in subdivision 2D above) upon their property in excess of the number listed on the below table in any 1 calendar year without a variance pursuant to section 1155 being first obtained. The removal of significant trees as listed on the below table in any 1 calendar year, shall constitute the "annual permitted tree harvest."

Property size	Number of significant trees allowed to be removed in any 1 calendar year
Up to 1/4 acre (up to 10,890 sq ft)	1
1/4 acre+ to 1/2 acre (10,891 sq ft to 21,780 sq ft)	2
1/2 acre+ to 3/4 acre (21,781 sq ft to 32,670 sq ft)	3
3/4 acre+ to 1 acre (32,671 sq ft to 43,560 sq ft)	4
Follow the same pattern for properties larger than 1 acre	

- B. *Noxious Trees* may be cut or removed from property without limitation.
- C. *Tree Trimming* - A property owner may trim an otherwise healthy tree in such a manner as to manage its growth, improve its appearance, or eliminate branches which encroach upon structures and improvements without permit first obtained, provided, however, that such trimming does not cause the tree to become diseased or will likely cause the tree to die. In the event such trimming is likely to cause the tree to become diseased or die, such activity shall be counted against the property owner's "annual permitted tree harvest" per subdivision 3A.

Subd. 4. Construction-Related Tree Cutting Permits. If the improvement of property necessitates the removal of trees for construction purposes, property owners and / or developers subsequent to issuance of a valid building permit may cut trees from a specific property in accordance with the following provisions and limitations and conditions attached to such building permit:

- A. The property owner / developer shall be limited to the property owner's "annual permitted tree harvest" per subdivision 3A in any given calendar year for construction-related tree cutting / harvesting, unless a permit under this subdivision is issued based upon a tree preservation plan prepared by the applicant and submitted to the attention of the building official in conjunction with a building permit application. The building permit application or a zoning code review shall not be considered complete unless and until a tree preservation plan has been submitted by the property owner, developer, or its agent.
- B. *Limitations on Construction-Related Tree Cutting.*
 - (1) The city building official and / or the zoning administrator may impose restrictions on construction-related tree trimming or cutting:
 - (a) so as to preserve trees that would not otherwise need to be cut or harvested to permit access, grading, and construction-related activities;
 - (b) of "significant trees" so as to preserve and protect same in the course of construction; and

Significant trees lost in the course of access, grading, and construction-related activities be replaced in accordance with the tree replacement schedule per subdivision 7.

- C. **Construction-Related Tree Cutting / Trimming Permit Types.** The following construction-related tree cutting / trimming permits may be issued by the city:
 - (1) **Home Addition / Accessory Structure Construction.** In conjunction with an approved building permit to accommodate the expansion of an existing residence and / or the construction of an otherwise code permitted accessory structure, a property owner / developer may cut or remove up to 10% of the total diameter inches of trees on a property identified on a submitted tree preservation plan.
 - (2) **New Home Construction / General Property Development.** In conjunction with an approved building permit for a new home construction and / or the razing of an existing home and the construction of a new home thereat, a property owner / developer may cut or remove up to 20% of the total diameter inches of trees on a property identified on a submitted tree preservation plan.
- D. **Variance.** In the event planned construction activity would necessitate the cutting of more than 10% of total diameter inches of trees identified in the tree preservation plan in conjunction with a home addition or accessory structure construction, or more than 20% of total diameter inches of trees identified in the tree preservation plan in conjunction with a new home development or general development, a variance pursuant to section 1155 must be first obtained. The variance, if approved, shall be conditioned upon the planting of replacement trees in accordance with the tree replacement schedules of this code.

Subd. 5. **Tree Preservation Plan Requirements.** A tree preservation plan shall be prepared by a licensed land surveyor, civil engineer, arborist, landscape architect, or other person whose credentials are deemed acceptable by the city zoning administrator. Such tree preservation plan shall include the following:

- A. A map (scale not less than 1" to 30') designating all existing structures, roads, utilities, driveways, and illustrating by species:
 - (1) All deciduous trees (excluding noxious trees) on the property greater than
 - (a) 3 inches in diameter for hardwood trees, and
 - (b) 4 inches in diameter for softwood trees measured at 48" above grade; and
 - (2) All coniferous trees greater than 6 feet in height; and
 - (3) All significant trees (excluding noxious trees).
- B. A written inventory of all trees included in the tree preservation plan map by type, size, and species and an indication of the trees that would be at risk or will be lost to grading and construction activities.
- C. The tree preservation plan shall show how the remaining trees will be protected.

Subd. 6. **Subdivision Approval - Tree Replacement.** No simple subdivision or full plat subdivision shall be approved by the city council except on condition that:

- A. All "Significant Trees"; and
- B. All trees to be cut down in excess of the maximum permitted under subdivision 4 hereof for construction-related tree cutting permits shall be replaced in accordance with the tree replacement schedule below.

Subd. 7. **Tree Replacement Schedule:**

- A. Replacement Trees Size Categories Defined:

Replacement Trees Size Categories Defined			
	Size of Replacement Trees Required Per Category		
	A	B	C
Deciduous Trees	Not Less than 2" in diameter	Not Less than 2.5" in diameter	Not Less than 3" in diameter
Coniferous Trees	Not Less than 6' in height	Not Less than 8' in height	Not Less than 10' in height

- B. **Replacement of "Trees" or "Significant Trees."** Where replacement of a tree or significant tree is required, the property owner, and their agent, shall be responsible for furnishing and planting the number and size of tree(s) identified in Category A, Category B, or Category C of the following schedules:

Replacement of "Trees" or "Significant Trees"					
Size of Tree Damaged or Destroyed	Quantity of Replacement Trees Required Per Category				
	A	or	B	or	C
Coniferous: 1-1/2" diameter but less than 6' tall	1		–		–
Coniferous: 6' to 12' tall	2		1		–
Coniferous: 12' to 24' tall	4		2		1
Coniferous: 24' or taller	8		4		2
Deciduous, Hardwood: 1-1/2 " to less than 6" diameter (5" to 18" circ.)	3		2		1
Deciduous, Hardwood: 6" to less than 10" diameter (19" to 30" circ.)	4		3		2
Deciduous, Hardwood: 10" to less than 20" diameter (31" to 62" circ.)	4		2		1
Deciduous, Hardwood: 20" diameter (63" circ.) or greater	8		4		2
Deciduous, Softwood: 1-1/2 " to less than 6" diameter (5" to 18" circ.)	3		2		1
Deciduous, Softwood: 6" to less than 14" diameter (19" to 43" circ.)	4		3		2
Deciduous, Softwood: 14" to less than 24" diameter (44" to 74" circ.)	4		2		1
Deciduous, Softwood: 24" diameter (75" circ.) or greater	8		4		2

- A. *Alternate Site.* In the event a property does not offer a reasonable site for planting of replacement trees on the property, the owner shall pay to the city the fair market value of each replacement tree required per the tree replacement schedule including installation costs as determined by the city's zoning administrator.
- B. *Source of Replacement Trees.* Replacement trees shall consist of "certified nursery stock" or state inspected transplant stock as defined by Minnesota statutes chapter 18 as amended.
- C. *Tree Survival.* Replacement trees shall be chosen with consideration given to the available soil types and available space such as to accommodate the anticipated natural growth and survival of the replacement tree.

Subd. 8. Property Owner / Developer Warranties of Replacement Trees. The property owner shall warrant the survival of replacement trees planted pursuant to this ordinance for a term of 2 years from the date of planting. The property owner, their successors and assigns shall be responsible for the replanting of replacement trees which die during the 2 years following initial planting or replanting. The property owner shall be responsible to remove and restore any replacement tree that is not alive and healthy 2 years after the date that the replacement tree was planted, unless such tree was planted on public lands. In the event a dead or unhealthy tree is not replaced on 30-day written demand to the owner from the city, the property owner shall be subject to the process outlined in chapter 12 of this code book.

Subd. 9. Property Owner / Developer's Security for Replacement Trees Planted. The owner shall provide security to the city for the performance of these obligations as follows:

- A. *Form.* Security may consist of a bond, letter of credit, or cash in such form and substance as shall be approved by the city clerk.
- B. *Amount of Security.* The amount of security until modified by subsequent city council resolution shall be 125% of the estimated cost to furnish and plant replacement trees as required in conjunction with any building permit. The estimated cost shall be at least as much as the reasonable amount charged by local nurseries for furnishing and planting of the requisite number of replacement trees. The estimated cost shall be at the sole discretion of the city.
- C. *Release of Security.* The security deposit shall be retained for the 2-year period from the date that the last replacement tree has been planted. Security may be released only to the party that made the deposit with the city, the city may retain such portion of the security deposit as is equal to the cost of:
- (1) Removing dead and unhealthy trees and planting new replacement trees; or
 - (2) Replacing any tree on which protective fencing has been encroached upon.

Subd. 10. Construction-Related Tree Protection. The city, as a condition to the grant of any building or zoning code permit, may require protective fencing, mandate that no soil disturbance occur within city engineer specified distances from a significant tree or any other city specified tree, and mandate such other action as may be necessary to preserve a "significant tree" or other city specified tree.

Subd. 11. Enforcement.

- A. *Intentional Harm of Tree.* Intentional harm, in excess of the a) property's permitted annual tree harvest; or b) a valid construction-related tree harvest shall constitute harvesting without a permit and subject the owner, and his agents, to the penalties provided hereunder.
- B. *Harvesting Without a Permit.* Harvesting without a permit is a misdemeanor and is subject to the process outlined in chapter 12 of this code book.
- C. Prohibitions on actions by a property owner extend to and are binding on the property owner's heirs, administrators, successors, assigns, agents, invitees, guests, employees, and independent contractors. A general, or sub-contractor, engaged by a property owner shall, for the purpose of this ordinance, be considered an authorized agent of the property owner.

Subd. 12. Municipal Projects Tree Replacement in Conjunction with Public Improvement Projects. All public improvement projects conducted by the city shall be required to replace trees lost in the course of such public improvement projects in accordance with the tree replacement schedule.

Subd. 13. Ordinance Administration. The administration of this ordinance shall be through the offices of the city zoning administrator who shall have the authority to sign complaints of violation. Fees for permits hereunder shall be set by the city council from time to time and set forth in chapter 5 of this code book.

Subd. 14. Tree Contractor License Required. No person may conduct or offer commercial (service for hire) tree trimming or removal services in the city without first obtaining a tree contractor license. The license shall be issued on an annual basis and licensees must pay the fee and provide proof of insurance in the amounts set forth in chapter 5 of this code book. (THIS SUBD ADDED JAN 2012 ORD 204, THIS PARAGRAPH ALSO INCLUDED IN SECTION 435.00)

(SECTION 1140.80 AMENDED JUN 2016, ORD 255)

Section 1140.85. Diseased Trees.

Subd. 1. Declaration of Policy. The city has determined that the health of the shade trees in the city is threatened by fatal diseases such as Dutch elm disease and oak wilt. It further has been determined that the loss of the shade trees growing upon 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 city to control and prevent the spread of these and other diseases and this section is intended for that purpose.

Subd. 2. Nuisance Declared. The following are public nuisances whenever they are found within the city:

- A. Any living or standing elm tree or part thereof infected to any degree with Dutch elm disease fungus, or which harbors any of the elm bark beetles.
- B. Any dead or dying elm tree or part thereof, including logs, branches, stumps, firewood, or other elm material from which the bark has not been removed. Bark does not have to be burned (or otherwise effectively treated).
- C. Any living or standing oak tree or part thereof infected to any degree with oak wilt.

D. Any living or standing tree affected by any other pathogen determined to be harmful by the state of Minnesota.

(THIS SUBD. AMENDED MAY 2012 ORD. 209)

Subd. 3. Abatement. It is unlawful for any person to permit any public nuisance as defined in subdivision 2 to remain on any premises owned, leased, occupied, or controlled by them. Such nuisance may be abated in the manner prescribed by this section.

Subd. 4. Inspection and Investigation.

1. Upon request, the city forester, their agents or employees, or the certified tree inspector, shall inspect trees to determine whether any conditions described herein exist thereon. They shall investigate and report incidents of infestation by Dutch elm disease, elm bark beetles, or oak wilt fungus to the council.
2. The city forester, their agents or employees, or the certified tree inspector after giving due notice, may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to them hereunder.
3. The city forester, their agents or employees, or the certified tree inspector, after on-site inspection and investigation have revealed conditions indicating Dutch elm disease infestation or oak wilt infestation, shall notify the owner, lessee, occupant, or person in control of the property inspected of the existence of these conditions and of the trees or wood affected.

Subd. 5. Abatement of Shade Tree Disease Nuisance on Public Property. In abating the nuisances defined herein, the city forester, their agents or employees, or the certified tree inspector, shall cause the infected tree or wood to be removed and burned or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of the disease. Such abatement procedures shall be carried out in accordance with the current technical and expert methods and plans as may be designed by the commissioner of agriculture of the state of Minnesota.

Subd. 6. Abatement of Shade Tree Disease Nuisance on Private Property. Whenever the city forester, their agents or employees, or the certified tree inspector, finds with reasonable certainty that the infestation defined in subdivision 2 exists in trees or wood located on private property outside any public way in the city, they shall notify the owner, lessee, occupant, or person in control of such property on which the nuisance is found, of the infestation and direct that the infestation shall be removed and burned, or otherwise effectively treated in a manner approved by the commissioner of agriculture of the state of Minnesota, by such owner, lessee, occupant, or person in control within 20 days after receipt of such notice. The notice also shall state that if such nuisance shall not be abated by the owner, lessee, occupant, or person in control within the time provided, the owner, lessee, occupant, or person in control may be charged with a violation of this section for maintaining a nuisance and that the city may abate the nuisance and assess the costs against said property. If the owner, lessee, occupant, or person in control of any private premises upon which such a tree or wood is situated fails to have such tree or wood removed and burned or otherwise effectively treated, within 20 days after receipt of notification, the city forester, their agents or employees, or the city tree inspector, shall proceed to have such tree or wood removed and burned or otherwise effectively treated, and any expense incurred by the city in so doing shall be a charge and lien upon the said property and shall be collected as a special assessment in the same manner as other special assessments.

Subd. 7. Collection of Assessment. The amount of the expense for such abatement, and not reimbursed by the owner on or before September 1 of each year, shall be reported by the city forester, their agents or employees, or the city tree inspector to the city clerk and the city clerk shall assess and levy and cause to be collected the amount of such expense as a special assessment upon and against said premises and property upon which said nuisance existed in like manner as such other special assessments payable in one sum.

Subd. 8. Sale, Storage and Transport of Elm and Red Oak Wood.

1. It is unlawful for any person to transport, store or sell within the city any bark-bearing elm wood, or red oak wood infected with oak wilt, or any other diseased wood.
2. Firewood storage for bark-bearing elm wood may be granted only for the period from September 15 to April 1.
3. Any such wood sold, stored or transported contrary to the provisions of this section must be removed and properly disposed of at the owner's expense within 24 hours of receipt of removal notice. Any such wood not so removed may be seized and destroyed by the city and all costs incurred assessed against the owners.

Subd. 9. Interference Prohibited. It is unlawful for any person to prevent, delay, or interfere with the city forester, their agents or employees, or the certified tree inspector while they are engaged in the performance of duties imposed by this section.

Section 1140.86. Dead, Dying, and Hazard Trees.

Subd. 1. *Hazard Trees*. The city forester shall perform inspections to determine whether trees are “hazard trees” (see section 1102 for definition) that need to be trimmed or removed. If the hazard tree is located on private property, the property owner is not required to secure a conditional use permit for removal within the shore impact zone or bluff impact zone (section 1140.80 subd 3A), the tree removal does not count towards the property's annual permitted harvest (section 1140.80 subd 3B), and the property owner is not subject to enforcement of “Harvesting Without a Permit” (section 1140.80 subd. 12B).”

Subd. 2. *Dead or Dying Trees*. If the city forester confirms or the property owner claims in a notarized signed statement that a tree was dead or dying prior to removal from private property, the property owner is not required to secure a conditional use permit for removal within the shore impact zone or bluff impact zone (section 1140.80 subd 3A), the tree removal does not count towards the property's annual permitted harvest (section 1140.80 subd 3B), and the property owner is not subject to enforcement of “Harvesting Without a Permit” (section 1140.80 subd. 12B).

(THIS SECTION ADDED JAN 2016 ORD 251)

SECTION 1145. NONCONFORMING USES.

Section 1145.00. Nonconformities.

- (a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:
- (1) the nonconformity or occupancy is discontinued for a period of more than 1 year; or
 - (2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50% of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case, the city may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50% of the required setback from the water is destroyed by fire or other peril to greater than 50% of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.
- (b) Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. The city may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. This subdivision does not prohibit the city from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.
- (c) Notwithstanding paragraph (a), the city shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.
- (d) Paragraphs (d) to (j) apply to shoreland lots of record in the office of the county recorder prior to December 1, 1992 that do not meet the requirements for lot size or lot width. The city shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to paragraphs (d) to (j).
- (e) A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:
- (1) all structure setback distance requirements can be met;
 - (2) the lot is connected to a public sewer; and
 - (3) the impervious surface coverage does not exceed 30% of a residential lot or 75% of a commercial lot.
- (f) In a group of 2 or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:
- (1) the lot must be at least 66% of the dimensional standard for lot width and lot size for the zoning district;
 - (2) the lot must be connected to a public sewer;

- (3) impervious surface coverage must not exceed 30% of each residential lot or 75% for each commercial lot; and
- (4) development of the lot must be consistent with the city's comprehensive plan.
- (g) A lot subject to paragraph (f) not meeting the requirements of paragraph (f) must be combined with the 1 or more contiguous lots so they equal 1 or more conforming lots as much as possible.
- (h) Notwithstanding paragraph (f), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are connected to a public sewer.
- (i) In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, stormwater runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.
- (j) A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

Section 1145.10. Discontinuance.

In the event that a nonconforming use of any building or premises is discontinued or its normal operation stopped for a period of 1 year, the use of the same shall thereafter conform to the regulations of the district in which it is located.

Section 1145.15. Alterations.

The lawful use of a building existing at the time of the adoption of this ordinance may be continued, although such use does not conform with the provisions hereof. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or more restricted classification. The foregoing provisions shall apply to nonconforming uses in districts hereafter changed. Whenever a nonconforming 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.

Section 1145.20. Residential Alterations.

Alterations may be made to a residential building containing nonconforming dwelling 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.

Section 1145.25. Restoration After Damage.

Subd. 1. Any building which has been damaged by fire, explosion, act of God or the public enemy to the extent of more than 50% of its value, as indicated in the records of the county assessor at the time of damage, and a building permit has been applied for within 180 days of when the property is damaged, may be restored to its pre-damage condition.

Subd. 2. Any building which has been damaged by fire, explosion, act of God or the public enemy to the extent of more than 50% of its value, as indicated in the records of the county assessor at the time of damage, and a building permit has not been applied for within 180 days of when the property is damaged, must be rebuilt in conformity with the city's zoning code.

Section 1145.30. Normal Maintenance.

Maintenance of a building or other structure containing or used by a nonconforming use will be permitted when it includes necessary, nonstructural repairs and incidental alterations that do not extend or intensify the nonconforming building or use. Nothing in this ordinance shall prevent the correction of an unsafe condition when said structure is declared unsafe by the city zoning administrator.

SECTION 1150. CONDITIONAL USE PERMITS.

Section 1150.00. Purpose.

The principal objective of this zoning ordinance is to provide for an orderly arrangement of compatible building and land uses, and for the proper location of all types of uses required for the social and economic welfare of the city. To

accomplish this objective, each type and kind of use is classified as permitted in one or more of the various districts established by this ordinance. However, in addition to those uses specifically classified and permitted in each district, there are certain additional uses that may be necessary to allow because of their unusual characteristics or the service they provide the public. These conditional uses require particular consideration as to their proper location in relation to adjacent established or intended uses, or to the planned development of the community. The conditions controlling the location and operation of such conditional uses are established by the following provisions of section 1150 et seq.

Section 1150.05. Authority.

After receipt of the recommendation of the planning commission, the city council must consider the request. In evaluating an application for a conditional use permit, the city council must consider and adopt findings regarding compliance with criteria outlined the ordinance. The planning commission may recommend and the city council may impose conditions on granting the permit in order to ensure compliance with the criteria or to affect the purpose of this ordinance. The Minnesota Department of Natural Resources must be notified of conditional use permit applications and decisions in the shoreland management district.

Section 1150.10. Initiation.

An application for a conditional use shall be in triplicate and may be made by any governmental office, department, board, or commission or by any person having a freehold interest or a contractual interest which may become a freehold interest, applicable to the parcel described in the application.

Section 1150.15. Procedure.

Subd. 1. An application shall be by written petition in the form prescribed by the planning commission, signed by the applicant, and shall be filed with the zoning administrator. A fee determined by the city council and published in the fee schedule located in chapter 5, shall be required for the filing of such petition.

Subd. 2. Notice of the time and place of the public hearing shall be given not more than 30 days nor less than 10 days in advance by publishing a notice in the official newspaper at least 10 days prior to the date of public hearing, and by mailing notices to the owner or owners of property within 350 feet of the subject property. This notice shall describe the particular conditional use proposed and shall contain a brief description thereof. The names and addresses of owners appearing in the tax record shall be deemed sufficient for mailing notices and the failure of any owner to receive notice shall not invalidate the proceedings.

Section 1150.20. Determination.

Subd. 1. The planning commission shall make findings and recommendations to the city council. The council may then authorize a conditional use by resolution provided the evidence presented is such as to establish:

- (a) That the proposed use will comply with the regulations specified in this ordinance for the district in which the proposed use is to be located.
- (b) That the use is one of the conditional uses permitted for the district in which it is to be located.
- (c) The use will not be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or city.
- (d) The use will be harmonious with the objectives of the comp plan.
- (e) The use will not be hazardous or disturbing to existing or future neighboring uses.
- (f) The use will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, sewer, 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.
- (g) 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.
- (h) 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.
- (i) The use will have vehicular approaches to the property that do not create traffic congestion or interfere with traffic on surrounding public thoroughfares.
- (j) The use will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.
- (k) The use will not depreciate surrounding property values.

Subd. 2. If no recommendation is transmitted by the planning commission within 45 days after referral of the application for conditional use to the commission, the council may hold the public hearing and take action without further awaiting such recommendation. (THIS SUBD ADDED JULY 2014 ORD 233)

Subd. 3. The council may impose such conditions and safeguards upon the premises benefited by a conditional use permit as may be necessary to maintain compatibility with other properties in the neighborhood. Examples of conditions include, but are not limited to: controlling size and location of use, regulating ingress and egress, controlling traffic flow, regulating off-street parking and loading areas, location of utilities, berming, fencing, screening, landscaping, restricting hours of operation, controlling noise, controlling lighting, controlling odors, and compatibility of appearance. Violation of such conditions and safeguards, when made part of the terms under which the conditional use permit is granted, shall be deemed a violation of this ordinance and punishable under section 1180 et seq.

Subd. 4. Completion of Conditions Required. Timely completion and performance of conditions, including but not limited to landscaping and lighting plans, required and / or imposed as a condition of the grant of a conditional use permit are necessary to (1) preserve and protect the public health, safety, and welfare of the city, and (2) for the protection of the neighboring property owners and the public in general from the adverse affects, physical and / or visual impacts of conditionally authorized improvements if required / imposed conditions are allowed to be left unfinished or incomplete.

Subd. 5. Security Deposit. The city is not obligated to issue an occupancy permit (new construction) or final inspection (remodeling) for a property prior to satisfactory completion of all conditions which may have been imposed upon an approved conditional use permit. Prior to the issuance of an occupancy permit / final inspection, the property owner shall complete all required conditions or submit a Security Deposit in the form of cashier's check or certified check in the amount set forth in chapter 5 payable to the city as security to assure timely performance and full implementation of any and all conditions of an approved conditional use permit within 12 months from the date the occupancy permit / final inspection to be then issued. The deposit is refundable if the required conditions are completed within 12 months.

Subd. 6. Security Agreement. As an alternative to a Security Deposit as provided in subdivision 5 above, the property owner may enter into a Security Agreement in form as provided by the city. By entering into Security Agreement the property owner agrees that if the conditions are not completed within 12 months of the issuance of the occupancy permit (new construction) or final inspection (remodeling projects), whichever is applicable, then all applicable fees and fines may be certified to the county to be collected with property taxes. No fees or fines will be certified to the county if the required conditions are completed within 12 months.

Subd. 7. Non-Performance. In the event a property owner fails to complete the required conditions within 12 months of the date of the Security Deposit or Security Agreement, a portion of said deposit / security amount shall be deemed forfeited to the city as a fine in the amount set forth in chapter 5 and shall be duly imposed and due and payable to the city for lack of timely performance. For each month thereafter (or part thereof) during which the required conditions remain uncompleted in a manner satisfactory to the city zoning administrator, the city may impose a like fine and the same will be forfeited to the city. The property owner shall, within 10 days of written demand directed to the property owner's last known address of record, pay said amount to the city. In the event the property owner fails to timely pay, the fine amount shall be certified to the county for assessment and collection with the property taxes due on the subject property. In that event, the city may add thereto an administrative processing fee as provided in chapter 5. The annual public hearing held prior to certification of unpaid assessments and service fees shall be the due process hearing at which the property owner may object to the fine / forfeiture / assessment hereunder in whole or part.

Subd. 8. Prosecution, Civil Enforcement, and Injunctive Relief for Non-Performance. Non-performance of the terms and conditions of a conditional use permit are hereby deemed violations of the zoning code and are subject to prosecution. No term or condition of a Security Deposit or Security Agreement shall bar the city from prosecuting individuals for non-performance of the terms and conditions of a conditional use permit. The city may take such enforcement action as it deems necessary and appropriate to prosecute violations of same and also may seek civil injunctive relief, including an order for specific performance, for failure to comply with or perform the terms and conditions of a conditional use permit as the city may deem necessary. The fact that a property owner has entered into a Security Deposit or Security Agreement shall not be a defense to, nor bar or prevent municipal prosecution or civil court action against same in the event of a property owner's non-performance of the underlying terms and conditions of a conditional use permit.

(THIS SECTION AMENDED DEC 2013 ORD 222, JAN 2016 ORD 249)

Section 1150.25. Uses and Buildings.

The following uses and buildings shall be subject to conditional use permits when they differ from the principal and accessory uses of a zoning district and when listed as a conditional use for that zoning district. The conditional uses shall be subject to the requirements stated herein and to any other conditions deemed necessary by the planning commission or the council.

Subd. 1. Public Buildings. Any public buildings erected and used by any department of the city, county, state, or federal government.

Subd. 2. Utilities. Telephone exchange and static transformer stations and other public utility buildings; provided there is no public business office nor any storage yard or storage building operated in connection therewith.

Subd. 3. Medical Buildings. Hospitals, clinics, provided that such buildings occupy not over 25% of the total area of the lot and will not have any serious depreciating effect upon the value of the surrounding property.

Subd. 4. Community Centers. Community centers not operated for profit.

Subd. 5. Parking Lots. Automobile parking lots, provided: that the parking area is adjacent to a C-1 or C-2 district, that it contains spaces for 4 or more automobiles and that such parking lot be subject to the requirements of sections 1140.45, 1140.55, 1140.60, and 1140.65.

SECTION 1155. VARIANCES.**Section 1155.00. Board of Appeals and Adjustments.**

Subd. 1. Establishment of Board and Powers. A board of appeals and adjustments is hereby established and invested with such authority as hereinafter provided and shall have the powers set forth in Minnesota statutes chapter 462 as amended. The city council shall serve as the board of appeals and adjustments and shall have the following powers with respect to the zoning ordinance:

1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.
2. To hear requests for variances from the requirements of any official control including restrictions placed on nonconformities as governed by Minnesota statutes chapter 462 as amended.

(REVISED OCT. 2011 ORD. 196)

Subd. 2. Officers, Rules, Minutes and Proceedings.

1. The mayor shall serve as the chair of the board of appeals and adjustments and the mayor pro tem shall serve as the vice chair of the board.
2. The board may adopt, from time to time, rules for the transaction of its business and proceedings before it. Such rules may include provisions for the giving of oaths to witnesses and the filing of written briefs by parties.
3. The board shall provide a record of its proceedings that shall include minutes of its meetings, its findings, and the action taken on each matter heard by it, including the final order.
4. Meetings and proceedings of the board of appeals and adjustments shall be held as agenda items of the city council and upon such notice to the public and interested parties as the law requires and otherwise in conformance with Minnesota statute section 15.99, as amended.

Section 1155.05. Appeals from Alleged Error in Administration of Zoning Ordinance.

Subd. 1. Appeals of Alleged Errors in Administration of the Zoning Ordinance. Any aggrieved person objecting to the ruling of an administrative officer in the enforcement of zoning ordinance, shoreland management district ordinance, wetland ordinance, or other zoning control shall have the right to appeal such determination to the board of appeals and adjustments, which shall hear and decide the appeal.

Subd. 2. Standard of Review on Appeal. The board of appeals and adjustments shall not grant an appeal from any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance unless it finds, at public hearing, that the aggrieved person has demonstrated:

1. That there are special circumstances or conditions affecting the land, building, or use in question on appeal that do not apply generally to other similarly situated properties;

2. That the granting of the appeal will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property; and
3. That the granting of the appeal will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property in question.

If, upon considering an appeal from an aggrieved person, the board of appeals and adjustments determines that the matter at issue is not an error in administration of the zoning ordinance but is rather a request for a variance from the literal provisions of the ordinance, the board shall apply the standards applicable to the processing of variance requests.

Subd. 3. Required Vote. No appeal shall be granted by the board except upon an affirmative vote of at least 3/5 of the entire board of appeals and adjustments (city council).

Subd. 4. Appeal Process. An aggrieved person-appellant shall file with the city clerk within 60 days of the date of the contested order, requirement, decision or determination the following:

1. A completed appeal application form;
2. Pay a fee as established by the city council and set forth in chapter 5 of this code book. This fee shall not be refundable;
3. Detailed written and graphic materials explaining and illustrating the alleged error and the aggrieved person-appellant's proposed interpretation of the applicable zoning ordinance, shoreland management district ordinance, wetland ordinance, or other zoning control at issue;
4. Where necessary, in the determination of the city clerk or zoning administrator, a survey prepared by a registered land surveyor illustrating all improvements existing and proposed setbacks and hard-cover;
5. A mailing list of property owners located within 350 feet of the subject property obtained from and certified by Hennepin County, Minnesota;
6. Verification that there are no delinquent property taxes, special assessments, interests or city utility fees due and owing upon the subject parcel.

Subd. 5. Processing of Appeals; Planning Commission Review.

1. The city clerk shall advise the aggrieved-person appellant within 10 days of submission of subdivision 4 appeal filings, any omission or deficiency in the appeal application and supporting documents. Appeals with complete documentation shall be placed upon the agenda of the first planning commission meeting occurring at least 30 days from the date of the submission of all required appeal materials.
2. The planning commission shall hold a public hearing and shall, at the close of the public hearing consider the appeal, the testimony of the applicant, all exhibits, public comments, city staff and consultant reports, and other evidence, shall then record its advice on the granting of the aggrieved person-appellant's appeal by motion to either:
 - (a) Recommend approval of the appeal together with comments and suggested conditions, if any; or
 - (b) Recommend denial of the appeal together with comments and suggested conditions, if any.
3. If no recommendation is transmitted by the planning commission within 45 days after referral of the application for variance to the commission, the council may hold the public hearing and take action without further awaiting such recommendation. (THIS PARAGRAPH ADDED JULY 2014 ORD 233)

Subd. 6. Board of Appeals and Adjustments Review.

1. Subsequent to the planning commission recommendation on the appeal. The appeal shall be considered by the board of appeals and adjustments at the next regularly scheduled city council meeting.
2. The board shall consider the recommendation of the planning commission, public comment, staff reports, consultants' reports, the application, all files, records, submissions, and other evidence. The board must make a decision within the time period specified in state law. Where it deems appropriate, the board may instruct city staff or consultants to prepare for its consideration, proposed findings of fact and proposed order. Decisions of the board of appeals and adjustments shall be final. Appeals of the decisions of the board of appeals and adjustments shall be made to the district court within 30 days.

Subd. 7. Public Notice.

- A. An application shall be by written petition in the form prescribed by the planning commission, signed by the applicant, and shall be filed with the zoning administrator. A fee determined by the city council and published in the fee schedule located in chapter 5, shall be required for the filing of such petition.

- B. Notice of the time and place of the public hearing shall be given not more than 30 days nor less than 10 days in advance by publishing a notice in the official newspaper at least 10 days prior to the date of public hearing, and by mailing notices to the owner or owners of property within 350 feet of the subject property. This notice shall describe the particular variance proposed and shall contain a brief description thereof. The names and addresses of owners appearing in the tax record shall be deemed sufficient for mailing notices and the failure of any owner to receive notice shall not invalidate the proceedings.
- C. Where appropriate notice also shall be given to the commissioner of the Minnesota Department of Natural Resources together with a complete copy of the appeal documentation of the aggrieved person-appellant sufficiently in advance of the public hearing to permit the commissioner an opportunity to comment as provided under the shoreland management district ordinance or other applicable code.
- D. Failure of a property owner to receive notice shall not invalidate any proceedings on the appeal request provided a bona fide attempt has been made to comply with the notice requirements of this ordinance.

Subd. 8. Reconsideration. Whenever an appeal of an alleged error made by an administrative officer in the enforcement of a zoning ordinance has been considered and denied by the board, a similar appeal by the aggrieved person, their successor or assigns, regarding the same property issue shall not be considered by the board for at least 1 year from the date of its denial except as follows:

- 1. If the aggrieved person-appellant or their successor or assigns, can clearly demonstrate circumstances surrounding the previous appeal request have changed significantly; and
- 2. The board decides to reconsider the matter upon an affirmative vote of 4/5 of the entire board.

Section 1155.10. Requests for Variances from the Literal Provisions of the Ordinance.

Subd. 1. Variances to Zoning Code. Any persons may request variances from the literal provisions of the zoning ordinance, shoreland management district ordinance, wetland ordinance, and other applicable zoning regulations in instances where their strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration. (UPDATED MAR 2014 ORD 228)

Subd. 2. Ordinance Provisions to Which Variances May Be Granted. The board of appeals and adjustments may consider variances to the following types of regulations under the zoning code, shoreland management district ordinance, wetland ordinance, and other applicable zoning regulations and no others:

- (a) To vary the applicable lot area, lot width, lot depth and minimum lot area per dwelling unit requirement provided that minimum lot area per dwelling unit requirements for multiple dwellings shall not be varied so as to permit more than one dwelling unit in addition to the number that would be permitted by the strict application of the minimum lot area requirements.
- (b) To vary the applicable bulk regulations, including maximum height, lot coverage, lot / floor area ratio, and minimum yard requirements.
- (c) To vary the off-street parking and off-street loading requirements.
- (d) To vary the regulations relating to restoration of damaged or destroyed nonconforming structures.
- (e) To interpret zoning district boundaries on official zoning maps and otherwise make interpretations of the zoning ordinance, shoreland management district ordinance, wetland ordinance and other related zoning regulations.
- (f) To permit the extension of a zoning district where the boundary line thereof divides a lot of record and as of the time of the passage of the zoning ordinance, however, in no event shall extension of district boundaries exceed 100 feet.

Subd. 3. Variance Standard. A variance to the requirements of the zoning code, shoreland management district ordinance, wetland ordinance and other related zoning controls shall only be permitted when they are in harmony with the purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

Subd. 4. Practical Difficulties Standard. "Practical difficulties," as used in connection with the granting of a variance, means:

- (a) that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
- (b) the plight of the landowner is due to circumstances unique to the property and not created by the landowner;
- (c) and the variance, if granted, will not alter the essential character of the locality.

Economic considerations alone shall not constitute practical difficulties.

Subd. 5. Findings. The board, in considering all requests for a variance, shall adopt findings addressing the following questions:

- (a) Is the variance in harmony with the purposes and intent of the ordinance?
- (b) Is the variance consistent with the comprehensive plan?
- (c) Does the proposal put property to use in a reasonable manner?
- (d) Are there unique circumstances to the property not created by the landowner?
- (e) Will the variance, if granted, alter the essential character of the locality?

Subd. 6. Practical Difficulties Considerations. When determining reasonable manner or essential character, the board will consider, but will not be limited to, the following:

- (a) Impair an adequate supply of light and air to adjacent property.
- (b) Unreasonably increase the congestion in the public street.
- (c) Increase the danger of fire or endanger the public safety.
- (d) Unreasonably diminish or impair established property values within the neighborhood or in any way be contrary to the intent of this ordinance. (UPDATED MAR 2014 ORD 228)

Subd. 7. Conditions. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance. Conditions required by section 1176.07.05 of the shoreland management district ordinance must also be imposed. Violation of such conditions and / or safeguards shall be a violation of the zoning code and subject to the enforcement provisions thereof. (REVISED MAR. 2013 ORD. 214)

Subd. 8. Required Vote. No variance shall be granted by the board except upon an affirmative 3/5 vote of the entire board of appeals and adjustments (city council).

Subd. 9. Lifespan of Variances Granted. Variances permitting the erection or alteration of a building shall be valid for a period of 1 year from the date of final approval unless a building permit for such erection or alteration is issued and construction is actually begun within said period. Failure to obtain an approved, final inspection (in the case of remodeling) or an occupancy permit (in the case of new construction) within 1 year from the date a building permit for such construction and / or alteration has been issued, shall cause the variance relied upon to become null and void. The structure shall then become a nonconforming structure. Provided no code revisions relevant to the variance have been made to the ordinance since the grant of the variance, a one-year variance extension may be granted by the zoning administrator. Additional one-year extensions may be granted by the city council. No more than three total extensions may be granted on any approved variance application. Thereafter, a new application must be made and approved through the variance process in this code. Requests for variance extensions must be made in writing and must be accompanied by payment of the fee established by the city council and set forth in chapter 5 of this code.

(SUBD 9 UPDATED DEC 2013 ORD 223)

(SECTION 1155 REVISED OCT 2011 ORD 196)

Section 1155.15. Variance Application Procedure.

Subd. 1. Application Requirements. Persons requesting variances from the literal provision of the zoning ordinance, shoreland management district ordinance, wetland ordinance, or other applicable zoning regulation shall file with the city clerk:

- (a) A completed application form; together with acknowledgment of the applicant's obligation to pay costs incurred by the city pursuant to section 1155.25;
- (b) The fee as established by the city council and set forth in chapter 5 of this code book. This fee shall not be refundable;
- (c) Detailed written and graphic materials explaining and illustrating the proposed change, development or use;
- (d) Applicant's reasons why a variance under the applicable ordinance is justified;
- (e) Hard surface calculations for both before and after construction;

- (f) A survey prepared by a registered land surveyor illustrating all improvements existing and proposed, setbacks and hardcover; and
- (g) The application shall include verification that there are no delinquent property taxes, special assessments, interest or city utility fees due and owing upon the subject parcel.

Subd. 2. Staff Review. The city clerk shall advise the zoning administrator, or their designate, and other staff and consultants to prepare such technical reports, legal advice and other information as may be deemed appropriate to assist the planning commission and board of appeals and adjustments in considering the request.

(THIS PARAGRAPH AMENDED JAN 2016 ORD 251)

Subd. 3. Planning Commission Review of Variance Requests.

1. The city clerk shall advise the applicant within 10 days of submission of subd. 1 variance application filings, of any omission or deficiency in the variance application and supporting documents. Requests for variances shall be placed upon the agenda of the first available planning commission meeting that allows for public notice requirements after the date of submission of all required materials.
2. The planning commission shall hold a public hearing and shall, at the close of the public hearing, consider the application, the testimony of the applicant, all exhibits, public comment, city staff and consultants' reports, and other evidence, and shall then record its advice on the granting of the applicant's variance request by motion to either recommend to the board of appeals and adjustments:
 - a) Approval of the request, together with comments and suggested conditions, if any or
 - b) Denial of the request, together with comments and suggested conditions, if any.
3. If no recommendation is transmitted by the planning commission within 45 days after referral of the application for variance to the commission, the council may hold the public hearing and take action without further awaiting such recommendation. (THIS PARAGRAPH ADDED JULY 2014 ORD 233)

Subd. 4. Right to Request Additional Information; Applicant Appearances and Testimony Before Board.

1. The board of appeals and adjustments may request additional information from the applicant concerning the proposed variance, its impact on neighboring property owners, statistical data, alternative plans; consult or seek out expert testimony; and otherwise require verification and means for measuring performance of any conditions that may be imposed in conjunction with the grant of a variance. Failure of an applicant to supply any and all necessary supportive information, including supplemental requests, shall be grounds for denial of the requested variance.
2. The applicant or the applicant's representative shall appear before the planning commission and the board of adjustments and appeals to answer questions concerning the proposed variance.
3. Any party may appear at the public hearing or before the planning commission or board of adjustments and appeals in person or by agent or attorney.

Subd. 5. Board of Appeals and Adjustments Variance Review.

1. Subsequent to the planning commission recommendation on the requested variance, the variance application shall be considered by the city council, sitting as the board of appeals and adjustments at the next regularly scheduled city council meeting. The board hearing date for such variance application request may be continued to the next regular city council meeting at the request of a board member. Provided the planning commission has held a public hearing on the variance request, the board need not but may elect to hold a public hearing.
2. The board shall consider the recommendation of the planning commission, any public comment, staff reports, consultants' reports, the application, all files, records, submissions, and other evidence. The board must make a decision within the time period specified in state law. Where it deems appropriate, the board may instruct city staff or consultants to prepare for its consideration, proposed findings of fact and proposed order. A copy of the final order shall be served upon the person requesting the variance by mail.
3. A copy of all decisions granting variances for properties from the shoreland management district ordinance shall be forwarded to the commissioner of the Department of Natural Resources within 10 days of such action.
4. Variance request decisions of the board shall be final. Appeals of board decisions shall be made to the district court within 30 days.

Subd. 6. Reconsideration. Whenever an application for a variance has been considered and denied, a similar application for variance affecting the same property by the applicant, their successors or assigns, shall not be considered a second time by the planning commission or the board of adjustments and appeals for at least one year

from the date of its denial; unless the board of adjustments and appeals vote for reconsideration of the matter upon a vote of not less than 4/5 of the entire board of adjustments and appeals.

Subd. 7. Public Notice. Public notice of said hearing shall consist of a summary of the variances requested, a street address and a tax assessor legal property description, including property tax ID number. The same shall be published in the official newspaper at least 10 days prior to the public hearing and written notification of said hearing shall be mailed at least 10 days prior to said hearing to all owners of land within 350 feet of the boundary of the property in question. (Public right-of-way shall not be included in the 350-foot measurement.) A copy of the notice and the list of the property owners and addresses to which the notice was sent shall become a part of the records of the proceeding.

Where appropriate, notice also shall be given to the commissioner of the Minnesota Department of Natural Resources together with the complete application of the requesting party, sufficiently in advance of the public hearing to permit the commissioner opportunity to comment as provided under the shoreland management district ordinance or other applicable code.

Failure of a property owner to receive notice shall not invalidate any proceedings on a variance request provided a bonafide attempt has been made to comply with the notice requirements of this ordinance.

1155.17. Completion of Conditions, Security Deposit, and Security Agreement.

Subd. 1. Completion of Conditions Required. Timely completion and performance of conditions, including but not limited to landscaping and lighting plans, required and / or imposed as a condition of the grant of a variance are necessary to (1) preserve and protect the public health, safety, and welfare of the city, and (2) for the protection of the neighboring property owners and the public in general from the adverse affects, physical and / or visual impacts of conditionally authorized improvements if required / imposed conditions are allowed to be left unfinished or incomplete.

Subd. 2. Security Deposit. The city is not obligated to issue an occupancy permit (new construction) or final inspection (remodeling) for a property prior to satisfactory completion of all conditions which may have been imposed upon an approved variance. Prior to the issuance of an occupancy permit / final inspection, the property owner shall complete all required conditions or submit a Security Deposit in the form of cashier's check or certified check in the amount set forth in chapter 5 payable to the city as security to assure timely performance and full implementation of any and all conditions of an approved variance within 12 months from the date the occupancy permit / final inspection to be then issued. The deposit is refundable if the required conditions are completed within 12 months.

Subd. 3. Security Agreement. As an alternative to a Security Deposit as provided in subdivision 2 above, the property owner may enter into a Security Agreement in form as provided by the city. By entering into Security Agreement the property owner agrees that if the conditions are not completed within 12 months of the issuance of the occupancy permit (new construction) or final inspection (remodeling projects), whichever is applicable, then all applicable fees and fines may be certified to the county to be collected with property taxes. No fees or fines will be certified to the county if the required conditions are completed within 12 months.

Subd. 4. Non-Performance. In the event a property owner fails to complete the required conditions within 12 months of the date of the Security Deposit or Security Agreement, a portion of said deposit / security amount shall be deemed forfeited to the city as a fine in the amount set forth in chapter 5 and shall be duly imposed and due and payable to the city for lack of timely performance. For each month thereafter (or part thereof) during which the required conditions remain uncompleted in a manner satisfactory to the city zoning administrator, the city may impose a like fine and the same will be forfeited to the city. The property owner shall, within 10 days of written demand directed to the property owner's last known address of record, pay said amount to the city. In the event the property owner fails to timely pay, the fine amount shall be certified to the county for assessment and collection with the property taxes due on the subject property. In that event, the city may add thereto an administrative processing fee as provided in chapter 5. The annual public hearing held prior to certification of unpaid assessments and service fees shall be the due process hearing at which the property owner may object to the fine / forfeiture / assessment hereunder in whole or part.

Subd. 5. Prosecution, Civil Enforcement, and Injunctive Relief for Non-Performance. Non-performance of the terms and conditions of a variance grant are hereby deemed violations of the zoning code and are subject to prosecution. No term or condition of a Security Deposit or Security Agreement shall bar the city from prosecuting individuals for non-performance of the terms and conditions of a variance grant. The city may take such enforcement action as it deems necessary and appropriate to prosecute violations of same and also may seek civil injunctive relief, including an order for specific performance, for failure to comply with or perform the terms and conditions of a variance grant as the city may deem necessary. The fact that a property owner has entered into a Security Deposit or Security Agreement shall not be a defense to, nor bar or prevent municipal prosecution or civil court action against same in the event of a property owner's non-performance of the underlying terms and conditions of a variance grant.

(THIS SECTION ADDED JAN 2016 ORD 249)

Section 1155.20. Performance Bond.

When a variance or an appeal, is approved contingent upon certain conditions imposed by the board of adjustments and appeals. The board may require a performance bond be provided. Such bond shall be a surety bond, cash equivalent, securities or cash deposit made with the city clerk prior to the issuance of any building permit or the initiation of any work on the proposed improvements or development the subject of the variance or appeal request. Said security shall be non-cancelable and shall guarantee conformance and compliance with the conditions of the variance and ordinances of the city.

The security shall be in an amount of 110% the city engineer's, estimated cost of labor and materials for the performance of the required conditions, improvements or development or such other amount as the city engineer deems appropriate. The city shall hold the security until completion of the conditions shall have been performed and a certificate of occupancy issued or final building inspection completed whichever applicable. Failure to comply with the conditions of the variance appeal shall result in forfeiture of the security to the city. In addition, the city may seek specific enforcement of its codes to correct any violations or deficiencies.

Section 1155.25. Recovery of Legal and Administrative Costs in Variance Requests.

In addition to the initial application fee as may be established from time to time by the city council, the applicant in making an application for variance agrees to pay all legal fees, engineering fees, consultant fees, and other administrative costs the city may incur in conjunction with the processing of the variance application. No building permit shall issue on a granted variance until such costs have been paid in full.

SECTION 1160. ZONING AMENDMENTS.

Section 1160.00. Process.

The council may on its own motion, or on request of the planning commission, or on petition or appeal of the affected property owners:

Subd. 1. Transfer land, or a portion thereof, from the district in which it is situated into another district, by amendment to this ordinance.

Subd. 2. Change any of the regulations of this ordinance as to the use or platting of land in any district, or as to the restrictions upon buildings or structures herein, by amendment to this ordinance.

Section 1160.05. Procedure.

Subd. 1. Application for amendment shall be filed with the city clerk in duplicate, accompanied by a fee as determined by the city council and set forth in chapter 5 of this code book. The clerk shall forward 1 copy to the planning commission.

Subd. 2. The planning commission shall give notice of the time and place of the public hearing. Notice shall be given not more than 30 days nor less than 10 days in advance of the hearings, by publishing a notice thereof at least once in the official newspaper, and by notifying the owner or owners of the property by mail at least 10 days prior to the meeting and by notifying the property owners within 300 feet of the subject property. The names and addresses of owners appearing in the tax record shall be deemed sufficient for mailing notices and the failure or any owner to receive notice shall not invalidate the proceedings.

Subd. 3. The planning commission shall transmit its recommendations on the application to the city council within 30 days after the public hearing.

Subd. 4. The council, upon receiving reports of the planning commission, shall approve or disapprove the amendment or it may refer it back to the planning commission for further consideration. If no recommendation is transmitted by the planning commission within 30 days after the hearing, the council may take action without awaiting such planning commission action. In making recommendations, the planning commission should consider existing conditions, the conservation of the property values, the direction of building development to the best advantage of the entire city, and the uses to which the property affected is being devoted at the time; and no amendment shall be recommended unless it is required for the public good. The amendment shall be effective only if 3/5 of all the members of the council concur in its passage.

Section 1160.10. Petition for Amendment.

Subd. 1. A petition for amendments contain the following: the name and address of the petitioner and the petition shall be signed by each of them.

Subd. 2. A description of the area proposed to be rezoned, and the names and addresses of all owners within 300 feet of the property involved.

Subd. 3. The present and proposed zone classification of the area.

Subd. 4. The present use of each separately owned tract within the area, and the intended use of any tract of land therein, if any change in use is proposed.

Subd. 5. Describe the manner in which the proposed rezoning will fit in with the general zoning pattern of the neighborhood, and the zoning and comprehensive plan of the entire city.

Subd. 6. The petition shall be accompanied by 3 copies of a map at a scale of 100 feet to the inch showing the property to be rezoned, the present zoning of the surrounding area, and other information requested by the zoning administrator.

SECTION 1165. THE ADMINISTRATIVE OFFICIAL.

Section 1165.00. Enforcement.

The city clerk is hereby authorized and directed to enforce all the provisions of this ordinance. The city clerk may delegate the enforcement of this ordinance to any administrative official of the city who shall be known as the zoning administrator. The zoning administrator shall perform the following duties:

Subd. 1. Examine all applications pertaining to use of land, buildings, or structures, and approve same when the application conforms with the provision of this ordinance.

Subd. 2. Keep a record of all nonconforming uses.

Subd. 3. Periodically inspect buildings, structures, and uses of land to determine compliance with the terms of this ordinance. In regard to performance standards the zoning administrator may require the services of a testing laboratory to determine compliance.

Subd. 4. Notify, in writing, any person responsible for violating a provision of this ordinance, indicating the nature of the violation and ordering the action necessary to correct it.

Subd. 5. Order discontinuance of illegal use of land, buildings, or structures; order removal of illegal buildings, structures, additions, alterations; order discontinuance of illegal work being done; or take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.

Subd. 6. Maintain permanent and current record of the zoning ordinance as provided in section 1115.00, subdivision 2, including all maps, amendments, conditions use, and variations.

Subd. 7. Maintain a current file of all permits, all certificates, and all copies of notices of violations, discontinuance, or removal for such time as necessary to ensure a continuous compliance with the provisions of this ordinance and, on request, provide information to any person having a propriety or tenancy interest in any specific property.

Subd. 8. Provide technical assistance to the city council and planning commission.

SECTION 1170. BUILDING AND USE PERMITS.

Section 1170.00. General.

Except as hereinafter provided, no person, firm or corporation shall construct, erect, alter, wreck or move any building or structure or parts thereof, within the corporate limits of the city without first securing a building permit from the city. It shall not be necessary to secure a building permit in order to alter, repair or otherwise change the interior of any residential building provided the proposed alteration, repair or change will not structurally affect the building or the exterior dimensions of such building or change the existing use and occupancy thereof.

Section 1170.05. Application.

Application for a building permit shall be made to the zoning administrator on forms to be furnished by the city. Each application for a permit to construct or alter a building shall be accompanied by a plan drawn to scale showing the dimensions of the lot to be built upon and the size and location of the building and accessory buildings to be erected. Applications shall contain such other information as may be deemed necessary for the proper enforcement of this or any other ordinance.

Section 1170.10. Fees.

The fee for a building permit shall be determined by the city council and set forth in chapter 5 of this code book.

Section 1170.15. Issuance.

The zoning administrator shall issue or may direct the city clerk to issue the building permit only after determining that the building plans together with the application comply with the terms of this ordinance.

Section 1170.20. Certificate of Zoning Compliance.

Subd. 1. A certificate of zoning compliance shall be obtained before any building hereafter erected or structurally altered is occupied or the use of any such building is altered.

Subd. 2. Application for a certificate of zoning compliance for a new building or for an existing building that has been altered shall be made to the zoning administrator as part of the application for a building permit as required in section 1170.05.

Subd. 3. Every certificate of zoning compliance shall state that the building or proposed use of a building or land complies with all provisions of law and this ordinance. A record of all certificates of zoning compliance shall be kept on file in the office of the zoning administrator, and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land affected.

SECTION 1174. FLOODPLAIN ORDINANCE.

Section 1174.01. Statutory Authorization, Findings of Fact, and Purpose.

Subd. 1. Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter 462 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the city council of Greenwood, Minnesota, does ordain as follows.

Purpose:

- (1) This ordinance regulates development in the flood hazard areas of the city of Greenwood. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.
- (2) National Flood Insurance Program Compliance. This ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

Section 1174.02. General Provisions.

Subd. 1. How to Use This Ordinance: This ordinance adopts the floodplain maps applicable to the city of Greenwood and includes three floodplain districts: Floodway, Flood Fringe, and General Floodplain.

- (a) Where Floodway and Flood Fringe districts are delineated on the floodplain maps, the standards in sections 1174.04 or 1174.05 will apply, depending on the location of a property.
- (b) Locations where Floodway and Flood Fringe districts are not delineated on the floodplain maps are considered to fall within the General Floodplain district. Within the General Floodplain district, the Floodway District standards in section 1174.04 apply unless the floodway boundary is determined, according to the process outlined in section 6. Once the floodway boundary is determined, the Flood Fringe District standards in section 1174.05 may apply outside the floodway.

Subd. 2. Lands to Which Ordinance Applies: This ordinance applies to all lands within the jurisdiction of Greenwood shown on the Official Zoning Map and/or the attachments to the map as being located within the boundaries of the Floodway, Flood Fringe, or General Floodplain Districts.

Subd. 3. Incorporation of Maps by Reference: The following maps together with all attached material are hereby adopted by reference and declared to be a part of the Official Zoning Map and this ordinance. The attached material includes the Flood Insurance Study for Hennepin County, Minnesota, and Incorporated Areas, dated November 4, 2016 and the Flood Insurance Rate Map panels enumerated below, dated November 4, 2016, all prepared by the Federal Emergency Management Agency. These materials are on file in the city clerk's office.

Effective Flood Insurance Rate Map panels:

27053C0316F

27053C0318F

Subd. 4. Regulatory Flood Protection Elevation: The regulatory flood protection elevation (RFPE) is an elevation no lower than one foot above the elevation of the regional flood.

Subd. 5. Interpretation: The boundaries of the zoning districts are determined by scaling distances on the Flood Insurance Rate Map.

- (a) Where a conflict exists between the floodplain limits illustrated on the official zoning map and actual field conditions, the flood elevations shall be the governing factor. The zoning administrator must interpret the boundary location based on the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory floodplain, and other available technical data.
- (b) Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the Board of Adjustment and to submit technical evidence.

Subd. 6. Abrogation and Greater Restrictions: It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or other private agreements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

Subd. 7. Warning and Disclaimer of Liability: This ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This ordinance does not create liability on the part of the city of Greenwood or its officers or employees for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

Subd. 8. Severability: If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

Subd. 9. Definitions: Unless specifically defined below, words or phrases used in this ordinance must be interpreted according to common usage and so as to give this ordinance its most reasonable application.

- (a) *Accessory Use or Structure* – a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- (b) *Basement* – any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.
- (c) *Development* – any manmade change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- (d) *Equal Degree of Encroachment* – a method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

- (e) *Flood Fringe* – the portion of the Special Flood Hazard Area (one percent annual chance flood) located outside of the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Study for Hennepin County, Minnesota.
- (f) *Flood Insurance Rate Map (FIRM)* means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
- (g) *Flood Prone Area* – any land susceptible to being inundated by water from any source (see “Flood”).
- (h) *Floodplain* – the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.
- (i) *Floodproofing* – a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.
- (j) *Floodway* – the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.
- (k) *Lowest Floor* – the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 Code of Federal Regulations, Part 60.3.
- (l) *Manufactured Home* – a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include the term “recreational vehicle.”
- (m) *New Construction* - Structures, including additions and improvements, and placement of manufactured homes, for which the start of construction commenced on or after the effective date of this ordinance.
- (n) *One Hundred Year Floodplain* – lands inundated by the “Regional Flood” (see definition).
- (o) *Recreational Vehicle* – a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this ordinance, the term recreational vehicle is synonymous with the term “travel trailer/travel vehicle.”
- (p) *Regional Flood* – a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 1% chance or 100-year recurrence interval. Regional flood is synonymous with the term “base flood” used in a flood insurance study.
- (q) *Regulatory Flood Protection Elevation (RFPE)* - an elevation not less than one foot above the elevation of the regional flood.
- (r) *Repetitive Loss* – Flood related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.
- (s) *Special Flood Hazard Area* – a term used for flood insurance purposes synonymous with “One Hundred Year Floodplain.”
- (t) *Start of Construction* – includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit’s expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (u) *Structure* - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, recreational vehicles not meeting the exemption criteria specified in section 1774.09(2)(b) of this ordinance and other similar items.
- (v) *Substantial Damage* - means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

- (w) *Substantial Improvement* - within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:
- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
 - (2) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” For the purpose of this ordinance, “historic structure” is as defined in 44 Code of Federal Regulations, Part 59.1.

Subd.10. Annexations: The Flood Insurance Rate Map panels adopted by reference into section 1774.02(3) above may include floodplain areas that lie outside of the corporate boundaries of the city of Greenwood at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the city of Greenwood after the date of adoption of this ordinance, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation.

Section 1174.03. Establishment of Zoning Districts.

Subd. 1. Districts:

- (a) Floodway District. The Floodway District includes those areas within Zones AE that have a floodway delineated as shown on the Flood Insurance Rate Map adopted in section 1774.02(3), as well as portions of other lakes, wetlands, and basins within Zones AE (that do not have a floodway delineated) that are located at or below the ordinary high water level as defined in Minnesota Statutes, section 103G.005, subdivision 14.
- (b) Flood Fringe District. The Flood Fringe District includes areas within Zones AE that have a floodway delineated on the Flood Insurance Rate Map adopted in section 1774.02(3), but are located outside of the floodway. For lakes, wetlands and other basins within Zones AE that do not have a floodway delineated, the Flood Fringe District also includes those areas below the 1% annual chance (100-year) flood elevation but above the ordinary high water level as defined in Minnesota Statutes, section 103G.005, subdivision 14.
- (c) General Floodplain District. RESERVED FOR GENERAL FLOODPLAIN DISTRICT (GF)

Subd. 2. Applicability: Within the floodplain districts established in this ordinance, the use, size, type and location of development must comply with the terms of this ordinance and other applicable regulations. In no cases shall floodplain development adversely affect the efficiency or unduly restrict the capacity of the channels or floodways of any tributaries to the main stream, drainage ditches, or any other drainage facilities or systems. All uses not listed as permitted uses in sections 1774.04, 1774.05 and 1774.06 are prohibited.

Section 1174.04. Floodway District (FW).

Subd. 1. Permitted Uses: The following uses, subject to the standards set forth in Subd. 2, are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:

- (a) Open space uses, including but not limited to picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, hunting and fishing areas.
- (b) Residential lawns.
- (c) Railroads, streets, bridges, utility transmission lines and pipelines, provided that the Department of Natural Resources’ Area Hydrologist is notified at least ten days prior to issuance of any permit.

Subd. 2. Standards for Floodway Permitted Uses:

- (a) The use must have a low flood damage potential.
- (b) The use must not obstruct flood flows or cause any increase in flood elevations and must not involve structures, obstructions, or storage of materials or equipment.

Section 1174.05. Flood Fringe District (FF).

Subd. 1. Permitted Uses: Permitted uses are those uses of land or structures allowed in the underlying zoning district(s) that comply with the standards in sections 1774.05(2). If no pre-existing, underlying zoning districts exist, then any residential or nonresidential structure or use of a structure or land is a permitted use provided it does not constitute a public nuisance.

Subd. 2. Standards for Flood Fringe Permitted Uses:

- (a) All structures, including accessory structures, must be elevated on fill so that the lowest floor, as defined, is at or above the regulatory flood protection elevation. The finished fill elevation for structures must be no lower than one foot below the regulatory flood protection elevation and the fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure.
- (b) Accessory Structures. As an alternative to the fill requirements of section 1774.05(2)(a), structures accessory to the uses identified in section 1774.05(1) may be permitted to be internally / wet floodproofed to the FP3 or FP4 floodproofing classifications in the State Building Code, provided that:
 - (1) The accessory structure constitutes a minimal investment, does not exceed 576 square feet in size, and is only used for parking and storage.
 - (2) All portions of floodproofed accessory structures below the Regulatory Flood Protection Elevation must be: (i) adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls, (ii) be constructed with materials resistant to flood damage, and (iii) must have all service utilities be water-tight or elevated to above the regulatory flood protection elevation
 - (3) Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following criteria:
 - (i) To allow for the equalization of hydrostatic pressure, there must be a minimum of two “automatic” openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 - (ii) There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.
- (c) The storage of any materials or equipment must be elevated on fill to the regulatory flood protection elevation.
- (d) All service utilities, including ductwork, must be elevated or water-tight to prevent infiltration of floodwaters.
- (e) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- (f) All fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.
- (g) All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation, or must have a flood warning /emergency evacuation plan acceptable to the city council.
- (h) Accessory uses such as yards, railroad tracks, and parking lots may be at an elevation lower than the regulatory flood protection elevation. However, any facilities used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.
- (i) Interference with normal manufacturing/industrial plant operations must be minimized, especially along streams having protracted flood durations. In considering permit applications, due consideration must be given to the needs of industries with operations that require a floodplain location.
- (j) Manufactured homes and recreational vehicles must meet the standards of section 1774.09 of this ordinance.

Section 1174.06. Reserved for General Floodplain District (GF).**Section 1174.07. Land Development Standards.**

Subd. 1 Subdivisions: No land may be subdivided which is unsuitable for reasons of flooding or inadequate drainage, water supply or sewage treatment facilities. Manufactured home parks and recreational vehicle parks or campgrounds are considered subdivisions under this ordinance.

- (a) All lots within the floodplain districts must be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation.
- (b) All subdivisions must have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation, unless a flood warning emergency plan for the safe evacuation of all vehicles and people during the regional (1% chance) flood has been approved by the city council. The plan must be prepared by a registered engineer or other qualified individual, and must demonstrate that adequate time and personnel exist to carry out the evacuation.
- (c) For all subdivisions in the floodplain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads must be clearly labeled on all required subdivision drawings and platting documents.

- (d) In the General Floodplain District, applicants must provide the information required in section 1774.06(2) of this ordinance to determine the regional flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.
- (e) If a subdivision proposal or other proposed new development is in a flood prone area, any such proposal must be reviewed to assure that:
 - (1) All such proposals are consistent with the need to minimize flood damage within the flood prone area,
 - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
 - (3) Adequate drainage is provided to reduce exposure of flood hazard.

Subd. 2. Building Sites: If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of manufactured homes) must be:

- (a) Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (b) Constructed with materials and utility equipment resistant to flood damage;
- (c) Constructed by methods and practices that minimize flood damage; and
- (d) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Section 1174.08. Public Utilities, Railroads, Roads, and Bridges.

Subd. 1. Public Utilities: All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be floodproofed in accordance with the State Building Code or elevated to the regulatory flood protection elevation.

Subd. 2. Public Transportation Facilities: Railroad tracks, roads, and bridges to be located within the floodplain must comply with sections 1774.04 and 1774.05 of this ordinance. These transportation facilities must be elevated to the regulatory flood protection elevation where failure or interruption of these facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

Subd. 3. On-site Water Supply and Sewage Treatment Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems and are subject to the provisions in Minnesota Rules Chapter 4725.4350, as amended; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, they must not be subject to impairment or contamination during times of flooding, and are subject to the provisions in Minnesota Rules Chapter 7080.2270, as amended.

Section 1174.09. Manufactured Homes, Manufactured Home Parks, and Recreational Vehicles.

Subd. 1. Manufactured Homes: New manufactured home parks and expansions to existing manufactured home parks are prohibited in any floodplain district. For existing manufactured home parks or lots of record, the following requirements apply:

If allowed in the Flood Fringe District, placement or replacement of manufactured home units is subject to the requirements of section 1174.05 of this ordinance and the following standards.

- (a) New and replacement manufactured homes must be elevated in compliance with section 5 of this ordinance and must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.
- (b) New or replacement manufactured homes in existing manufactured home parks must meet the vehicular access requirements for subdivisions in section 1174.07(1)(b)

Subd. 2. Recreational Vehicles: New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Placement of recreational vehicles in existing recreational vehicle parks or campgrounds in the floodplain must meet the exemption criteria below or be treated as new structures meeting the requirements of this ordinance.

- (a) Recreational vehicles are exempt from the provisions of this ordinance if they are placed in any of the following areas and meet the criteria listed in section 1774.09(2)(b):
 - (1) Individual lots or parcels of record.
 - (2) Existing commercial recreational vehicle parks or campgrounds.
 - (3) Existing condominium-type associations.
- (b) Criteria for Exempt Recreational Vehicles:
 - (1) The vehicle must have a current license required for highway use.
 - (2) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks.
 - (3) No permanent structural type additions may be attached to the vehicle.
 - (4) The vehicle and associated use must be permissible in any pre-existing, underlying zoning district.

Section 1174.10. Administration.

Subd. 1. Zoning Administrator: A zoning administrator or other official designated by the city council must administer and enforce this ordinance.

Subd. 2. Permit Requirements:

- (a) *Permit Required*. A permit must be obtained from the zoning administrator prior to conducting the following activities:
 - (1) The erection, addition, modification, rehabilitation, or alteration of any building, structure, or portion thereof. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in this ordinance.
 - (2) The use or change of use of a building, structure, or land.
 - (3) The construction of a dam, fence, or on-site septic system, although a permit is not required for a farm fence as defined in this ordinance.
 - (4) The change or extension of a nonconforming use.
 - (5) The repair of a structure that has been damaged by flood, fire, tornado, or any other source.
 - (6) The placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.
 - (7) Relocation or alteration of a watercourse (including new or replacement culverts and bridges), unless a public waters work permit has been applied for.
 - (8) Any other type of "development" as defined in this ordinance.
- (b) *Application for Permit*. Permit applications must be submitted to the zoning administrator on forms provided by the zoning administrator. The permit application must include the following as applicable:
 - (1) A site plan showing all pertinent dimensions, existing or proposed buildings, structures, and significant natural features having an influence on the permit.
 - (2) Location of fill or storage of materials in relation to the stream channel.
 - (3) Copies of any required municipal, county, state or federal permits or approvals.
 - (4) Other relevant information requested by the zoning administrator as necessary to properly evaluate the permit application.
- (c) *Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use*. No building, land or structure may be occupied or used in any manner until a certificate of zoning compliance has been issued by the zoning administrator stating that the use of the building or land conforms to the requirements of this ordinance.
- (d) *Certification*. The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Floodproofing measures must be certified by a registered professional engineer or registered architect.
- (e) *Record of First Floor Elevation*. The zoning administrator must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the floodplain. The Zoning administrator must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.
- (f) *Notifications for Watercourse Alterations*. Before authorizing any alteration or relocation of a river or stream, the Zoning administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statutes, section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

- (g) Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning administrator must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

Subd. 3. Variances:

- (a) *Variance Applications*. An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with applicable state statutes and section 1155 of the zoning ordinance.
- (b) *Adherence to State Floodplain Management Standards*. A variance must not allow a use that is not allowed in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.
- (c) *Additional Variance Criteria*. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:
- (1) Variances must not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - (2) Variances may only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (3) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (d) *Flood Insurance Notice*. The Zoning administrator must notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and 2) Such construction below the base or regional flood level increases risks to life and property. Such notification must be maintained with a record of all variance actions.
- (e) *Submittal of Hearing Notices to the Department of Natural Resources (DNR)*. The Zoning administrator must submit hearing notices for proposed variances to the DNR sufficiently in advance to provide at least 10 days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- (f) *Submittal of Final Decisions to the DNR*. A copy of all decisions granting variances must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- (g) *Record-Keeping*. The zoning administrator must maintain a record of all variance actions, including justification for their issuance, and must report such variances in an annual or biennial report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.

Subd. 4. Conditional Uses:

- (a) *Administrative Review*. An application for a conditional use permit under the provisions of this ordinance will be processed and reviewed in accordance with section(s) 1150 of the zoning ordinance.
- (b) *Submittal of Hearing Notices to the Department of Natural Resources (DNR)*. The zoning administrator must submit hearing notices for proposed conditional uses to the DNR sufficiently in advance to provide at least ten days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- (c) *Submittal of Final Decisions to the DNR*. A copy of all decisions granting conditional uses must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

Section 1174.11. Nonconformities.

Subd. 1. Continuance of Nonconformities: A use, structure, or occupancy of land which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions. Historic structures, as defined in section 1774.02(9)(w)(2) of this ordinance, are subject to the provisions of sections 1774.11(1)(a) – 1774.11(1)(e) of this ordinance.

- (a) A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its flood damage potential or degree of obstruction to flood flows except as provided in 1774.11(b) below. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.

- (b) Any addition or structural alteration to a nonconforming structure or nonconforming use that would result in increasing its flood damage potential must be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP1 thru FP4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 1774.11(c) and 1774.11(d) below.
- (c) If any nonconformity is substantially damaged, as defined in section 1774.02(9)(v) of this ordinance, it may not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in sections 1774.04 or 1774.05 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe, respectively.
- (d) If any nonconforming use or structure experiences a repetitive loss, as defined in section 1774.02(9)(r) of this ordinance, it must not be reconstructed except in conformity with the provisions of this ordinance.
- (e) Any substantial improvement, as defined in section 1774.02(9)(w) of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of section 1774.04 or 1774.05 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District.

Section 1174.12. Penalties and Enforcement.

Subd. 1. Violation Constitutes a Misdemeanor: Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) constitute a misdemeanor and will be punishable as defined by law.

Subd. 2. Other Lawful Action: Nothing in this ordinance restricts the city of Greenwood from taking such other lawful action as is necessary to prevent or remedy any violation. If the responsible party does not appropriately respond to the zoning administrator within the specified period of time, each additional day that lapses will constitute an additional violation of this ordinance and will be prosecuted accordingly.

Subd. 3. Enforcement: Violations of the provisions of this ordinance will be investigated and resolved in accordance with the provisions of section 515 of the city ordinance. In responding to a suspected ordinance violation, the zoning administrator and city council may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The city of Greenwood must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

Section 1174.13. Amendments.

Subd. 1. Floodplain Designation – Restrictions on Removal: The floodplain designation on the Official Zoning Map must not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources (DNR) if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.

Subd. 2. Amendments Require DNR Approval: All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner must approve the amendment prior to community approval.

Subd. 3. Map Revisions Require Ordinance Amendments: The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in section 1774.02(3) of this ordinance.

(THIS SECTION UPDATED BY ORD 262, OCT 2016)

SECTION 1175. WETLANDS.

Section 1175.00. Statement of Policy.

Subd. 1. General Intent. The City of Greenwood is a residential community located on the south shore of Lake Minnetonka and it includes within its boundaries Lake Minnetonka together with numerous inlets, harbors, bays, wetlands, woods, and valleys. It is in the public interest to protect these assets that may affect in some way low lands, marshes, wetlands, swamps, lakes and water courses within the city.

Recognizing the obligation to protect these assets and natural resource gifts from destruction and pollution of all kinds, and in order to carry out a program of coordinated land and water management, the following standards, prohibitions, regulations and requirements are hereinafter set forth:

Subd. 2. Specific Intent. In addition to the above general purposes the specific intent of this ordinance is:

- a. Reduce danger to health by protecting surface and ground water supplies from the impairment that results from incompatible land uses by providing safe and sanitary drainage.
- b. Permit and encourage planned development land use which will not impede the flow of floodwater or cause danger to life or property.
- c. Permit and encourage land use compatible with the preservation of the natural vegetation and marshes which are a principal factor in the maintenance of constant rates of water flow through the year and which sustain many species of wildlife and plant growth.
- d. Avoid fast runoff of surface waters from developed areas to prevent pollutional materials such as animal feces, motor oils, paper, sand, salt and other debris, garbage and foreign materials from being carried directly into the nearest natural stream, lake or other public waters.
- e. Prevent the development of structures in areas that will adversely affect the public passage and use of creeks, marshes, low lands and water courses within the city.

Section 1175.05. Definitions.

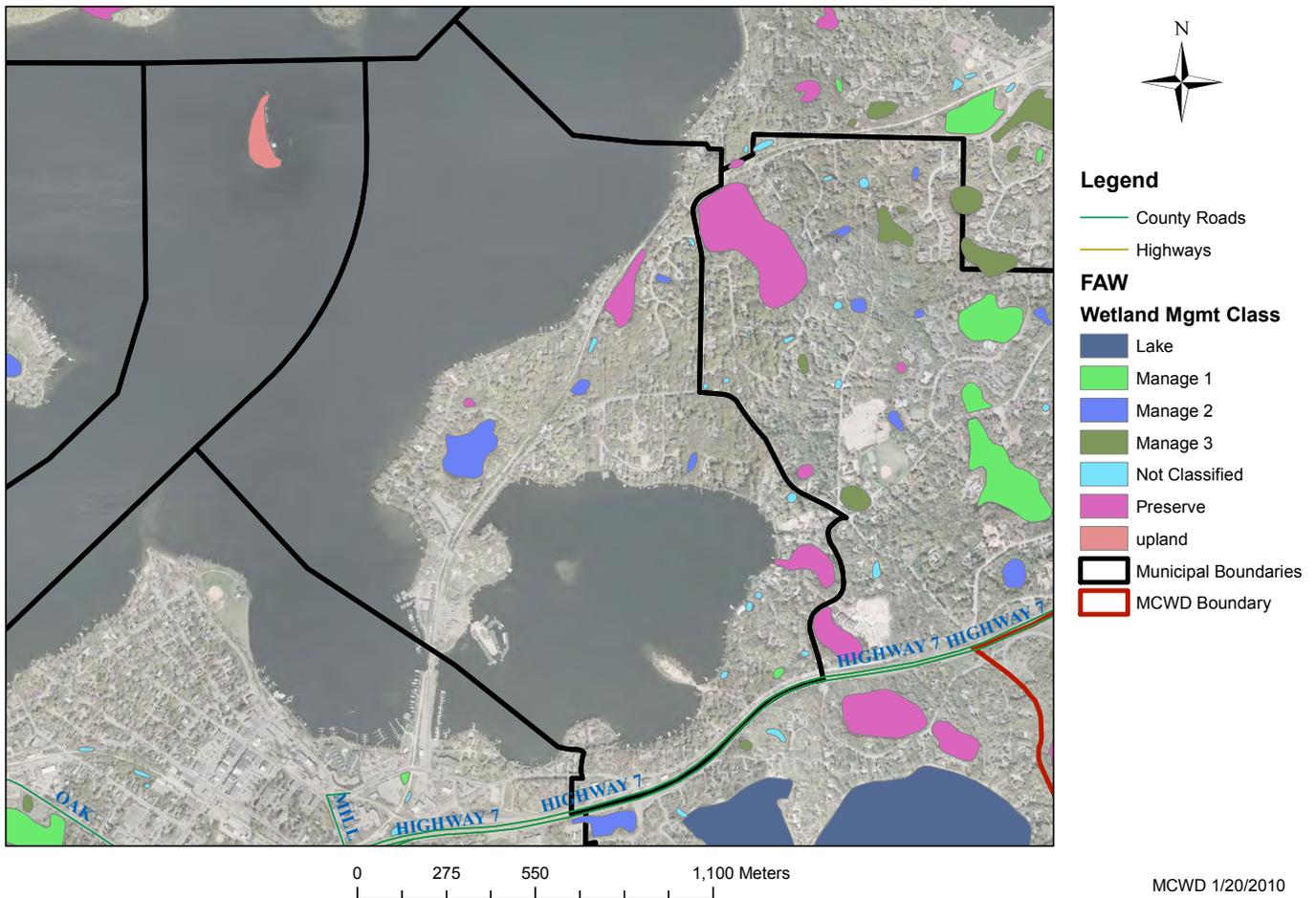
See section 1102 for definitions.

Section 1175.10. Definition and Establishment of Wetland Conservation Area.

The wetland conservation area within the city is defined and established to be the shore line of Lake Minnetonka and the low areas adjoining any water course and drainage way or body of water subject to meandering, flowing or overflow, including areas of marsh, wooded marsh, submerged marsh, inundation area as shown upon the attached wetlands map. Said map is hereby made a part of this ordinance and copies thereof shall remain on file in the office of the city clerk for public inspection.

Functional Assessment of Wetlands (FAW)

Greenwood, MN



Section 1175.15. Development Regulations.

Landowners or developers desiring to develop land or construct any dwelling or any other artificial obstruction on land located within the wetland conservation area within the city shall first submit a plan of development, hereinafter referred to as “an earth change plan,” to the city council which shall set forth proposed provisions for sediment control, water management, maintenance of landscaped features, and any additional matters intended to improve or maintain the quality of the environment. Such a plan shall set forth the proposed change requested by the applicant and affirmatively disclose what, if any, change will be made in the natural condition of the earth, including loss or change of earth ground cover, destruction of trees, grade changes and its effect, if any, upon lakes, streams, water courses and marshes, low lands and wetlands in the area. The plan shall minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible and shall affirmatively provide for the relocating or replanting of as many trees as possible that are proposed to be removed. The purpose of the earth change plan shall be to eliminate as much as possible potential pollution, erosion and siltation. Such plan shall also set forth the reasons a development is necessary and why it should be authorized under and pursuant to the terms of this ordinance.

Section 1175.20. Development Prohibited.

No filling, grading, dredging, excavation or construction of any kind whatsoever shall be allowed within the wetland conservation area if such activity is incompatible with the policies expressed in this ordinance. The preservation of wetlands in their natural state is hereby determined to be the stated policy of the city.

Section 1175.25. Land Development and Platting.

No part of any land within the wetlands conservation area shall be platted for residential use or any other use that will increase the danger to health, life, property or public welfare. Whenever a portion of the wetlands conservation area is located within the area to be subdivided, an adequate easement in favor of the city over the wetlands shall be required for the purpose of improving and protecting the area from drainage and other purposes expressed in this ordinance. Streets, driveways, parking areas, and culverts shall not be constructed or designed so as to restrict the flow of water and the same shall be approved by the city council.

Section 1175.30. Land Area Credit and Special Assessments.

Land area, if within the wetlands conservation area, shall not be credited as part of the area complying with the land use density or building unit to land area ratio, or other similar requirements of the zoning ordinance of the city. The exempt land area which is not to be developed and which is designated as an easement shall not be subject to special assessment to defray cost of municipal improvement projects including and not limited to water, sanitary and storm sewer improvements.

Section 1175.35. Variances.

Variances authorizing development within the wetlands conservation area may be granted in extraordinary cases by the city council by 3/5 vote thereof upon filing of an earth change plan as described in section 1175.15, but only when the proposed use is determined by the council to be in the public interest and no variance shall be granted which the council determines will or has a tendency to:

- a. Result in the placement of an artificial obstruction which will restrict the passage of storm and flood water in such a manner as to increase the height of flooding, except obstructions approved by the Minnehaha Creek Watershed District in conjunction with sound flood plain management.
- b. Result in non-compatible land uses or which would be detrimental to the protection of surface and ground water supplies.
- c. Be not in keeping with land use plans and planning objectives for the city or which will increase or cause danger to life or property.
- d. Be inconsistent with the objectives of encouraging land uses compatible with the preservation of the natural land forms, vegetation and the marshes and wetlands within the city.
- e. Be incompatible with the policies expressed in this ordinance.

In granting any variance the council may attach such conditions as it deems necessary to ensure compliance with the policy or intent of this ordinance.

Section 1175.40. Removal of Artificial Obstruction.

If an artificial obstruction is found within the wetland conservation area, an order shall be issued to the owner of the parcel following 10 days written notice and hearing thereon, for removal within a reasonable time as may be prescribed by the condition and type of artificial obstruction. If the owner shall fail to remove the artificial obstruction, or if the owner cannot be found or determined, the city shall have the power to make or cause such removal to be made, the cost of which shall be borne by the owner or specially assessed against the lands in the same manner as prescribed by law for the levy of special assessments for municipal improvements not withstanding section 1175.30 herein. The special assessment shall be certified to the county auditor for collection in the same manner as the ad valorem real property tax of the city.

SECTION 1176. SHORELAND MANAGEMENT DISTRICT.**Section 1176.01. Authorization and Purpose.**

Subd. 1. Statement of Purpose. The purpose of this section is to promote the public health, safety, and general welfare by providing for the wise use and development of the shoreland of public waters that exist within the boundaries of the city. It is the specific intent of this section to preserve and enhance the quality of surface waters, preserve the economic and natural environmental values of shorelands, and provide for the wise utilization of waters and related land resources.

Subd. 2. Statutory Authorization. This shoreland ordinance is adopted pursuant to the authorization and policies contained in Minnesota statutes, chapter 105, Minnesota Regulations, Parts 6120.2500-6120.3900, and the planning and zoning enabling legislation in Minnesota statutes chapter 462.

Subd. 3. Pre-Eminence of Shoreland Management District Ordinance; Project Review. This shoreland ordinance shall take pre-eminence over all other city codes. A person desiring to repair or improve property within the shoreland shall submit to the city building official full written particulars of the planned improvement or repair and pay a fee set by the city council, from time to time, and set forth in chapter 5 of this code book.

Section 1176.02. Definitions.

See section 1102 for definitions.

Section 1176.03. Jurisdiction and Enforcement.

Subd. 1. Jurisdiction. The provisions of this ordinance shall apply to the shorelands of the public water bodies as classified in this ordinance.

Subd. 2. Survey. Any person desiring to improve property or change use within the shoreland of the public waters shall submit to the city building official a survey prepared by a registered surveyor of the property to be improved, showing location and dimensions of existing and proposed structures, and all impervious surfaces, including but not limited to driveways, walkways, sidewalks, tennis courts, swimming pools, patios, decks, plastic landscape sheets or water barriers, buildings, accessory structures and primary structures. The survey also shall indicate the location of easements crossing the property, all known encroachments, and any other information which may be necessary to ensure conformance with city ordinances, including but not limited to shoreland management district ordinance, city zoning code, and city building code.

The building official may waive the requirement of the survey in cases where it is deemed unnecessary, and the applicant has submitted all necessary information as may have been required by the building official, together with a sworn statement of dimensions of all structures, and impervious surfaces, and the applicant's calculation of total hardcover (in square feet) as a percentage of total lot area. The building official shall investigate the representations to determine their accuracy. If the applicant's submission is inaccurate, a survey shall be required before any permits are issued. The review by the building official also shall determine whether the applicant's proposed improvement or use is permitted under the shoreland management district ordinance, zoning code, and building code, and whether conditional use permits, variances, or building permits are required.

Subd. 3. Enforcement. The zoning administrator is responsible for the administration and enforcement of this ordinance. Any violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be subject to the process outlined in chapter 12 of this code book. Violations of this ordinance can occur regardless of whether or not a permit is required for a regulated activity.

Subd. 4. Classification of Public Waters. Public Waters as they affect the city were classified by the commissioner of the Department of Natural Resources and designated as "general development," being Lake Minnetonka, having an ordinary high water level (OHWL) of 929.4' and protected water I.D. # of 133-P. These protected waters within the city have been given a shoreland water classification in order to preserve the water quality, natural characteristics, economic values, and the general health, safety and welfare of the city.

Subd. 5. Shoreland Management District. The shorelands of the city are hereby designated as a shoreland management district. The purpose of the shoreland management district is to provide for the wise utilization of shoreland areas in order to preserve the quality and natural character of these protected waters in the city.

Subd. 6. Permitted Use. All permitted uses allowed and regulated by the applicable zoning district underlying this shoreland management district as indicated on the official zoning map of the city and not limited by the shoreland management district provisions.

Subd. 7. Conditional Uses. All conditional uses called for herein and applicable attached conditions allowed and regulated by the applicable zoning district underlying this shoreland management district as indicated on the official zoning map of the city are conditional uses.

Subd. 8. Substandard Conditional Uses. Any use of shorelands in existence prior to December 1, 1992 which are not permitted within the applicable zoning district, but do not meet the minimum lot area, setbacks, or other dimensional requirements of this ordinance are substandard uses.

Subd. 9. Prohibited Uses. Any use which is not permitted or is considered a conditional use as regulated by the applicable zoning district and the shoreland management district are prohibited uses.

Subd. 10. Shoreland Compliance Review Fee. Applicants for conditional uses, variances, permits, or plats shall pay, in addition to fees required by the underlying zoning ordinance, upon filing an application for the same an additional shoreland compliance review fee listed on the fee schedule in chapter 5 to cover the costs of notices and review by the city of standards established and required by this ordinance.

Section 1176.04. Zoning Provisions.

Subd. 1. Standards for all Shorelands. The following standards shall apply to all shoreland of the protected waters within the city. Where the requirements of the underlying zoning district as shown on the official zoning map are more restrictive than those set forth herein, the more restrictive standard shall apply.

Subd. 2. Sewered Areas. The entire city is classified as a sewered area and no use of a residential structure will be permitted without being serviced by a municipal sewer.

Subd. 3. Minimum Lot Size, Width, Building Height, and Impervious Coverage.

(1) *Dimensions*. All single lots created after December 1992 must meet or exceed the following dimensions:

	Riparian and Non-Riparian Lots		Non-Riparian Lots	Office District	Lake Recreation District
	R-1A	R-1B	R-2	C-1	C-2
Lot Area (sq. ft.) abutting water and not abutting water	15,000	20,000	10,000	10,000	10,000
Lot Width at building line (ft.)	75	100	75	75	75
Building Setback from OHWL (ft.)	50	50	50	50	50
Maximum Building Height	28	28	28	35	30*

* The 30-foot building height limit within the C-2 lake recreation district is subject to the following exception: The maximum building height for multi-family residential structures of 8 units or greater may exceed 30 feet but shall not be greater than 32 feet for structures with gabled roofs of not less than 5/12; pitch; all other roof / building design or uses within the C-2 district shall not exceed 30 feet in height. See section 1102 for definition of "building height."

(2) *Exceptions to Setbacks*. Setback requirements from the ordinary high water level shall not apply to authorized boathouses and docks.

(3) *Impervious Coverage*.

- a) Impervious surface coverage in all residential districts as expressed as a percentage of the lot area, shall not exceed 30%.
- b) Impervious surface coverage in all commercial districts, expressed as a percent of the lot area, shall not exceed 30%, provided that because of the additional hardcover required for typical commercial developments, the maximum impervious surface in commercial districts may be increased to a maximum of 75% with a conditional use permit first obtained under sections 1150 and 1176.07 of this code, supported by an applicant prepared stormwater management plan meeting the approval of the city engineer. The city engineer, planning commission, and / or city council may require an applicant to implement stormwater management practices deemed necessary to control and minimize or control stormwater and off site runoff, including but not limited to, rain gardens, holding ponds, reductions in proposed impervious surfaces, and other accepted stormwater management techniques and methods.

Subd. 4. Additional Structure Setbacks. The following additional structure setbacks apply:

Setback from top of bluff: 30 ft.

Setback from right-of-way line of federal, state, or county highway: 30 ft.

Subd. 5. Bluff Impact Zones. Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

Subd. 6. Steep Slopes. An evaluation shall be made by the zoning administrator of soil erosion impact and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads,

driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles and other facilities as viewed from the surface of public waters, assuming summer leaf-on conditions.

Subd. 7. Fences, Docks, Retaining Walls. No fence shall be placed within the shoreland setback zone. Portions of dock located landward of the ordinary high water level shall be considered as a landing, subject to the regulations for landings. Retaining walls shall not be placed within the shore setback zone without a conditional use permit.

Subd. 8. Stairways, Lifts, and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts shall meet the following design requirements:

1. Stairways and lifts shall not exceed 4 feet in width;
2. Landings for stairways and lifts shall not exceed 32 square feet in area. Landings larger than 32 square feet shall require a conditional use permit;
3. Canopies or roofs shall not be allowed on stairways, lifts, or landings;
4. Stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion.
5. Stairways, lifts, and landings shall be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public waters assuming summer, leaf-on conditions, whenever practical; and
6. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons also shall be allowed for achieving access to shore areas, provided that the dimensional and performance standards of items 1 to 5 listed above are complied with in addition to the requirements of Minnesota rules.

Subd. 9. Significant Historic Sites. No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been documented in a public repository.

Subd. 10. Substandard Lots. Any lot of record filed in the office of the Hennepin county register of deeds on or before December 1, 1992 which does not meet the dimensional requirements of this ordinance may be allowed as a building site subject to approval of a shoreland conditional use permit, as provided for in this ordinance and provided:

1. Such use is permitted in the zoning district;
2. The lot is in separate ownership from abutting lands;
3. All dimensional requirements of the shoreland management district are complied with insofar as practical in compliance with requirements for legal nonconforming lots; and
4. A conditional use permit is granted by the city.

The minimum size lot shall be 4,500 sq. ft. and lot width at the building line shall be 50 ft. for substandard lots of record.

Two or more contiguous lots under the same ownership, which do not meet the area requirements of this ordinance, must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of this ordinance to the extent possible.

Subd. 11. Roads and Parking Areas. Roads and parking areas in the shoreland area shall be controlled in accordance with the following criteria. No impervious surface shall be placed within 50 feet of the ordinary high water level except that a conditional use permit may be issued to permit access to an island by road or driveway constructed within 50 feet of the ordinary high water level on the following conditions:

- a. All road, or driveways constructed within 50 feet of the ordinary high water level shall be no greater than 12 feet of hard surface in width.
- b. The approach to an island crossing shall be as nearly perpendicular to the shoreline as physical conditions allow.
- c. Driveways or roadways on islands shall be no greater than 12 feet of hard surface in width. The driveways and roadways shall not be expanded to accommodate parking areas within the shoreland setback zone nor within any bluff impact zone.
- d. The grant of a conditional use permit for driveway and roadways upon an island shall not imply an obligation on the part of the city to agree to hard surfacing, excavation, filling, or other disturbance within bluff impact zones.
- e. Driveways or roadways which are not public right-of-ways built to service an island shall be subject to such additional restrictions as the city deems appropriate relative to the permitted uses of parcels over which such driveway or roadway easements traverse and in any event all driveway or roadway easements servicing islands shall be set back not less than 30 feet from all structures.
- f. Such additional conditions as the city may determine necessary for the public health, safety, and welfare.

- g. Where feasible and practical, all roads and parking areas shall meet the setback requirements established for building in the zoning ordinance.
- h. Natural vegetation or other material shall be used in order to screen parking areas when viewed from the water.

Subd. 12. Elevation of Lowest Floor. Structures shall be placed at elevations consistent with the city's flood plain management control. In areas not regulated by flood plain management controls, the elevation to which the lowest floor (including basements) shall be placed is as follows:

1. For lakes, ponds, and flowages by (1) an evaluation of available flood information and consistent with statewide standards and criteria for management of flood plain areas of Minnesota, or, (2) placing the lowest floor at a level 3 feet above the highest known water level. In those instances where sufficient dates on known high water levels are not available, the ordinary high water mark shall be used.
2. For rivers and streams, by an evaluation of available flood information and consistent with statewide standards and criteria for management of flood plain areas of Minnesota.

Subd. 13. Exceptions to Building Setback Requirements.

1. Boathouses in existence prior to December 1, 1992 may continue to be located landward of the ordinary high water mark as a conditional use with a permit issued after a public hearing and then only if the boathouses are not used for habitation and they do not contain sanitary facilities and satisfactory proof is submitted as to its existence prior to December 1, 1992.
2. Location of piers and docks shall be controlled by regulations set out in this ordinance.
3. On undeveloped shoreland lots that have 2 adjacent lots with existing principal structures on both such adjacent lots, any new residential structure may be set back the average setback of the adjacent structures from the ordinary high water mark or 50 feet, whichever is greater, provided all other provisions of the shoreland management district are in compliance.

Section 1176.05. Docks, Decks, and Lake Recreational Lots.

Subd. 1. Docks. Each lakeshore lot upon which there is a residence shall be entitled to 1 seasonal residential dock at which 3 personal pleasure boats plus 1 boat under 16 feet and powered by no more than a 35 horsepower motor owned by the lot owner or members of his or her family may be stalled. Docks shall be attached to the lot no closer than 5 feet from adjoining lot line. Commercial boats shall not be permitted to be stalled or parked at docks located at properties zoned R-1A, R-1B, or R-2 for a period of time greater than established by the underlying zoning ordinance.

Subd. 2. Deck Additions. Deck Additions shall meet the required setback from the ordinary high water level.

Subd. 3. Lake Recreational Lots. Lake recreational lots in existence at the time of the adoption of this ordinance and which are not of sufficient size or fail to meet minimum ordinance requirements so as to locate a residential structure thereon are intended to provide the owners thereof with access to public waters but without the right to construct docks thereon, except as follows.

Owners of residential lots on which a home is located, who own lakeshore recreational lots which have a minimum of 50 feet lake shore frontage and are located within 1,000 feet of their residence, may use such recreational lots as access to the public waters and for construction of a dock thereon in accordance with the following minimum standards:

- a. A conditional use permit may be issued by the city council that specifies which lot owners have authority to include such lots as part of their PID residential tax number and use the non-buildable lots and specify which activities may be conducted on the property, including the mooring and docking of watercraft. It also may include other activities that do not generally conflict with general use or normal property rights of adjacent property owners.
- b. The city council shall restrict the number of vehicles allowed to be parked on the recreational lot, the total number of pleasure boats allowed to be moored, docked, or stored on the water, to 1 boat and the ownership thereof restricted to the residential lot owners or members of his or her family.
- c. The use of such recreational lots shall not be enhanced through the dredging or filling of lands that have been designated as wetlands by the city.
- d. The city council shall have authority to deny the use of recreational lots as access to public waters if it finds after a public hearing that such use will violate the terms and conditions of the wetlands ordinance of the city.
- e. To ensure that the use will be made in conformance with these standards, covenants shall be developed by the recreational lot owners that include legal restrictions on the lot as approved by the city council and the covenants shall be filed of record.

- f. No authorization to use such lakeshore recreation lots issued by regulatory authorities other than the city shall be valid or take precedence over actions of the city council in regulating the use of such lots.
- g. Uses to be made of recreational lots may not violate terms and conditions of this ordinance or the underlying zoning district regulations.

Subd. 4. Lakeshore Park Lots Operated by a Homeowners' Association. Lakeshore Park lots which are 20,000 square feet or more to meet the minimum square footage requirement to locate a residential structure thereon (hereinafter buildable lakeshore park lot) but are dedicated by the fee owner as a park or playground to be operated and under the control of a homeowners' association so as to create an access to public waters by members of such homeowners' association shall be granted such access as a conditional use subject to the following conditions:

- a. Such platted or dedicated buildable lakeshore park lot shall be permitted 1 dock at which no boat or watercraft may be stored, moored, docked or kept. The purpose of the dock shall be only to give the users of the buildable lakeshore park lot the opportunity to be picked up and let off safely by watercraft using the public waters.
- b. All conditions, covenants and restrictions governing the use of such buildable lakeshore park lot shall be subject to the formal approval of the council of the city and such conditions, covenants and restrictions governing the use of the lot by homeowners' association shall not be amended or changed without the prior approval of the city council.
- c. In the event the homeowners' association operating the buildable lakeshore park lot allow boats to be stored, moored, docked, or kept upon, the lot or at any dock emanating from such lot, or the association attempts to construct, or permit, more than 1 dock on the property, the conditional use permit granted shall become null and void. The homeowners' association operating the buildable lakeshore park lot, in order to permit the continued use of the lot as a buildable lakeshore park lot, shall reapply to the city for issuance of the conditional use access permit. In the event the violation of the conditional use access permit continues and / or the homeowners' association governing the buildable lakeshore park lot refuse to make application for a new conditional use access permit, the city may, in addition to criminal violation of this ordinance, seek civil remedy through court ordered injunction against further use of the property for boating access purposes.
- d. The conditional use permit holder, hereunder, shall as a condition of a conditional use permit issued hereunder, agree to pay all expenses and legal fees incurred by the city in the enforcement of the terms and conditions of such permit. In event of reapplication for a conditional use access permit as hereinabove provided, the city council may attach additional terms to the permit to guarantee compliance with the reissued permit.

Section 1176.06. Commercial Use, Legal Nonconforming Multiple Use, and Public Use Standards.

Subd. 1. Existing Nonconforming Use of Non-Riparian Lots. Existing legal nonconforming multiple use of non-riparian lots may continue as a nonconforming use under terms of the underlying zoning ordinance and may be upgraded and maintained so long as any upgrade is performed within the allowable height, setback, massing, and impervious coverage requirements of this ordinance. (REVISED MAR. 2013 ORD. 214)

Subd 2. Surface Water-Oriented Commercial and Public Uses. Surface water-oriented commercial and public uses with needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters, if permitted by the underlying zoning district standards. Those uses with water-oriented needs must meet the following standards:

- a. In addition to meeting impervious coverage (hardcover) limits, setbacks, and other zoning standards in this ordinance, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures.
- b. Uses that require watercraft mooring for patrons must centralize their facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need.
- c. Uses that depend on patrons arriving by watercraft may use the minimum amount of signage and lighting necessary to convey needed information to the public, subject to the following standards:
 - 1. No advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority.
 - 2. Signs may be placed, when necessary, within the shoreland setback zone if they are designed in size to be the minimum necessary to convey needed information. They must only convey the location and name of the establishment and general types of goods and services available.
 - 3. The aggregate square footage of sign space per property shall not exceed the limitations on sign square footage as regulated in the city zoning ordinance.

4. Non-sign related outside lighting may be located within the lakeshore setback zone or over public waters only if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters.

Section 1176.07. Conditional Uses.

Subd. 1. Review Procedure. Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of conditional uses established in section 1150. The following additional evaluation criteria and conditions apply within the shoreland management district:

Subd. 2. Evaluation Criteria. A thorough evaluation of the waterbody and topographic, vegetation, and soils conditions on the site must be made to ensure:

1. The prevention of soil erosion or the possible pollution of public waters, both during and after construction;
2. The visibility of structures and other facilities as viewed from public waters is limited; and
3. The site is adequate for water supply and onsite sewage treatment.

Subd. 3. Conditions Attached to Conditional Use Permits. The city council, upon consideration of the criteria listed above and the purpose of this ordinance, shall attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purpose of this ordinance. Such conditions may include but are not limited to the following:

1. Increased setbacks from the ordinary high water level;
2. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and
3. Special provisions for the location, design, and use of structures, watercraft and aircraft launching and dock areas, and vehicle parking areas.

Section 1176.07.05. Variances.

Subd. 1. Review Procedure. Variance allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of variances established in section 1155. The following additional policies, evaluation criteria, and conditions apply within the shoreland management district.

Subd. 2. Evaluation Criteria. A thorough evaluation of the waterbody and topographic, vegetation, and soils conditions on the site must be made to ensure:

1. The prevention of soil erosion or the possible pollution of public waters, both during and after construction.
2. The visibility of structures and other facilities as viewed from public waters is limited.
3. The site is adequate for water supply.

Subd. 3. Conditions. The city council, upon consideration of the criteria listed above and the purpose of this ordinance, shall attach such conditions to the issuance of variances as it deems necessary to fulfill the purpose of this ordinance. Such conditions may include but are not limited to the following:

1. Increased setbacks from the ordinary high water level.
2. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.
3. Special provisions for the location, design, and use of structures, watercraft and aircraft launching and dock areas, and vehicle parking areas.

Subd. 4. Impervious Surface Policies and Conditions.

1. Variance applicants with total impervious surface coverage in excess of 30% shall have the burden of proof to establish that the excess is a *legal* nonconforming use by showing evidence that the excess was in existence prior to the adoption of the Shoreland Management Ordinance (December 1992), or by showing the excess was approved by the city. If no such evidence exists, the city council may require the property owner to reduce impervious surfaces as a condition of variance approval.
2. Variance applicants shall provide a certified survey showing separate calculations for the items listed below for structural-related impervious surfaces and landscape-related impervious surfaces.
 - Structural-related impervious surfaces include buildings, driveways, decks and patios 30+ inches in height, staircases (5+ steps), etc.
 - Landscape-related impervious surfaces include sidewalks, steps (up to 4 steps), plastic landscaping sheets, patios or decks less than 30 inches in height, etc.

3. Legal and illegal nonconforming landscape-related impervious surfaces cannot be exchanged for an increase in structural-related impervious surfaces to obtain a variance from impervious surface requirements.
4. Driveways may be exchanged for structural impervious surface. Future driveway expansion must comply with the provisions set forth in subdivision 1 of this section.

(THIS SECTION REVISED JUN 2014 ORD 229, JAN 2016 ORD 251)

Subd. 5. State Requirements. Variances may only be granted in accordance with Minnesota statutes chapter 462. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required elsewhere in this section also shall include both the planning commission's and the city council's summary of the public record / testimony and the findings of fact and conclusions which supported the issuance of the variance.

(SECTION 1176.07.05 ADDED MAR 2013 ORD 214)

Section 1176.07.10. Notifications to the Department of Natural Resources.

Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under this section must be sent to the commissioner of the Department of Natural Resources and postmarked at least 10 days before the hearing. Notices of hearing to consider proposed subdivisions / plats must include copies of the subdivisions / plat. Upon final action by the city council, a copy of approved amendments and subdivisions / plats and final decisions granting variances or conditional uses under this section must be sent to the commissioner of the Department of Natural Resources and postmarked within 10 days of final action. (RENUMBERED MAR. 2013 ORD. 214)

Section 1176.08. Shoreland Alterations.

Subd. 1. Removal of Natural Vegetation. The removal of natural vegetation shall be restricted to prevent erosion into protected waters, to consume nutrients in the soil, and to preserve shoreland aesthetics. Removal of natural vegetation in the shoreland management district shall be subject to the following provisions:

1. Selective removal of natural vegetation is allowed, provided that sufficient vegetation cover remains to screen cars, dwellings, and other structures when viewed from the water.
2. Clear cutting of natural vegetation is prohibited.
3. Natural vegetation shall be restored insofar as feasible after any construction project is completed in order to retard surface runoff and soil erosion.
4. The provisions of this section shall not apply to permitted uses which normally require the removal of natural vegetation.

Subd. 2. Grading and Filling.

1. Grading and filling in shoreland areas or any alteration of the natural topography where the slope of the land is towards a protected water or watercourse leading to a protected water must be authorized by a permit.
2. Grading and filling, and excavations necessary for the construction of structures and driveways under approved construction permits for these facilities shall not require the issuance of a separate grading and filling permit. However, the grading and filling standards shall be incorporated into the issuance of permits for construction of structures and driveways, which shall include the following:
 - a. The movement of more than 10 cubic yards of material on steep slopes or within shore or bluff impact zones; and
 - b. The movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones;
 - c. A permit may be granted subject to the following:
 1. The smallest amount of base ground is exposed for as short a time as feasible.
 2. Temporary ground cover, such as mulch, is used until permanent ground cover, such as sod, is established.
 3. Methods to prevent erosion and trap sediment are employed.
 4. Fill is stabilized to accepted engineering standards.
 5. Fill or excavated material must not be placed in bluff impact zones.
 6. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner of the Department of Natural Resources under Minnesota statutes chapter 105.
 7. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and

do not adversely affect adjacent or nearby property.

8. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed 3 feet horizontal to 1 foot vertical, the landward extent of the riprap is within 10 feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed 3 feet and a permit therefor is first obtained from the Department of Natural Resources and / or any other agency with authority to approve or deny such action.

Subd. 3. Wetlands. Any work in or on wetlands as designated by the city shall be in full compliance with the city's wetland ordinance which is part of the city's underlying zoning ordinance. In addition, should the zoning administrator determine and evaluate that work outside of the designated wetland does in fact affect wetlands, such work shall require permits, reviews, or approval by other local or state agencies, including the Minnesota Department of Natural Resources. The applicant will be so advised of this requirement.

Subd. 4. Excavations. Excavations on shorelands where the intended purpose is to establish connection to a public water shall require a permit from the zoning administrator before construction is begun. Such permits may be obtained only after the Commissioner of Natural Resources has issued a permit for work on the beds of public waters.

1. Any work that will change or diminish the course, current, or cross section of a protected water or wetland shall be approved by the commissioner of Department of Natural Resources, and such approval shall be construed to mean the issuance by the commissioner of Department of Natural Resources of a permit under the procedures of Minnesota statutes.
2. Excavations made with the intention of establishing connection to public waters, such as boat slips, canals, lagoons, and harbors, are prohibited above the ordinary high water level.

Subd. 5. Stormwater Management. All development within the shoreland management district shall be consistent with the stormwater management plan for the city as may be adopted and in force and effect. In addition, the following standards shall be met:

A. *General Standards*.

1. When possible, existing natural drainage ways, wetlands, and vegetated soil surfaces shall be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.
2. Development shall be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas shall be stabilized and protected as soon as possible to retain sediment on the site.
3. When topographic features and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities may be used.

B. *Specific Standards*.

1. When constructed facilities are used for stormwater management, documentation shall be provided by a qualified individual that they are designed and installed consistent with the field guidelines of the Minnehaha Creek Watershed District.
2. Newly constructed stormwater outfalls to public waters shall provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

Section 1176.09. Sewage Treatment.

Public or municipal sewage collection and treatment facilities shall be used and connected to any premises intended for human occupation all in accordance with the rules, regulations, and ordinance of the city.

Section 1176.10. Water Supply.

Public or private suppliers of water for domestic purposes shall conform to Minnesota Department of Health standards for water quality.

Subd. 1. Public or Municipal Water Supplies. Public or municipal water supplies shall be used where available and where feasible. New and replacement water supply systems shall be designed to minimize infiltration from flood waters.

Subd. 2. Permits. No person, firm, or corporation shall install, alter, repair, or extend any private well without first obtaining a permit therefor from the building inspector of the city.

1. Application for permits shall be made in writing upon printed blanks or forms furnished by the building inspector and shall be signed by the applicant.
2. Each application for a permit shall have thereon the correct legal description of the property on which the proposed installation, alteration, repair, or extension is to take place; a plan of the site of reasonable scale and accuracy showing the location of any proposed or existing buildings, property lines, and a complete plan municipal sewage connection system showing the location, size, and design of the system to be installed, altered, repaired or extended; the name of the person, firm, or corporation who is to install the system; and any further information as required by the building official.

Subd. 3. Private Wells / Flooding.

1. Private wells shall be located in a manner to be free from flooding, and the top shall be so constructed and located as to be above all possible sources of pollution. Wells already existing in areas subject to flooding, such as a flood plain, shall be flood-proofed.
2. No private well shall be located closer than 3 feet to the outside basement wall of a dwelling. The outside basement footing shall be continuous across the opening of the well alcove. No well shall be located closer than 15 feet to a property line.
3. Private wells shall be located in accordance with the standards of the Minnesota Health Department.

Section 1176.11. Subdivisions / Administrative Procedures.

Subd. 1. Subdivisions. No land shall be subdivided which is determined to be unsuitable by the city for the proposed use because of flooding, inadequate drainage, soil and rock formation with severe limitations for development, severe erosion potential, unfavorable topography, inadequate water supply or sewage treatment capabilities, or any other feature likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.

Subd. 2. Plats.

1. Any proposed plat of shoreland shall be reviewed by the commissioner of the Department of Natural Resources before approval of the city may be granted. Such review shall require that proposed plats be received by the commissioner of the Department of Natural Resources at least 10 days before a hearing is called by the city for consideration of approval of a final plat.
 - a) Copies of all plats within shoreland areas shall be submitted to the commissioner of the Department of Natural Resources within 10 days of final approval of the city.
2. Any amendment that would change the floodway, floodway fringe, or base flood elevation must be approved by the commissioner of Department of Natural Resources of and federal insurance administrator prior to adoption.
 - a) Forward notices of public hearings to consider variance, amendment, or conditional uses to the commissioner of Natural Resources at least 10 days prior to such hearing.
3. To satisfy federal regulations all development proposals must be reviewed to determine that all applicable state and federal permits have been secured.
4. A copy of the notice of a public hearing to consider a variance to the provisions of the shoreland management district or a conditional use in the shoreland management district shall be sent to the commissioner of the Department of Natural Resources and that the notice is received by the commissioner at least 10 days prior to such hearings.
5. A copy of all amendments to this ordinance and final decisions granting variances or conditional uses within the shoreland management district shall be sent to the commissioner of the Department of Natural Resources within 10 days of the amendment or final action.

SECTION 1177. CONSTRUCTION SITE RUN-OFF CONTROL

Section 1177.10. Intent.

To promote the health, safety and general welfare of the citizens of Greenwood, Minnesota and protect the city's environmental resources by reducing the discharge of pollutants into receiving water bodies, by requiring a sediment and erosion control program for construction activity as required by the city stormwater management program.

Section 1177.20. Findings.

The city of Greenwood hereby finds that uncontrolled land disturbing activity at construction sites are subject to soil erosion where sediment and other pollutants enter into receiving water bodies adversely affecting the public health, safety and general welfare by impacting water quality, creating nuisances, impairing or permanently damaging environmental resources and otherwise hindering the ability of the city to provide adequate water, sewage, flood control and other community services.

Section 1177.30. Purpose

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 poorly sited development or incompatible activities by regulating land disturbing activities that would have an adverse and potentially irreversible impact on water quality, environmentally sensitive land and surface water bodies; by minimizing conflicts and encouraging construction site runoff control through proper evaluation, assessment, design and implementation of a erosion and sediment control program for site disturbance or development.

Section 1177.40. Definitions

See section 1102 for definitions.

Section 1177.50. Scope and Effect.

A. Applicability. Every applicant for a building permit, subdivision approval, or a permit to allow land disturbing activities greater than or equal to 1 acre or part of a larger common plan or development greater or equal to 1 acre or smaller area where the zoning administrator determines the activity poses a risk to water resources must submit a stormwater pollution prevention plan to the zoning administrator. No building permit, subdivision approval, or permit to allow land disturbing activities shall be issued until approval of the stormwater pollution prevention plan or a waiver of the approval requirement has been obtained in strict conformance with the provisions of this ordinance. The provisions of section 1177.60 (B), of this ordinance apply to all land, public or private. Nothing in this ordinance shall relieve the applicant of other county, state, federal or local watershed district requirements that may be applicable to the applicants proposed activities.

B. Exemptions. The provisions of this ordinance do not apply to:

1. A lot for which a building permit has been approved on or before the effective date of this ordinance;
2. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles; or
3. Emergency work to protect life, limb or property.
4. Tilling, planting, or harvesting of agricultural, horticultural, or silvicultural (forestry) crops.
5. Minor land disturbance activities such as home gardens and an individual's home landscaping, repairs and maintenance work.
6. Additions or modifications to existing single-family structure which result in creating under 5,000 square feet of exposed soil or impervious surface and / or is part of a larger common development plan.

Section 1177.60. Stormwater Pollution Prevention Plan Submittal Procedures.

A. Application. A copy of the written application for General Permit Authorization to Discharge Stormwater Permit Associated with Construction Activities (MN R100001) and all supporting documentation including a copy of the proposed stormwater pollution prevention plan, including evidence of the permit fee payment, and / or the application requirements of the Minnehaha Creek Watershed District as applicable shall be filed with the city and shall include a statement indicating the grounds upon which the approval is requested, that the proposed use permitted by right or as an exception in the underlying zoning district, and adequate evidence showing that the proposed use will conform to the standards set forth in this ordinance. Prior to applying for approval of a stormwater pollution prevention plan, an applicant may have the stormwater pollution prevention plan reviewed by the appropriate departments of the city.

Two sets of clearly legible blue or black lined copies of drawings and required information shall be submitted to the zoning administrator and shall be accompanied by a receipt from the city clerk evidencing the payment of all required fees for processing and / or such financial securities that the city determines are required to guarantee performance by the permittee. The permit letter and certification acknowledging permit coverage under General Permit MN R10001 from Minnesota Pollution Control Agency shall also be submitted upon receipt. 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.

B. Stormwater Pollution Prevention Plan. At a minimum, the stormwater pollution prevention plan shall fully comply with the requirement of Parts III and IV of General Permit Authorization to Discharge Stormwater Associated with Construction Activity, Permit No. MN R100001. All submissions and notifications required Permit No. MN R100001 shall also be submitted to the zoning administrator.

Section 1177.70. Enforcement Procedures.

A. Right of Entry. The applicant shall promptly allow the city and their authorized representatives, upon presentation of credentials to:

- 1.) Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations, inspections or surveys.
- 2.) Bring such equipment upon the permitted site as is necessary to conduct such surveys and investigations.
- 3.) Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of this permitted site.
- 4.) Inspect the stormwater pollution control measures.
- 5.) Sample and monitor any items or activities pertaining to stormwater pollution control measures.
- 6.) Any temporary or permanent obstruction to the safe and easy access of such an inspection shall be promptly removed upon the inspector's request. The cost of providing such access shall be born by the applicant.

B. Warning Letter. If upon inspection by the city or designated representative, the applicant fails to implement the erosion and sediment control practices outlined in the approved stormwater pollution prevention plan or minimum BMP standards outlined in section 1177.60 (B), the city will notify the applicant with a letter of warning which outlines the issues of noncompliance and a timeline for completion of any work to bring the site into compliance.

C. Action Against the Financial Security. If any of the conditions listed below exist and have not been corrected within 7 days after notification by the city, the city may act using the financial security. The city shall use funds from this security to finance any corrective or remedial work undertaken by the city or a contractor under contract to the city and to reimburse the city for all direct cost incurred in the process of remedial work including, but not limited to, staff time and attorney's fees.

- 1) The applicant ceases land disturbing activities and / or filling and abandons the work site prior to completion of the city approved grading plan.
- 2) The applicant fails to conform to any city approved grading plan and / or the stormwater pollution control plan as approved by the city, or related supplementary instructions.
- 3) The techniques utilized under the stormwater pollution control plan fail within 1 year of installation.
- 4) The applicant fails to reimburse the city for corrective action taken.
- 5) Emergency action under part D.

D. Emergency Action. If circumstances exist such that noncompliance with this ordinance poses an immediate danger to the public health, safety and welfare, as determined by the city engineer, the city may take emergency preventative action. The city also shall take every reasonable action possible to contact and direct the applicant to take any necessary action. Any cost to the city may be recovered from the applicant's financial security.

Section 1177.80. Penalty.

Any person, firm, or corporation violating any provision of this ordinance shall be guilty of a misdemeanor and subject to the process outlined in chapter 12.

SECTION 1178. ADULT ESTABLISHMENTS.

Section 1178.00. Purpose.

The purpose of this ordinance is to control, through zoning regulations, certain land uses that have a direct and detrimental affect on the character of the city's residential and commercial neighborhoods. The city council specifically recognizes the sanctity and fundamental nature of free speech and does not intend to regulate or ban speech based on content.

Section 1178.05. Findings.

The city council makes the following findings regarding the impact adult establishments have on the character of the city. In making these findings, the city council accepts the studies conducted by the Minnesota Attorney General, the American Planning Association and cities such as St. Paul, MN, Hopkins, MN, and Rochester, MN. Based on these studies the city council concludes:

1. Adult establishments have an impact on the neighborhoods surrounding them that is distinct from the impact caused by other uses.
2. Residential and commercial neighborhoods located within close proximity to adult establishments experience the following negative impacts:
 - (a) Increased crime rates, particularly in sex-related crimes such as rapes, prostitution, indecent exposure and other lewd and lascivious behavior;
 - (b) Property values which are either diminished or fail to appreciate at the rate of other comparable properties not located in proximity to adult establishments;
 - (c) Increased transiency and decreased stability of ownership;
 - (d) Deteriorated neighborhood appearance from litter and graffiti;
 - (e) Sex-related harassment of residents and customers by motorists and pedestrians;
 - (f) A perception that the area is “unsafe;” and
 - (g) Difficulty in attracting and retaining customers, employees, and desirable tenants.
3. The adverse impacts which adult establishments have on surrounding areas diminish as the distance from the adult establishments increases.
4. The adverse impacts of adult establishments are increased when the uses are located near each other.
5. The presence of liquor establishments in the immediate vicinity of adult establishments also compounds the adverse impacts on the neighborhood.
6. Adult establishments can exert a dehumanizing influence on persons attending places of worship, children attending day care centers or schools, and people using public parks and libraries.
7. Adult establishments can significantly contribute to the deterioration of residential neighborhoods and can impair the character and quality of the residential housing in the area where they are located, thereby increasing the shortage of affordable and habitable housing for city residents.
8. The concentration of adult establishments in one area can have a substantially detrimental affect on that area and on the overall quality of urban life. A cycle of decay can result from the influx and adult establishments. The presence of such businesses are perceived by others as an indication that the area is deteriorating and the result can be devastating: other businesses move out of the vicinity and residents flee from the area. The resulting decline in real estate values erodes the city’s tax base and contributes to overall urban blight.
9. Land-use regulations are appropriate to minimize the detrimental affects that adult establishments have on adjacent land uses.

Section 1178.10. Exceptions.

This ordinance does not regulate the following:

1. Any material with significant literary content or social commentary;
2. A business where sexually-oriented materials are sold, bartered, distributed, leased, furnished, or otherwise provided for off-site use or entertainment, if (a) the sexually-oriented material on each item is blocked from view by an opaque cover as required under Minnesota statutes chapter 617, and (b) each item is in an area accessible only by an employee of the business;
3. Any person or organization exempted under Minnesota statutes chapter 617;
4. Any activity regulated under Minnesota statutes chapter 617;
5. Displaying works of art showing specified anatomical areas, so long as no sexually- oriented materials are for sale, and the business does not have a liquor license; and
6. Movies rated G, PG, PG13, NC-17, or R.

Section 1178.15. General.

1. Adult Establishments are businesses that:
 - (a) Meet any of the following criteria, measured on a daily, weekly, monthly, or yearly basis: 1) has more than 10% of its inventory, stock in trade, or publicly displayed merchandise in sexually-oriented materials, or 2) devotes more than 10% of its floor area (not including storerooms, stock areas, bathrooms, basements, or

- any portion of the business not open to the public) to sexually-oriented materials, or 3) derives more than 10% of its gross revenues from sexually-oriented materials; or
- (b) Engage for any length of time in an adult use or any other use that has an emphasis on specified sexual activities or specified anatomical areas.
2. Adult Use includes, but is not limited to, any of the following activities and businesses:
- (a) *Adult Body Painting Studio* – An establishment or business that provides the service of applying paint, ink, or other substance, whether transparent or non-transparent, to the body of a patron when the person is nude.
 - (b) *Adult Bookstore* – An establishment or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, movies, or motion picture film if the business meets the criteria in 1(a) above.
 - (c) *Adult Cabaret* A business or establishment that provides dancing or other live entertainment distinguished or characterized by an emphasis on: 1) the depiction of nudity, specified sexual activities or specified anatomical areas; or 2) the presentation, display, or depiction of matter that seeks to evoke, arouse, or excite sexual or erotic feelings or desire.
 - (d) *Adult Companionship Establishment* – A business or establishment that provides the service of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
 - (e) *Adult Conversation / Rap Parlor* – A business or establishment that provides the services of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
 - (f) *Adult Health / Sport Club* – A health / sport club that is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
 - (g) *Adult Hotel or Motel* means a hotel or motel that presents material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.
 - (h) *Adult Massage Parlor / Health Club* – A massage parlor or health club that provides massage services distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
 - (i) *Adult Mini-Motion Picture Theater* – A business or establishment with a capacity of less than 50 persons that as a prevailing practice presents on-premises viewing of movies, motion pictures, or other material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
 - (j) *Adult Modeling Studio* – A business or establishment that provides live models who, with the intent of providing sexual stimulation or sexual gratification, engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted.
 - (k) *Adult Motion Picture Arcade* – Any place to which the public is permitted or invited where coin or slug-operated or electronically, electrically, or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are used to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.
 - (l) *Adult Motion Picture Theater* – A motion picture theater with a capacity of 50 or more persons that as a prevailing practice presents material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons.
 - (m) *Adult Novelty Business* – An establishment or business that has a variety of items for sale if it meets the criteria in 1(a) above.
 - (n) *Adult Sauna* – A sauna that excludes minors by reason of age, and that provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
 - (o) *Adult Steam Room / Bathhouse Facility* – A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, if the building or portion of a building restricts minors by reason of age and if the service provided by the steam room / bathhouse facility is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
3. Sexually-Oriented Materials include visual, printed, or aural materials, and other objects or devices, which:
- (a) Contain, depict, simulate, or describe specified sexual activities or specified anatomical areas;

- (b) Are marketed for use in conjunction with, or are primarily used only with or during, specified sexual activities; or
 - (c) Are designed for sexual stimulation.
4. Specified Anatomical Areas Include:
- (a) Less than completely and opaquely covered human genitals, pubic area, buttock, anus, or female breast below a point immediately above the top of the areola; and
 - (b) Human male genitals in a state of sexual arousal, whether or not completely and opaquely covered.
5. Specified Sexual Activities Include:
- (a) Actual or simulated: sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation of unclothed genitals; flagellation or torture in the context of a sexual relationship; the use of excretory functions in the context of a sexual relationship; anilingus; coprophagy; coprophilia; cunnilingus; fellatio; necrophilia; pedophilia; piquerism; or zoerastia;
 - (b) Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;
 - (c) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;
 - (d) Fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts;
 - (e) Situations involving a person or persons, any of whom are nude, who are clad in undergarments or in sexually revealing costumes and engaged in the flagellation, torture, fettering, binding, or other physical restraint of any person;
 - (f) Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or
 - (g) Human excretion, urination, menstruation, or vaginal or anal irrigation.

Section 1178.20. Location.

An adult establishment may not be located within 200 feet of any residentially-zoned property boundary or any church site, school site, day care facility, park or within 10 feet of a business licensed under chapter 8 relating to liquor, beer, and wine licensing. An adult establishment may not be located within 200 feet of another adult establishment. For purposes of this chapter, this distance is a horizontal measurement from the main public entrance of the adult establishment to: the nearest point of a residentially-zoned property boundary; the property line of a church site, school site, day care facility, park or business licensed under chapter 8 of this code; and the main public entrance of another adult establishment.

Section 1178.25. Hours of Operation.

An adult establishment may not be open to the public between the hours of 10:00 p.m. and 10:00 a.m.

Section 1178.30. Financial Records Subject to Audit.

To ensure compliance with this ordinance, businesses that derive less than 10% of gross revenues from sexually-oriented materials are required to maintain weekly, monthly, and annual financial records of gross revenue and revenue from sexually-oriented materials. Such records may be subject to city audits.

Section 1178.35. Sign Restrictions.

In order to protect children from exposure to lurid signs and materials, to avoid the appearance that the windows are boarded up and that the property is deteriorating, and to preserve the value of property surrounding adult establishments, the following sign regulations apply to all adult establishments, in addition to the provisions of section 1140.40. To the extent that the following provisions are inconsistent with section 1140.40, the following provisions apply.

1. All signs must be flat wall signs. No signs may be freestanding, located on the roof, or contain any flashing lights, moving elements, or electronically or mechanically changing messages.
2. No merchandise, photos, or pictures of the products or entertainment on the premises may be displayed in, or immediately behind, window areas or any other area, if they can be viewed from outside the portion of the building in which the business is located.
3. Window areas must not be covered or made opaque in any way. No signs may be placed in a window. A sign no larger than one-square-foot must be placed on the main entrance door and must state, "adults only." The letters of

this message must be a minimum of 2 inches high. The only other information on this sign may be the hours of operation.

Section 1178.40. Liquor Restriction.

An adult establishment may not receive a liquor license under chapter 8 of this code.

Section 1178.45. Penalty.

A violation of this ordinance is a misdemeanor is subject to the penalties and provisions of chapters 5 and 12 of this code book.

SECTION 1179. TELECOMMUNICATIONS FACILITIES.

Section 1179.00. Purpose and Intent.

The purpose of this section is to establish predictable and balanced regulations for the siting and screening of wireless telecommunication equipment in order to accommodate the growth of wireless communication systems within the city while protecting the public against any adverse impacts on the city's aesthetic resources and the public welfare. This section recognizes that these wireless communication systems provide a valuable service to the public but that they are not a public utility. This section creates two categories of support structures for antennas. The first category consists of existing towers, water towers, and high-density residential and non-residential buildings, which the ordinance favors in order to minimize the number of freestanding towers needed to serve the community. The second category consists of all other support structures. The structures in this second category are all classified as freestanding telecommunication towers even if they are intended to replace existing light poles, utility poles, or similar structures. Freestanding towers are subject to increased standards to minimize their visual impact. One such standard is that towers in residential and commercial zoning districts must use state-of-the-art stealth design techniques to disguise the towers and soften their views. A telecommunications company that does not currently use stealth technology will need to develop this capability in order to place freestanding towers in this city. This ordinance does not accept the lowest common denominator and challenges the telecommunications companies to improve their technology. This ordinance allows minimal use of the public right-of-way for telecommunication antennas because that space should be reserved for public utilities and should be free of safety hazards. In addition, telecommunications facilities located in the right-of-way have the potential of being very visible to the traveling public. In order to locate in a public right-of-way, telecommunications companies must use improved technology to reduce the size and visibility of their facilities.

Section 1179.05. Administrative Approval.

1. The zoning administrator may grant administrative approval of the following telecommunication facilities:
 - (a) Telecommunications facilities located on electric transmission towers carrying over 200 kilo volts of electricity.
 - (b) Telecommunication facilities located on an antenna support structure that has already been approved by a conditional use permit as the location for a telecommunication facility, if the proposed facility does not involve a variance and is not accompanied by any other matter requiring consideration by the planning commission or city council.
 - (c) A one-time, 15-foot extension of an existing monopole telecommunications structure or one-time replacement of an existing monopole by a tower no greater than 15 feet taller than the existing monopole may be administratively approved if the proposed facility does not involve a variance and is not accompanied by any other matter requiring consideration by the planning commission and city council.
 - (d) Telecommunication facilities that are attached to an existing public utility structure within a right-of-way if:
 - i. the telecommunication facility does not extend above the top of the existing utility structure and the height of the existing utility structure is not increased to accommodate the telecommunication facility;
 - ii. any replacement utility structure does not exceed the height of the existing utility structure, including the telecommunication facility, and does not exceed the diameter of the existing utility structure by more than 50 percent;
 - iii. the telecommunication facility is no larger than three cubic feet and has no individual surface larger than four square feet;

- iv. the telecommunication facility extends outward from the utility structure by no more than two and one-half feet, except that an antenna no greater than one half inch in diameter may extend an additional six inches;
 - v. there is no ground mounted equipment;
 - vi. there is no interference with public safety communications or with the original use of the public utility structure; and
 - vii. the telecommunication facility must be removed and relocated when the road authority requires the removal and relocation of the public utility structure.
2. Administrative review and approval is subject to the following:
 - (a) Submittal of a complete site and building plan review application, accompanied by a registered land survey, complete site plan, building elevations, and antenna elevations and be signed by a registered architect, civil engineer, landscape architect or other appropriate design professional.
 - (b) Submittal of an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of the applicant's system. The applicant also must pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis; and
 - (c) Submittal of any necessary easements and easement exhibits, which have been prepared by an attorney knowledgeable in the area of real estate and which are subject to the city attorney's approval.
3. The zoning administrator will render a decision within 30 days and serve a copy of the decision upon the applicant by mail.
4. Any person aggrieved by a decision of the zoning administrator may appeal the decision to the planning commission and city council pursuant to section 1155.05.

Section 1179.10. Conditional Use.

Telecommunications facilities that are not eligible for administrative approval under section 1179.05 are permitted only as a conditional use in all zoning districts and must be in compliance with the provisions of this section. Conditional use telecommunications facilities are subject to the following standards:

1. Residential and Commercial Zoning Districts.
 - (a) Telecommunication facilities may be located only on public property in the R-2 residential district or the C-1 commercial districts subject the standards listed in subparagraphs (b) through (e) that follow.
 - (b) An applicant must provide an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of its system and that there is no existing antenna support structure that could adequately serve the area if antennas were placed on it. The applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis;
 - (c) A telecommunications facility must use as many stealth design techniques as reasonably possible. Economic considerations alone are not justification for failing to provide stealth design techniques. The city council may require that a different location be used if it would result in less public visibility, is available, and would meet the applicant's reasonable capacity and coverage needs; and
 - (d) A telecommunications tower and antennas, including attachments other than lightning rods, must not exceed 75 feet in height, measured from grade. The city council may increase this height to 90 feet if the increase in height would not have a significant impact on surrounding properties because of proximity, topography or screening by trees or buildings or would accommodate two or more users. The city council may waive this height standard for a tower used wholly or partially for essential public services, such as public safety.
 - (e) Telecommunications facilities may be located in public right-of-way of a major collector or arterial roadway as defined in the comprehensive plan, if they meet all of the following requirements:
 - i. The facility, including attachments other than lightning rods, may not exceed 60 feet in height measured from grade. The city council may waive this height standard for a tower used wholly or partially for essential public services, such as public safety;
 - ii. The facility must use as many stealth design techniques as reasonably possible. In particular, the antennas must be designed to minimize their size and appearance and may not project out from the side of the tower by more than two feet. Economic considerations alone are not justification for failing to provide stealth design techniques; and

- iii. The facility is not located adjacent to residentially zoned property unless the applicant demonstrates by providing a study prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of its system and no other location is feasible in a non-residential zone

Section 1179.15. General Standards.

The following standards apply to all telecommunications facilities.

1. *Vertical projection on antenna support structures.* Antennas mounted on an antenna support structure must not extend more than 15 feet above the height of the structure to which they are attached. Wall or facade-mounted antennas may not extend above the cornice line and must be constructed of a material or color that matches the exterior of the building.
2. *Horizontal projection.* Antennas must not project out from the side of the antenna support structure or tower by more than three feet, except if located in a commercial district.
3. *Setbacks.* A tower adjacent to a residential zoning district must meet the building setback that is established for the district where it is to be located, but only from the residential zone. This setback is not required for a tower in a right-of-way. The city may waive this setback requirement if necessary to implement stealth design techniques or if the residentially zoned property is public property. An accessory equipment cabinet that is greater than 120 square feet in size must be at least 10 feet from all property lines.
4. *Height.* The height of an antenna and tower must be the minimum necessary to meet the applicant's coverage and capacity needs, as verified by an electrical engineer or other appropriate professional. The city council may waive this requirement if additional height is appropriate for co-location opportunities.
5. *Exterior surfaces.* Towers and antennas must be galvanized steel and painted with a colored duplex coating applied in accordance with the American Galvanized Association standards consistent with the surrounding area in: blue, gray, brown, or silver.
6. *Ground-mounted equipment.* Ground-mounted accessory equipment or buildings must be architecturally designed to blend in with the surrounding environment, including the principal structure, or must be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the character of the surrounding neighborhood. No more than one accessory building is permitted for each tower. Additional space needed for the co-location of antennas must be added to an existing accessory building in a manner to make it appear as one building. Design of the building or equipment cabinet, screening and landscaping are subject to a site plan review.
7. *Construction.* Telecommunications facilities must be in compliance with all building and electrical code requirements. A tower must be designed and certified by an engineer to be structurally sound and in conformance with the building code. Structural design, mounting and installation of the telecommunications facilities must be in compliance with the manufacturer's specifications.
8. *Co-location opportunity.* If a new tower over 60 feet in height is to be constructed:
 - (a) The tower must be designed to accommodate both the applicant's antennas and antennas for at least one additional comparable user;
 - (b) The tower must be designed to accept antennas mounted at additional heights;
 - (c) The applicant, the tower owner, the landowner, and their successors must allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use, must submit a dispute over the potential terms and conditions to binding arbitration, and must sign the conditional use permit agreeing to these requirements. The city council may waive these co-location requirements if necessary to implement stealth design.
9. *Exterior maintenance.* The exterior finish of all towers shall be maintained by the owner / operator in a condition free of rust and surface coating deterioration.
10. *External messages.* No advertising message or identification sign larger than 2 square feet may be affixed to the telecommunications facilities.
11. *Lighting.* Telecommunications facilities may not be artificially illuminated unless required by law or by a governmental agency to protect the public's health and safety or unless necessary to facilitate service to ground-mounted equipment.
12. *Rights-of-way.* All telecommunication facilities in a public right-of-way must comply with the following:
 - (a) Telecommunications facilities located within a right-of-way must not negatively impact the public health, safety and welfare, interfere with the safety and convenience of ordinary travel over the right-of-way, or otherwise

negatively impact the right-of-way or its users. In determining compliance with this standard, the city may consider one or more of the following factors:

- i. The extent to which right-of-way space where the permit is sought is available, including the placement of the ground equipment;
 - ii. The potential demands for the particular space in the right-of-way;
 - iii. The availability of other locations in a right-of-way that would have less public impact;
 - iv. The extent to which the placement of the telecommunications facilities minimizes impacts on adjacent property; and
 - v. The applicability of ordinances or other regulations of the right-of-way that affect location of equipment in the right-of-way.
- (b) The facility, including attachments other than lighting rods, may not exceed 60 feet in height measured from grade in residential and commercial zones, or 75 feet in industrial zones. The city council may waive this height standard for a facility used wholly or partially for essential public services, such as public safety;
- (c) The support structure for the antennas cannot exceed the diameter of the closest public utility pole by more than 50 percent, but in no event may exceed 18 inches in diameter;
- (d) Antennas and other components must not project out from the side of the support structure by more than two feet in residential and commercial districts or three feet in industrial districts;
- (e) The support structure for the antennas must match the materials and color of the closest public utility structures in the right-of-way, if required by the director of planning;
- (f) Ground mounted equipment will be allowed only if:
- i. the equipment will not disrupt traffic or pedestrian circulation;
 - ii. the equipment will not create a safety hazard;
 - iii. the location of the equipment minimizes impacts on adjacent property; and
 - iv. The equipment will not adversely impact the health, safety, or welfare of the community;
- (g) Ground mounted equipment must be:
- i. set back a minimum of 10 feet from the existing or planned edge of the pavement;
 - ii. separated from a sidewalk or trail by a minimum of 3 feet;
 - iii. set back a minimum of 50 feet from the nearest intersection right-of-way line;
 - iv. set back a minimum of 50 feet from the nearest principal residential structure;
 - v. separated from the nearest ground mounted telecommunication facilities in a right-of-way by at least 330 feet;
 - vi. no larger than 3 feet in height above grade and 27 cubic feet in size in residential districts;
 - vii. no larger than 5 feet in height above grade and 81 cubic feet in size in non-residential districts; and
 - viii. screened by vegetative or other screening compatible with the surrounding area if deemed necessary by the director of planning;
- (h) The antennas cannot interfere with public safety communications;
- (i) The telecommunication facility must be removed and relocated when the road authority requires the removal and relocation of public utility structures; and
- (j) Telecommunications facilities within a right-of-way must receive a right-of-way permit from the city engineer.
13. *On-site employees.* There must be no employees on the site on a permanent basis. Occasional or temporary repair and service activities are allowed.
14. *Landowner authorization.* When applicable, the applicant must provide written authorization from the property owner. The property owner must sign the conditional use permit agreeing to the permit conditions, agreeing to remove the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city's right to assess removal costs under paragraph 15 below.
15. *Removal.* Obsolete or unused telecommunications facilities and all related equipment must be removed within 1 year after cessation of operation at the site, unless an exemption is granted by the city council. Telecommunications facilities and related equipment that have become hazardous must be removed or made not hazardous within 30 days after written notice to the current owner and to any separate landowner, unless an exemption is granted by the city council. Notice may be made to the address listed in the application, unless another one has subsequently been provided, and to the taxpayer of the property listed in the Hennepin county tax records. Telecommunications facilities and all related equipment that are not removed within this time limit are declared to be public nuisances and may be removed by the city. The city may assess its costs of removal against the property.
16. *Historic Places.* No telecommunication tower may be located within 400 feet of the boundary of any property that contains a facility or structure listed on the national register of historic places. Antennas may be located in this restricted area only if they are hidden from public view.

Section 1179.20. Definitions.

See section 1102 for definitions.

SECTION 1180. VIOLATIONS AND PENALTIES.**Section 1180.00. Violations and Penalties.**

Any person, firm, or corporation who shall violate any of the provisions hereof or who shall fail to comply with any of the provisions hereof or who shall make any false statement in any document required to be submitted under the provisions hereof shall be guilty of a misdemeanor and subject to a civil fine set forth in chapter 5 and the process outlined in chapter 12.

Section 1180.05. Enforcement.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this ordinance, the zoning administrator, in addition to other remedies, may institute any proper action or proceedings in the name of the city. They shall hereby have the powers of a police officer to prevent such unlawful erection, construction, reconstruction, alteration, repair conversion, maintenance, or use, to restrain, correct, or abate such violations to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business, or use in or about said premises.

Section 1180.10. Zoning Administrator Enforcement Authority.

The zoning administrator shall have authority to make determinations that specific uses are prohibited or are or would be in violation of applicable code. In the case of home occupations, the zoning administrator may make determinations that a specific home occupation adversely impacts or changes the character of a residential area and is therefore barred by code. The zoning administrator may issue and serve written demands that uses in violation of code cease and may issue civil citations as provided under chapter 12 for zoning code and underlying municipal code violations. (THIS SECTION ADDED MAY 2013, ORD. 216)