

ZONING

Chapter 129

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*State law reference—Zoning generally, Minn. Stats. § 462.357.

ARTICLE I. IN GENERAL

Sec. 129-1. Intent and purpose.

This chapter is adopted for the purpose of:

- (1) Protecting the public health, safety, morals, comfort, convenience and general welfare.
- (2) Promoting orderly development of the residential, commercial, industrial, recreational, and public areas.
- (3) Conserving the natural and scenic beauty and attractiveness of the city.
- (4) Conserving and developing natural resources.
- (5) Providing for the compatibility of different land uses and the most appropriate use of land throughout the city.

(Code 1987, § 350.205; Ord. No. 61-1993, § 350.205, 2-23-1994)

Sec. 129-2. Definitions.

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

Accessory building means and shall be considered to be an integral part of the principal structure unless it is five feet or more from the principal structure or use and providing that the structure exceeds 120 square feet. The term "accessory shed," as defined in this section, shall not be classified as an accessory building.

Accessory outdoor retail uses means exterior retail sales that shall be enclosed by walls, fencing or other suitable material. Such uses shall be an accessory to the principal retail structure and shall not exceed 20 percent of the floor area of the principal structure.

Accessory shed means a one-story detached accessory structure, used as a tool and storage shed, playhouse, and similar use, provided the floor area does not exceed 120 square feet.

Alley means a public right-of-way which affords a secondary means of access to abutting property. The term "alley" does not include fire lanes.

Automobile repair, major, means the general repair, rebuilding, or reconditioning of engines, motor vehicles or trailer, including bodywork, framework, and major painting service.

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

Basement means a portion of a building located partly underground but having half or more of its floor-to-ceiling height below the average grade of the adjoining ground.

Blight means a deteriorated condition, something that impairs or destroys.

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

- (1) Part or all of the feature is located in a shoreland area;
- (2) The slope rises at least 25 feet above the ordinary high-water level of the water body;
- (3) The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high-water level averages 30 percent or greater; and
- (4) The slope must drain toward the water body.

An area with an average slope of less than 18 percent over a distance of 50 feet or more shall not be considered part of a bluff.

Bluff impact zone means an area including a bluff and land located within 20 feet from the top of the bluff.

Bluff line means a line along the top of a slope connecting the points at which the slope becomes less than 12 percent. This applies to those slopes within the land use districts which are beyond the setback provisions from the ordinary high-water mark.

Brewery means a facility that produces for sale beer, ale, malt liquor, or other beverages made from malt by fermentation and containing not less than one-half of one percent alcohol by volume.

Brewpub means a brewery that operates a restaurant on the same premises as the brewery, whose malt liquor production per calendar year may be limited by Minnesota Statutes.

Boardinghouse, roominghouse or lodginghouse means a building other than a motel or hotel where, for compensation and by prearrangement for definite periods, meals or lodgings are provided for three or more persons, but not to exceed 20 persons.

Building means any structure having a roof which may provide shelter or enclosure for persons, animals, chattel, or property of any kind.

Building height means the vertical distance to be measured from the average grade of a building line to the top, to the cornice of a flat roof, to the deck line of a mansard roof, to a point on the roof directly above the highest wall of a shed roof, to the uppermost point on a round or other arch type roof, to the mean distance of the highest gable on a pitched or hip roof.

Building line means a line parallel to the street right-of-way or the ordinary high-water level at any story level of a building and representing the minimum distance which all or any part of the building is set back from said right-of-way line or ordinary high-water level.

Building setback means the minimum horizontal distance between the building foundation wall and a lot line.

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

Camping trailer means a folding structure, mounted on wheels and designed for travel, recreation, and vacation uses, also commonly called a pop-up camper.

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

Carwash, automatic conveyor, means a carwash where the car is attached to a conveyor and proceeds through the line.

Carwash, automatic drive-through, means a carwash where the person drives the car through the wash and machines clean the car.

Carwash, coin-operated self-service, means a carwash where a person washes the car themselves after depositing a coin in a machine for the use of water.

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

Clearcutting means the removal of an entire stand of vegetation.

Clustering or *cluster housing* means the development of a pattern or technique whereby structures are arranged in closely related groups to make the most efficient use of the natural amenities of the land.

Cocktail room means an area for the on-sale consumption of premium, distilled spirits produced on the premises of a micro distillery and in common ownership to the producer of the distilled spirits.

Commercial recreation means recreational facilities such as bowling alleys, tennis courts, racetracks, etc., constructed and operated for profit, by private enterprise.

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

Commissioner means the commissioner of the department of natural resources.

Common residential appurtenances means play apparatus such as swing sets and slides, sandboxes, picnic tables, barbecue stands, and similar equipment or structures but not including tree houses, swimming pools, play houses exceeding 25 square feet of floor area, or sheds utilized for storage of equipment. For the purpose of this subsection and other subsections or chapters contained in the City Code, a Common residential appurtenance(s) may also be referred to as "recreational equipment".

Community residential facility means a state licensed group home or foster home serving mentally retarded or physically handicapped persons.

Comprehensive plan or policies means a compilation of goals, policy statements, standards, programs, and maps for guiding the physical, social, and economic development, both public and private, of the city and its environs, as defined in the Metropolitan Land Planning Act and includes any unit or part of such plan separately adopted and any amendment to such plan or parts thereof.

Conditional use means a use under this Code requiring the approval and issuance of a conditional use permit.

Condominium means a form of individual ownership with a multifamily and/or commercial building with joint responsibility for maintenance and repairs. In a condominium, each apartment, townhouse or business unit is owned outright by its occupant, and each occupant owns a share of the land and other common property of the building.

Consignment shops means small scale retail shops selling goods on consignment. Goods shall be limited to crafts, clothing, soft goods, accessories, and/or similar related goods.

Cooperative means a multiunit development operated for and owned by its occupants. Individual occupants do not own their specific housing unit outright as in a condominium, but they own shares in the enterprise.

County board means the county board of commissioners.

Curb level means the grade elevation established by the governing body of the curb in front of the center of the building. Where no curb level has been established, the engineering staff shall determine a curb level or its equivalent for the purpose of this chapter.

Day care facility, adult (adult day care, adult day services, and family adult day services) mean a program operating less than 24 hours per day that provides functionally impaired adults with an individualized and coordinated set of services including health services, social services, and nutritional services that are directed at maintaining or improving the participants' capabilities for self-care. The term "adult day care," "adult day services," and "family adult day services" do not include programs where adults gather or congregate primarily for purposes of socialization, education, supervision, caregiver respite, religious expression, exercise, or nutritious meals.

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Day care facility, child, means a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. The term "child day care facility" includes commercial and home based day care.

Deck means a platform supported by an open system of posts, beams and other structural elements.

Drive-in means any use where products and/or services are provided to the customer under conditions where the customer does not have to leave the car or where fast service to the automobile occupants is a service offered regardless of whether service is also provided with a building.

Dwelling, attached, means a dwelling that is joined to another dwelling at one or more sides by a party wall.

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

Dwelling, multiple-family, means a building designed exclusively for or occupied exclusively by three or more families living independently of each other.

Dwelling, single-family, means a building designed exclusively for and occupied exclusively by one family.

Dwelling, townhouse, means a building designed exclusively for or occupied exclusively for between three and six families living independently of each other. Each dwelling unit is attached horizontally in a linear arrangement with private front and rear entrances. Each dwelling unit must be separated from other dwelling units by a firewall extending from foundation through the roof with no openings. Each dwelling unit shall have a totally exposed front and rear wall to be used for entry, light, and ventilation.

Dwelling, twin home, means a building designed exclusively for or occupied exclusively by no more than two families living independently of each other with each unit located on a separate, single parcel of record, with the party wall separating the units acting as a dividing lot line.

Dwelling, two-family, means a building designed exclusively for or occupied exclusively by no more than two families living independently of each other with both units located on a single parcel of record.

Dwelling unit means a residential building or portion thereof intended for occupancy by a single family but not including hotels, motels, boardinghouses or roominghouses or tourist homes.

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

Essential service building means any building or similar structure designed and constructed to house or serve an essential service or public utility and necessary for the operation or maintenance thereof. The term "essential service building" includes, without limitation, publicly owned water well houses, sewer lift stations, and water towers.

Essential services means overhead or underground electric, gas, communication, steam or water transmission or distribution systems and structures, by public utilities or governmental departments or commissions or as are required for protection of the public health, safety, or general welfare, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police callboxes, and accessories in connection therewith, but not including buildings.

Expansion or enlargement of a nonconforming structure means any increase in a dimension, size, area, volume or height.

Expansion, enlargement or intensification of a nonconforming use means any increase in the area of a nonconforming use including any placement of such a use in a structure or part thereof where the use or the structure did not exist before, any improvement that would allow the land to be more intensely developed for the nonconforming use, any move of a nonconforming use to a new location on the property, or any increase in intensity of the nonconforming use based on a review of the original nature, function or purpose of the nonconforming use, the hours of operation, traffic, parking, noise, exterior

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storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the City.

Expansion permit means a permit that is granted by the City for the expansion or enlargement of a nonconforming structure in accordance with Sections 129-35 and 129-40.

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

Exterior storage or outdoor storage means the keeping of materials or equipment on a parcel of land, outside of a principal dwelling or accessory structure, for the purpose of transporting, using, or employing such materials or equipment at a future date at another location, either on- or off-site. The keeping of motorized vehicles or watercraft for more than 24 hours, other equipment that is not capable of self-powered movement including, but not limited to recreational vehicles, watercraft trailers, ice shelters, or other similar items, or materials covered by a tarp or other similar screening devices, shall be included in this definition.

Family means one or two persons or parents, with their direct lineal descendants and adopted or legally cared for children (and including the domestic employees thereof) together with not more than two persons not so related, living together in the whole or part of a dwelling comprising a single housekeeping unit. Every additional group of four or less persons living in such housekeeping unit shall be considered a separate family for the purpose of this chapter.

Fence means any partition structure, wall or gate erected as a dividing marker, barrier or enclosure and located along the boundary, or within the required yard.

Fire lane means a portion of a platted or dedicated public right-of-way extending to Lake Minnetonka, Dutch Lake or Lake Langdon from an intersecting platted or dedicated public right-of-way.

Fitness/Health Studio means a business under 10,000 square feet in size with equipment, facilities, and classes for exercising and improving physical fitness and health.

Floor area means the sum of the gross horizontal areas of the several floors of the building or portion thereof devoted to a particular use, including accessory storage areas located within selling or working space and including any basement floor area devoted to retailing activities, to the production or processing of goods, or to business or professional offices. However, the term "floor area" shall not include the basement floor area other than area devoted to retailing activities, the production or processing of goods, or to business or professional offices.

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

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

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

Frontage means that boundary of a lot which abuts an existing or dedicated public street.

Gardening and Horticulture Uses means the keeping of a garden for the cultivation, propagation, and processing of plants, flowers, vegetables, herbs, and fruits for household use only. The keeping of any of the various species of farm animals or farm poultry, such as, but not limited to, horses, cattle, mules, donkeys, goats, sheep, llamas, alpacas, potbellied pigs, pigs, bees, chickens, ducks, geese, turkeys, peacocks, pigeons, swans, and doves is not a gardening or horticulture use. See Chapter 14.

Garage, private, means an accessory building or accessory portion of the principal building which is intended for and used to store the private passenger vehicles of the families resident upon the premises.

Governing body means the City Council.

Group home, residential, means a building or structure where persons reside for purposes of rehabilitation, treatment, or special care, and which is not a community residential facility as defined

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herein. Such persons may be orphaned, suffer chemical or emotional impairment, or suffer social maladjustment or dependency.

Highway means any public thoroughfare or vehicular right-of-way with a federal or state numerical route designations; any public thoroughfare or vehicular right-of-way with a county numerical route designation.

Home occupations means home occupations which shall be defined to mean any occupation or profession of a service character which is clearly secondary to the main use of the structure as a single-family private dwelling and does not change the character thereof. Any activity resulting in noise, fumes, traffic, light or odor to such an extent that it is noticeable that the property is being used for nonresidential purposes shall not constitute a home occupation. The use shall be confined to one room within the principal structure; shall be engaged in only by persons residing in the dwelling; and shall not have special parking, lighting, advertising, or other facilities which would indicate its use for purposes other than as a single-family private dwelling.

Hotel means a building that provides a common entrance, lobby, halls and stairway and in which 20 or more people are, for compensation lodged with or without meals.

Ice shelter means a fish house, ice house, dark house, or other similar portable structure, used on the ice of state waters, designed to provide shelter while taking fish by angling or spearing, constructed with any variety of materials, with or without framing or running gear.

Impervious cover means any surface impervious or resistant to the free flow of water or surface moisture. The term "impervious cover" shall include, but not be limited to, all driveways and parking areas whether paved or not, tennis courts, sidewalks, patios and swimming pools. Open decks (one-quarter-inch minimum opening between boards) shall not be counted in impervious cover calculations.

Improved public street means a public right-of-way or private right-of-way approved pursuant to the requirements of the city, containing a bituminous or concrete surfaced roadway.

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

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

Junk or derelict means any cast-off, damaged, discarded, junked, obsolete, salvage, scrapped, unusable, worn-out, or wrecked object, thing, or material composed in whole or in part of asphalt, brick, carbon, cement, plastic, or other synthetic substance, fiber, glass, metal, paper, plaster, plaster of Paris, rubber, terra cotta, wool, cotton, cloth, canvas, organic matter, or other substance, regardless of perceived market value requiring reconditioning in order to be used for its original purpose. Junk vehicles, junk trailers, or junk watercraft, shall be included in this definition.

Kennel, animal, means any place where more than three of any single type of domestic animal, over six months of age, is owned, boarded, bred, or offered for sale, but not including livestock in relation to a farm.

Landscaping means planting such as trees, grass, and shrubs.

Local Government Buildings means the principal use of land or buildings involving the assembly or congregation of the general public in facilities that are owned and operated for local government purposes. Examples include but are not limited to city offices, public works, parks facilities, and public safety buildings. Local government buildings may also include other governmental uses, as well as facilities and space to accommodate semi-public, quasi-public, community-based uses and similar related organizations.

Lockbox means a structure accommodating the storage of boat and beach equipment, not exceeding 20 square feet in total floor area and four feet in height.

Lodgingroom means a room rented as sleeping and living quarters, but without cooking facilities. In a suite of rooms, without cooking facilities, each room that provides sleeping accommodations shall be counted as one lodgingroom.

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Lot means a parcel of land, abutting on a public street or having legal access to a public street, being a lot designated in a recorded plat or a division, or being a parcel of record of sufficient size to provide the yards required by this chapter.

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

Lot, lakeshore, means a lot abutting public waters or abutting public lands abutting public waters with the exception of designated parks.

Lot, substandard, means a lot of record that does not meet the minimum lot area, structure setbacks or other dimensional standards of this chapter.

Lot, through, means a lot which has a pair of opposite lines abutting two substantially parallel streets, and which is not a corner lot. On a through lot, both street lines shall be front lines for applying this chapter.

Lot area, minimum, means the area of a lot in a horizontal plane bounded by the lot lines, but not including any area below the ordinary high-water level as determined by the city or department of natural resources. (The ordinary high-water level for major lakes in the city: Lake Minnetonka = 929.4; Dutch Lake = 939.2; Lake Langdon = 932.1.)

Lot depth means the mean horizontal distance between the front lot line and the rear lot line of a lot.

Lot line means the property line bounding a lot except that where any portion of a lot extends into the public street right-of-way, the lot line shall be deemed to be the boundary of said public right-of-way for the purpose of applying this chapter. This exception does not apply to any additional public street right-of-way obtained following the initial establishment of the street.

Lot line, front, means that boundary of a lot which abuts an existing or dedicated public street. In the case of a corner lot it shall be the shortest dimension on a public street or as otherwise designated by the Community Development Director based on the practical front yard of the property as determined by such factors as the existing or proposed building configuration of the property and taking into consideration the characteristics of the surrounding properties. If the dimensions of a corner lot are equal, the front line shall be designated by the owner and filed with the city. For purpose of this chapter, a lot shall have only one front setback.

Lot line, rear, means that boundary of a lot that is opposite the front lot line. If the rear line is less than ten feet in length, or if the lot forms a point at the rear, the rear lot line shall be a line 20 feet in length within the lot, parallel to, and at the maximum distance from the front lot line.

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

Lot of record means part of a subdivision, the plat of which has been recorded in the office of the register of deeds or registrar of titles; or a parcel of land, the deed to which was recorded in the office of said register of deeds or registrar of titles, in accordance with subdivision regulations and zoning ordinances of the city in effect at the time of said conveyance.

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

Membrane structure means a structure usually consisting of an aluminum, steel or plastic frame which is covered with a plastic, fabric, canvas or similar nonpermanent material and is used to provide for the storage of vehicles, boats, recreational vehicles or other personal property. The term "membrane structure" shall also apply to structures commonly known as hoop houses, canopy-covered carports and tent garages and can be fully or partially covered but shall not apply to boat lifts and canopies which are placed in public waters.

Metes and bounds means a method of property description by means of their direction and distance from an easily identifiable point.

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Microdistillery means a facility that produces for sale premium, distilled spirits as defined by Minnesota Statutes 340A.101.

Motel means a building or group of detached, semidetached, or attached buildings containing guestrooms or dwellings, with garage or parking space conveniently located to each unit, and which is designed, used, or intended to be used primarily for the accommodation of automobile travelers.

Motor fuel station means a retail place of business engaged primarily in the sale of motor fuels, but also may be engaged in supplying goods and services generally associated with the operation and maintenance of motor vehicles. These may include sale of petroleum products, sale and servicing of tires, batteries, automotive accessories, and replacement of items, washing and lubrication services; and the performance of minor automotive maintenance and repair.

Motor fuel station, convenience store, means a store operated in conjunction with a motor fuel station for the purpose of offering for sale, goods not essential to the motoring public.

Motor home means a portable temporary dwelling to be used for travel, recreation, and vacation, constructed as an integral part of a self-propelled vehicle.

Motorized vehicle means every vehicle which is self-propelled including, but not limited to automobiles, pick-up trucks, vans, all-terrain vehicles (ATV), utility terrain vehicles (UTV), motorcycles, mopeds, scooters, off-highway vehicles (OHV), snowmobiles, golf cart, neighborhood electric vehicle, or other similar equipment. Motorized vehicle does not include an electric personal assistive mobility device, motor home, or vehicle moved solely by human power (such as a bicycle).

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

Nonconforming use means an activity using land, buildings and/or structures for a purpose that is not currently allowed as a use in the zoning district in which it is located. The term also includes the use of a property which is eligible for a conditional use permit, for which none has been granted.

Nonconforming structure means a nonconformity other than a nonconforming use that does not currently conform to an ordinance standard such as height, setback or size; and includes a structure which is permitted as the result of a variance.

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

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

Obstruction means any dam, wall, wharf, embankment, levee, dike pile, abutment, projection, excavation, channel rectification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood hazard area which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the same downstream to the damage of life or property.

Off-street loading space means a space accessible from a street, alley or driveway for the use of trucks or other vehicles while loading or unloading merchandise or materials. Such space shall be of size as to accommodate one vehicle of the type typically used in the particular business.

Open sales lot (exterior storage) means any land used or occupied for the purpose of buying and selling goods, materials, or merchandise and for the storing of same under the open sky prior to sale.

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

- (1) The Lake Minnetonka ordinary high-water level is 929.4 feet;
- (2) The Langdon Lake ordinary high-water level is 932.1 feet; and
- (3) The Dutch Lake ordinary high-water level is 939.2 feet.

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

Pedestrianway means a public or private right-of-way across or within a block, to be used by pedestrians.

Performance standard means criterion established to control noise, odor, toxic or noxious matter, vibration, fire or explosive hazards, or glare or heat generated by or inherent in the use of land or buildings.

Pick-up camper means a structure designed to be mounted on a truck chassis or bed, for use as a temporary dwelling for travel, recreation, and vacation. May also be commonly be referred to as a camper shell, truck cap, truck topper, or tonneau cover.

Practical Difficulties, as used in conjunction with a variance, means that:

- (i) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
- (ii) The plight of the landowner is due to circumstance unique to the property including unusual lot size or shape, topography or other circumstances not created by the landowner; and
- (iii) The variance, if granted, will not alter the essential character of the locality.

Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

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

Private schools means schools having a course of instruction approved by the state board of education for students enrolled in grades K-12 or any portion thereof; provided they do not include boarding or residential facilities.

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

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

Public land means land owned or operated by municipal, school district, county, state or other governmental units.

Public waters means waters as defined in Minn. Stats. § 103G.005, subd. 15, as amended. Lakes, ponds or flowage of less than ten acres shall not be considered public waters.

Recreation, public, means and includes all uses such as tennis courts, ball fields, picnic areas, and the like that are commonly provided for the public at parks, playgrounds, community centers, and other sites owned and operated by a unit of government for the purpose of providing recreation.

Recreational vehicle means a: camping trailer, motor home, pick-up camper, or travel trailer.

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Registered land survey means a survey map of registered land designed to simplify a complicated metes and bounds description, designating the same into a tract of a registered land survey number. See Minn. Stats. § 508.47.

Regulatory flood protection elevation means an elevation no lower than two feet above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from a change in the designation of a floodway. The regulatory flood protection elevation for each lake is as follows:

- (1) The Lake Minnetonka regulatory flood protection elevation is 933.0 feet;
- (2) The Dutch Lake regulatory flood protection elevation is 942.0 feet; and
- (3) The Lake Langdon regulatory flood protection elevation is 937.0 feet.

Restaurants.

- (1) *Class I traditional restaurant* means where food is served and consumed by customers while seated at a counter or table. A cafeteria is where food is selected by customers while going through a serving line and taken to a table for consumption.
- (2) *Class II fast food, convenience and drive-in* means restaurants where a majority of customers order and are served their food at a counter in packages prepared to leave the premises; or able to be taken to a table, counter, or automobile, or off the premises to be consumed; or a drive-in where most customers consume their food in an automobile regardless of how it is served.
- (3) *Class III liquor service restaurants* means restaurants where food, 3.2 malt liquor, wine and intoxicating liquors are served and consumed by customers while seated at a counter or table and/or restaurants which contain entertainment, either live or prerecorded.

Retail business means stores and shops selling retail goods directly to the general public and includes shops and stores purchasing such goods directly from the general public for resale.

Road means a public right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land, place or however otherwise designated. Ingress and egress easements shall not be considered roads.

Selective cutting means the removal of single scattered trees.

Semipublic use means the principal use of land or buildings involving the assembly or congregation of the general public in facilities that are owned either privately or by institutions. Such uses include churches, fraternal organizations, museums, etc.

Service shops means consumer oriented retail businesses offering repair and maintenance services for normal household goods and commodities. Service shops shall include, but not be limited to, tailors, shoe repair, and repair of small appliances, lawn and garden equipment, and tools.

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

Shoreland means land located within 1,000 feet of the ordinary high-water level of a lake, pond or flowage. The limits of shoreland may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the state department of natural resources.

Shoreland setback means the minimum horizontal distance between a structure and the ordinary high-water level.

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

Special mobile equipment means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to, ditch digging equipment, moving dollies, pump hoists, and other well-drilling equipment, street sweeping vehicles, and other machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck-tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, and earth-moving equipment.

Steep slope means lands having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.

Story means that portion of a building included between the surface of any floor and the surface of the floor next above, the space between the floor and the ceiling next above.

Street means a public right-of-way which affords primary means of access to abutting property, and shall also include avenues, highways, roads, or ways.

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

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

Street, major or thoroughfare, means a street which serves, or is designed to serve, heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

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

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

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

Structure means anything constructed or erected, the use of which requires more or less permanent location on the ground or attached to something having a permanent location on the ground, except the following:

- (1) On-grade stairways and steps not exceeding six feet in width and landings connected to such stairways or steps not exceeding six feet in width and six feet in length;
- (2) Boardwalks not exceeding six feet in width;
- (3) Driveways not exceeding 24 feet in width; and
- (4) Sidewalks not exceeding six feet in width.

Subdivision means the dividing of any parcel of land into two or more parcels.

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 conductance of business. Examples include marinas and restaurants with transient docking facilities.

Taproom means an area for the on-sale consumption of malt liquor produced by the brewer for consumption on the premises or on an adjacent property owned by the same property owner as the brewery. A taproom may also include sale for off-premises consumption of malt liquor produced at the brewery for off-premises consumption, packaged subject to Minnesota Statute 340A.285 or its successor.

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Toe of the bluff means the lower point of a 50-foot segment of a bluff with an average slope exceeding 18 percent.

Top of the bluff means the higher point of a 50-foot segment of a bluff with an average slope exceeding 18 percent.

Travel trailer means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreation, and vacation uses, permanently identified as a travel trailer by the manufacturer of the trailer.

Unique as used in conjunction with the granting of a variance means that the circumstances on which the request for a variance is based are not common or unusual in properties having the same zoning.

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

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

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

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

Utility trailer means any enclosed or unenclosed non-motorized vehicle other than a watercraft trailer, designed for carrying snowmobiles, motorcycles, all terrain vehicles, off-road vehicles, property or materials on its own structure and for being drawn by a motor vehicle. The term does not include a trailer drawn by a truck-tractor semitrailer combination or an auxiliary axle on a motor vehicle, which carries a portion of the weight of the motor vehicle for which it is attached.

Variance means a modification or variation of the provisions of this chapter where it is determined that by reason of special and unusual circumstances unique to the individual property under consideration, strict application of the chapter would cause an undue or unnecessary hardship, or that strict conformity with the provisions of this chapter would be unreasonable, and granting a variance would be in keeping *with the spirit and intent of the chapter*.

Watercraft means and includes boats, canoes, paddleboards, personal watercraft (PWC), and other similar recreational equipment designed to be used in or on a body of water.

Water-oriented accessory structure or facility means an at-grade deck or lockbox that reasonably needs to be located closer to public waters than the normal structure setback. Stairways, fences, docks and retaining walls are not considered water-oriented accessory structures or facilities.

Watercraft trailer means any non-motorized vehicle, designed for carrying watercraft on its own structure and for being drawn by a motorized vehicle.

Yard means a required open space on a lot which is unoccupied and unobstructed by a structure from its lowest level to the sky except as permitted in this chapter. The yard extends along the lot line at right angles to such lot line to a depth or width specified in the setback regulations for the zoning district in which such lot is located.

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

Yard, rear, means the portion of the yard on the same lot with the principal building located between the rear line of the building and the rear lot line and extending for the full width of the lot.

Yard, side, means the yard extending along the side lot line between the front and rear yards to a depth or width required by setback regulations for the zoning district in which such lot is located.

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Zoning amendment means a change authorized by the city either in the allowed use within a district or in the boundaries of a district.

Zoning district means an area or areas within the limits of the city for which the regulations and requirements governing use are uniform.

(Code 1987, § 345.310; Ord. No. 8, 9-21-1987; Ord. No. 41-1990, 3-26-1990; Ord. No. 61-1993, § 350.310, 2-23-1994; Ord. No. 69-1994, 8-29-1994; Ord. No. 09-2001, 9-23-2001; Ord. No. 14-2002, 7-7-2002; Ord. No. 12-2003, 12-7-2003; Ord. No. 02-2004, 6-6-2005; Ord. No. 15-2005, 9-4-2005; Ord. No. 06-2007, 5-8-2007; Ord. No. 07-2008, 5-13-2008; Ord. 11-2008, 5-25-08; Ord. No. 06-2010, 10-24-10; Ord. No. 10-2010, 12-5-2010; Ord. No. 03-2011, 10-23-2011; Ord. No. 04-2011, 11-6-2011; Ord. 01-2012, 3-25-2012; Ord. No. 01-2013, 2-10-13; Ord. No. 01-2014, 1-26-14; Ord. No. 11-2014, 12-14-2014; Ord. No. 1-2016, 2-7-2016; Ord. No. 10-2016, 9-4-2016; 01-2017, 2-5-2017)

Sec. 129-3. Rules.

(a) The language set forth in the text of this chapter shall be interpreted in accordance with the rules of construction in this section.

(b) All measured distances expressed in feet shall be to the nearest tenth of a foot. In the event of conflicting provisions, the more restrictive provision shall apply.

(Code 1987, § 350.305; Ord. No. 61-1993, § 350.305, 2-23-1994)

Sec. 129-4. Supremacy.

(a) When any condition imposed by any provision of this chapter on the use of land or buildings or on the bulk of buildings is either more restrictive or less restrictive than similar conditions imposed by any provision of any other county or state chapter, regulation, or statute, the more restrictive conditions shall prevail.

(b) This chapter is not intended to abrogate any easements, restrictions, or covenants relating to the use of land or imposed on lands within the county by private declaration or agreement, but where the provisions of this chapter are more restrictive than any such easement, restriction, or covenant, or the provision of any private agreement, the provisions of this chapter shall prevail.

(Code 1987, § 350.905; Ord. No. 61-1993, § 350.905, 2-23-1994)

Sec. 129-5. Application of this chapter.

(a) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, morals, and welfare.

(b) Where the conditions imposed by any provisions of this chapter are either more restrictive or less restrictive than comparable conditions imposed by any other law, chapter, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.

(c) Except as in this chapter specifically provided, no structure shall be erected, converted, enlarged, reconstructed, or altered, and no structure or land shall be used, for any purpose nor in any manner which is not in conformity with this chapter.

(Code 1987, § 350.405; Ord. No. 61-1993, § 350.405, 2-23-1994)

Sec. 129-6. Existing lots of record.

A lot of record in a residential district may be used for residential dwelling purposes provided:

- (1) The area thereof meets all setback and minimum lot area requirements of this chapter. In the shoreland management area, all single-family detached lots shall have a minimum lot area of 6,000 square feet in the R-1A and R-2 districts and 10,000 square feet in the R-1 district, while all two-family and twin homes in the R-2 district shall be located on lots having a minimum area of 14,000 square feet.
- (2) It has frontage on an improved public right-of-way.

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- (3) It was under separate ownership from abutting lands upon or prior to the effective date of the ordinance from which this chapter is derived.

(Code 1987, § 350.415; Ord. No. 61-1993, § 350.415, 2-23-1994; Ord. No. 19-2006, 10-29-2006; Ord. No. 03-2007, 2-13-2007)

Secs. 129-7—129-30. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 129-31. Administration of chapter.

The Community Development Director shall be responsible for the administration and enforcement of this chapter, and the implementation and enforcement of the comprehensive plan. The Community Development Director shall create and maintain such systems of records and files and establish such administrative procedures as are necessary to promote the efficient administration and enforcement of this chapter and the comprehensive plan. The Community Development Director may designate additional persons as may be necessary or convenient to administer and enforce this chapter. Any person aggrieved by any procedure or decision of the Community Development Director may appeal to the board of adjustments and appeals. In addition to the foregoing, the Community Development Director or individuals acting on that person's direction shall have the following responsibilities:

- (1) Issue occupancy, building and other permits, and make and maintain records thereof.
- (2) Conduct inspections of buildings and use of land to determine compliance with the terms of this chapter.
- (3) Maintain permanent and current records of this chapter, including, but not limited to:
 - a. All maps;
 - b. Amendments;
 - c. Conditional uses;
 - d. Variances;
 - e. Appeals; and
 - f. Applications therefore.
- (4) Receive, file, and forward all applications for appeals, variances, conditional uses or other matters to the designated official bodies.
- (5) Institute in the name of the city, any appropriate actions or proceedings against a violator as provided for.

(Code 1987, § 350.505; Ord. No. 61-1993, § 350.505, 2-23-1994)

Sec. 129-32. Appeals to the board of adjustment and appeals.

(a) The board of appeals and adjustments shall be the City Council. The Planning Commission shall hear and advise the City Council of its findings and determinations.

(b) The board of adjustment and appeals shall act upon all questions as they may arise in the administration of this chapter, including the interpretation of zoning maps, and it shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing the chapter. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of a town, municipality, county or state.

(c) The conditions for the issuance of a variance are as indicated in section 129-39. No use variances (a use different from that permitted in the district) shall be issued by the board of adjustment and appeals.

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(d) Hearings of the board of adjustment and appeals shall be held within such time and upon such notice to interested parties as is provided in its adopted rules for the transaction of its business. The board shall, within a reasonable time, make its order deciding the matter and shall serve a copy of such order upon the appellant or petitioner by mail. Any party may appear at the hearing in person or by agent or attorney.

(e) The board of adjustment and appeals may reverse or affirm wholly or partly or modify the order, requirement, decision, or determination as in its opinion ought to be made to the premises and to that end shall have all the powers of the officer from whom the appeal was taken and may issue or direct the issuance of a permit. The reasons for the board's decision shall be stated.

(Code 1987, § 350.510; Ord. No. 61-1993, § 350.510, 2-23-1994)

Sec. 129-33. Planning Commission.

The Planning Commission established pursuant to chapter 2, article VIII shall provide assistance to the City Council in the administration of this chapter and at the direction of the City Council shall review, hold public hearings, and make recommendations to the City Council on all applications for zoning amendments and conditional use permits using the criteria in sections 129-34 and 129-38.

(Code 1987, § 350.515; Ord. No. 61-1993, § 350.515, 2-23-1994)

Sec. 129-34. Zoning amendments.

(a) *Criteria.* The City Council may adopt amendments to the zoning chapter and zoning map in relation both to land uses within a particular district or to the location of the district lines. Such amendments shall not be issued indiscriminately, but shall only be used as a means to reflect changes in the goals and policies of the community as reflected in the plan or changes in conditions in the city.

(b) *Procedure.*

- (1) An amendment to the text of this chapter or zoning map may be initiated by the City Council, the Planning Commission or by application of a property owner. Any amendment not initiated by the Planning Commission shall be referred to the Planning Commission for review. Individuals wishing to initiate an amendment to the zoning chapter shall fill out a zoning amendment application form and submit it to the planning staff.
- (2) The property owner applying for a zoning amendment shall fill out and submit to the planning staff a rezoning application form. A site plan must be attached or drawn below at a scale large enough for clarity showing the following information:
 - a. The location and dimensions of:
 1. The lot;
 2. The building;
 3. The driveways; and
 4. Off-street parking.
 - b. The distance between:
 1. The building and front lot lines;
 2. The building and side lot lines;
 3. The building and rear lot lines;
 4. The principal building and accessory buildings;
 5. The principal building and principal buildings on adjacent lots.
 - c. The location of signs, easements, underground utilities, etc.

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- d. Any additional information as may reasonably be required by the planning staff and applicable sections of this zoning chapter.
- (3) The planning staff shall maintain records of amendments to the text and zoning map of the chapter. The City Council may not act until it has received the advice from the planner or 60 days has passed from referral.
- (4) A public hearing on all rezoning shall be held by the City Council. Notice of said hearing shall be published in the official newspaper designed by the City Council at least ten days prior to the public hearing. The City Clerk shall mail the same notice to the owners of property located within 350 feet of the outer boundaries of the land proposed to be rezoned. The notice shall include the description of the land and the proposed changes in zoning. The Planning Commission must take action on the application within sixty days following referral. The person making the application shall be notified of the action taken. The Planning Commission shall make its report to the City Council at its next regular meeting following its action recommending approval, disapproval or modified approval of the proposed amendment. The City Council shall act within the time frame specified in Minn. Stats. § 15.99.
- (5) No application of a property owner for an amendment to the text of the chapter or the zoning map shall be considered by the Planning Commission within the one-year period following a denial of such request, except the Planning Commission may permit a new application, if in the opinion of the Planning Commission, new evidence or a change of circumstances warrant it.

(Code 1987, § 350.520; Ord. No. 61-1993, § 350.520, 2-23-1994)

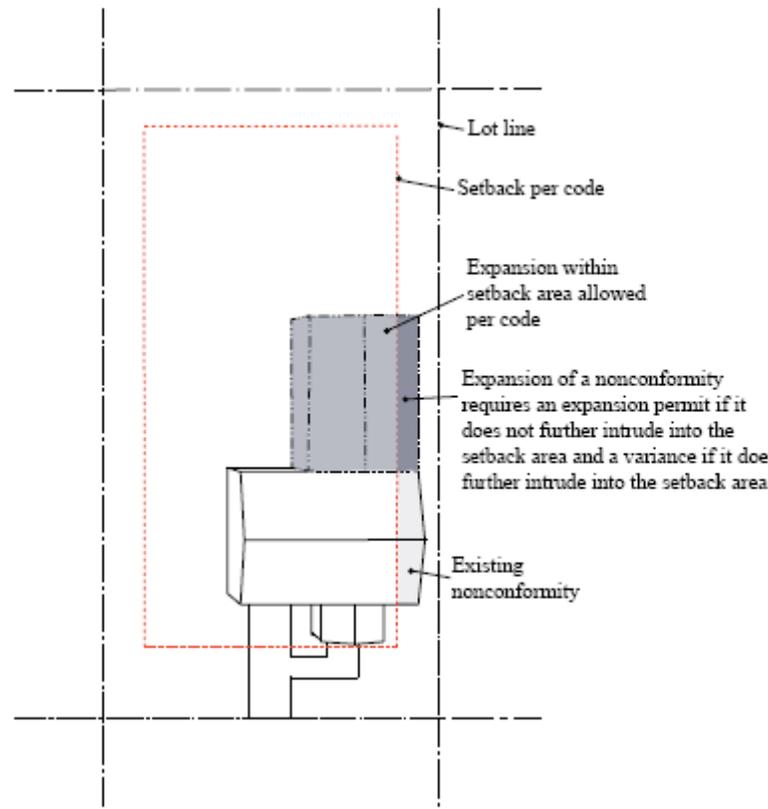
State law reference—Amendments generally, Minn. Stats. § 462.357, subd. 4; public hearings, Minn. Stats. § 462.357, subd. 3.

Sec. 129-35. Nonconformities.

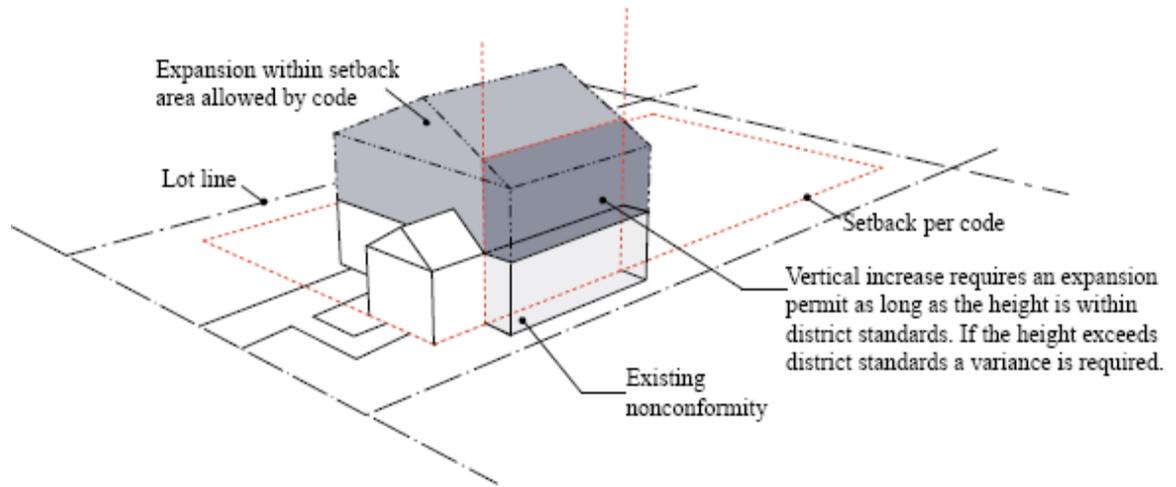
- (a) Nonconforming structures.
 - (1) Any structure lawfully existing upon the effective date of the ordinance from which this chapter is derived may be continued at the size and location existing upon such date, but may be expanded or intensified only in compliance with the provisions of this section.
 - (2) Nothing in this chapter shall prevent the repair, replacement, restoration, maintenance or improvement of a structure, unless such activities constitute an expansion or enlargement of the nonconformity.
 - (3) Whenever a nonconforming structure shall have been damaged by fire, flood, explosion, earthquake, war, riot, or act of God, it may be reconstructed and used as before if it be reconstructed not later than 12 months after such calamity, unless the damage to the building or structure is 50 percent or more of its fair market value as shown on the assessor's records at the time of damage, in which case it may not be reconstructed unless a building permit has been applied for within 180 days after the date of damage, and construction is completed not more than one year after the date of damage.
 - (4) Nonconforming principal and accessory structures may be expanded, enlarged, or modified with conforming structures provided:
 - a. the use of the parcel is conforming to district regulations
 - b. the proposed project meets the current zoning regulations
 - c. no other nonconformities are created.

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- (5) Nonconforming principal and accessory structures may be expanded or enlarged with nonconforming structures only if a variance or an expansion permit is granted.
- a. a variance is required if the expansion or enlargement will further intrude (as measured at the point of greatest intrusion) into the required setback beyond the distance of the existing structure or the proposed new height/stories is greater than allowed by City Code. For example: (i) if the building currently has a setback of 15 feet when 20 feet is required and the proposed expansion will have a setback of 14 feet a variance will be needed; or (ii) if the nonconforming structure will not further intrude into any currently required setback but will be expanded to a height greater than is permitted by City Code a variance will be needed.
 - b. an expansion permit is required if the expansion or enlargement will not further intrude (as measured at the point of greatest intrusion) into the required setback beyond the distance of the existing structure or the proposed new height/stories is within City Code requirements. For example: (i) if the building currently has a setback of 15 feet when 20 feet is required and the proposed expansion will have a setback of 15 feet an expansion permit will be needed; (2) a second floor area is expanded into the nonconforming setback over an existing nonconforming first floor.



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(b) Nonconforming uses.

- (1) Any use lawfully existing upon the effective date of the ordinance from which this chapter is derived may be continued at the size and in a manner of operation existing upon such date, but may be expanded or intensified only in compliance with the provisions of this section. This paragraph shall not be deemed to prevent the expansion, enlargement or intensification of a nonconforming use if the use is allowed as a conditional use and the landowner obtains a expansion permit allowing such expansion, enlargement or intensification
- (2) When any nonconforming use of any structure or land in any district has been changed to a conforming use, and has been so used for more than 12 months, it shall not thereafter revert to its prior nonconforming use.
- (3) Whenever a nonconforming use of a structure or land is discontinued for a period of more than 12 months, any future use of said structure or land shall be in conformity with the provisions of this chapter.
- (4) A nonconforming use of a structure or parcel of land may be changed to a similar nonconforming use or to a more restrictive nonconforming use (as determined by the City Council). Some nonconforming uses are permitted by conditional use permits. Once a structure or parcel of land has been placed in similar nonconforming use or in a more restrictive nonconforming use, and has been so used for a period of more than 12 months, it shall not return to the prior nonconforming use.
- (5) With the approval of the City Council, alterations may be made to a building containing nonconforming residential units when they will improve the livability thereof, provided they will not increase the number of dwelling units or result in the expansion, enlargement or intensification of the use.

(Code 1987, § 350.420; Ord. No. 61-1993, § 350.420, 2-23-1994; Ord. No. 103-1999, 8-9-1999; Ord. No. 02-2006, 2-5-2006; Ord. No. 06-2010, 10-24-2010)

State law reference—Nonconformities, Minn. Stats. § 462.357, subs. 1c, 1e.

Sec. 129-36. Change to be coordinated with adjacent districts.

Any zoning district change on land adjacent to or across a public right-of-way from an adjoining community shall be referred to the Planning Commission, and the adjacent community for review and comment prior to action by the City Council granting or denying the zoning district classification change.

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A period of at least 30 days shall be provided for receipt of comments; such comments shall be considered as advisory only.

(Code 1987, § 350.425; Ord. No. 61-1993, § 350.425, 2-23-1994)

Sec. 129-37. Land use plan and map to be amended with change.

Any change in zoning granted by the City Council shall automatically amend the land use plan and the land use map in accordance with said zoning change.

(Code 1987, § 350.430; Ord. No. 61-1993, § 350.430, 2-23-1994)

Sec. 129-38. Conditional use permits.

(a) *Criteria.* A conditional use permit is required for conditional uses. In granting a conditional use permit, the City Council shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety, morals and general welfare of occupants of surrounding lands. Among other things, the City Council may make the following findings where applicable:

- (1) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.
- (2) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
- (3) Adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
- (4) Adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use.
- (5) Adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.
- (6) The use, in the opinion of the City Council, is reasonably related to the overall needs of the city and to the existing land use.
- (7) The use is consistent with the purposes of this chapter and the purposes of the zoning district in which the applicant intends to locate the proposed use.
- (8) The use is not in conflict with the policy plan of the city.
- (9) The use will not cause traffic hazards or congestion.
- (10) Existing adjacent uses will not be adversely affected because of curtailment of customer trade brought about by the intrusion of noise, glare or general unsightliness.
- (11) The developer shall submit a time schedule for completion of the project.
- (12) The developer shall provide proof of ownership of the property to the zoning officer.
- (13) All property taxes, special assessments, municipal utility fees, including, but not limited to, water and sewer bills, and penalties and interest thereon have been paid for the property for which the permit has been submitted.

(b) *Additional conditions.* In permitting a new conditional use or the alteration of an existing conditional use, the City Council may impose, in addition to those standards and requirements expressly specified by this chapter, additional conditions which the City Council considers necessary to protect the

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best interest of the surrounding area or the community as a whole. The conditions may include, but are not limited to, the following:

- (1) Increasing the required lot size or yard dimension.
- (2) Limiting the height, size or location of buildings.
- (3) Controlling the location and number of vehicle access points.
- (4) Increasing the street width.
- (5) Increasing the number of required off-street parking spaces.
- (6) Limiting the number, size, location or lighting of signs.
- (7) Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
- (8) Designating sites for open space. Any change involving structural alterations, enlargement, intensification of use, or similar change not specifically permitted by the conditional use permit issued shall require an amended conditional use permit and all procedures shall apply as if a new permit were being issued. The planning staff shall maintain a record of all conditional use permits issued including information on the use, location, and conditions imposed by the City Council; time limits, review dates, and such other information as may be appropriate.

(c) *Procedure.*

- (1) The person applying for a conditional use permit shall fill out and submit to the planning staff a conditional use application form. A site plan must be attached at a scale large enough for clarity showing the following information:
 - a. Location and dimensions of:
 1. Lot;
 2. Building;
 3. Driveways; and
 4. Off-street parking spaces.
 - b. Distance between:
 1. Building and front, side, and rear lot lines;
 2. Principal building and accessory buildings;
 3. Principal building and principal buildings on adjacent lots.
 - c. The location of signs, easements, underground utilities, etc.
 - d. Any additional information as may reasonably be required by the planning staff and applicable sections this chapter, including, but not limited to, the following:
 1. Site plan drawn at scale dimensions with setbacks noted.
 2. Location of all buildings, heights, and square footage.
 3. Curb cuts, driveways, parking spaces.
 4. Off-street loading areas.
 5. Drainage plan.
 6. Type of business, proposed number of employees by shift.
 7. Proposed floor plan with use indicated and building elevations.

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8. Sanitary sewer and water plan with estimated use per day.
 9. A lighting plan showing the lighting of parking area, walks, security lighting and driveway entrance lights.
 10. A landscape plan with a schedule of the plantings.
- (2) The planning staff shall refer the application to the Planning Commission for review.
 - (3) The City Council shall hold a public hearing on the proposal. Notice of the public hearing shall be published in the official newspaper designated by the city at least ten days prior to the hearing. Notice of the hearing shall also be mailed to owners of property located within 350 feet of the outer boundaries of the land to which the conditional use will be applicable. The notice shall include a description of the land and the proposed conditional use.
 - (4) The report of the Planning Commission shall be placed on the agenda of the City Council at a regular meeting following referral from the Planning Commission.
 - (5) The City Council must take action on the application after receiving the report of the Planning Commission. If it grants the conditional use permit, the City Council may impose conditions (including time limits) it considers necessary to protect the public health, safety and welfare and such conditions may include a time limit for the use to exist or operate.
 - (6) An amended conditional use permit application shall be administered in a manner similar to that required for a new conditional use permit. Amended conditional use permits shall include requests for changes in conditions, and as otherwise described in this chapter.
 - (7) No application for a conditional use permit shall be resubmitted for a period of one year from the date of said order of denial.
 - (8) If a time limit or periodic review is included as a condition by which a conditional use permit is granted, the conditional use permit may be reviewed at a public hearing with notice of said hearing published at least ten days prior to the review; it shall be the responsibility of the planning staff to schedule such public hearings and the owner of land having a conditional use permit shall not be required to pay a fee for said review. A public hearing for annual review of a conditional use permit may be granted at the discretion of the City Council.
 - (9) In the event that the applicant violates any of the conditions set forth in this permit, the City Council shall have the authority to revoke the conditional use permit.
 - (10) Bond. For any required screening, landscaping or other improvements, the City Council may request that any applicant file with the clerk a bond or other financial guarantee in the amount of 1¼ times the engineer's estimate of the cost of the required improvement.
 - (11) After the approval of the conditional use permit, the applicant, owner or developer, before commencing any work or obtaining any building permits, may be required to make a minimum cash deposit in the amount established by the city. The Council may establish an amount above the minimum deposit at the time the permit is approved and this deposit shall be held in a special developer's escrow account and shall be credited to the said applicant, owner, or developer.

Engineering and legal expenses incurred by the city in plan approval, office and field checking, checking and setting grade and drainage requirements, general supervisions, staking, inspection, drafting as-built drawings and all other engineering services performed in the processing of said development, and all

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administrative and legal expenses in examining title to the property and in reviewing or preparing all documents for the land being developed shall be charged to the aforementioned account and shall be credited to the city for the payment of these expenses. If at any time it appears that a deficit will occur in any developer's escrow account as determined by the city, said officials shall recommend to the Council that an additional deposit is required and the Council may require that the applicant, owner or developer shall deposit additional funds in the developer's escrow account. The city engineer and City Attorney shall itemize all services and materials billed to any developer's escrow account. The applicant, owner or developer making the deposits in the developer's escrow account shall, upon request, be furnished a copy of said itemized charges and any balance remaining in the account upon completing the project shall be returned to the depositor by the clerk after all claims and charges thereto have been paid.

(Code 1987, § 350.525; Ord. No. 61-1993, § 350.525, 2-23-1994; Ord. No. 105-2000, 2-5-2000)

State law reference—Conditional use permits. Minn. Stats. §§ 62.357, subd. 3, 462.3595.

Sec. 129-39. Variances.

(a) *Criteria.* A variance to the provisions of this chapter may be granted, but is not mandated, to provide relief to the landowner in those zones where this chapter imposes practical difficulties to the property owner in the use of the owner's land. No use variances may be granted. A variance may be granted only in the event that the following circumstances exist:

- (1) The variance proposed meets the criteria for Practical Difficulties as defined in City Code Sub. 129-2.
- (2) Granting of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to owners of other lands, structures or buildings in the same district nor be materially detrimental to property within the same zone.
- (3) The variance requested is the minimum variance which would alleviate the practical difficulty.
- (4) A variance shall only be permitted when it is in harmony with the general purposes and intent of the zoning ordinance and when the terms of the variance are consistent with the comprehensive plan.

(b) *Procedure.*

- (1) The person applying for a variance shall fill out and submit to the planning staff a variance request form. A site plan with a certificate of survey must be attached at a scale large enough for clarity showing the following information:
 - a. Location and dimensions of:
 1. Lot;
 2. Building;
 3. Driveways; and
 4. Off-street parking spaces.
 - b. Distance between:
 1. Building and front, side, and rear lot lines;
 2. Principal building and accessory buildings;
 3. Principal building and principal buildings on adjacent lots.
 - c. The location of signs, easements, underground utilities, etc.
 - d. Any additional information as may be reasonably required by the planning staff and applicable sections of this zoning chapter.
- (2) The planning staff shall refer the application to the Planning Commission for

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review.

- (3) The Planning Commission must take action on the application in accordance with the timelines established by statute for land use applications. If it recommends for the variance, it may also recommend conditions it considers necessary to protect public health, safety and welfare.
- (4) Upon receiving the recommendation of the Planning Commission or within 60 days after referral of the application for a variance to the Planning Commission, if no recommendation has been transmitted, the Council may place the request on the agenda. The Council may grant variances only in situations where it determines that the applicant has satisfied the requirements of the City Code Sub. 129.39(a).
- (5) Whenever a variance has been considered and denied by the City Council, a similar application and proposal for a variance shall not be considered again by the Planning Commission or City Council for at least one (1) year from the date of its denial, unless a decision to reconsider such matter is made by the City Council.

(c) The Council may impose any reasonable condition in the granting of such variances in order to insure compliance with this chapter, or to protect adjacent property. Any condition imposed must be directly related to and must bear rough proportionality to the impact created by the variance.

(Ord. No. 06-2010, 10-24-10; Ord. No. 03-2011, 10-23-2011)

Sec. 129-40. Expansion Permit.

(a) *Classification of Expansion Permits.*

(1) Minor Expansion Permit. An expansion permit shall be considered a minor expansion permit when the request is for any of the following:

- i. A roof modification that increases the useable area within the same footprint without adding a full story to the structure;
- ii. A basement excavation within the existing structure footprint;
- iii. A one-story addition to an existing upper floor of a nonconforming structure that does not expand the footprint of the non-conforming structure and the one-story addition is less than 500 square feet in size; or
- iv. A one-story addition to the footprint of an existing, nonconforming structure that is less than 250 square feet in area.

(2) Major Expansion Permit. An expansion permit shall be considered a major expansion permit unless specifically defined as a minor expansion permit in clause (a)(1) of this section.

(b) *Criteria.* A major or minor expansion permit for a nonconforming structure may be issued, but is not mandated, to provide relief to the landowner where this chapter imposes practical difficulties to the property owner in the reasonable use of the land. In determining whether practical difficulties exist, the applicant must demonstrate that the following criteria exist:

- (1) the proposed expansion is a reasonable use of the property considering:
 - i. function and aesthetics of the expansion.
 - ii. absence of adverse off-site impacts such as from traffic, noise, odors and dust.
 - iii. adequacy of off-street parking.
- (2) exceptional or extraordinary circumstances justifying the expansion are unique to the property and result from lot size or shape, topography, or other circumstances over which the owners of the property since enactment of this chapter have had no control.
- (3) the exceptional or extraordinary circumstances do not result from the actions of the applicant.

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- (4) the expansion would not adversely affect or alter the essential character of the neighborhood.
- (5) the expansion requested is the minimum needed.

(c) *Procedure.*

- (1) The person applying for a major or minor expansion permit shall fill out and submit to the planning staff an expansion permit request form with fee as required by City Code Chapter 101. A site plan with a certificate of survey must be attached at a scale large enough for clarity showing the following information:

- i. Location and dimensions of:
 - 1. Lot;
 - 2. Building;
 - 3. Driveways; and
 - 4. Off-street parking spaces.
- ii. Distance between:
 - 1. Building and front, side, and rear lot lines;
 - 2. Principal building and accessory buildings;
 - 3. Principal building and principal buildings on adjacent lots.
- iii. The location of signs, easements, underground utilities, etc.
- iv. Any additional information as may be reasonably required by the planning staff and applicable sections of this zoning chapter.

(2) Minor Expansion Permit

- i. The planning staff will refer a minor expansion permit application to the Community Development Director for review. The Community Development Director shall grant or deny the application administratively and may impose administratively any reasonable conditions the Community Development Director deems necessary to protect the public health, safety and welfare and the essential character of the neighborhood, to insure compliance with this chapter, or to protect the adjacent property.
- ii. The Community Development Director may refer an application for a minor expansion permit to the Planning Commission and City Council, as if the application is for a major expansion permit, when the Community Development Director determines that the application requires additional review and consideration by the Planning Commission and City Council.
- iii. An applicant may appeal the determination of the Community Development Director in accordance with Section 129-32.

(3) Major Expansion Permit

- i. The planning staff shall refer a major expansion permit application to the Planning Commission for review. If it recommends approval of the major expansion permit, it may include conditions it considers necessary to protect the public health, safety and welfare and the essential character of the neighborhood.
- ii. Upon receiving the recommendation of the Planning Commission the Council may place the request on the agenda for formal review. If it grants a major expansion permit, the Council may impose any reasonable condition in order to insure compliance with this chapter, or to protect adjacent property. If no recommendation has been transmitted by the Planning Commission within 60 days of the date of the

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application, the Council, at its discretion, may place the request on the agenda for review.

- (d) *Term.* A major or minor expansion permit will automatically expire and be of no further force and effect if no building permit has been issued within one year of the date of approval of the major or minor expansion permit. The applicant may petition for an extension of time in which to have a building permit issued. Such extension shall be requested in writing and filed with the Building Official at least thirty (30) days before the expiration of the original major or minor expansion permit. It is the applicant's responsibility to monitor the expiration of the major or minor expansion permit. There shall be no charge for the filing of such petition. The request for extension shall state facts demonstrating a good faith attempt to complete the major or minor expansion as permitted in the expansion permit. Such petition shall be presented to the Planning Commission for a recommendation to the City Council for decision. Once the project is completed as approved, the major or minor expansion permit becomes perpetual subject to the limitations contained in Section 129-40 or in the major or minor expansion permit itself. The structure authorized by the major or minor expansion permit will be treated in all respects as a nonconforming structure.
- (e) *Denial and Reconsideration.* Whenever a major or minor expansion permit has been considered and denied by the Community Development Director, a similar application and proposal for a major or minor expansion permit shall not be considered again by the City for at least one (1) year from the date of its denial, unless a decision to reconsider such matter is made by the City Council.
- (f) *Specific project.* The major or minor expansion permit is only valid for the project for which it was granted. Construction of any project must be in substantial compliance with the building plans and specifications reviewed and approved by the City Council.
- (g) *Recording.* A certified copy of the major or minor expansion permit must be filed by the applicant with the Hennepin County recorder or the Hennepin County registrar of titles. The major or minor expansion permit must contain a legal description of the property affected.

(Code 1987, § 350.530; Ord. No. 61-1993, § 350.530, 2-23-1994; Ord. No. 06-2010, 10-24-2010; Ord. No. 1-2016, 2-7-2016)

State law reference—Variances, Minn. Stats. § 462.357, subd. 6(2).

Secs. 129-41—129-66. Reserved.

ARTICLE III. ZONING DISTRICTS ESTABLISHED; ZONING MAP

Sec. 129-67. Zoning districts.

For the purpose of this chapter, the city is hereby divided into the following use districts:

R-1	Single-family residential district
R-1A	Single-family residential district
R-2	Two-family residential district
R-3	Multiple-family residential district
B-1	Central business district
B-2	General business district
B-3	Neighborhood business district
PED-PUD	Pedestrian planned unit development district

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- DEST-PUD Destination planned unit development district
- L-PUD Linear planned unit development district
- I-1 Light industrial district
- CON Conservation district

(Code 1987, § 350.605; Ord. No. 61-1993, § 350.605, 2-23-1994)

Sec. 129-68. Zoning map.

The zoning map of the city is hereby adopted by reference. The boundaries of the districts are hereby established as shown on said map. A revised, updated copy of said map shall be kept on file in the office of the City Manager, or Manager's designate for reference as the official zoning map.

(Code 1987, § 350.610; Ord. No. 61-1993, § 350.610, 2-23-1994. Ord. No. 03-2010, 6/20/10; Ord. No. 14-2010, 1-2-2011;)

Sec. 129-69. District boundaries.

District boundary lines as indicated on the zoning map follow lot lines, the centerline of streets, the centerlines of streets projected, the centerline of railroad right-of-way, the center of watercourses or the corporate limits lines, as they exist, upon the effective date of the ordinance from which this chapter is derived.

(Code 1987, § 350.615; Ord. No. 61-1993, § 350.615, 2-23-1994)

Sec. 129-70. Vacated streets.

Whenever any street, alley, easement or public way is vacated by official action, the zoning district abutting the centerline of the said vacated area shall not be affected by such proceeding.

(Code 1987, § 350.755; Ord. No. 61-1993, § 350.755, 2-23-1994)

Secs. 129-71—129-98. Reserved.

ARTICLE IV. ZONING DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Sec. 129-99. Allowable uses (residential districts).

Within the residential districts, no building or land shall be used except for one or more of the following uses.

- P = Permitted Use
- C = Conditional Use
- A = Accessory Use
- (-) = Not Allowed

Use	R-1				R-1A				R-2				R-3			
	No n Sho re	G .D	R D	N .E	No n Sho re	G D.	R D.	N. E.	No n Sho re	G .D	R D	N .E	No n Sho re	G D	R D	N .E
Single Family Detached Residences (1 dwelling per parcel)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Two Family Residences	-	-	-	-	-	-	-	-	P	P	P	P	P	P	P	P

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Use	R-1				R-1A				R-2				R-3			
	No n Sho re	G .D	R .D	N .E	No n Sho re	G. D.	R. D.	N. E.	No n Sho re	G .D	R .D	N .E	No n Sho re	G .D	R .D	N .E
Twin Homes	-	-	-	-	-	-	-	-	C	C	C	C	C	C	C	C
Townhouses	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C
Lodging Room (1 per single family unit)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Multiple Dwelling Unit Structure (3-6 units)	-	-	-	-	-	-	-	-	-	-	-	-	P	P	P	P
Multiple Dwelling Unit Structure (Over 6 units)	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C
Garages	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Accessory Buildings (In accordance with Section 350:645)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Accessory Grocery Store (Less than 400 sq. ft. in apartment complex containing at least 100 units and serving the principal structure)	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C
Cemeteries	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Churches	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Commercial Recreation	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C
Community Residential Facilities (16 or less)	-	-	-	-	-	-	-	-	-	-	-	-	P	C	C	C
Community Residential Facilities (6 or less)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Essential Service Buildings (Essential service building means any building or similar structure designed and constructed to house or serve an essential service or public utility and necessary for the operation or maintenance thereof. The term	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C

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Use	R-1				R-1A				R-2				R-3			
	No n Sho re	G .D	R .D	N .E												
"essential service building" includes, without limitation, publicly owned water well houses, sewer lift stations, and water towers.)																
Fences	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Gardening and Horticulture uses (Household use only, no on-site sales)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Home Occupants	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Licensed Daycare and Preschool (12 or less)	P	P	P	P	P	P	P	P	P	P	P	P	-	-	-	-
Licensed Daycare and Preschool (13 or more)	C	C	C	-	C	C	C	-	C	C	C	-	-	-	-	-
Local Government Buildings	C	C	C	C	C	C	C	C	C	C	C	C	-	-	-	-
Nursery Schools	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	-
Nursing Homes	C	C	C	-	C	C	C	-	C	C	C	-	C	C	C	-
Offices (Engineering, Accounting, Legal, Religious or Philanthropic Organizations subject to Section 350)	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C
Off-Street Parking	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Docks (In accordance with the Lake Minnetonka conservation district or other applicable regulations)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Public and Private schools	C	C	C	-	C	C	C	-	C	C	C	-	C	C	C	-
Public Park and Recreation	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Recreational Equipment	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Swimming Pools and Hot Tubs (in accordance with Section	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

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	R-1				R-1A				R-2				R-3			
	No	G	R	N	No	G	R	N	No	G	R	N	No	G	R	N
Use	Sho	.D	D	E	Sh	D.	D.	E.	Sho	D	D	.E	Sh	D	D	E
350:645)	re	.	.	.	ore	.	.	.	re	.	.	.	ore	.	.	.

Note. Letter designations shall be interpreted as meaning:

P = Permitted use;

C = Conditional use;

A = Accessory use;

(-) = Not allowed.

(Code 1987, § 350.640; Ord. No. 61-1993, § 350.640, 2-23-1994)

Sec. 129-100. Single-family residential (R-1).

(a) *Purpose (R-1).* The purpose of this district is to allow the continuation of existing residential development and the infill of existing lots in residential areas of the city where services are available.

(b) *Lot area, height, lot width, and yard requirements (R-1).*

(1) *Building height.* No building hereafter erected shall exceed 2½ stories or 35 feet in height.

(2) *Lot area, lot width, and setback requirements (R-1).* The following minimum requirements shall be observed subject to additional requirements, exceptions, and modifications set forth in other sections of this chapter:

- a. Minimum lot area: 10,000 square feet.
- b. Minimum lot width: 60 feet.
- c. Front yard: 30 feet.
- d. Side yard: 10 feet.
- e. Rear yard: 15 feet.
- f. Minimum lot depth: 80 feet.

Minimum lot frontage on an improved public street shall be 60 feet, except that lots fronting on a cul-de-sac shall be 60 feet at the front building setback line.

(3) *Setback requirements for lots of record (R-1).* The following minimum setback requirements shall be observed for lots of record (R-1).

a. *Side yard requirements.* The required side yard setback shall be a minimum of 10 feet.

<i>Minimum Side Yard Setback</i>	
<i>Lot Width</i>	<i>On One Side Yard</i>
> 40— < 79 feet	6 feet
80—100 feet	8 feet
> 101 feet	10 feet

b. *Front yard.* Except as regulated in section 129-197(f), the front yard setback shall be based on the lot depth as follows:

<i>Minimum Front Yard Setback</i>

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<i>Lot Depth</i>	<i>Setback</i>
< 60 feet	20 feet
61—80 feet	24 feet
> 81 feet	30 feet

- (4) *Shoreland overlay regulations.* See shoreland overlay regulations contained in chapter 129, article VIII for properties in the shoreland district.

(Code 1987, § 350.620; Ord. No. 61-1993, § 350.620, 2-23-1994)

Sec. 129-101. Single-family residential (R-1A).

(a) *Purpose (R-1A).* The R-1A district shall function as an area in the city where historical platting practices of small lots call for a relaxation of development standard for remodeling and construction of infill residential.

(b) *Lot area, height, lot width, and yard requirements (R-1A).*

- (1) *Building height.* No building hereafter erected shall exceed 2½ stories or 35 feet in height.
- (2) *Lot area, lot width, and setback requirements (R-1A).* The following minimum requirements shall be observed subject to additional requirements, exceptions, and modifications set forth in other sections of this chapter:
- a. Minimum lot area: 6,000 square feet.
 - b. Minimum lot width: 40 feet.
 - c. Front yard: 20 feet.
 - d. Side yard: 10 feet.
 - e. Rear yard: 15 feet.
 - f. Minimum lot depth: 80 feet.

Minimum lot frontage on an improved public street shall be 40 feet, except that lots fronting on a cul-de-sac shall be 40 feet at the front building setback line.

- (3) *Setback requirements for lots of record (R-1A).* Side yard setbacks shall be six feet and six feet unless the structure or site does not contain a garage in which case, one side yard setback shall be ten feet to accommodate a driveway access.
- (4) *Shoreland overlay regulations.* See shoreland overlay regulations contained in chapter 129, article VIII for properties in the shoreland district.

(Code 1987, § 350.625; Ord. No. 61-1993, § 350.625, 2-23-1994)

Sec. 129-102. Two-family residential (R-2).

(a) *Purpose (R-2).* The R-2 district is intended to provide a district which will allow two-family residential dwellings and twin homes upon review.

(b) *Single-family detached dwellings (R-2).* The lot area, height, lot width, and yard requirements in R-2 districts are as follows:

- (1) *Building height.* No building hereafter erected shall exceed 2½ stories or 35 feet in height.
- (2) *Lot area, lot width, and setback requirements.* The following minimum requirements for single-family detached dwellings in R-2 districts shall be observed subject to additional requirements, exceptions, and modifications set forth in other sections of this chapter:

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- a. Minimum lot area: 6,000 square feet.
- b. Minimum lot width: 40 feet.
- c. Front yard: 20 feet.
- d. Side yard: 10 feet.
- e. Rear yard: 15 feet.
- f. Minimum lot depth: 80 feet.

Minimum lot frontage on an improved public street shall be 40 feet, except that lots fronting on a cul-de-sac shall be 40 feet at the front building setback line.

- (3) *Setback requirements for lots of record (R-2).* Side yard setbacks shall be six feet and six feet unless the structure or site does not contain a garage in which case, one side yard setback shall be ten feet to accommodate a driveway access.
- (4) *Shoreland overlay regulations.* See shoreland overlay regulations contained in chapter 129, article VIII for properties in the shoreland district.

(c) *Two-family dwellings and twin homes (R-2).* The lot area, height, lot width, and yard requirements in R-2 districts are as follows:

- (1) *Building height.* No building hereafter erected shall exceed 2½ stories or 35 feet in height.
- (2) *Lot area, lot width, and setback requirements.* The following minimum requirements for two-family dwellings and twin homes in R-2 districts shall be observed subject to additional requirements, exceptions, and modifications set forth in other sections of this chapter:
 - a. Minimum lot area: 14,000 square feet.
 - b. Minimum lot width: 80 feet.
 - c. Front yard: 20 feet.
 - d. Side yard: 10 feet.
 - e. Rear yard: 15 feet.

Minimum lot frontage on an improved public street shall be 80 feet, except that lots fronting on a cul-de-sac shall be 80 feet at the front building setback line.

- (3) *Setback requirements for lots of record (R-2).* Side yard setbacks shall be six feet unless the structures or sites do not contain garages in which case, side yard setbacks shall be ten feet to accommodate driveway accesses.

(d) *Twin home dwelling; conditional uses (R-2).* Two-family dwellings and twin homes may be divided into single parcels of record with the party wall acting as the dividing lot line by issuance of a conditional use permit and subject to the following conditions:

- (1) Each of the lots created in subdividing lands on which a two-family structure is located shall be equal in area or as near equal as is reasonably possible.
- (2) Each lot so created shall contain no less than one-half of the minimum land area requirement for a twin home dwelling, and shall be shown on a registered survey.
- (3) Except for setbacks along the common property line, all other setback and yard requirements shall be met.
- (4) Separate services shall be provided to each residential unit for sanitary sewer, water, electricity, natural gas, telephone and other utilities.
- (5) The two-family units, either existing or proposed, must be constructed in a side-by-side manner.

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- (6) To protect the safety and property of the owner and occupants of each individual unit, no existing two-family structure may be split into two separate ownerships unless and until the common party wall fire rating is brought up to new construction standards contained in the state building code. Party walls must provide sound transmission control ratings as per the state building code.
- (7) The owner of property to be subdivided shall execute and record at their expense a declaration of covenants, conditions and restrictions as approved by the City Attorney. Said document is necessary to protect the rights of the individual owners sharing a single structure and the public as it relates to but is not limited to such things as maintenance, repair and construction in case of damage to the original structure and sanitation. The declarations, covenants, conditions and restrictions shall provide protection to the property owners and the city on the following subjects:
 - a. Building and use restrictions.
 - b. Party walls.
 - c. Relationships among owners of adjoining living units and arbitration of disputes.

The intent of these regulations is to promote harmony between the neighbors sharing a single structure and to protect the city and neighborhood from improper maintenance and/or disputes such as the following examples: one living unit being painted one color and the other unit having a different color or one side of the structure having one roof color and type of roof and the other side being of a different type and color. The city is concerned that all such disputes be avoided and that the regulations contained herein are designed to establish the rights of the parties prior to their entering into joint ownership of one structure. The city shall be a beneficiary of these declarations, covenants, conditions and restrictions.

- (8) The authority to divide a single structure containing two-dwelling units shall be subject to chapter 121 relating to park dedication and other subdivision requirements and the City Council may impose other reasonable conditions.
- (9) *Shoreland overlay regulations.* See the shoreland overlay regulations contained in article VIII of this chapter for properties in the shoreland district.

(Code 1987, § 350.630; Ord. No. 61-1993, § 350.630, 2-23-1994)

Sec. 129-103. Multiple-family residential (R-3).

(a) *Purpose (R-3).* The R-3 multiple-family district is intended to provide a district which will allow multiple-family dwellings where proper relationships to other land uses and adequate transportation services exist.

(b) *Performance requirements—Community residential facilities (R-3).* The performance requirements for community residential facilities in R-3 districts are as follows:

- (1) Community residential facilities shall not be located in a two-family dwelling or twin home.
- (2) No more than 16 community residential facility residents may be housed in excess of the persons allowed by the definition of the term "family," except for structures designed or newly built specifically for such use may allow a greater number provided that all other conditions of the conditional use permit are met.
- (3) The minimum lot size is that prescribed for single-family detached dwellings.
- (4) A minimum distance of 300 feet will be required between lots used as community residential facilities.

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(c) *Same—Townhouses (R-3)*. The performance requirements for townhouses in R-3 districts are as follows:

- (1) Height limit is 2½ stories or 35 feet.
- (2) The following minimum requirements shall be observed:
 - a. Minimum lot area.
 1. Three-unit structure: 5,000 sq. ft./unit.
 2. Four-unit structure: 4,500 sq. ft./unit.
 3. Five-unit structure: 4,000 sq. ft./unit.
 4. Six-unit structure: 4,000 sq. ft./unit.
 - b. Minimum setbacks.
 1. Front: 30 feet.
 2. Side: 20 feet.
 3. Rear: 20 feet.
 - c. Off-street parking requirements. Two per unit, at least one of which shall be indoors. If the indoor parking is a part of the main structure and is set back at least 25 feet, and has an individual driveway for each unit, one off-street parking space may be credited for the portion of the driveway which shall be set back at least five feet from the public right-of-way. Any off-street parking located other than within the front yard area described above and serving more than one dwelling unit shall not be located closer than ten feet from the principal structure.
 - d. No more than one townhouse shall be located on any one platted lot. If more than one platted lot is used for said construction, the owner shall be required to replat said lots in accordance with chapter 121. The Council may waive said platting requirements upon recommendation of the Planning Commission and upon receipt of a signed statement from the owners combining said lots into one buildable parcel, said combination to be filed with the county auditor and taxed as one parcel.

Individual townhouse units may be conveyed or ownership transferred if copies of articles of incorporation, association bylaws, or other covenants are presented to the Council and said documents setting forth conditions for transfer are approved by the Council. Such approval shall not be given until the aforesaid documents shall be filed with the county recorder or the registrar of titles and all future owners of townhouses or units in the individual townhouse shall be bound by the conditions and covenants set forth in said documents. A certified copy of the documents filed with the county recorder or the registrar of titles shall be filed with the City Clerk.

(d) *Lot area, height, lot width, and yard requirements for other than multiple-family dwellings (R-3)*. All lot area, height, lot width, yard and lot coverage requirements for single-family and two-family dwellings shall be as follows:

- (1) Single-family shall comply with section 129-102(b).
- (2) Two-family shall comply with section 129-102(c).

(e) *Height, lot size, lot area, parking and open space and general requirements for multiple-family dwellings (R-3)*.

- (1) *Minimum requirements*. The following minimum requirements shall be observed as hereinafter set forth:
 - a. Height shall be limited to three stories or 35 feet.

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- b. Minimum lot width shall be 120 feet and lot area 22,000 square feet.
 - c. Front yard shall be not less than 30 feet, or 1½ times the height of the building, whichever is greater.
 - d. Side and rear yards shall be not less than 20 feet or the height of the building, whichever is greater.
 - e. A side or rear yard abutting a street shall be not less than 25 feet or the height of the building, whichever is greater.
 - f. All height measurements shall be from the lowest grade level.
 - g. No accessory building shall exceed the height of the principal structure.
 - h. Distance between multiple-dwelling buildings. No building shall be erected closer to any other building than a distance equal to the sum of their respective heights or 40 feet, whichever is greater.
- (2) *Lot area per dwelling unit.* Lot area per dwelling unit requirements are as follows:
- a. Efficiency unit and one bedroom: five times minimum floor area (2,400 square feet).
 - b. Two bedroom: six times minimum floor area (4,560 square feet).
 - c. Three bedroom or more: seven times minimum floor area plus 500 square feet for each bedroom over three.
 - d. Minimum lot area average per dwelling: 3,000 square feet.
- (3) *Lot usage.* Lot usage requirements are as follows:
- a. A maximum of 30 percent for main or principal structure.
 - b. A minimum of 30 percent of the lot area shall be green area and landscape area, this may include all setback areas.
 - c. Forty percent of the area may be used for parking, driveways, garages, refuse areas, storage areas and other permitted uses.
- (4) *Parking and sidewalk requirements.* Parking and sidewalk requirements for each dwelling unit:
- a. Two and one-half spaces per unit, one of which must be indoors and 1½ of which may be outdoor parking.
 - b. Indoor parking shall be at least nine feet by 18 feet as a minimum size.
 - c. Outdoor parking, shall be at least nine feet by 18 feet as a minimum size.
 - d. All driveways and parking aisles shall be at least 25 feet in width.
 - e. All interior driveways, parking areas, loading areas, etc., shall be of blacktop or concrete construction.
 - f. All parking spaces shall be located on the same parcel as the principal structure.
 - g. There shall be no outdoor parking space within 20 feet of any public right-of-way or closer than ten feet from any adjacent lot.
 - h. Interior curbs shall be constructed of concrete to separate driving and parking areas from landscaped areas. The curb design shall be normal six inches in height.
 - i. Concrete walkways shall be provided from parking areas, loading zones and recreation areas to the entrances of the principal structure and

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garages.

- (5) *General requirements for all structures.*
- a. *Building plan certification.* The building plan, including the site plan for a multiple dwelling shall be certified by an architect or engineer registered in the state, stating that he has personally viewed the site and has designed the building to fit the site as planned and to be harmonious with the neighboring buildings, topography and natural surroundings and in accordance with the purpose and objectives of this chapter. The architect or engineer shall further certify that he has been retained to provide full architectural service, and that he will be available to carry this project through to completion. No conditional use for a multiple dwelling shall be issued until the certificate is provided. On completion of the construction, the supervising architect or engineer shall file a written statement with the building official certifying that, to the best of his knowledge and belief, the construction, including site construction, has been performed in substantial compliance with the plans as approved by the city.
 - b. *Design.* The design shall make use of all land contained in the site. All of the site shall be related to the multiple use, either parking, circulation, recreation, landscaping, screening, building, storage, etc.
 - c. *Exterior vertical surface.* All exterior vertical surfaces shall have the same or equivalent facing material as that used in the front of the building.
 - d. *Drainage.* The drainage of stormwaters shall be provided for either on the site or in a public storm sewer.
 - e. *Garages.* Garages shall have the same construction and appearance as the main building.
 - f. *Landscaping.* A landscaping plan shall be required and approved by the City Council. All required yards shall either be open landscaped and green areas or be left in a natural state. If any yards are to be landscaped, they shall be landscaped attractively with lawn, trees, shrubs, etc. Any areas left in a natural state shall be properly maintained in a slightly and well-kept condition. Multiple-family residential yards adjoining any of the residential R-1, R-1A and R-2 districts shall be landscaped with buffer planting screens. Plans of such screens shall be submitted for approval as a part of the site plan and installed prior to issuance of a certificate of occupancy for any tract in the district.
 - g. *Open air drying of clothes.* Open air drying of clothes shall not be permitted on the grounds of the multiple-family dwellings except when the following conditions are met:
 1. The areas for open air drying of clothes are specifically drawn on the original site plans.
 2. A durable and dustless surface and adequate screening is provided for the entire area to be used for the drying of clothes.
 - h. *Incinerators and storage.* Any structure or equipment for the burning or storing of trash must comply with the regulations of the state pollution control agency. No open storage will be allowed on the site.
 - i. *Platting.* If more than one building is hereafter permitted to be erected upon one parcel of land then the buildings shall be so placed that any

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future subdivision or conveyance will comply with all setback and other requirements of this chapter.

- j. *Screening.* If screening is required by the City Council, it shall consist of a fence or wall that complies with this Code, but shall not extend within 15 feet of any street or ingress or egress. The screening shall be placed along property lines or in case of screening along a street, 15 feet from the street right-of-way with landscaping between the screening and the pavement. Planting of a type approved by the City Council shall also be required in addition to or in lieu of fencing.
- k. *Building design and construction.*
 - 1. *Efficiency dwelling units.* No more than 20 percent of the dwelling units in any one building shall be efficiency dwelling units.
 - 2. *Sound.* Party and corridor partitions and floor systems shall be of a type rated by a laboratory regularly engaged in sound testing as capable of accomplishing an average sound transmission loss (using a nine-frequency test) of not less than 50 decibels. Door systems between corridors and dwelling units shall be of solid core construction and include gaskets and closure plates. Room relationships, hallway designs, door and window placements and plumbing and ventilating installations shall be such that they assist in the control of sound transmission from unit to unit.
 - 3. *Projecting air conditioning and heating units.* Air conditioning or heating units projecting through exterior walls or windows shall be so located and designed that they neither unnecessarily generate nor transmit sound nor disrupt the architectural amenities of the building. Units projecting more than four inches beyond the exterior finish of a building wall shall be permitted only with the written consent of the building official, which shall be given only when building structural systems prevent compliance.
 - 4. *Elevators.* Any multiple residence building of more than three stories shall be equipped with at least one public elevator.
 - 5. *Determination of conformity.* Before any building permit is approved for a multiple dwelling the City Council upon recommendation of the building official shall determine whether the proposed use will conform to the performance standards. The developer or landowner shall supply data necessary to demonstrate such conformance. Such data may include description of equipment to be used, method of refuse disposal, type and location of exterior storage, etc. It may occasionally be necessary for a developer to employ a specialized consultant to demonstrate that a given use will not exceed the performance standards.

(f) *Offices in multiple-family district (R-3).* All offices in R-3 shall conform to the following performance standards:

- (1) There shall be at least 2,000 square feet of floor area of office space on the main floor. The maximum office space in any structure shall not exceed 6,000 square feet.

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- (2) The lot on which the structure is located shall contain at least 40,000 square feet.
- (3) One off-street parking space shall be provided for each 200 square feet of floor space. A detailed plan with parking spaces shown shall be made a part of the permit.
- (4) A landscaping plan shall be presented and incorporated as a part of the conditional use permit and shall provide for a minimum ten-foot setback from all parking areas to abutting property lines and shall provide that on the ten-foot setback, shrubbery will be planted and maintained by the occupant of the property. The landscaping plan shall show that at least 30 percent of the land area will be maintained in open space consisting of greenery and shrubbery and will not be used for building, parking, or accessory purposes.
- (5) All offices in this use district shall abide by the terms of the special permit to limit truck deliveries to the hours of 8:00 a.m. to 5:00 p.m. each day.
- (6) No outside storage shall be allowed on the premises without the specific consent of the Council as stated in the permit.
- (7) Illuminated flashing signs are prohibited. No sign shall be erected which has more than nine square feet of total area including both sides of the sign if a message is contained on both sides, and the sign shall not extend on to any public right-of-way. No sign shall exceed a height of five feet from the ground level where the sign is located.
- (8) Lighting of any parking area shall be accomplished in such a way as to have no direct source of light visible from a public right-of-way or from adjacent properties.
- (9) Prior to occupancy of the structure, approval shall be obtained from the Fire Chief or his designated inspector and from the building official, showing compliance with all city ordinances and codes.
- (10) The Council may require a traffic circulation plan or the location or relocation of driveways to the property to promote traffic circulation and the health, safety, and general welfare of the community.

(Code 1987, §§ 350.635, 350.780; Ord. No. 61-1993, §§ 350.635, 350.780, 2-23-1994; Ord. No. 13-2006, 7-9-2006)

Secs. 129-104—129-134. Reserved.

DIVISION 2. BUSINESS AND INDUSTRIAL DISTRICTS

Sec. 129-135. Allowable uses.

Within the business and industrial districts, no building or land shall be used except for one or more of the following uses.

- P = Permitted Use
- C = Conditional Use
- A = Accessory Use
- (-) = Not Allowed

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Use	B-1			B-2			B-3			I-1		
	Non Shore	G.D.	R.D.									
Accessory Outdoor Retail Uses	C	C	C	-	-	-	-	-	-	-	-	-
Accessory Buildings Other than Garages and Accessory Sheds	-	-	-	-	-	-	C	C	C	-	-	-
Accessory Sheds	A	A	A	A	A	A	A	A	A			
Adult Establishments	P	P	P	-	-	-	-	-	-	P	P	P
Animal Hospital	C	C	C	C	C	C	-	-	-	C	C	C
Assembly/Storage of: 1. Apparel 2. Food Products 3. Glass 4. Leather 5. Pottery 6. Lumber and Wood Products 7. Paper Products 8. Rock and Stone Products 9. Textiles 10. Tobacco Products 11. Fabrication Metal Products 12. Machinery and Appliances 13. Transportation Equipment 14. Liquid Bulk Storage	-	-	-	-	-	-	-	-	-	C	C	C
Auction Hall	C	C	C	-	-	-	-	-	-	C	C	C
Banks	P	P	P	P	P	P	-	-	-	P	P	P
Barber and Beauty Shops	P	P	P	P	P	P	-	-	-	P	P	P
Boat and Marine Sales	C	C	C	C	C	C	-	-	-	C	C	C
Brewery	C	C	C	C	C	C	-	-	-	C	C	C
Brewpub	C	C	C	C	C	C	-	-	-	C	C	C
Bus Terminal and Taxi Stands	C	C	C	C	C	C	-	-	-	C	C	C

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Use	B-1			B-2			B-3			I-1		
	Non Shore	G.D.	R.D.									
Car Wash	-	-	-	C	C	C	-	-	-	C	C	C
Churches	P	P	P	P	P	P	C	C	C	P	P	P
Cocktail Room	C	C	C	C	C	C	-	-	-	C	C	C
Commercial Parking Lots (Not affiliated with principal use)	C	C	C	C	C	C	-	-	-	C	C	C
Commercial Recreation	C	C	C	C	C	C	-	-	-	C	C	C
Community Residential Facilities (16 or less)	-	-	-	-	-	-	-	-	-	-	-	-
Community Residential Facilities (6 or less)	-	-	-	-	-	-	P	P	P	-	-	-
Consignment Shops	P	P	P	P	P	P	C	C	C	C	C	C
Construction and Special Trade Contractor	-	-	-	-	-	-	-	-	-	C	C	C
Cultural and Fraternal Institutions	C	C	C	C	C	C	-	-	-	C	C	C
Delicatessen and Dairy Store	P	P	P	P	P	P	C	C	C	C	C	C
Drive- In Retailing Establishments	C	C	C	C	C	C	-	-	-	C	C	C
Drug Store	P	P	P	P	P	P	C	C	C	C	C	C
Electrical Substations	-	-	-	-	-	-	-	-	-	C	C	C
Essential Service Buildings (Essential service building means any building or similar structure designed and constructed to house or serve an essential service or public utility and necessary for the operation or maintenance thereof. The term "essential	C	C	C	C	C	C	C	C	C	C	C	C

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Use	B-1			B-2			B-3			I-1		
	Non Shore	G.D.	R.D.									
service building" includes, without limitation, publicly owned water well houses, sewer lift stations, and water towers.)												
Grocery Store	P	P	P	P	P	P	C	C	C	C	C	C
Health Club, Fitness Center and Dance Studio	P	P	P	P	P	P	-	-	-	P	P	P
Home Occupations	-	-	-	-	-	-	P	P	P	-	-	-
Hospitals	C	C	C	C	C	C	-	-	-	C	C	C
Household Goods-Warehousing and Storage	-	-	-	-	-	-	-	-	-	P	P	P
Incidental Repair or Processing (Necessary to conduct a permitted principal use)	A	A	A	A	A	A	-	-	-	P	P	P
Institutions and Non-Profit Corporations (Religious, Health, Educational, or Charitable Nature)	P	P	P	P	P	P	C	C	C	C	C	C
Laundry and Dry Cleaning	P	P	P	P	P	P	-	-	-	P	P	P
Licensed Day Care Facilities	C	C	C	C	C	C	C	C	C	C	C	C
Limousine Service	C	C	C	C	C	C	-	-	-	C	C	C
Liquor Stores	P	P	P	C	C	C	-	-	-	C	C	C
Major Auto Repair, Tire, Battery Stores	-	-	-	C	C	C	-	-	-	C	C	C
Medical and Dental Clinics	P	P	P	-	P	P	-	-	-	P	P	P
Microdistillery	C	C	C	C	C	C	-	-	-	C	C	C
Motel and Motor Hotels	C	C	C	C	C	C	-	-	-	C	C	C

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Use	B-1			B-2			B-3			I-1		
	Non Shore	G.D.	R.D.									
Motel Fuel Station	C	C	C	C	C	C	-	-	-	C	C	C
Motor Fuel Station, Convenience Store	C	C	C	C	C	C	-	-	-	C	C	C
Multiple Dwelling Structure	C	C	C	C	C	C	C	C	C	-	-	-
Newspaper Printing or Published Shops	C	C	C	C	C	C	-	-	-	C	C	C
Offices	P	P	P	P	P	P	-	-	-	P	P	P
Open Sales Lots	-	-	-	C	C	C	-	-	-	C	C	C
Planned Industrial Area (Subject to Section 350:680)	-	-	-	-	-	-	-	-	-	C	C	C
Private Lodges and Clubs	P	P	P	P	P	P	-	-	-	P	P	P
Private Garages, Off-Street Parking	A	A	A	A	A	A	A	A	A	A	A	A
Public and Private Utility Uses	-	-	-	-	-	-	-	-	-	P	P	P
Public Buildings	P	P	P	P	P	P	P	P	P	P	P	P
Public Park and Recreation	P	P	P	P	P	P	P	P	P	P	P	P
Public and Private Schools	C	C	C	C	C	C	-	-	-	-	-	-
Refrigerated Warehousing	-	-	-	-	-	-	-	-	-	P	P	P
Research Laboratories	-	-	-	-	-	-	-	-	-	P	P	P
Restaurants (Class I)	P	P	P	P	P	P	C	C	C	C	C	C
Restaurants (Class II)	C	C	C	C	C	C	-	-	-	C	C	C
Restaurants (Class III)	C	C	C	C	C	C	-	-	-	C	C	C

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Use	B-1			B-2			B-3			I-1		
	Non Shore	G.D.	R.D.									
Retail Businesses	P	P	P	P	P	P	-	-	-	P	P	P
Retail and Mail Order Businesses	C	C	C	C	C	C	-	-	-	P	P	P
Service Shops	P	P	P	P	P	P	-	-	-	P	P	P
Single Family Detached Residences	-	-	-	-	-	-	P	P	P	-	-	-
Taproom	C	C	C	C	C	C	-	-	-	C	C	C
Television and Radio Stations	-	-	-	-	-	-	-	-	-	C	C	C
Temporary Construction Buildings	A	A	A	A	A	A	-	-	-	-	-	-
Theaters	P	P	P	P	P	P	-	-	-	P	P	P
Townhouses	-	-	-	-	-	-	C	C	C	-	-	-
Twin Homes	-	-	-	-	-	-	C	C	C	-	-	-
Two Family Dwellings	-	-	-	-	-	-	P	P	P	-	-	-
Warehousing and Wholesaling	-	-	-	-	-	-	-	-	-	P	P	P
Wholesale and Assembly Operations	C	C	C	C	C	C	-	-	-	C	C	C

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Note. Letter designations shall be interpreted as meaning:

P = Permitted use;

C = Conditional use;

A = Accessory use;

(-) = Not allowed.

(Code 1987, § 350.670; Ord. No. 61-1993, § 350.670, 2-23-1994; Ord. No. 06-2007, 5-8-2007; Ord. No. 10-2016, 9-4-2016)

Sec. 129-136. Central business district (B-1).

(a) *Purpose (B-1)*. This district is established to recognize the unique character of the central business district in terms of land use, height regulations, parking requirements and circulation.

(b) *Lot area, height, lot width and yard requirements (B-1)*. The lot area, height, lot width and yard requirements for the B-1 district is as follows:

- (1) The maximum building height is 35 feet. The maximum building height with conditional use permit is 45 feet.
- (2) The minimum lot size is 7,500 square feet.
- (3) Side and rear setback if abutting residential district is the same as the B-2 district.

(Code 1987, § 350.650; Ord. No. 61-1993, § 350.650, 2-23-1994)

Sec. 129-137. General business district (B-2).

(a) *Purpose (B-2)*. The general business district will allow local retail sales and services along with office space opportunities to serve local population demand and needs of nonhighway orientation. This district will encourage compact center for retail sales and services by grouping businesses in patterns of workable relationships, by limiting and controlling uses near residential areas and by excluding highway oriented and other business that tends to disrupt the shopping center or its circulation patterns.

(b) *Lot area, height, lot width and yard requirements (B-2)*. The lot area, height, lot width and yard requirements for the B-2 district are as follows:

- (1) No building shall exceed 35 feet in height.
- (2) The minimum lot area is 20,000 square feet.
- (3) The front, side, rear setbacks are 30 feet.
- (4) The minimum setback from side or rear lot line if abutting any residential district is 50 feet.
- (5) If the City Council allows more than one building on one lot, an open space equal to half the sum of the heights of the two buildings must be provided between the buildings.
- (6) Refer to section 129-316(b), pertaining to screening.
- (7) The minimum lot width is 80 feet.

(Code 1987, § 350.655; Ord. No. 61-1993, § 350.650, 2-23-1994)

Sec. 129-138. Neighborhood business district (B-3).

(a) *Purpose (B-3)*. The neighborhood commercial center shall function as a small service area which may supply local retail sales to nearby residents.

(b) *Lot area, height, lot width, and yard requirements (B-3)*. The lot area, height, lot width and yard requirements for the B-3 district are as follows:

- (1) No building shall exceed 35 feet in height.

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- (2) The minimum lot area is 10,000 square feet.
- (3) The front, side, rear setbacks are 30 feet.
- (4) The minimum setback from side or rear residential area is 50 feet.
- (5) Refer to section 129-316(b), pertaining to screening.
- (6) The minimum lot width is 60 feet.
- (7) All residential uses subject to lot area, height, and yard requirements for said type of housing as set forth in applicable sections.

(Code 1987, § 350.660; Ord. No. 61-1993, § 350.660, 2-23-1994)

Sec. 129-139. PED—PUD Pedestrian planned unit development district.

(a) *Purpose (PED—PUD).* The pedestrian planned unit development zoning district is intended to provide a range of retail and service commercial, office, institutional, public, open space, and attached high density residential uses that are organized and planned in a manner that is pedestrian friendly. The mixed use concept embodies traditional town planning concepts to create an urban environment allowing arrangements of mixed residential and commercial uses. A high degree of aesthetic detail is to be provided in building and site design to promote a village community atmosphere.

(b) *Permitted uses.* The permitted uses for the PED—PUD district are as follows:

- (1) Adult establishments.
- (2) Professional offices.
- (3) Retail sales and services.
- (4) Restaurants (Class I, II and III) excluding drive-through.
- (5) Drug store.
- (6) Public and institutional uses.
- (7) Public and private parks.
- (8) Multifamily dwelling units.
- (9) Townhouses.

(c) *Conditional uses.* The conditional uses for the PED—PUD district are as follows:

- (1) Banks with drive-through services.
- (2) Restaurants (classes I, II and III) including drive-through services. The provisions of section 129-326, pertaining to drive-in business development standards, shall not apply to drive-through services in the pedestrian district. Drive-through services in the pedestrian district shall comply with the performance standards provided in this subsection:
 - a. *Stacking spaces.* Unless approved by the City Council as part of the pedestrian planned development unit development project following review and favor recommendation of a traffic circulation plan by the city engineer, at least two stacking spaces must be provided per drive-through lane. Required width for vehicle drive aisles may not be allocated toward stacking spaces or stacking lanes.
 - b. *Stacking space dimensions.* Each stacking space must be a minimum of nine feet by 18 feet in size.
 - c. *Design.* Each drive-through lane must be clearly defined and designed so as not to conflict or interfere with pedestrian movement or other vehicular traffic using the site and not to conflict with access for drive aisles, fire lanes, or street ingress/egress.

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- d. *Screening.* All elements of the drive through service area, including, but not limited to, menu boards, order stations, teller windows, and vehicle lights from the stacking lanes, must be screened or appropriately landscaped from adjacent residential uses, if appropriate.
 - e. *Speakers.* In addition to meeting the requirements of the noise regulations included in this Code, if within 300 feet of residential properties, speakers must not produce noise that exceeds 75 dBA as measured five feet from the speaker.
 - f. *Hours of operation.* Restaurant drive-through windows must not be operated between the hours of 10:00 p.m. and 6:00 a.m. unless alternate hours are approved by the City Council as part of the conditional use permit.
 - g. *Liquor.* No liquor may be dispensed or sold at a drive-through window for class III restaurant.
 - h. *Conditional use permit criteria.* The provisions of section 129-38 are considered and satisfactorily met.
- (3) Brewery, Brewpub, Taproom, Microdistillery, or Cocktail Room. The provisions of section 129-329 shall apply.
- (d) *Accessory uses.*
- (1) Pavilions and shelter houses.
 - (2) Automatic teller machines.
 - (3) Bus shelters.
 - (4) Signs.
 - (5) Public telephone booths.
 - (6) Antennas.
 - (7) Private garages, off-street parking and loading spaces.
- (e) *Bulk requirements.*
- (1) Ordinary high-water setback (OHW). The minimum OHW setback is:
 - a. Commercial and mixed uses: 50 feet.
 - b. Residential uses: 50 feet.
 - (2) Height. The maximum height is:
 - a. Commercial and mixed uses: 50 feet.
 - b. Residential uses: 35 feet.
 - (3) Maximum impervious surface: 75 percent or as approved by PUD.
 - (4) All other bulk requirements as approved by PUD.
 - (5) There is not a minimum lot size requirement for PED—PUD district.
- (f) *Building facade.* The building facade requirements are as follows:
- (1) *Window area ratio.*
 - a. Front facade for first story: 45—65 percent window area in a virtually continuous pattern.
 - b. Front facade for second story and up: 25—45 percent window area.
 - c. Exposed side and rear facades: minimum 25 percent window area or use of landscaping or building fenestration.
 - (2) *Material standards.*

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- a. Wood lap siding as the predominant exterior material for street facing elevations.
- b. Bulkheads may use wood, brick, stone, or precast products.
- c. Window and siding trim may be combination of wood materials.

(g) *Signage.* Signage in this district is allowed as prescribed in this subsection. Signage as prescribed by other sections of this chapter is not applicable unless a specific sign program for a redevelopment project, which is included in a redevelopment plan, as has been established pursuant to state statutes, has been approved by Council resolution.

(1) *Exempt signs.*

- a. Temporary civic, cultural and public service window posters, when posted inside commercial establishments, provided they do not, individually or combined, occupy more than 25 percent of the total area of said window or five square feet, whichever is less. Temporary window signs are permitted on ground floor windows only.
- b. Temporary promotional or special sales signs when erected in conjunction with a commercial establishment provided they do not, individually or combined with other window signs, exceed 25 percent of the total area of the display window or 16 square feet, whichever is less. Temporary signs advertising a business opening or change in ownership shall not exceed an area of 16 square feet, and shall require a temporary sign permit, specifying the date of removal. All temporary signs shall have the date of removal printed clearly on the lower right hand corner, as viewed from the exterior, and shall be permitted for a period not to exceed 30 days. Temporary promotional signs are permitted on ground floor windows only.

(2) *Prohibited signs.*

- a. Signs employing mercury vapor, low pressure and high pressure sodium and metal halide lighting; plastic panel rearlighted signs.
- b. Signs on roofs, dormers, and balconies.
- c. Billboards.
- d. Signs painted or mounted upon the exterior side or rear walls on any principal or accessory building or structure, except as otherwise permitted hereunder.
- e. Freestanding signs over six feet in height.
- f. Backlit awnings.
- g. Interchangeable letter boards or panels.
- h. Flashing signs.
- i. Off-premises signs.

(3) *Permitted signs.*

- a. Wall-mounted or painted signs, provided the following standards are met:
 1. The sign shall be affixed to the front facade of the building, and shall project outward from the wall to which it is attached no more than six inches.
 2. The area of the signboard shall not exceed five percent of the ground floor building facade area or 24 square feet, whichever is less.

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3. The height of the lettering, numbers, or graphics shall not exceed 12 inches.
 4. The sign shall be granted to commercial uses occupying the ground floor of buildings facing public streets only and shall not be allocated to other uses.
 5. Limited to one sign per business.
- b. One wall-mounted sign per business, not exceeding six square feet in area, shall be permitted on any side or rear entrance open to the public.
- c. Wall-mounted building directory signs identifying the occupants of a commercial building, including upper story business uses; provided the following standards are met:
1. The sign is located next to the entrance.
 2. The sign shall project outward from the wall to which it is attached no more than six inches.
 3. The sign shall not extend above the parapet, eave, or building facade.
 4. The area of the signboard shall not exceed three square feet, with each tenant limited to one square foot.
 5. The height of the lettering, numbers, or graphics shall not exceed four inches.
 6. One such sign is allowed per public building entrance.
- d. Applied letters may substitute for wall-mounted signs, if constructed of painted wood, painted cast metal, bronze, brass, acrylic or black anodized aluminum. The height of applied letters shall not exceed 12 inches.
- e. Projecting signs, including graphics or icon signs, mounted perpendicular to the building wall; provided the following standards are met:
1. The signboard shall not exceed an area of six square feet.
 2. The distance from the ground to the lower edge of the signboard shall be ten feet or greater.
 3. The height of the top edge of the signboard shall not exceed the height of the wall from which the sign projects, if attached to a single story building, or the height of the sill or bottom of any second story window, if attached to a multistory building.
 4. The distance from the building wall to the signboard shall not exceed six inches.
 5. The width of the signboard shall not exceed three feet.
 6. Limited to one sign per business. Projecting signs are not permitted in conjunction with wall-mounted, freestanding, or applied letter signs.
 7. Granted to ground floor commercial uses only.
- f. Awning signs, for ground floor uses only; provided that the following standards are met:
1. If acting as the main business sign, it shall not exceed 24 square feet in area, and the height of the lettering, numbers, or graphics shall not exceed 12 inches.
 2. If acting as an auxiliary business sign, it shall be located on the valance only, shall not exceed four square feet in area, and the height of the

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- lettering, numbers, or graphics shall not exceed four inches.
3. Limited to two such signs per business.
 4. If acting as the main business sign, it shall not be in addition to a wall-mounted or applied letter sign.
- g. Window or door signs, provided that the following standards are met:
1. The sign shall not exceed ten percent of the window or door area or four square feet, whichever is less.
 2. The sign shall be silk screened, hand painted, applied letters/graphics, neon tubing or other sign technologies that meet these standards.
 3. Limited to one sign per business, applied on either the window or the door, but not on both.
 4. The sign shall not have an opaque backing of any type although smoked glass is allowed.
 5. May be in addition to only one of the following: a wall-mounted sign, a freestanding sign, an applied letter sign, a projecting sign or a valance awning sign.
- h. One freestanding sign, provided that the following standards are met:
1. The building in which the advertising business is located, shall be set back a minimum of six feet from a public street right-of-way.
 2. The area of each face of the signboard shall not exceed six square feet and the signboard shall not have more than two readable faces.
 3. The height of the top of the signboard, or of any posts, brackets, or other supporting elements shall not exceed six feet from the ground.
 4. The signboard shall be constructed of wood, acrylic, aluminum or metal and shall be architecturally compatible with the style, composition, materials, colors and details of the building.
 5. No part of the sign shall encroach on the right-of-way and its location shall not interfere with pedestrian or vehicular circulation.
 6. Limited to one sign per building and shall not be in addition to wall-mounted, applied letter or projecting signs.
 7. The readable faces of the sign shall be perpendicular to the adjacent street.
- i. Businesses with frontage on more than one public street are allowed the permitted sign criteria for each street frontage.
- j. Businesses with service entrances may identify these with one wall-mounted or applied letter sign not exceeding two square feet.
- k. One directional sign, facing a rear parking lot. This sign may be any type of permitted sign other than a freestanding sign, but shall be limited to three square feet in area.
- l. In addition to other signage, restaurants and cafes shall be permitted. One wall-mounted display featuring the actual menu as used at the dining table, to be contained within a shallow wood or metal case and clearly visible through a glass front. The display case shall be attached to the building wall, next to the main entrance, at a height of approximately five feet, shall not exceed a total area of two square feet, and may be lighted.
- m. Each business shall identify the number of its address at the main entry within

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the sign parameters of this subsection. Each business shall identify the number of its address at all secondary entries with applied numbers supplied by the city to ensure a consistent style throughout the district.

(h) *Parking.* Parking in this district is allowed as prescribed in this subdivision. Parking as prescribed by other sections of this chapter is not applicable.

- (1) Parking in the pedestrian district is a shared system. Only stalls designated for residential uses or fleet vehicles are to be restricted/reserved. The district's mixed-use will allow the maximum utility of the fewest number of parking stalls. Therefore, this chapter does not set parking stall quantity requirements in the pedestrian district. Instead, developers will be required to determine parking demand for their project's particular tenant mix based on industry standards such as those stated in Shared Parking; Urban Land Institute, 1983, and design their project accordingly. In calculating parking requirements, developers should consider parking demand of existing uses within the district and existing supply, both on and off-street. Upon construction, new parking lots will become part of the shared system according to the city's policy on parking in the pedestrian district.
- (2) Residential uses in the pedestrian district shall have two designated parking spaces per unit. One of those is to be enclosed. The term "enclosed" indicates that the parking space is to have an overhead cover, a closeable auto entrance door and continuous walls. It could be a parking garage with common parking spaces all behind one entrance door.
- (3) Parking spaces. Each parking space shall not be less than nine feet wide and 18 feet long exclusive of access drives. Handicapped parking shall be provided pursuant to state law which at the time of this publication requires a striped loading zone five feet by 18 feet adjacent to the designated stall of eight feet by 18 feet.
- (4) All commercial off-street parking must be in rear or side yards.
- (5) Where off-street parking abuts a public street right-of-way, all vehicular use areas other than necessary access drives are to be set back a minimum of eight feet from the right-of-way. Setback areas are to be landscaped with plants, low walls and fences, earthen berms, etc., to provide some screening of the parking lot.
- (6) For each 100 square feet of vehicular use area, five square feet of interior landscaping area is to be provided. Setback areas described above cannot be counted toward this requirement.
- (7) A minimum of 25 percent of vehicular use areas are to be covered by tree canopy when trees are calculated at two-thirds mature size. Use the following formula to calculate canopy spread: Mature tree height according to typical nursery standards times 0.66 equals canopy spread.
- (8) Proposers of parking lots must demonstrate how pedestrian movement will flow between parking vehicles and reasonably anticipated destinations. Parking lot design must provide pedestrian access routes within parking lots as necessary to allow convenient and safe circulation.
- (9) All parking lots are to be illuminated to a minimum maintained 0.6 footcandle level with a 4:1 uniformity ratio.

(Code 1987, § 350.651; Ord. No. 110-2000, § 350.651, 7-29-2000; Ord. No. 5-2004, 7-04-2004; Ord. No. 13-2006, 7-9-2006; Ord. No. 05-2007, 3-27-2007; Ord. No. 10-2016, 9-4-2016)

Sec. 129-140. DEST—PUD destination planned unit development district.

(a) *Purpose (DEST—PUD).* The destination district is intended to allow for retail sales and services intended to serve the needs of the local population. This district is primarily oriented at the motoring public because of its location along minor arterial roadways and good visibility.

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- (b) *Permitted uses.* The permitted uses in the DEST—PUD district are as follows:
- (1) Banks.
 - (2) Barbershops and beauty shops.
 - (3) Businesses or trade schools.
 - (4) Churches.
 - (5) Consignment shops.
 - (6) Day care.
 - (7) Delicatessens.
 - (8) Drug stores.
 - (9) Grocery stores.
 - (10) Health clubs, fitness centers and dance studios.
 - (11) Institutions and charitable organizations.
 - (12) Liquor stores.
 - (13) Medical and dental clinics.
 - (14) Offices.
 - (15) Private lodges and clubs.
 - (16) Public buildings.
 - (17) Public and private parks and recreation.
 - (18) Restaurants (classes I, II and III).
 - (19) Retail businesses.
 - (20) Service shops.
 - (21) Theatres.
 - (22) Transit stations.
- (c) *Conditional uses.* The conditional uses in the DEST—PUD district are as follows:
- (1) Accessory outdoor retail uses.
 - (2) Animal hospitals.
 - (3) Commercial parking lots.
 - (4) Cultural and fraternal organizations.
 - (5) Drive-in retailing establishments.
 - (6) Hospitals.
 - (7) Minor auto repair, tire and battery stores.
 - (8) Taverns.
 - (9) Brewery, Brewpub, Taproom, Microdistillery, or Cocktail Room. The provisions of section 129-329 shall apply.
- (d) *Accessory uses.* The accessory uses in the DEST—PUD district are as follows:
- (1) Parking lots.
 - (2) Automatic teller machines (ATM).
 - (3) Bus shelters.
 - (4) Signs.

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- (5) Public telephone booths.
- (6) Antennas.
- (e) *Bulk standards.* The bulk standards in the DEST—PUD district are as follows:
 - (1) Ordinary high-water setback (OHW): minimum of 50 feet.
 - (2) Height: maximum of 50 feet.
 - (3) Impervious surface: maximum of 75 percent or as approved by PUD.
 - (3) All other bulk requirements as approved by PUD. There is not a minimum lot size requirement for the DEST-PUD district.

(Code 1987, § 350.652; Ord. No. 110-2000, § 350.652, 7-29-2000; Ord. No. 12-2003, 12-7-2003; Ord. No. 10-2016, 9-4-2016)

Sec. 129-141. L—PUD linear planned unit development district.

(a) *Purpose (L—PUD).* The purpose of the linear district is to provide a mix of medium and high density residential, institutional, and office uses. The linear district provide a key entry point to the downtown core and will provide a higher degree of aesthetic treatment to complement the downtown.

- (b) *Permitted uses.* The permitted uses in the L—PUD district are as follows:
 - (1) Townhouses.
 - (2) Multiple-family dwellings (six plus units).
 - (3) Offices.
 - (4) Public and private schools.
 - (5) Public parks and recreation.
 - (6) Public and institutional buildings.
 - (7) Private lodges and clubs.
- (c) *Conditional uses.* The conditional uses in the L—PUD district are as follows:
 - (1) Gas stations.
 - (2) Convenience stores.
 - (3) Boat and marine sales.
- (d) *Accessory uses.* The accessory uses in the L—PUD district are as follows:
 - (1) Parking lots.
 - (2) Garages.
 - (3) Bus shelters.
 - (4) Signs.
 - (5) Public telephone booths.
 - (6) Antennas.
- (e) *Bulk standards.*
 - (1) Ordinary high-water setback (OHW): minimum of 50 feet.
 - (2) Side and rear yard setbacks (nonresidential uses abutting a residential district): minimum of 30 feet.
 - (3) Height: maximum of 35 feet.
 - (4) Impervious surface: maximum of 75 percent or as approved by CUP.

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- (5) All other bulk requirements as approved by PUD. There is not a minimum lot size requirement for the L-PUD district.

(Code 1987, § 350.653; Ord. No. 110-2000, § 350.653, 7-29-2000)

Sec. 129-142. Light industrial (I-1).

(a) *Purpose (I-1)*. This district shall serve as a development opportunity for industrial sites.

(b) *Lot area, height, lot width and yard requirements (I-1)*. The lot area, height, lot width and yard requirements for the I-1 district are as follows:

- (1) Floor area ratio shall not exceed one to one.
- (2) Front yard setback: 30 feet.
- (3) Lot width: 100 feet.
- (4) Lot area: minimum of 30,000 square feet.
- (5) Rear yard setback: 30 feet.
- (6) Side yard setbacks:
 - a. When abutting a residential district: 50 feet.
 - b. When abutting a street: 15 feet.
 - c. When abutting a railroad: zero feet.

(Code 1987, § 350.665; Ord. No. 61-1993, § 350.665, 2-23-1994)

Sec. 129-143. Planned industrial area (PIA).

(a) *Purpose (PIA)*. The purpose of the planned industrial area (PIA) is to facilitate the conversion and division of industrial structures into two or more separate uses in order to promote economical and efficient land use, expand employment opportunities, improve levels of amenities and/or encourage creative design.

(b) *Conditional use permit (PIA)*. The owner of any tract of land in the light industrial (I-1) district may submit to the City Council for approval, a plan for the use and development of such a tract of land as planned industrial area (PIA) by making application for a conditional use permit authorizing completion of the project according to the plan.

(c) *Subdivision (PIA)*. Industrial buildings may be subdivided into two or more units under a condominium plat or other appropriate technique providing that the parking requirements and other applicable standards in this chapter and conditional use permit are met. All condominium plats or subdivisions of any nature shall be reviewed and approved by the Planning Commission and City Council prior to filing with the county. All plats shall be consistent with the development plan as included in the conditional use permit.

(d) *Conditional use permit procedure (PIA)*. Conditional use permit review/issuance. The conditional use permit review shall include an application for conditional use permit subject to the requirements of section 129-38. Additionally, the site plan (master development plan) shall include the following:

- (1) Names, addresses, and telephone numbers of owners, developers, and designers;

name of development, date, north point and scale.

- (2) Sufficient information on adjacent properties to indicate relationships to the proposed development, including such information as land divisions, land use, pedestrian and vehicular circulation, significant natural features or physical improvements and drainage pattern.
- (3) Existing site conditions including contours at intervals sufficient to indicate topographic conditions (generally two feet).

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- (4) Treatment of transitional zones around the perimeter of the project for protection of adjoining properties, including setbacks and buffer areas, landscaping, fences or other screening, height limitation or other provisions.
- (5) A narrative or graphic explanation of the planning and design concepts and objectives the owner intends to follow in implementing the proposed development, including a description of the character of the proposed development; the rationale behind the assumptions and choices made; the compatibility with the surrounding areas; and design considerations for architecture, engineering, landscaping, open space, etc.
- (6) A statement of intent with regard to selling or leasing all or portions of the proposed development.
- (7) Proposed phasing timetable.

(e) *Permitted uses (PIA)*. Within any planned industrial area, no structure or land shall be used except for one or more of the following. The numbers in parenthesis refer to the Standard Industrial Classification Manual, 1987 edition.

- (1) Public buildings.
- (2) Public and private utility uses.
- (3) Refrigerated warehousing (4222).
- (4) Household goods warehousing and storage (4214).

(f) *Operation permit (PIA)—Uses*. Within any planned industrial area, no structure or land shall be used for the following except by operations permit. The numbers in parenthesis refer to the Standard Industrial Classification Manual, 1987 edition.

- (1) *Manufacturing*. The manufacturing of the following:
 - a. Food and kindred products (20), excluding (2011)—(2017), (2044), (2046), (2062), (2063) and (2074)—(2079).
 - b. Textile milled products (22).
 - c. Apparel and other finished products made from fabrics and other similar materials (23).
 - d. Millwork (2431).
 - e. Wood kitchen cabinets (2343).
 - f. Furniture and fixtures (25).
 - g. Paper and allied products (26) excluding (2611)—(2631) and (2661).
 - h. Printing, publishing and allied industries (27).
 - i. Leather and leather products (31) excluding (3111).
 - j. Stone, clay, glass and concrete products (32) excluding (3251), (3255), (3259), (3271)—(3281) and (3292).
 - k. Cold rolled steel sheet, strip and bars (3316).
 - l. Steel pipe and tubes (3317).
 - m. Fabricated metal products, except machinery and transportation equipment (34) excluding (3448) and (3471)—(3489).
 - n. Machinery, except electrical (35) excluding (3519), (3523), (3531)—(3533), (3536) and (3537).
 - o. Electrical and electronic machinery, equipment and supplies (36) excluding (3612), (3624), (3672) and (3691)—(3693).
 - p. Measuring, analyzing and controlling instruments; photographic, medical and

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- optical goods; watches and clocks (38).
- q. Miscellaneous manufacturing industries (39).
- (2) *Public utilities.* Transportation, communication and other public utilities including:
 - a. Local and suburban transit and inter-urban highway passenger transportation (41).
 - b. General warehousing and storage (4225).
- (3) *Wholesale.* The wholesaling of, including the following:
 - a. Durable goods (50) excluding (5012), (5031), (5039), (5051), (5052), (5082), (5083) and (5093).
 - b. Nondurable goods (51) excluding (5154)—(5172).
- (4) *Retail.* Retail trade, including the following:
 - a. Building materials, hardware, garden supply, and mobile home dealers (52) excluding (5271).
 - b. General merchandise stores (53).
 - c. Food stores (54).
 - d. Auto and home supply stores (5531).
 - e. Apparel and accessory shops (56).
 - f. Furniture, home furnishings and equipment stores (57).
 - g. Eating and drinking places (58).
 - h. Miscellaneous retail (59) excluding (5983) and (5984).
- (5) *Finance, insurance and real estate.* Finance, insurance and real estate including the following:
 - a. Banking (60).
 - b. Credit agencies other than banks (61).
 - c. Security and commodity brokers, dealers, exchanges and services (62).
 - d. Insurance carriers (63).
 - e. Insurance agents, brokers and service (64).
 - f. Real estate (65).
 - g. Combinations of real estate, insurance, loans and law offices (66).
 - h. Holding and other investment companies (67).
- (6) *Services.* Services including the following:
 - a. Personal services (72).
 - b. Business services (73).
 - c. Automotive repair, service and garages (75), including boats and watercraft.
 - d. Miscellaneous repair services (76).
 - e. Motion pictures (78).
 - f. Amusement and recreation services except motion pictures (79) excluding (7948), (7992) and (7996).
 - g. Health services (80).
 - h. Legal services (81).

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- i. Social services (83).
 - j. Nonprofit membership organizations (86).
 - k. Miscellaneous services (89).
- (g) *Same—Application procedure.*
- (1) Applications for operations permits accompanied by the fee as established by the city shall be filed with the building official. After approval of the operations permit, the applicant, owner or developer, before commencing any work or obtaining any building permits, may be required to make a minimum cash deposit of \$250.00. The Council may establish an amount above the minimum deposit at the time the permit is approved and this deposit shall be held in a special developer's escrow account to cover administrative and legal expenses incurred by the city.
 - (2) Approval of a planned industrial area operations permit shall be by the City Council after recommendation by the city staff.
 - (3) At the option of the City Council, the city may elect to call a public hearing to solicit public input on an operations permit application. A hearing may be called to review concerns regarding the use or discharge of toxic substances, emissions, special access, parking or loading requirements, noise, storage or other relevant factors.
- (h) *Same—Criteria.* The criteria for granting operation permits shall be the same as the criteria listed in section 129-38(a)(1) through (12) for the issuance of conditional use permits.

(Code 1987, § 350.680; Ord. No. 61-1993, § 350.680, 2-23-1994)

Secs. 129-144—129-169. Reserved.

DIVISION 3. OTHER DISTRICTS

Sec. 129-170. Conservation district (CON).

(a) *Purpose (CON).* The purpose of the conservation district is to discourage the infringement of the manmade environment on the community's natural resources. The conservation district includes those areas such as wetlands, marshes, steep slopes, interpretive areas, undeveloped islands, wildlife areas, and other areas that due to environmental conditions, are not generally appropriate for development.

(b) *Permitted uses.* The permitted uses in the CON district are as follows:

- (1) Parks.
- (2) Nature conservation areas.
- (3) Trails.
- (4) Overlooks and landings.
- (5) Docks.

(Code 1987, § 350.690; Ord. No. 61-1993, § 350.690, 2-23-1994; Ord. No. 110-2000, 7-29-2000)

Secs. 129-171—129-193. Reserved.

ARTICLE V. REQUIREMENTS FOR SPECIFIC USES

DIVISION 1. GENERALLY

Sec. 129-194. Accessory buildings.

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

(b) No accessory building shall be higher than the principal building in the R districts based on the calculation of the height regulations.

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(c) In residential districts, accessory buildings shall be permitted providing that they comply with the regulations found in the district provisions section of this chapter.

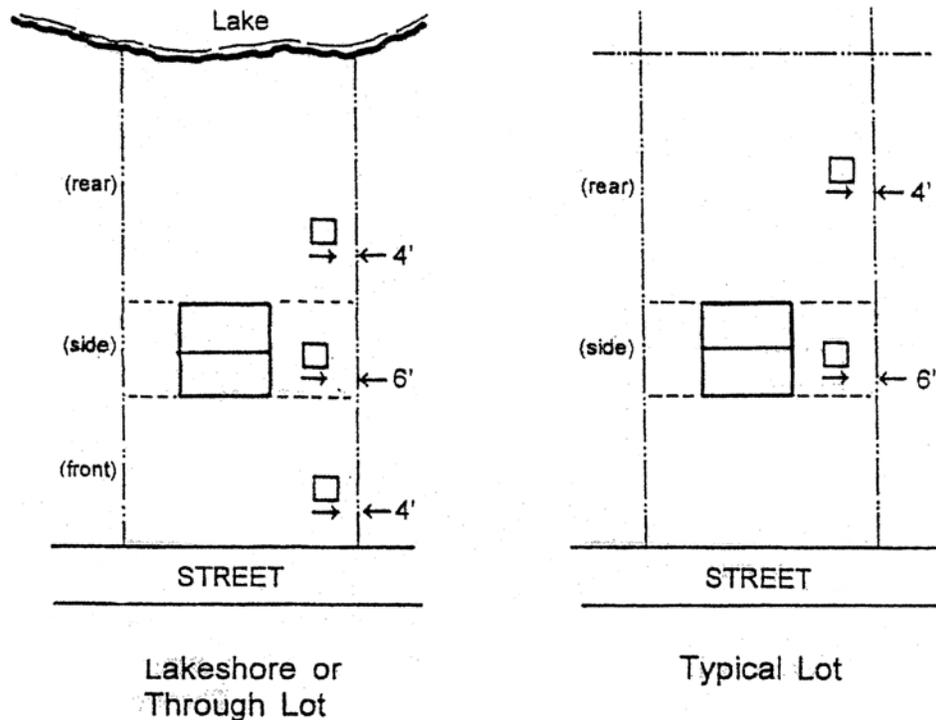
(d) In commercial and industrial districts all accessory building setbacks shall equal the principal building setback requirements.

(e) Permitted accessory buildings. Within any residential district, accessory buildings shall be permitted subject to the following restrictions

- (1) Buildings shall not exceed a total gross floor area of 3,000 square feet or 15 percent of the total lot area whichever is less.
- (2) Each individual accessory building shall not exceed 1,200 square feet of gross floor area.
- (3) The total number of accessory buildings for lots measuring 10,000 square feet or less shall be two. On lots exceeding 10,000 square feet, accessory buildings shall be limited to a total of three.

(f) Accessory residential building setback requirements.

- (1) Side yard setbacks. A detached accessory building may be located within four feet of the side lot line in the rear yard with a minimum of a six foot setback in side yard location. On through and lakeshore lots, a detached accessory building may be located within four feet of the side lot line in the front yard. Whenever a garage is so designed that the doors face a side street or side property line, the distance between the doors and the property line shall be 20 feet or more.

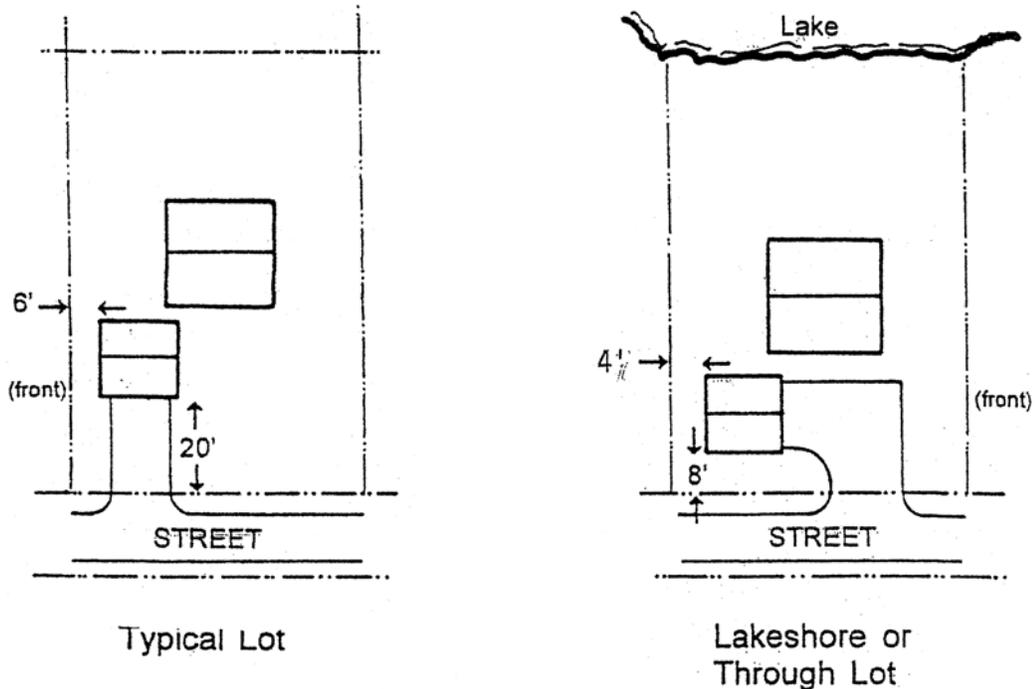


Accessory Building Setbacks

- (2) Front yard setbacks. All accessory buildings shall meet the same front yard setback

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requirements as the principal building, except for lakeshore and through lots. For detached garages on a lakeshore or through lots, a minimum 20-foot front yard setback is required if the garage door opens to the street; an eight-foot front yard setback is required if the garage door opens to the side lot line.



Detached Garage Setbacks

- (3) Rear setback. A detached accessory building may be located within four feet of the rear lot line.
 - (4) Lakeshore setback. Detached accessory buildings must maintain a 50-foot setback from the ordinary high-water line.
- (g) Sheds and other buildings less than 120 square feet in floor area shall be subject to a 50-foot setback from the ordinary high-water line of all lakes. Such structures shall also be subject to accessory building setbacks.
- (h) Membrane structures.
- (1) Permit procedure. No person shall place a membrane structure on private property without first obtaining a permit from the city. Failure to obtain a permit shall be considered to be a violation of this Code and subject to the penalties defined herein.
 - (2) Fee. The permit fee shall be determined by the City Council.
 - (3) Special provisions.
 - a. Membrane covered buildings shall be permitted uses in all residential, commercial and industrial districts and shall be neutral colored (i.e., dark green, tan, brown, etc.).
 - b. There shall be no more than one membrane-structure per property and such structure shall not exceed 400 square feet.
 - c. Privately owned membrane structures shall not be placed on public property or

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- in a location which obstructs traffic visibility.
- d. Membrane structure located in commercial and industrial districts shall be placed a minimum setback of three feet on all sides.
 - e. Membrane structures shall also be included in hardcover calculations.
 - f. Membrane structures shall be adequately anchored and/or secured to the ground.
 - g. Membrane structures located in residential zoning districts shall meet the appropriate setbacks for accessory buildings as set forth in this chapter.

(Code 1987, § 350.435; Ord. No. 61-1993, § 350.435, 2-23-1994; Ord. No. 02-2004, 6-6-2004; Ord. No. 03-2005, 2-6-2005)

Sec. 129-195. Planned development areas (PDA).

(a) *Purpose (PDA).* The purpose of this section is to provide a method by which parcels of land in the residential use districts having unusual building characteristics due to subsoil conditions, topographic conditions, elevation of water table, unique environmental considerations, or because of the parcel's unusual shape or location in relationship to lakes, trees or other natural resources requires more unique and controlled platting techniques to protect and promote the quality of life in the city.

(b) *Standards and regulations for planned development areas (PDA).* The owner of any tract of land in the residential district may submit to the City Council for approval, a plan for the use and development of such a tract of land as a PDA by making application for a conditional use permit authorizing completion of the project according to the plan. The plan for the proposed project shall conform to the requirements of the use district within which the land is located except as hereinafter modified.

- (1) The tract of land for which a project is proposed and a permit requested shall not be less than one acre.
- (2) The application for the conditional use permit shall include a detailed preliminary plan, and shall be submitted in complete conformance with the city subdivision regulations or with all variations detailed and explained. Variations to the requirements of chapter 121, pertaining to subdivisions may be approved by the City Council upon a showing that the public health, safety, and welfare will not be adversely affected and further that the development plan will not have an adverse effect on adjacent properties. All variances must be so noted on the preliminary plan at the time of application.
- (3) The number of dwelling units proposed for the entire site shall not exceed the total number permitted under the density control provision for the use district within which the land is located.

(c) The density in the plan shall not exceed the maximum for the zoning district.

(d) All housing types included as permitted uses in the residential districts may be included in the PDA. Each lot as shown on the plan shall have indicated on it the maximum number of dwelling units to be permitted within a single building.

(e) Open space and park land dedication or cash in lieu thereof pursuant to the requirements of section 121-121 shall be required. The land that is to be set aside as open space shall be clearly indicated on the plan. Provisions for recreational area and for continual maintenance of the areas not dedicated and accepted by the city shall be required.

(f) The concept of cluster platting or zero lot line development will be reflected by the PDA and must be shown on the plan and subject to all conditions imposed by the conditional use permit.

(g) No conveyance of property within the PDA shall take place until the property is platted in conformance with the city subdivision regulations and Minn. Stats. § 462.358 or unless specifically waived in accordance with Section 121-3. All bylaws, homeowners' association articles of incorporation, and protective covenants must be approved by the City Attorney and filed with the record plat.

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(h) Approval of a PDA conditional use permit shall be by the City Council after recommendation by the city Planning Commission and all improvements required by chapter 121 shall be constructed by the developer at its sole cost. The applicant must provide the city with a surety bond or other financial guarantee to guarantee the construction of all improvements required in accordance with city specifications.

(i) The land utilized by public utilities, such as easements for major facilities, (electrical transmission lines, sewer lines, drainage easement and water mains), where such land is not available to the owner or developer for development because of such elements, shall not be considered as part of the gross acreage in computing the maximum number of lots or density that may be created under the procedure described in this chapter.

(j) The maximum number of lots that may be approved shall be computed by subtracting, from the total gross acreage available for development under this planned development area procedure, the actual amount of street right-of-way required and that land in subsection (i) of this section which is not available, and by dividing the remaining area by the minimum lot area requirements of the existing R districts in which the development is to be located.

(k) After approval of the conditional use permit, the applicant, owner or developer, before commencing any work or obtaining any building permits shall make a minimum cash deposit in an amount established by the city. The Council shall establish the amount required for deposit at the time the planned development area is approved and this deposit shall be held in a special developer's escrow account and shall be credited to the applicant, owner, or developer. Engineering, planning, and legal expenses incurred by the city in plan approval, office and field checking, checking and setting grade and drainage requirements, general supervisions, staking, inspection, drafting as-built drawings and all other engineering services performed in the processing of said development, and all administrative and legal expenses in examining title to the property and in reviewing all documents described in subsection (h) of this section for the land being developed shall be charged to the aforementioned account and shall be credited to the city for the payment of these expenses. If at any time it appears that a deficit will occur in any developer's escrow account as determined by the City Manager, said officials shall recommend to the Council that an additional deposit is required and the Council may require that the applicant, owner, or developer shall deposit additional funds in the developer's escrow account. The City Manager or clerk shall itemize all services and materials billed to any developer's escrow account. The applicant, owner or developer making the deposits in the developer's escrow account shall, upon request, be furnished a copy of said itemized charges and any balance remaining in the account upon completing the project shall be returned to the depositor by the clerk after all claims and charges thereto have been paid.

(Code 1987, § 350.460; Ord. No. 61-1993, § 350.460, 2-23-1994; Ord. No. 10-2006, 5-7-2006; Ord.No.06-2010, 10-24-2010)

Sec. 129-196. Requirements applicable to all residential districts.

(a) *Lot coverage.* Impervious surface coverage of lots in residential zones shall not exceed 30 percent of the lot area. On existing lots of record, impervious coverage may be permitted to up to a maximum of 40 percent consistent with the provisions identified in section 129-385(g)(2)a.

(b) *Swimming pools and hot tubs.* Within any residential district, swimming pools and hot tubs shall be permitted subject to the following restrictions:

- (1) *Swimming pools.* Swimming pools having a water depth of two feet or more which are operated for the enjoyment and convenience of the residents of the principal use and their guests are permitted provided that the following conditions are met:
 - a. Swimming pools shall be subject to the following setbacks:
 1. The side yard setback is ten feet.
 2. The corner lots, from the side street setback is 15 feet.
 3. The rear yard setback is 15 feet.
 4. Lakeshore, from the ordinary high-water line setback is 50 feet.
 5. From any structure on same lot the setback is ten feet.

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6. From principal building on an adjoining lot the setback is 20 feet.
 - b. Private swimming pools are prohibited in the front portion of residential parcels. The front portion includes the area extending across the entire width of the lot and situated between the front line of the principal building and the front lot line.
 - c. The swimming pool shall be entirely enclosed by a protective fence or other permanent structure not less than five feet or more than six feet in height. Such protective enclosures shall be maintained by locked gates or entrances when a responsible person is not present outdoors and within 25 feet of the pool.
 - d. As an alternative to a protective fence or other permanent structure as required by subsection (b)(1)c of this section, an automatic pool cover may be utilized if it meets the American Society of Testing and Materials (ASTM) F1346-91 Standard (2010), as such standards may be modified, superseded or replaced by ASTM. Such pool cover shall be closed when a responsible person is not present outdoors and within 25 feet of the pool.
- (2) *Hot tubs.* Outdoor hot tubs shall comply with subsections (b)(1)a and b of this section with the exception that the setback from any structure on the same lot shall not apply. Furthermore, all outdoor hot tubs shall be required to either contain surrounding decking with appropriate guardrails or shall be secured by a locked cover when not in use.

(Code 1987, § 350.645; Ord. No. 61-1993, § 350.645, 2-23-1994; Ord. No. 71-1994, 10-31-1994; Ord. No. 05-2017, 8-20-2017)

Sec. 129-197. Required yards and open space.

- (a) No yard or other open space shall be reduced in area or dimension so as to make such yard or other open space less than the minimum required by this chapter, and if the existing yard or other open space as existing is less than the minimum required, it shall not be further reduced.
- (b) No required yard or other open space allocated to a building or dwelling group shall be used to satisfy yard, other open space, or minimum lot area requirements for any other building.
- (c) The following shall not be considered to be encroachments on yard requirements:
 - (1) Chimneys, window air conditioners, belt courses, leaders, sills, pilasters, lintels, ornamental features, mechanical devices, cornices, eaves, and the like, provided they do not extend more than two feet into the required yard area. Gutters are allowable encroachments and are not subject to setback.
 - (2) Uncovered porches, stoops or similar entrance structures not exceeding 32 square feet which do not extend in elevation above the height of the ground floor elevation of the principal building, and steps that do not extend to a distance of less than two feet from any lot line.
 - (3) Decks, balconies, and the like, attached to the principal building which extend in elevation above the height of the ground floor elevation of the principal building; and decks, balconies, and the like, detached from the principal building and exceeding 30 inches in height above the surrounding grade; provided that such structures described in this subsection do not extend within ten feet of the rear lot line or extend beyond side yard and front yard accessory building setbacks. On lakeshore lots, such structures shall comply with the lakeshore setback of the principal structure.
 - (4) Detached decks or similar structures which do not extend above 30 inches in elevation above the height of the surrounding grade and do not extend to a distance of less than two feet from any lot line. On lakeshore lots, such structures shall comply with the lakeshore setback of the principal structure.

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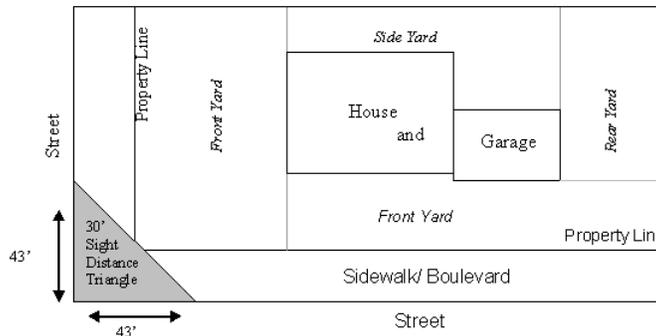
- (5) Yard lights and name plate signs for single-family and two-family dwellings, lights for illuminating parking areas, loading areas or yards for safety and security purposes, provided the direct source of light is not visible from the public right-of-way or adjacent residential property. Such fixtures may be located within five feet of the front lot line.
- (6) Fire escapes not exceeding three feet in width in side or rear yards only.
- (7) Recreational equipment such as a swing set, slide, climbing apparatus, sandbox and the like, clotheslines, picnic tables and other equipment accessory to and associated with the residential use of property.
- (8) Bay windows; provided the encroachment within the yard area does not exceed eight square feet and provided the setback of the principal wall conforms to district setback requirements.
- (9) Retaining walls shall be considered to be an allowable encroachment; provided that a building permit, to include all required information, is submitted for any retaining wall that exceeds four feet in height.
- (10) The list of items referenced in City Code Sec. 129-2 (Definitions) which do not qualify as a “structure” shall be considered to be allowable encroachments unless another section of the code requires a setback.

(d) Buildings may be excluded from side yard requirements if party walls are utilized or if the adjacent buildings are planned to be constructed as an integral structure and a conditional use permit is secured.

(e) Corner lots. Lots which abut on more than one street shall provide the required front yards along every street except for lots of record which shall provide a side yard setback abutting the street based on the lot width as follows: In cases where the street side yard setback established above is greater than the required front yard setback, the street side yard setback shall be the same as the front yard setback.

<i>Minimum side yard setback</i>	
<i>Lot width (feet)</i>	<i>On corner lots (feet)</i>
40—50	10
51—80	20
81 or more	30

The Sight Distance Triangle



(f) Where adjoining structures have a shorter setback from that required, the front setback of a new structure shall conform to the average of the setback observed by the adjoining houses on either side, but not closer than 20 feet.

(g) In all districts, structures shall be 50 feet or more from the ordinary high-water mark. No structure, except piers and docks, shall be placed at an elevation such that the lowest floor, including basement floors, is less than the regulatory flood protection elevation.

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(h) No building permit shall be issued for any lot or parcel which does not abut a dedicated, improved public street.

(i) In residential districts, street frontages created by the existence of fire lanes having a width not exceeding 15 feet shall be considered side yards or rear yards, as appropriate, and subject to applicable district setbacks.

(j) In residential districts, street frontages created by the existence of alleys, such alleys having a total width not exceeding 15 feet, shall be considered side yards or rear yards, as appropriate, and subject to applicable district setbacks.

(k) In residential districts, unimproved street frontages having a width exceeding 15 feet, shall be considered side yards or rear yards, as appropriate. The minimum side setback shall be ten feet.

(Code 1987, § 350.440; Ord. No. 61-1993, § 350.440, 2-23-1994; Ord. No. 15-2005, 9-4-2005; Ord. No. 07-2008, 5-13-08; Ord.11-2008, 10-19-08; Ord. 01-2010, 5-23-10)

Sec. 129-198. Access drives and access.

(a) Access drives shall be no closer than one foot to any side or rear lot line and shall be a hard surface as approved by the city engineer and in accordance with section 121-146(13).

(b) The number and types of access drives onto major streets shall be limited to a single access unless approved by the city engineer.

(c) Access drives onto county roads shall require a review by the county engineer. The county engineer shall determine the appropriate location, size, and design of such access drives and may limit the number of access drives in the interest of public safety and efficient traffic flow.

(d) Access drives to principal structures which traverse wooded, steep, or open field areas shall be constructed and maintained to a width and base material depth sufficient to support access by emergency vehicles. The city shall review all access drives (driveways) for compliance with accepted community access drive standards. All driveways shall have a minimum width of ten feet and a maximum width of 24 feet with a pavement strength capable of supporting any emergency vehicles.

(e) All lots or parcels shall have direct adequate physical access for emergency vehicles along the frontage of the lot or parcel from an existing dedicated improved public roadway.

(Code 1987, § 350.445; Ord. No. 61-1993, § 350.445, 2-23-1994; Ord. No. 07-2006, 3-26-2006)

Sec. 129-199. Residential minimum floor area requirements.

The following minimum requirements shall be applied to all new residential dwelling construction:

- (1) For single-family detached dwellings the minimum requirement is 840 square feet per dwelling.
- (2) For two-family dwellings the minimum requirement is 800 square feet per dwelling.
- (3) For twin home dwellings the minimum requirement is 840 square feet per dwelling.
- (4) Townhouse dwellings:
 - a. For one-bedroom units the minimum requirement is 760 square feet above grade.
 - b. For two-bedroom units the minimum requirement is 880 square feet above grade.
 - c. For three-bedroom units the minimum requirement is 960 square feet above grade.
 - d. For each additional bedroom add 120 square feet.
- (5) Multiple-family dwellings:
 - a. For efficiency units the minimum requirement is 480 square feet

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minimum.

- b. For one-bedroom units the minimum requirement is 640 square feet minimum.
- c. For two-bedroom units the minimum requirement is 760 square feet minimum.
- d. For three or more bedroom units add 100 square feet per bedroom to requirements for a two-bedroom unit.

(Code 1987, § 350.450; Ord. No. 61-1993, § 350.450, 2-23-1994)

Sec. 129-200. Essential services and buildings.

(a) Essential services and public utilities, except buildings, shall be permitted as authorized and regulated by state law and this Code, it being the intention that such are exempt from the application of this chapter when located within public easements.

(b) Essential service buildings. Essential service buildings are not subject to the lot area, lot width, coverage and setback requirements contained in this chapter. Essential service buildings are conditional uses in all districts; and may not be constructed or substantially renovated unless a conditional use permit is issued in accordance with the provisions of this chapter. The city may place design, size, location and coverage restrictions on any conditional use permit, and may require that the coverage and setbacks conform as close as practical to those otherwise required in the district.

(Code 1987, § 350.455; Ord. No. 61-1993, § 350.455, 2-23-1994; Ord. No. 14-2002, 7-7-2002)

Sec. 129-201. Docks serving commercial property.

(a) Docks to serve property located in district B-1, B-2 or B-3 shall be permitted only after the issuance of a conditional use permit according to section 129-38.

(b) Any conditional use permit granted by the Council shall be conditioned as follows:

- (1) The residential property on which dockage is to be located and the commercial property served shall be in common ownership and shall be located within 300 feet of the property line of the commercial property.
- (2) The mooring of boats at such dock shall be limited to a maximum of four hours.
- (3) No gas, oil or other product may be sold from the dock and no servicing of boats will be permitted.
- (4) One sign for identification will be allowed but it shall not exceed a total of six square feet in size.
- (5) Ingress and egress from the residential lot shall be restricted to the property held under common ownership and adequate safeguards shall be provided so that persons docking will not trespass on private property or on any public property except for properly designated streets or sidewalks.
- (6) The owner shall be required to meet and comply with all the standards and requirements of the Lake Minnetonka conservation district.

(Code 1987, § 350.465; Ord. No. 61-1993, § 350.465, 2-23-1994)

Sec. 129-202. State environmental quality regulation.

It is the intent of this chapter to comply with all state regulations relating to environmental concerns. In all administrative review procedures, at the time of application, the planning staff shall determine the need for the preparation of an environmental assessment according to such regulations. If the environmental assessment is prepared, all other action on applications shall cease pending ruling from the state.

(Code 1987, § 350.470; Ord. No. 61-1993, § 350.470, 2-23-1994)

Sec. 129-203. Fences.

Fencing shall be permitted in all zones subject to the following:

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(1) *General requirements.*

- a. No person shall erect, construct or place any fence without first making an application for and securing a building permit.
- b. The building official may require fence permit applicants to establish property boundary lines by a survey completed by a registered land surveyor. In all cases, the city shall not be liable for the establishment or definition of property lines.
- c. Chainlink fences not exceeding ten feet in height shall be permitted to enclose tennis courts.

(2) *Construction and maintenance.*

- a. All fences shall be constructed of durable, weather resistant materials and properly anchored. Every fence shall be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair, danger or constitute a nuisance. Fences in a state of disrepair or deemed to be a nuisance may be abated by the city by proceedings taken under Minn. Stats. ch. 429, and the cost of abatement, including administration expenses, may be levied as a special assessment against the property upon which the fence is located.
- b. Electric fences and barbed wire fences are prohibited except that barbed wire may be used in industrial districts as an anti-vaulting measure on top of a fence that equals six feet in height. In such cases, barbed wired shall not exceed the height of one foot above the top of the fence.
- c. In all districts, fences shall consist of materials comparable in grade and quality to the following:
 1. Chainlink;
 2. Wood;
 3. Wrought iron;
 4. Vinyl;
 5. Plastic;
 6. Decorative masonry; or
 7. Other acceptable similar material, constructed from commercially available materials.

Wooden fences shall not be constructed from twigs, branches, doors, siding or other wooden products originally intended for other purposes.

- d. Fences shall in no way detain or inhibit the flow of surface water drainage to and from abutting properties.
- e. Front yard fences shall be designed and constructed in such a manner so as not to unreasonably obscure the sight distance of vehicles accessing the street from driveways on the subject property or from adjacent properties.
- f. Fence heights shall be measured from the adjoining natural ground. Fences installed on top of retaining walls shall be limited to a maximum of 42 inches in residential zones.
- g. All fenced areas shall be accessible through at least one gate having a minimum width of three feet.
- h. All chainlink fences shall have a top rail, barbed ends shall be placed at the bottom of the fence and posts shall be spaced at intervals not to exceed eight

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feet. For wooden fences, post spacing shall not exceed eight feet.

- i. Fences shall be installed such that the finished side faces abutting properties. The finished side shall be the side that provides maximum coverage of posts and stringers. Board-on-board, basket-weave fences, and similar design shall be deemed to have two finished sides.
- (3) *Residential district fences.*
- a. Front yard fences may be solid or open and shall not exceed four feet in height.
 - b. Rear and side yard fences located behind the front yard setback line may be solid or open and shall not exceed six feet in height.
 - c. Fences shall be required around swimming pools in conformance with section 129-196(b)(1)c.
- (4) *Business and industrial district fences.*
- a. Fences in industrial districts shall not exceed six feet in height.
 - b. Fences in commercial districts not exceeding four feet in height may be permitted in front of the front building line as established by the primary structure on the lot. Fences in commercial districts not exceeding six feet in height are permitted at or behind the front building line as established by the primary structure on the lot.
 - c. Fences not exceeding six feet in height may be permitted in front of the front building line as established by the primary structure on the lot when required for screening of adjacent residential uses or as required for other provisions of this chapter including, but not limited to, dumpsters, off-street parking and loading areas or as required by other rules and/or regulations.
- (5) *Shoreland district lakeshore setback fences.* Fences to be located within any portion of the 50-foot principal structure lakeshore setback shall not exceed a maximum of three feet in height and shall maintain a see-through visibility level equal to that of a chainlink type fence. All fence materials must be treated so as to blend with the natural surroundings of the setback area.

(Code 1987, § 350.475; Ord. No. 61-1993, § 350.475, 2-23-1994; Ord. No. 15-2005, 9-4-2005; Ord. No. 11-2007, 9-25-2007)

Sec. 129-204. Temporary Health Care Dwellings

Pursuant to authority granted by Minnesota Statutes, Section 462.3593, subdivision 9, the City of Mound opts-out of the requirements of Minn. Stat. §462.3593, which defines and regulates Temporary Family Health Care Dwellings.

(Ord. No. 09-2016, 8-28-2016)

Secs. 129-205—129-229. Reserved.

DIVISION 2. TELECOMMUNICATIONS FACILITIES

Sec. 129-230. Definitions.

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

Antenna support structure means a building, athletic field lighting, water tower, or other structure, other than a tower, which can be used for location of telecommunications facilities.

Applicant means a person who applies for a permit to develop, construct, build modify or erect a tower under this section.

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Application means the process by which the owner of a plot of land within the city submits a request to develop, construct, build, modify or erect a tower upon that land.

Engineer means an engineer licensed by the state.

Stealth means designed to blend into the surrounding environment; examples of stealth facilities include, without limitation, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and telecommunications towers designed to appear other than as a tower, such as light poles, power poles, and trees.

Telecommunications facilities means cables, wires, lines, wave guides, antennas or any other equipment or facilities associated with the transmission or reception of telecommunications located or installed on or near a tower or antenna support structure. The term "telecommunication facilities" does not include:

- (1) A satellite earth station antenna two meters in diameter or less located in an industrial or commercial district;
- (2) A satellite earth station antenna one meter or less in diameter, wherever located; or
- (3) A tower.

Telecommunications tower or *tower* means a self-supporting lattice, guyed, or monopole structure constructed from grade that supports telecommunications facilities; the term "telecommunication tower" does not include amateur radio operations equipment licensed by the Federal Communications Commission.

(Code 1987, § 350.1305)

Sec. 129-231. Findings and purpose.

(a) The City Council finds:

- (1) The Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the Act) grants the Federal Communications Commission exclusive jurisdiction over the regulation of the environmental effects of radio frequency emissions from telecommunications facilities and the regulation of radio signal interference among users of the radio frequency spectrum.
- (2) Consistent with the Act, the regulation of towers and telecommunications facilities in the city will not have the effect of prohibiting any person from providing wireless telecommunications services.

(b) The general purpose of this division is to regulate the placement, construction, and modification of telecommunication towers and facilities in order to protect the health, safety and welfare of the public, while not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the city. In addition, this division recognizes the contractual control for the purpose of preserving public health, safety, and welfare that can be exercised over telecommunications facilities when those facilities are located on property owned or controlled by governmental entities. Specifically, the purposes of this division are:

- (1) To regulate the location of telecommunication towers and facilities;
- (2) To protect residential areas and land uses from potential adverse impacts of telecommunication towers and facilities;
- (3) To minimize adverse visual impacts of telecommunication towers and facilities through design, site, landscaping, and innovative camouflaging techniques;
- (4) To promote and encourage shared use and collocation of telecommunication towers and antenna support structures;
- (5) To avoid damage to adjacent properties caused by telecommunication towers and facilities by ensuring that those structures are soundly and carefully designed, constructed, modified, maintained and promptly removed when no longer used or when determined to be structurally unsound;
- (6) To ensure that telecommunication towers and facilities are compatible with surrounding

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land uses; and

- (7) To facilitate the provision of wireless telecommunications services to the residents and businesses of the city in an orderly fashion.

(Code 1987, § 350.1301)

Sec. 129-232. Development of towers; approvals required.

(a) *General construction prohibition.* A tower may not be constructed in any zoning district unless such tower is a conditional or permitted use in the zoning district in which construction will take place.

(b) *Conditional use permit required.* A tower may not be constructed in any zoning district unless a conditional use permit has been issued by the City Council if the tower is a conditional use in the zoning district in which construction will take place.

(c) *Building permit required.* A tower may not be constructed in any zoning district unless a building permit has been issued by the building official.

(d) *City property.* The city may authorize the use of city property for towers in accordance with the procedures of this chapter. The city has no obligation to allow the use of city property for this purpose.

(e) *Zoning districts.* A tower is not a permitted use in any zoning district. Towers shall be allowed as a conditional use in the following zoned areas:

- (1) Light industrial (I-1) and planned industrial area (PIA) districts.
- (2) Publicly owned or operated land in residential and commercial districts.

(Code 1987, § 350.1305; Ord. No. 102-1999, 2-21-1999)

Sec. 129-233. Application procedure.

(a) A person desiring to construct a tower must submit an application for a building permit and, if applicable, for a conditional use permit, to the planning staff.

(b) An application to develop a tower must include:

- (1) Name, address, and telephone number of the applicant;
- (2) Name, address, and telephone numbers of the owners of the property on which the tower is proposed to be located;
- (3) Written consent of the property owner to the application;
- (4) Written evidence from an engineer that the proposed structure meets the structural requirements of this Code;
- (5) Written information demonstrating the need for the tower at the proposed site in light of the existing and proposed wireless telecommunications networks to be operated by persons intending to place telecommunications facilities on the tower;
- (6) A copy of relevant portions of a lease signed by the applicant and property owner, requiring the applicant to remove the tower and associated telecommunications facilities upon cessation of operations on the leased site, or, if a lease does not yet exist, a written agreement to include such a provision in the lease to be signed; and
- (7) An application fee established by the city.

(Code 1987, § 350.1315)

Sec. 129-234. Performance standards.

(a) *Collocation capability.* Unless the applicant presents clear and convincing evidence to the City Council that collocation is not feasible, a new tower may not be built, constructed or erected in the city unless the tower is capable of supporting at least two telecommunications facilities comparable in weight, size, and surface area to each other.

(b) *Setback requirements.* A tower must comply with the following setback requirements:

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- (1) Towers shall meet the principal structure setbacks of the underlying zoning district provided the tower does not encroach upon any easement.
- (2) Towers shall not be located between a principal structure and a public street.
- (3) A tower's setback may be reduced or its location in relation to a public street varied, if the City Council reasonably deems it necessary to allow better site integration.

(Code 1987, § 350.1320; Ord. No. 102-1999, 2-21-1999)

Sec. 129-235. Engineer certification.

Towers must be designed and certified by an engineer to be structurally sound and in conformance with the state building code, and any other standards set forth in this Code.

(Code 1987, § 350.1325)

Sec. 129-236. Height restriction.

A tower may not exceed 125 feet in height. Measurement of tower height must include the tower structure itself, the base pad, and any telecommunications facilities attached thereto. Tower height is measured from grade. Measurement of antenna support structure height must include the structure itself and any telecommunications facilities attached thereto. This provision, however, is not a separate grant of authority to construct an antenna support structure or a grant that such a structure may be any particular height.

(Code 1987, § 350.1330; Ord. No. 102-1999, 2-21-1999)

Sec. 129-237. Lighting.

Towers may not be artificially lighted except as required by the Federal Aviation Administration. At time of construction of a tower, in cases where there are residential uses located within a distance that is three times the height of the tower from the tower, dual mode lighting must be requested from the Federal Aviation Administration. Notwithstanding this provision, the city may approve the placement of an antenna on an existing or proposed lighting standard; provided the antenna is integrated with the lighting standard.

(Code 1987, § 350.1335)

Sec. 129-238. Exterior finish.

Towers not requiring Federal Aviation Administration painting or marking must have an exterior finish as approved in the site plan.

(Code 1987, § 350.1340)

Sec. 129-239. Fencing.

Fences constructed around or upon parcels containing towers, antenna support structures, or telecommunications facilities must be constructed in accordance with the applicable fencing requirements in the zoning district where the tower or antenna support structure is located, unless more stringent fencing requirements are required by Federal Communications Commission regulations.

(Code 1987, § 350.1345)

Sec. 129-240. Landscaping.

Landscaping on parcels containing towers, antenna support structures or telecommunications facilities must be in accordance with landscaping requirements as approved in the site plan. Utility buildings and structures accessory to a tower must be architecturally designed to blend in with the surrounding environment and to meet such setback requirements as are compatible with the actual placement of the tower. Ground-mounted equipment must be screened from view by suitable vegetation, except where a design of nonvegetative screening better reflects and complements the character of the surrounding neighborhood.

(Code 1987, § 350.1350)

Sec. 129-241. Accessory buildings and equipment.

No more than one accessory building is permitted per tower. Accessory buildings may be no more than 200 square feet in size. Telecommunications facilities not located on a tower or in an accessory building must be of stealth design.

(Code 1987, § 350.1355)

Sec. 129-242. Security.

Towers must be reasonably posted and secured to protect against trespass. All signs must comply with applicable sign regulations.

(Code 1987, § 350.1360)

Sec. 129-243. Design.

Towers must be of stealth design.

(Code 1987, § 350.1365)

Sec. 129-244. Nontower facilities.

Telecommunications facilities are permitted only as follows:

- (1) Telecommunications facilities are a conditional accessory use in the central business district (B-1), general business district (B-2), and neighborhood business district (B-3); provided that the owner of such a telecommunications facility, by written certification to the building official, establishes the following facts at the time plans are submitted for a building permit:
 - a. The height from grade of the telecommunications facilities and antennas support structure does not exceed the maximum height from grade of the antenna support structure by more than 20 feet;
 - b. The antenna support structure and telecommunications facilities comply with the state building code; and
 - c. The telecommunications facilities located above the primary roof of an antenna support structure are set back one foot from the edge of the primary roof for each one foot in height above the primary roof of the telecommunications facilities. This setback requirement does not apply to antennas that are mounted to the exterior of antenna support structures below the primary roof, but that do not protrude more than six inches from the side of the antenna support structure.
- (2) Notwithstanding anything to the contrary contained in this chapter, telecommunications facilities are a permitted accessory use on antenna support structures owned or otherwise under the physical control of the city, a school district, or the state or federal government provided a building permit has been issued by the City Council and provided further that the owner of such a telecommunications facility, by written certification to the building official, establishes the following facts at the time plans are submitted for a building permit:
 - a. The height from grade of the telecommunications facilities and antennas support structure does not exceed the maximum height from grade of the antenna support structure by more than 20 feet;
 - b. The antenna support structure and telecommunications facilities comply with the state building code; and
 - c. Telecommunications facilities located above the primary roof of an antenna support structure are set back one foot from the edge of the primary roof for each one foot in height above the primary roof of the telecommunications facilities. This setback requirement does not apply to antennas that are mounted

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to the exterior of antenna support structures below the primary roof, but that do not protrude more than six inches from the side of the antenna support structure.

(Code 1987, § 350.1370; Ord. No. 102-1999, 2-21-1999)

Sec. 129-245. Removal of towers.

Abandoned or unused towers and associated above-ground facilities must be removed within twelve months of the cessation of operations of the telecommunications facility at the site unless an extension is approved by the City Council. Any tower and associated telecommunications facilities that are not removed within twelve months of the cessation of operations at a site are declared to be public nuisances and may be removed by the city and the costs of removal assessed against the property pursuant to state law and this Code.

(Code 1987, § 350.1375)

Sec. 129-246. Shoreland protection.

To the extent that any conflict exists between any provision of this division and any provision of chapter 129, article VIII, pertaining to shoreland protection, the more restrictive provision shall apply.

(Code 1987, § 350.1380)

Sec. 129-247. Additional requirements.

(a) *Inspections.* The city may conduct inspections at any time, upon reasonable notice to the property owner and the tower owner to inspect the tower for the purpose of determining if it complies with the state building code and other construction standards provided by this Code, federal and state law. The expense related to such inspections will be borne by the property owner. Based upon the results of an inspection, the building official may require repair or removal of a tower.

(b) *Evaluation and monitoring.* As a condition of approval for telecommunication facilities the applicant shall reimburse the city for its costs to retain outside expert technical assistance to evaluate any aspect of the proposed site of telecommunications facilities, including, but not limited to, other possible sites within the city. The owner of a telecommunications facility shall provide the city with current, technical evidence of compliance with FCC radiation emission requirements, annually or more frequently at the city's reasonable request. If the owner does not promptly provide the city with satisfactory technical evidence of FCC compliance, the city may carry out tests to ensure FCC radiation compliance using a qualified expert. The owner shall reimburse the city for its reasonable costs in carrying out such compliance testing.

(c) *Maintenance.* Towers must be maintained in accordance with the following provisions:

- (1) Tower owners must employ ordinary and reasonable care in construction and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public.
- (2) Tower owners must install and maintain towers, telecommunications facilities, wires, cables, fixtures and other equipment in compliance with the requirements of the National Electric Safety Code and all Federal Communications Commission, state, and local regulations, and in such a manner that they will not interfere with the use of other property.
- (3) Towers, telecommunications facilities, and antenna support structures must be kept and maintained in good condition, order, and repair.
- (4) Maintenance or construction on a tower, telecommunications facilities or antenna support structure must be performed by qualified maintenance and construction personnel.
- (5) Towers must comply with radio frequency emissions standards of the Federal Communications Commission.
- (6) If the use of a tower is discontinued by the tower owner, the tower owner must provide written notice to the city of its intent to discontinue use and the date when the use will

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be discontinued.

(Code 1987, § 350.1380; Ord. No. 96-1998, 4-18-1998; Ord. No. 102-1999, 2-21-1999)

Sec. 129-248. Variances.

(a) *Initial criteria.* The City Council may grant a variance to the setback separation or buffer requirements, and maximum height provision of this subsection based on the criteria set forth in section 129-39.

(b) *Additional criteria.* In addition to consideration of a variance based on the criteria set forth in section 129-39 into consideration, the City Council may also grant a variance by considering the requirements imposed by the Act and showing by the applicant with written or other satisfactory evidence that:

- (1) The location, shape, appearance or nature of use of the proposed tower will not substantially detract from the aesthetics of the area nor change the character of the neighborhood in which the tower is proposed to be located;
- (2) The variance will not create a threat to the public health, safety or welfare;
- (3) In the case of a requested modification to the setback requirement, the size of plat upon which the tower is proposed to be located makes compliance impossible, and the only alternative for the applicant is to locate the tower at another site that poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land;
- (4) In the case of a request for modification of separation requirements, if the person provides written technical evidence from an engineer that the proposed tower and telecommunications facilities must be located at the proposed site in order to meet the coverage needs of the applicant's wireless communications system and if the person agrees to create approved landscaping and other buffers to screen the tower from being visible to the residential area;
- (5) In the case of a request for modification of the maximum height limit, that the modification is necessary to:
 - a. Facilitate collocation of telecommunications facilities in order to avoid construction of a new tower; or
 - b. To meet the coverage requirements of the applicant's wireless communications system, which requirements must be documented with written, technical evidence from an engineer.

(Code 1987, § 350.1390)

Sec. 129-249. Failure to comply.

(a) *City's right to revoke.* If the permittee fails to comply with any of the terms imposed by the conditional use permit, the city may impose penalties or discipline for noncompliance, which may include revocation of the permit, in accordance with the following provisions:

(b) *Procedure.* Except as provided in subsection (c) of this section, the imposition of any penalty shall be preceded by:

- (1) Written notice to the permittee of the alleged violation;
- (2) The opportunity to cure the violation during a period not to exceed 30 days following receipt of the written notice; and
- (3) A hearing before the City Council at least 15 days after sending written notice of the hearing.

The notices contained in subsections (b)(1) and (3) of this section may be contained in the same notification. The hearing shall provide the permittee with an opportunity to show cause why the permit should not be subject to discipline.

(c) *Exigent circumstances.* If the city finds that exigent circumstances exist requiring immediate

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permit revocation, the city may revoke the permit and shall provide a post-revocation hearing before the City Council not more than 15 days after permittee's receipt of written notice of the hearing. Following such hearing, the City Council may sustain or rescind the revocation, or may impose such other and further disciplines as it deems appropriate.

(d) *Record.* Any decision to impose a penalty or other discipline shall be in writing and supported by substantial evidence contained in a written record.

(Code 1987, § 350.1395)

Secs. 129-250—129-265. Reserved.

DIVISION 3. ADULT ESTABLISHMENTS*

***State law reference**—Adult entertainment establishments, Minn. Stats. § 617.242.

Subdivision I. In General

Sec. 129-266. Definitions.

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

Adult establishment means:

- (1) Any business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise, or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from, items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to specified sexual activities or specified anatomical areas; or
- (2) Any business that engages in any adult use as defined in this division.

Adult use means any of the activities and businesses described in this definition.

- (1) *Adult body painting studio* means an establishment or business that provides the service of applying paint, ink, or other substance, whether transparent or nontransparent, to the body of a patron when the person is nude.
- (2) *Adult bookstore* means an establishment or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tapes, videotapes, movies, DVDs or motion picture films if a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise consists of, or if a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) is devoted to, or if substantial or significant portion of its gross revenues is derived from items, merchandise, devices or materials that are distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to specified sexual activities or specified anatomical areas.
- (3) *Adult cabaret* means a business or establishment that provides dancing or other live entertainment distinguished or characterized by an emphasis on:
 - a. The depiction of nudity, specified sexual activities or specified anatomical areas; or
 - b. The presentation, display, or depiction of matter that seeks to evoke, arouse, or excite sexual or erotic feelings or desire.

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- (4) *Adult companionship establishment* means 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.
- (5) *Adult conversation/rap parlor* means 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.
- (6) *Adult health/sport club* means a health/sport club that is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
- (7) *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.
- (8) *Adult massage parlor/health club* means a massage parlor or health club that provides massage services distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
- (9) *Adult minimotion picture theater* means 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.
- (10) *Adult modeling studio* means 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.
- (11) *Adult motion picture arcade* means 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.
- (12) *Adult motion picture theater* means 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.
- (13) *Adult novelty business* means an establishment or business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from items, merchandise, or devices that are distinguished or characterized by an emphasis on material depicting or describing specified sexual activities or specified anatomical areas, or items, merchandise or devices that simulate specified sexual activities or specified anatomical areas, or are designed for sexual stimulation.
- (14) *Adult sauna* means 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.
- (15) *Adult steam room/bathhouse facility* means a building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing,

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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.

Nude or specified anatomical areas means:

- (1) Less than completely and opaquely covered human genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means:

- (1) The following whether 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 zooerastia;
- (2) Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;
- (3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;
- (4) Fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts;
- (5) Situations involving 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;
- (6) Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or
- (7) Human excretion, urination, menstruation, or vaginal or anal irrigation.

Substantial or significant portion means 25 percent or more.

(Code 1987, § 350.1405; Ord. No. 11-2003, 12-7-2003)

Sec. 129-267. Purpose and intent.

(a) *Findings of the City Council.* Studies conducted by the state attorney general, the American Planning Association and cities such as St. Paul, Minneapolis and Rochester, Minnesota; Indianapolis, Indiana; Phoenix, Arizona; Los Angeles, California; Seattle, Washington; St. Croix County, Wisconsin, have studied the impacts that adult establishments have in those communities. These studies have concluded that adult establishments have an adverse impact on the surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. The City Council makes the following findings regarding the need to regulate adult establishments. The findings are based upon the experiences of other cities where such businesses have located, as studied by city staff. Based on these studies and findings, the City Council concludes:

- (1) Adult establishments have adverse secondary impacts of the types set forth in this subsection.
- (2) The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by locational requirements, licensing requirements and health requirements.
- (3) It is not the intent of the City Council to prohibit adult establishments from having a reasonable opportunity to locate in the city.
- (4) The provisions of Minn. Stats. § 462.357, allows the city to adopt regulations to

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promote the public health, safety, morals and general welfare.

- (5) The public health, safety, morals and general welfare will be promoted by the city adopting regulations governing adult establishments.
- (6) Adult establishments can contribute to an increase in criminal activity in the area in which such businesses are located, taxing city crime prevention programs and law enforcement services.
- (7) Adult establishments can be used as fronts for prostitution and other criminal activity. The experience of other cities indicates that the proper management and operation of such businesses can, however, minimize this risk, provided the owners and operators of such facilities are regulated by licensing or other procedures.
- (8) Adult establishments can increase the risk of exposure to communicable diseases including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS) for which currently there is no cure. Experiences of other cities indicate that such businesses can facilitate the spread of communicable diseases by virtue of the design and use of the premises, thereby endangering not only the patrons of such establishments but also the general public.
- (9) Adult establishments can cause or contribute to public health problems by the presence of live adult entertainment in conjunction with food and/or drink on the same premises.
- (10) The risk of criminal activity and/or public health problems can be minimized through a licensing and regulatory scheme as prescribed herein.

(b) *Purpose.* It is the purpose of this division to regulate adult establishments to promote the health, safety, morals, and general welfare of the citizens of the city and to establish reasonable and uniform regulations to:

- (1) Prevent additional criminal activity within the city;
- (2) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;
- (3) To locate adult establishments away from residential areas, schools, churches, libraries, parks, and playgrounds;
- (4) Prevent the concentration of adult establishments within certain areas of the city.

(c) *Provisions not meant to limit First Amendment.* The provisions of this division have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult oriented materials. Similarly, it is not the intent nor effect of this division to restrict or deny access by adults to adult oriented materials protected by the First Amendment or to deny access by distributors and exhibitors of adult oriented entertainment to their intended market.

(Code 1987, § 350.1400; Ord. No. 11-2003, 12-7-2003)

Sec. 129-268. Application of this division.

(a) Except as this division specifically provides, no structure shall be erected, converted, enlarged, reconstructed, or altered, and no structure or land shall be used, for any purpose nor in any manner which is not in conformity with this division.

(b) No adult establishment shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited by any ordinance of the city, the laws of the state, or the United States of America. Nothing in this division shall be construed as authorizing or permitting conduct that is prohibited or regulated by other statutes or ordinances, including, but not limited to, statutes or ordinances prohibiting the exhibition, sale, or distribution of obscene material generally, or the exhibition, sale, or distribution of specified materials to minors.

(Code 1987, § 350.1410; Ord. No. 11-2003, 12-7-2003)

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Sec. 129-269. Inspection.

(a) *Access.* An applicant or licensee shall permit health officials, representatives of the Police Department, Fire Department, and building official, to inspect the premises of an adult establishment for the purpose of ensuring compliance with the law, at any time it is occupied or open for business. The licensee is at all times responsible for the conduct, activity and operation of the business.

(b) *Refusal to permit inspections.* A person who operates an adult establishment or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by health officials, representatives of the Police Department, Fire Department, and building official at any time it is occupied or open for business. Refusal to permit inspections may result in nonrenewal, suspension or revocation of the license as provided in sections 129-289 and 129-290.

(c) *Exceptions.* The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation. Temporary habitation is defined as a period of time of at least 12 hours.

(d) *Records.* The licensee must keep itemized written records of all transactions involving the sale or rental of all items or merchandise for at least one year after the transaction. At a minimum, those records must describe the date of the transaction, a description of the transaction, the purchase price or rental price, and a detailed description of the item or merchandise that is being purchased or rented. These written records must be provided to the city upon request.

(Code 1987, § 350.1440; Ord. No. 11-2003, 12-7-2003)

Sec. 129-270. Location.

(a) *Permitted use.* Adult establishments are permitted uses in the B-1 central business district, the PED pedestrian planned unit development district and the I-1 light industrial district.

(b) *Restrictions.*

- (1) An adult establishment must be located at least 200 radial feet, as measured in a straight line from the closest point of the proposed adult establishment structure to the property line of any:
 - a. Residential property;
 - b. School;
 - c. Church or place of worship;
 - d. City-owned facility;
 - e. Park or recreational property;
 - f. Child day care facility;
 - g. Adult establishment.
- (2) If the proposed adult establishment is located in a multitenant building, the measurement described in subsection (b)(1) of this section shall be taken from the nearest point of the portion of the building where the adult establishment is located.
- (3) An applicant for an adult establishment license must demonstrate to the city that the location requirements in this section have been met.

(Code 1987, § 350.1415; Ord. No. 11-2003, 12-7-2003)

Sec. 129-271. Hours of operation.

No adult establishment shall be open to the public from the hours of 10:00 p.m. to 10:00 a.m. weekdays and Saturdays, nor at any time on Sundays or national holidays.

(Code 1987, § 350.1420; Ord. No. 11-2003, 12-7-2003)

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Sec. 129-272. Operation.

(a) *Off-site viewing.* Any business operating as an adult establishment shall prevent off-site viewing of its merchandise, which if viewed by a minor, would be in violation of Minn. Stats. ch. 617 or other applicable federal or state statutes or local ordinances.

(b) *Entrances.* All entrances to the business, with the exception of emergency fire exits that are not useable by patrons to enter the business, shall be visible from a public right-of-way.

(c) *Layout.* The layout of any display areas shall be designed so that the management of the establishment and any law enforcement personnel inside the store can observe all patrons while they have access to any merchandise offered for sale or viewing including, but not limited to, books, magazines, photographs, video tapes, or any other material, or any live dancers or entertainers.

(d) *Illumination.* Illumination of the premises exterior shall be adequate to observe the location and activities of all persons on the exterior premises.

(e) *Signs.* Signs for adult establishments shall comply with the city's articles for signs addressed in chapter 119 and section 129-139. Signs for adult establishments shall not contain a representational depiction of an adult nature or graphic descriptions of the adult theme of the operation.

(f) *Access by minors.* No minor shall be permitted on the licensed premises. Adult goods or materials may not be offered, sold, transferred, conveyed, given or bartered to a minor, or displayed in a fashion that allows them to be viewed by a minor, whether or not the minor is on the licensed premises.

(g) *Additional conditions for adult cabarets.* The following additional conditions apply to adult cabarets:

- (1) No dancer, live entertainer or performer shall be under 18 years old.
- (2) All dancing or live entertainment shall occur on a platform intended for that purpose and which is raised at least two feet from the level of the floor.
- (3) No dancer or performer shall perform any dance or live entertainment closer than ten feet to any patron.
- (4) No dancer or performer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.
- (5) No patron shall pay or give any gratuity to any dancer or performer.
- (6) No dancer or performer shall solicit or receive any pay or gratuity from any patron.

(Code 1987, § 350.1425; Ord. No. 11-2003, 12-7-2003)

Secs. 129-273—129-285. Reserved.

Subdivision II. Licenses

Sec. 129-286. Procedure.

(a) *Required.* All adult establishments shall apply for and obtain a license from the city. A person or entity is in violation of this division if the person or entity operates an adult establishment without a valid license, issued by the city.

(b) *Applications.* An application for a license must be made on a form provided by the city and must include:

- (1) If the applicant is an individual, the name, address, phone number, and birth date of the applicant. If the applicant is a partnership, the name, residence, phone number, and birth date of each general and limited partner. If the applicant is a corporation, the names, addresses, phone numbers, and birth dates of all officers and directors of the corporation;
- (2) The name, address, phone number, and birth date of the operator and manager of the adult establishment, if different from the owner's;

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- (3) The address and legal description of the premises where the adult establishment is to be located;
- (4) A statement detailing any misdemeanor, gross misdemeanor, or felony convictions relating to sex offenses, obscenity, or the operation of an adult establishment or adult business by the applicant, operator, or manager, and whether the applicant, operator or manager has ever applied for or held a license to operate a similar type of business in another community. In the case of a corporation, a statement detailing any felony convictions by the officers and directors of the corporation, and whether or not those individuals have ever applied for or held a license to operate a similar type of business in another community;
- (5) The activities and types of business to be conducted;
- (6) The hours of operation;
- (7) The provisions made to restrict access by minors;
- (8) A building plan of the premises detailing all internal operations and activities;
- (9) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches;
- (10) A statement that the applicant is qualified according to the provisions of this division and that the premises have been or will be inspected and found to be in compliance with the appropriate state, county, and local law and codes by the health official, fire marshal, and building official;
- (11) The names, addresses, phone numbers, dates of birth, of the owner, lessee, if any, the operator or manager, and all employees; the name, address, and phone number of two persons, who shall be residents of the state, and who may be called upon to attest to the applicant's, manager's, or operator's character; whether the applicant, manager, or operator has ever been convicted of a crime or offense other than a traffic offense and, if so, complete and accurate information of the disposition thereof; the names and addresses of all creditors of the applicant, owner, lessee, or manager insofar as credit which has been extended for the purposes of constructing, equipping, maintaining, operating, furnishing or acquiring the premises, personal effects, equipment, or anything incident to the establishment, maintenance and operation of the business;
- (12) If the application is made on behalf of a joint business venture, partnership, or any legally constituted business association, it shall submit along with its application, accurate and complete business records showing the names, addresses, and dates of birth of partners, owners, and creditors furnishing credit for the establishment, acquisition, maintenance, and furnishings of said business and, in the case of a corporation, the names, addresses, and dates of birth of all officers, directors, and creditors who have extended credit for the acquisition, maintenance, operation, or furnishing of the establishment including the purchase or acquisition of any items of personal property for use in said operation; and
- (13) Complete and accurate documentation establishing the interest of the applicant in the premises upon which the building is proposed to be located or the furnishings thereof, personal property thereof, or the operation or maintenance thereof. Documentation shall be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements, and any other documents establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the enterprise.

(c) *Disqualifications.* The city will issue a license to an applicant within 30 days of the application unless one or more of the following conditions exist:

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- (1) The applicant is under 21 years of age;
 - (2) The applicant failed to supply all of the information requested on the license application;
 - (3) The applicant gives false, fraudulent, or untruthful information on the license application;
 - (4) The applicant has been convicted of a gross misdemeanor or felony or of violating any law of this state or local ordinance relating to sex offenses, obscenity offenses, or adult establishments;
 - (5) The adult establishment is not in full compliance with this Code and all provisions of state and federal law;
 - (6) The applicant has not paid the required license and investigation fees;
 - (7) The applicant has been denied a license by the city or any other municipal corporation in the state to operate an adult establishment, or such license has been suspended or revoked, within the preceding 12 months;
 - (8) The applicant is not the proprietor of the establishment for which the license is issued; or
 - (9) The adult establishment premises holds an intoxicating liquor, beer or wine license.
- (d) *Requalification.* An applicant may qualify for an adult establishment license as follows:
- (1) After one year has elapsed in the case of a previous license revocation;
 - (2) After two years have elapsed since the date of conviction or the date of release from confinement in the case of a misdemeanor offense;
 - (3) After five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is later, in the case of a felony offense; or
 - (4) After five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is later, if the conviction is of two or more misdemeanor offenses or a combination of misdemeanor offenses occurring within any 24-month period.

(e) *Posting.* The license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the adult establishment. The license shall be posted in a conspicuous place at or near the entrance to the adult establishment so that it may be easily read at any time.

(Code 1987, § 350.1430; Ord. No. 11-2003, 12-7-2003)

State law reference—Certain persons prohibited from owning or managing adult entertainment establishments, Minn. Stats. § 609B.545.

Sec. 129-287. Fees.

- (a) The license fees for adult establishments are as follows:
- (1) The annual license fee shall be as established by the city.
 - (2) An application for a license must be submitted to the City Clerk and accompanied by payment of the required license fee. Upon rejection of an application for a license, the city will refund the license fee.
 - (3) Licenses will expire on December 31 in each year. Each license will be issued for a period of one year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a prorated fee. In computing a prorated fee, any unexpired fraction of a month will be counted as one month.

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- (4) No part of the fee paid by any license will be refunded, except that a pro rata portion of the fee will be refunded in the following instances upon application to the City Council within 30 days from the happening of one of the following events, provided that the event occurs more than 30 days before the expiration of the license:
 - a. Destruction or damage of the licensed premises by fire or other catastrophe;
 - b. The licensee's illness, if such illness renders the licensee unable to continue operating the licensed adult establishment;
 - c. The licensee's death; or
 - d. A change in the legal status making it unlawful for the licensed business to continue.
- (5) An application must contain a provision in bold print indicating that withholding information or providing false or misleading information will be grounds for denial or revocation of a license. Changes in the information provided on the application or provided during the investigation must be brought to the attention of the City Council by the applicant or licensee. If such a change takes place during the investigation, it must be reported to the City Manager in writing. A failure by an applicant or licensee to report such a change may result in a denial or revocation of a license.

(b) The one-time, nonrefundable background investigative fee for an adult establishment license by the Police Department for each person identified on the application as an owner, operator, or manager of the business and for each successor, owner, operator or manager shall be established by ordinance by the City Council.

(c) The procedures for granting an adult establishment license are as follows:

- (1) The city will conduct and complete an investigation within 30 days after the City Manager receives a complete application and all license and investigative fees.
- (2) If the application is for a renewal, the applicant will be allowed to continue business until the City Council has determined whether the applicant meets the criteria of this division for a renewal license.
- (3) If, after the investigation, it appears that the applicant and the place proposed for the business are eligible for a license, the license must be issued by the City Council within 30 days after the investigation is completed. If the City Council fails to act within 30 days after the investigation is completed, the application will be deemed approved.

(Code 1987, § 350.1435; Ord. No. 11-2003, 12-7-2003)

Sec. 129-288. Expiration and renewal.

(a) *Expiration.* Each license shall expire at the end of the calendar year and may be renewed only by making application as provided in section 129-286. Application for renewal must be made at least 60 days before the expiration date.

(b) *Denial of renewal.* When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

(Code 1987, § 350.1445; Ord. No. 11-2003, 12-7-2003)

Sec. 129-289. Suspension.

(a) *Causes of suspension.* The city may suspend a license for a period not to exceed 30 days if it determines that the licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any provision of this division.
- (2) Engaged in the sale or use of alcoholic beverages while on the adult establishment

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premises other than at an adult hotel or motel.

- (3) Refused to allow an inspection of the adult establishment as authorized by this division.
- (4) Knowingly permitted gambling by any person on the adult establishment premises.
- (5) Demonstrated an inability to operate or manage an adult establishment in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(b) *Notice.* A suspension by the city shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least ten days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed business premises with the person in charge thereof, or by mailing the notice by U.S. mail to the last known address of the owner or agent authorized to receive legal notices for the business, as listed on its license application.

(Code 1987, § 350.1450; Ord. No. 11-2003, 12-7-2003)

Sec. 129-290. Revocation.

(a) *Suspended licenses.* The city may revoke a license if a cause of suspension in section 129-289 occurs and the license has been suspended at least once before within the preceding 12 months.

(b) *Causes of revocation.* The city may revoke a license if it determines that:

- (1) A licensee gave false or misleading information in the material submitted to the city during the application process;
- (2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (3) A licensee or an employee has knowingly allowed prostitution on the premises;
- (4) A licensee or an employee knowingly operated the adult establishment during a period of time when the licensee's license was suspended;
- (5) A licensee has been convicted of an offense listed in section 129-286(c)(4), for which the time period required in section 129-286(d), has not elapsed;
- (6) On two or more occasions within a 12-month period, a person committed an offense occurring in or on the licensed premises of a crime listed in section 129-286(c)(4) for which a conviction has been obtained, and the person was an employee of the adult establishment at the time the offense was committed;
- (7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.

(c) *Appeals.* The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(d) *Exceptions.* Subsection (b)(7) of this section, does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) *Granting a license after revocation.* When the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued an adult establishment license for one year from the date the revocation became effective. If, subsequent to the revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license is revoked under subsection (b)(5) of this section, an applicant may not be granted another license until the appropriate number of years required under section 129-286(d) have elapsed.

(f) *Notice.* A revocation by the city shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least ten days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving

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the same at the licensed premises with the person in charge thereof or by mailing the notice by U.S. mail to the last known address of the owner or agent authorized to receive legal notices for the business, as listed on its license application.

(Code 1987, § 350.1455; Ord. No. 11-2003, 12-7-2003)

Sec. 129-291. Procedures.

Issuance, suspension, revocation, and nonrenewal of adult establishment licenses are governed by the following provisions:

- (1) In the event that the City Council proposes not to renew, to revoke, or to suspend the license, the licensee must be notified in writing of the basis for such proposed revocation or suspension. The Council will hold a hearing for the purpose of determining whether to revoke or suspend the license. The hearing must be within 30 days of the date of the notice. The City Council must determine whether to suspend or revoke a license within 30 days after the close of the hearing or within 60 days of the date of the notice, whichever is sooner. The Council must notify the licensee of its decision within that period.
- (2) If the Council determines to suspend or revoke a license, the suspension or revocation is not effective until 15 days after notification of the decision to the licensee. If, within that 15 days, the licensee files and serves an action in state or federal court challenging the Council's action, the suspension or revocation is stayed until the conclusion of such action.
- (3) If the City Council determines not to renew a license, the licensee may continue its business for 15 days after receiving notice of such nonrenewal. If the licensee files and serves an action in state or federal court within that 15-day period for the purpose of determining whether the city acted properly, the licensee may continue in business until the conclusion of the action.
- (4) If the City Council does not grant a license to an applicant, then the applicant may commence an action in state or federal court within 15 days for the purpose of determining whether the city acted properly. The applicant may not commence doing business unless the action is concluded in its favor.

(Code 1987, § 350.1460; Ord. No. 11-2003, 12-7-2003)

Sec. 129-292. Transfer of license.

A licensee shall not transfer his license to another, nor shall a licensee operate an adult establishment under the authority of a license at any place other than the address designated in the application.

(Code 1987, § 350.1465; Ord. No. 11-2003, 12-7-2003)

Secs. 129-293—129-312. Reserved.

ARTICLE VI. PERFORMANCE STANDARDS

Sec. 129-313. Purpose.

(a) The performance standards established in this article are designed to encourage a high standard of development by enhancing the compatibility of neighboring land uses. The performance standards are designed to prevent and eliminate those conditions that cause blight and to enhance and protect the health, safety, welfare and appearance of the community consistent with established policies and standards. All future development in any district shall be required to meet these standards.

(b) The standards shall also apply to existing development where so stated. The City Manager shall be responsible for enforcing the standards.

(c) Before any building permit is approved, the planning staff shall determine whether the proposed use will conform to the performance standards. The applicant shall supply all data necessary to demonstrate

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such conformance.

(Code 1987, § 350.700; Ord. No. 61-1993, § 350.705, 2-23-1994)

Sec. 129-314. Exterior storage.

In all residential districts, it is the responsibility of the owner of any property, improved or unimproved, to maintain the outdoor areas; including courtyards and the like, of the property and adjacent rights-of-way in a manner that prevents blight and complies with the following requirements:

(a) *Storage on private property.* Exterior storage of ice shelters, recreational vehicles, motorized vehicles, utility trailers, watercraft, or watercraft trailers is permitted on all residentially zoned properties and shall be regulated as follows:

(b) *Developed lots.* Exterior storage on lots with principal dwellings shall be limited to no more than one (1) ice shelter, recreational vehicle, motorized vehicle, utility trailer, watercraft, watercraft trailer, objects screened by a tarp or other screening device, or any combination thereof, for every 1,500 square feet of lot area, up to a maximum of six (6).

(c) *Undeveloped lots.* Exterior storage on lots with no principal dwelling shall be limited to no more than one (1) ice shelter, recreational vehicle, motorized vehicle, utility trailer, watercraft, watercraft trailer, objects screened by a tarp or other screening device, or any combination thereof, for every 3,000 square feet of lot area, up to a maximum of six (6).

(d) *Storage for hire prohibited.* All exterior storage items must be owned by, leased to, or rented to the owner or occupant of the property on which it is stored. The storage of un-owned items under storage for hire, trade, or other in-kind consideration is prohibited on all residential properties.

(e) *Storage of recreational vehicles and utility trailers.* Storage of recreational vehicles and utility trailers shall be regulated as follows:

(1) It is unlawful for any person to use for human habitation a recreational vehicle or utility trailer that is parked or stored upon public property.

(2) It is unlawful for any person to park or store a recreational vehicle or utility trailer for human habitation upon any private property for more than 72 hours, without first obtaining a permit from the City, which may not exceed 14 days in aggregate.

(3) All outdoor storage of recreational vehicles and utility trailers stored in whole on areas meeting the requirements of section 121-146 (13), are permitted to be stored no closer than one foot to any side, front, or rear lot line, so long as the construction of the area meets the requirements of section 121-146 (13).

(4) All exterior storage on an area which does not comply with subd. 3 shall be stored no less than five (5) feet from any lot line.

(f) *Storage of motorized vehicles.* Storage and parking of all motorized vehicles other than recreational vehicles shall be regulated as follows:

(1) Operability and restorations. All outdoor storage of motorized vehicles on any residentially zoned property within the City shall be operable. The parking or exterior storage of junk vehicles is prohibited.

(2) Exterior storage of motorized vehicles other than recreational vehicles, with a maximum gross vehicle weight (GVW) of 10,000 pounds or less is allowed in all residential districts.

(3) Exterior storage of motorized vehicles in excess of 10,000 pounds GVW is prohibited in all residential districts.

(4) All exterior storage of motorized vehicles stored in whole on areas of impervious cover are permitted to be stored no closer than one (1) foot to any side, front, or rear lot line, so long as the construction of the area meets the requirements of section 121-146 (13). Storage on an area which does not meet the requirements of section 121-146 (13) shall be considered storage on non-impervious cover.

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(5) All exterior storage of motorized vehicles on areas of non-impervious cover shall be stored no less than five (5) feet from any lot line.

(g) *Storage of watercraft and watercraft trailers.* Watercraft, unoccupied watercraft trailers, and watercraft on watercraft trailers shall be subject to the following storage requirements:

(1) *Operability and restorations.* All watercraft stored in the open on any residentially zoned property within the City shall be in operable condition. The storage of junk watercraft or junk watercraft trailers is prohibited.

(2) *Allowed outdoor storage locations.* The exterior storage of watercraft and unoccupied watercraft trailers on residential properties is permitted as follows:

i. *Lakeshore lots.* Watercraft and unoccupied watercraft trailers may be stored in a side yard, rear yard, front yard, and lakeshore yard, so long as the storage meets required setbacks and have no significant impact on lake views to adjacent lakeshore properties.

ii. *Non-lakeshore lots.* Watercraft and unoccupied watercraft trailers may be stored in front yard, side yard, or rear yard areas, so long as the storage meets required setbacks.

(3) *Required setbacks.* All exterior storage of watercraft and watercraft trailers shall be subject to the following setbacks:

i. *Storage on impervious cover.* All exterior storage of watercraft and watercraft trailers stored in whole on areas of impervious cover are permitted to be stored no closer than one (1) foot to any side, front, or rear lot line, so long as the construction of the area meets the requirements of section 121-146 (13). Storage on an area which does not meet the requirements of section 121-146 (13) shall be considered storage on non-impervious cover.

ii. *Storage on non-impervious cover.* All exterior storage of watercraft and watercraft trailers on areas of non-impervious cover shall be stored no less than five (5) feet from any lot line.

(h) *Storage of special mobile equipment.* The exterior storage of special mobile equipment on any residentially zoned property shall be prohibited; exclusive of equipment stored on a property for use in conjunction with a valid building permit issued by the City.

(i) *Prohibited exterior storage.* The exterior storage of any of the following is prohibited:

(1) *Trash and debris.*

i. All garbage, rubbish, animal carcasses, animal and human waste, and other waste materials stored outside of an approved rubbish pre-collection container;

ii. Accumulations of litter, glass, scrap materials (such as wood, cardboard, metal, paper, or plastics), junk, combustible materials, stagnant water, plastic bags, trash, or other debris outside of an approved rubbish pre-collection container;

iii. Rubble, trash, debris, spoil, and other construction wastes generated during permitted construction not removed from the property within 21-days of being generated.

iv. Accumulations of discarded, disused, or junk clothing, furniture, carpet, or any other items not designed for outdoor storage.

(2) *Non-trash items.*

i. Accumulations of discarded, disused, or junk wood or plastic pallets;

ii. Accumulations of automotive parts or tires;

iii. All construction and building materials, unless such materials are being used at the time in the construction of a building, in which case, such construction must be permitted and on a continuous, uninterrupted basis;

iv. All discarded, disused, or junk appliances or appliance parts;

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v. All indoor or upholstered furniture of a type or materials which is deteriorated by exposure to outdoor elements; or

vi. All recycling materials, except for reasonable accumulations, amounts consistent with a policy of regular removal, which are stored in a well-maintained manner according to Chapter 54.

(3) *All other non-trash items.*

Storage of items which are a type or quantity inconsistent with normal and usual use;

Are of a type or quantity inconsistent with the intended use of the property; or

Are likely to obstruct or impede the necessary passage of fire or other emergency personnel.

(j) *Exterior storage of firewood.* Exterior storage of firewood may be stored upon all residential properties solely for use on the premises and not offered for resale. All firewood located upon residential properties shall be stored as follows:

(1) All firewood shall be cut or split, prepared for use, and stored in a regular, orderly arrangement that is stable and reasonably resistant to collapse.

(2) The height of a woodpile over three (3) feet shall be no more than twice its width, with a maximum height of six (6) feet.

(3) Firewood shall be stored not less than three and one-half (3.5) inches off the ground and on a well supported, non-rotting base.

(4) Storage of firewood shall be permitted in side and rear yard areas only and must maintain a minimum setback of four (4) feet from any side or rear lot line, unless separated by a fence, then no closer than one (1) foot.

(k) *Violation subject to abatement.* A violation of this Code shall be deemed a public nuisance, subject to the notification and abatement procedures contained within Chapter 42.

(Ord. No. 01-2017, 2-5-2017)

Sec. 129-315. Refuse.

(a) In all districts, all waste material, with the exception of debris, refuse, or garbage shall be kept in an enclosed building or properly contained in a closed container designed for such purposes. The owner of vacant land shall be responsible for keeping such land free of refuse. Existing uses shall comply with this provision within six months following the enactment of the ordinance from which this chapter is derived.

(b) Passenger vehicles and trucks in an inoperative state shall not be parked in residential districts for a period exceeding 96 hours. The term "inoperative" means incapable of movement under their own power and in need of repairs or removal to junk yard. All exterior storage not included as a permitted accessory use, a permitted use, or included as part of a conditional use permit, or otherwise permitted by provisions of this chapter shall be considered as refuse.

(Code 1987, § 350.715; Ord. No. 61-1993, § 350.715, 2-23-1994)

Sec. 129-316. Screening and buffering.

(a) Screening shall be required in all residential zones where:

(1) Any off-street parking area contains more than four parking spaces and is within 30 feet of an adjoining residential zone; and

(2) Where the driveway to a parking area of more than six parking spaces is within 15 feet of an adjoining residential use or zone.

(b) Where any business (structure, parking or storage) is adjacent to property zoned or developed for any residential use, that business or industry shall provide screening along its boundary with the residential property. Screening shall also be provided where a business, parking lot, or industry is across the street from a residential zone, but not on that side of a business or industry considered to be the front (as determined by this chapter).

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- (c) All exterior storage in commercial districts shall be screened. The exceptions are:
- (1) Merchandise being displayed for sale;
 - (2) Materials and equipment presently being used for construction on the premises; and
 - (3) Merchandise located on service station pump islands. All exterior storage in commercial districts shall not impede traffic control and must follow section 129-322.

(d) Required screening or buffering may be achieved with fences, walls, earth berms, hedges or other landscape materials. All walls and fences shall be architecturally harmonious with the principal building. Earth berms shall not exceed a 3:1 slope ratio.

(e) The screen shall be designed to employ materials which provide an effective visual barrier during all seasons.

(f) All required screening or buffering shall be located on the lot occupied by the use, building, facility or structure to be screened. No screening or buffering shall be located on any public right-of-way or within ten feet of the traveled portion of any street or highway.

(g) Screening or buffering required by this section shall be of a height needed to accomplish the goals of this section without impairing safe sight distances at intersections, driveways and other critical locations.

(Code 1987, § 350.720; Ord. No. 61-1993, § 350.720, 2-23-1994)

Sec. 129-317. Landscaping and tree preservation.

(a) *Minimum requirements.* All open areas of a lot which are not used or improved for required parking areas, drives or storage shall be landscaped with a combination of overstory trees, ornamental trees, shrubs, flowers, ground cover, decorative walks or other similar site design materials in a quantity and placement suitable for the site. A reasonable attempt shall be made to preserve as many existing trees as is practicable and to incorporate them into the development.

(b) *Minimum number of trees.* The minimum number of overstory trees on any given site shall be as indicated in this section. These are minimum requirements that are typically supplemented by other understory trees, shrubs, flowers and ground covers deemed appropriate for a complete quality landscape treatment of a site.

- (1) Commercial, industrial, and institutional sites shall contain at a minimum, the greater of:
 - a. One tree per 1,000 square feet of gross building floor area; or
 - b. One tree per 50 linear feet of site perimeter.
 - (2) Multiple-family residential sites shall contain at a minimum: one tree per dwelling unit.
- (c) *Minimum size of plantings.* Required trees shall be of the following minimum planting size:
- (1) Deciduous trees with a 2.5-inch caliper diameter.
 - (2) Coniferous trees of six feet in height.
 - (3) Deciduous shrubs of two feet in height.
 - (4) Evergreen shrubs of two feet in height or two feet in width whichever applies.
- (d) *Species.*
- (1) All trees used in site developments shall be indigenous to the appropriate hardiness zone and physical characteristics of the site.
 - (2) All deciduous trees proposed to satisfy the requirements herein shall be long-lived hardwood species.
 - (3) The compliment of trees fulfilling the landscaping requirements shall be not less than 25 percent deciduous and not less than 25 percent coniferous.

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(e) *Sodding and ground cover.* All areas not otherwise improved in accordance with approved site plans shall be sodded or seeded.

(f) *Maintenance.* In all districts, required landscaping shall be maintained so as not to be unsightly or present harmful health or safety conditions. Dead plant materials shall be replaced promptly.

(g) *Tree preservation policy.*

- (1) It is the intent of the city to preserve wooded areas throughout the city and with respect to future site development, to retain, as far as practicable, substantial existing tree cover.
- (2) Credit for the retention of existing trees which are of acceptable species, size and location may be given to satisfy the minimum number requirements set forth in this section.
- (3) The following restrictions shall apply to all development occurring in wooded areas:
 - a. Structures shall be located in such a manner that the maximum number of trees shall be preserved.
 - b. Prior to the granting of a building permit, it shall be the duty of the person seeking the permit to demonstrate that there are no feasible or prudent alternatives to the cutting of trees on the site.
 - c. Forestation, reforestation or landscaping shall utilize a variety of tree species and shall not utilize any species presently under disease epidemic. Species planted shall be hardy under local conditions and compatible with the local landscape.
 - d. Development including grading and contouring shall take place in such a manner that the root zone aeration stability of existing trees shall not be affected and shall provide existing trees with a watering equal to one-half the crown area.
 - e. Notwithstanding the restrictions in this subsection, the removal of trees seriously damaged by storms, or other natural causes, shall not be prohibited.

(Code 1987, § 350.725; Ord. No. 61-1993, § 350.725, 2-23-1994)

Sec. 129-318. Glare.

In all districts, any lighting used to illuminate an off-street parking area, sign, or other structure, shall be arranged so as to deflect light away from any adjoining residential zone or from the public streets. Direct or sky-reflected glare, where from floodlights or from high temperature processes such as combustion or welding, shall not be directed into any adjoining property. The source of lights shall be hooded or controlled in some manner so as not to light adjacent property. Bare incandescent light bulbs shall not be permitted in view of adjacent property or public right-of-way. Any light or combination of lights which cast light on a public street shall not exceed one footcandle (meter reading) as measured from the centerline of said street. Any light or combination of lights which cast light on residential property shall not exceed 0.4 footcandle (meter reading) as measured from said property line.

(Code 1987, § 350.730; Ord. No. 61-1993, § 350.730, 2-23-1994)

Sec. 129-319. Bulk storage.

All uses associated with the bulk storage of oil, gasoline, liquid fertilizer, chemicals, and similar liquids shall require a conditional use permit in order that the governing body may have assurance that fire, explosion, or water or soil contamination hazards are not present (that would be detrimental to the public health, safety, and general welfare). All existing, aboveground liquid storage tanks having a capacity in excess of 10,000 gallons shall secure a conditional use permit within 24 months following enactment of the ordinance from which this chapter is derived. The City Council may require the development of diking around said tanks. Diking shall be suitably sealed, and shall hold a leakage capacity equal to 115 percent of the capacity of the largest, single tank.

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(Code 1987, § 350.735; Ord. No. 61-1993, § 350.735, 2-23-1994)

Sec. 129-320. Nuisances.

(a) *Nuisance characteristics.* No noise, odors, vibration, smoke, air pollution, liquid, or solid wastes, heat, glare, dust, or other such adverse influences shall be permitted in any district that will in any way have an objectionable effect upon adjacent or nearby property. All wastes in all districts shall be disposed of in a manner that is not dangerous to public health and safety nor will damage public waste transmission or disposal facilities.

(b) *Nonindustrial district standards.* The following standards apply to nonindustrial districts:

- (1) *Odors and noise.* Odors shall not be allowed to exceed the standards stated in the Minnesota Air Pollution Control Regulations. Ambient noise shall not be allowed to exceed MPCA standards.
- (2) *Miscellaneous nuisances.*
 - a. It shall be unlawful to create or maintain a junkyard or vehicle dismantling yard except as provided herein.
 - b. The following are declared to be nuisances affecting public health or safety:
 1. The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances.
 2. The ownership, possession or control of any unused refrigerator or other container, with doors which fasten automatically when closed, of sufficient size to retain any person, to be exposed and accessible to the public without removing the doors, lids, hinges or latches or providing locks to prevent access by the public.
- (3) *Dwelling units prohibited.* No garage, tent, trailer, (except licensed mobile home) or accessory building and/or basement in and of itself shall be at any time used as a permanent residence. Earth sheltered housing is permitted.

(Code 1987, § 350.7470; Ord. No. 61-1993, § 350.740, 2-23-1994)

Sec. 129-321. Soil erosion and sedimentation control.

The following are general standards for soil erosion and sedimentation control:

- (1) All development shall conform to the natural limitations presented by the topography and soil as to create the best potential for preventing soil erosion.
- (2) Development on slopes with a grade over twelve percent shall be carefully reviewed to insure adequate measures have been taken to prevent erosion, sedimentation, and structural damage.
- (3) Erosion and siltation control measures shall be coordinated with the different stages of development. Appropriate control measures shall be installed prior to development when necessary to control erosion.
- (4) Land shall be developed in increments of workable size such that adequate erosion and siltation controls can be provided as construction progresses. The smallest practical area of land shall be exposed at any one period of time.
- (5) The drainage system shall be constructed and operational as quickly as possible during construction.
- (6) Whenever possible, natural vegetation shall be retained and protected.
- (7) Where the topsoil is removed, sufficient arable soil shall be set aside for re-spreading over the developed area. The soil shall be restored to a depth of four inches and shall be of a quality at least equal to the soil quality prior to development.

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- (8) When soil is exposed, the exposure shall be for the shortest feasible period of time. No exposure shall be planned to exceed 60 days. Said time period may be extended only if the Planning Commission is satisfied that adequate measures have been established and will remain in place.
- (9) The natural drainage system shall be used as far as is feasible for storage and flow of runoff. Stormwater drainage shall be discharged to marshlands, swamps, retention basins or other treatment facilities. Diversion of stormwater to marshlands or swamps shall be considered for existing or planned surface drainage. Marshlands and swamps used for stormwater shall provide for natural or artificial water level control. Temporary storage areas or retention basins scattered throughout development areas shall be encouraged to reduce peak flow, erosion damage, and construction costs.

(Code 1987, § 350.7745; Ord. No. 61-1993, § 350.745, 2-23-1994)

Sec. 129-322. Traffic control.

- (a) The traffic generated by any use shall be channelized and controlled in a manner that will avoid:
 - (1) Congestion on the public streets;
 - (2) Traffic hazards; and
 - (3) Excessive traffic through residential areas, particularly truck traffic.
- (b) Internal traffic shall be so regulated as to ensure its safe and orderly flow.
- (c) Traffic into and out of business areas shall in all cases be forward moving with no backing into streets.
- (d) On corner lots, nothing shall be placed or allowed to grow with the exception of seasonal crops in such a manner as materially to impede vision between a height of 2½ and ten feet above the centerline grades of the intersecting streets to a distance such that a clear line of vision is possible of the intersection street from a distance of 30 feet from the intersection of the right-of-way lines.

(Code 1987, § 350.750; Ord. No. 61-1993, § 350.750, 2-23-1994)

Sec. 129-323. Parking.

- (a) *Location.* All accessory off-street parking facilities required herein shall be located as follows:
 - (1) Spaces accessory to one-family and two-family dwellings shall be on the same lot as the principal use served.
 - (2) Spaces accessory to multiple-family dwellings shall be on the same lot as the principal use served or within 200 feet of the main entrance to the principal building served.
 - (3) Spaces accessory to uses located in a business district shall be within 800 feet of a main entrance to the principal building served.
 - (4) No off-street open parking area containing more than four parking spaces shall be located closer than five feet from an adjacent lot zoned or used for residential purposes.
- (b) *General provisions.*
 - (1) *Parking spaces.* Each parking space shall not be less than nine feet wide and 18 feet in length exclusive of an adequately designed system of access drives. Handicapped parking shall be provided and constructed pursuant to state law with stalls of not less than 12 feet wide and 20 feet in length.
 - (2) *Calculation.* When the computation of required parking spaces produces a fractional result, fractions of one-half or greater shall require one full parking space.
 - (3) *Gross floor area.* The term gross floor area for the purpose of calculating the number of off-street parking spaces required shall be determined on the basis of the exterior floor dimensions of the building, structure, or use, multiplied by the number of floors, minus

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the greater of 10% or the square footage devoted to restrooms, mechanical spaces, entry vestibules, and exit hallways or stairwells as documented on a submitted floor plan.

- (4) *Control of off-street parking facilities.* When required, accessory off-street parking facilities are provided elsewhere than on the lot in which the principal use served is located, they shall be in the same ownership or control, either by deed or longterm lease, as the property occupied by such principal use, and the owner of the principal use shall file a recordable document with the City Council requiring the owner and his heirs and assigns to maintain the required number of off-street spaces during the existence of said principal use.
- (5) *Use of parking area.* Required off-street parking space in any district shall not be utilized for open storage of goods or for the storage of vehicles which are inoperable or for sale or for rent.

(c) *Design and maintenance of off-street parking areas.*

- (1) *Access.* Parking areas shall be designed so as to provide adequate means of access to a public alley or street. Such driveway access shall not exceed 24 feet in width and shall be so located as to cause the least interference with traffic movement.
- (2) *Signs.* No signs shall be located in any parking area except as necessary for orderly operation of traffic movement and such signs shall not be a part of the permitted advertising space.
- (3) *Multiple-family, commercial and industrial uses.* For multiple-family, commercial and industrial uses, parking areas and access drives shall be paved with concrete or bituminous surfacing with proper drainage, and concrete curb.
- (4) *Spaces for six or more cars.* When a required off-street parking space for six cars or more is located adjacent to a residential district, a fence of adequate design, not over five feet in height nor less than four feet in height shall be erected along the residential district property line.
- (5) *Maintenance responsibility.* It shall be the joint and several responsibility of the operator and owner of the principal uses and/or building to maintain, in a neat and adequate manner, the parking space, accessways, landscaping and required fences.
- (6) *Design and maintenance.* Parking areas shall be so designed that internal circulation shall be available without utilizing the public street.

(d) *Truck parking in residential areas.* No motor vehicle over one ton capacity bearing a commercial license and no commercially licensed trailer shall be parked or stored in a platted residential district or a public street except when loading, unloading, or rendering a service. Recreation vehicles and pickups are not restricted by the terms of this provision.

(e) *Parking Credit for B-1 Central Business District and B-2 General Business District.* The number of off-street parking spaces provided for a building in the B-1 or B-2 Business Districts constructed prior to January 1, 2014 shall satisfy the requirement of this section for any use that is determined to be a retail store; business or professional office; or similar use, as determined by Staff. When such structure is reconstructed, enlarged, structurally altered, changed in occupancy to a more intensive use category or otherwise increased in capacity, off-street parking shall be provided for that portion of the structure or use constituting the increase in capacity. Notwithstanding the provisions above, any parking areas now serving such existing buildings shall not be reduced below the requirements established in this section in the future.

(f) *Spaces required.* Off-street parking spaces required. One space equals 325 square feet

<i>Uses</i>	<i>Spaces Required</i>
One-family and two-family residences	Two spaces per dwelling unit

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<i>Uses</i>	<i>Spaces Required</i>
Multiple dwellings	2½ spaces per dwelling unit, one which must be undercover.
Churches, theaters, auditoriums and other places	One space for each three seats or for each five feet of assembly pew length based upon maximum design capacity.
Business and professional offices	One space for each 400 square feet of gross floor space.
Medical and dental clinics	Five spaces per professional, plus one space for each employee.
Hotel or motel	One space per rental unit plus one space per employee.
School, elementary and junior	At least one parking space for high each classroom plus one additional space for each ten student capacity.
School, high school through college	At least one parking space for each four students based on design capacity, plus one additional space for each classroom.
Drive-in food establishment	At least one parking space for 15 square feet of gross floor space in a building allocated to a drive-in operation.
Bowling alley	At least five parking spaces for each alley, plus additional spaces as may be required herein for related uses such as a restaurant, plus one additional space for each employee.
Automobile service station	At least two off-street parking spaces plus four off-street parking spaces for each service station stall.
Retail store	At least one off-street parking space for each 250 square feet of gross floor area.
Restaurants, cafes, bars, taverns, nightclubs	At least one space for each three seats based on capacity design.
Funeral homes	One parking space for each five seats or 35 square feet of seating area where there are no fixed seats, plus one parking space for each 250 square feet of floor area not used for seating.
Industrial, warehouse, storage, handling of bulk goods.	At least one space for each employee on maximum shift or one space for each 2,000 square feet of gross floor area, whichever is larger.
Day Care Centers	At least one off-street parking space for each employee plus one space for each four children or clients.
Fitness/Health Studio	At least one space for every 250 square feet of gross floor area.
Shopping Centers	At least 4.5 spaces for every 1,000 square feet of gross floor area.
Brewery/Microdistillery	At least one space for each employee on maximum shift or one space for each 2,000 square feet of gross floor area, whichever is greater.
Brewpub	Parking space requirements shall be based up on the types of uses on the premises. The retail portion of the business would fit under the Retail Store requirement. The restaurant or taproom portion under Restaurants, cafes, bars taverns and night club requirement. The production portion under the Industrial, warehouse, storage and handling of bulk goods

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<i>Uses</i>	<i>Spaces Required</i>
	requirement.
Taproom/Cocktail Room	At least one space for each three seats based on capacity design.
<p>Uses not specifically noted shall be determined by the Community Development Director on the same basis as required for the most similar listed uses in Section 129-323 (f) or an off-street parking generation rate study. Appeals will be addressed as identified in Sec. 129-32. Any determinations made by the Community Development Director that were not previously identified through Council action shall be forwarded to the Planning Commission and City Council as information.</p>	

(Code 1987, § 350.760; Ord. No. 61-1993, § 350.760, 2-23-1994; Ord. No. 13-2006, 7-9-2006; Ord. No. 01-2014, 1-26-14; Ord. No 05-2016 5-8-2016; Ord. No. 10-2016, 9-4-2016)

Sec. 129-324. Off-street loading and unloading areas.

(a) *Location.* All required loading berths shall be off-street and shall be located on the same lot as the building or use to be served. A loading berth shall be located at least 25 feet from the intersection of two street rights-of-way and at least 50 feet from a residential district, unless within a building. Loading berths shall not occupy the required front yard space.

(b) *Size.* Unless otherwise specified in this chapter, a required loading berth shall not be less than 12 feet in width, 50 feet in length, and 14 feet in height, exclusive of aisles and maneuvering space.

(c) *Access.* Each required loading berth will be located with appropriate means of vehicular access to a street or public alley in a manner which will least interfere with traffic.

(d) *Surfacing.* All loading berths and accessways shall be improved with a hard surface to control the dust and drainage before occupancy of the structure.

(e) *Accessory use.* Any space allocated as a loading berth or maneuvering area so as to comply with the terms of this chapter shall not be used for the storage of goods, inoperable vehicles, or be included as a part of the space requirements necessary to meet the off-street parking area.

(f) *New or altered structures.* Any structure erected or substantially altered for a use which requires the receipt or distribution of materials or merchandise by trucks or similar vehicles, shall provide off-street loading space as required for a new structure.

(g) *Screening.* Screening shall be required of all loading and unloading areas located adjacent to residential and agricultural districts.

(Code 1987, § 350.765; Ord. No. 61-1993, § 350.765, 2-23-1994)

Sec. 129-325. Auto service stations.

(a) *Lot size.* A service station site shall be a minimum of 20,000 square feet.

(b) *Setbacks.* Buildings shall be set back at least 35 feet from the street right-of-way. Adjacent to residential districts, service station buildings, signs, and pumps shall be a minimum of 25 feet from adjoining property. In commercial areas, the structures shall be set back at least ten feet from adjoining property.

(c) *Curbs and gutters.* Curbs and gutters shall be installed on all streets giving access to the station. There shall be a six-inch curb along all interior driveways.

(d) *Fencing and screening.* When adjacent or near to residential property, there shall be a screening fence. When adjacent to commercial property, there shall be a bumper-type fence about 18 inches high between the station and the adjacent commercial property.

(e) *Architecture.* The station should be of a type that is reasonably compatible with the surroundings. Host national oil companies have a variety of building types which could be viewed for selection of the most suitable.

(f) *Outdoor displays.* The storage of used tires, batteries, and other such items for sale outside the building should be controlled; such items should be displayed in specifically designed containers and be limited

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to one or two areas well back from the street right-of-way line. Junk cars, empty cans, and other unsightly materials should not be permitted in areas subject to public view.

(g) *Business activities not included.* Business activities not listed in the definition of service stations in this chapter are not permitted on the premises of a service station unless a conditional use permit is obtained specifically for such business. Such activities include, but are not limited to, the following:

- (1) Automatic carwash and truck wash;
- (2) Rental of vehicles, equipment, or trailers; and
- (3) General retail sales.

(Code 1987, § 350.770; Ord. No. 61-1993, § 350.770, 2-23-1994)

Sec. 129-326. Drive-in business development standards.

The following standards shall apply to drive-in businesses in all districts:

- (1) The entire area of any drive-in business shall have a drainage system approved by the city engineer.
- (2) The entire area other than that occupied by structures or plantings shall be surfaced with a hard surface material which will control dust and drainage.
- (3) A fence or screen of acceptable design not over six feet in height or less than four feet shall be constructed along the property line abutting a residential district and such fence or screen shall be adequately maintained. The fence shall not be required in front of the setback line.
- (4) General standards for drive-in businesses.
 - a. Any drive-in business serving food or beverages may also provide, in addition to vehicular service areas, indoor food and beverage service seating area.
 - b. The hours of operation shall be set forth as a condition of any conditional use permit for drive-in business.
 - c. Each drive-in business serving food may have outside seating.
 - d. Each food or beverage drive-in business shall place refuse receptacles at all exits as well as one refuse receptacle per ten vehicle parking spaces within the parking area.
- (5) Location standards for drive-in businesses.
 - a. No drive-in business shall be located within 400 feet of a public or parochial school, church, public recreation area, or any residential district.
 - b. No drive-in business shall be located such that it may increase traffic volumes on nearby residential streets.
 - c. No drive-in shall be located on any street other than one designated as a thoroughfare or business service road in the comprehensive plan.
 - d. The design of any structure shall be compatible with other structures in the surrounding area.
 - e. Electronic devices such as loudspeakers, automobile service order devices, drive-in theater car speakers and similar instruments shall not be located within 400 feet of any residentially zoned or used property, nor within 200 feet of any adjacent lot regardless of use of zoning district.
 - f. No service shall be rendered, deliveries made, or sales conducted within the required front yard; customers served in vehicles shall be parked to the sides and/or rear of the principal structure.
 - g. No permanent or temporary signs visible from the public street shall be erected

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without specific approval in the permit.

- h. No plan shall be approved which will in any way constitute a hazard to vehicular or pedestrian circulation. No access drive shall be within 50 feet of intersecting street curblines.
- (6) In the case of a drive-in theater, a solid fence not less than eight feet in height and extending at least to within two feet of the ground shall be constructed around the property.
- (7) The lighting shall be designed so as to have no direct source of light visible from the public right-of-way or adjacent land in residential use.

(Code 1987, § 350.775; Ord. No. 61-1993, § 350.775, 2-23-1994)

Sec. 129-327. Carwashes.

(a) *Lot area and setback requirements.* The following are lot area and setback requirements for carwashes:

- (1) A coin-operated self-service carwash shall have a minimum lot area of 10,000 square feet with a minimum of 100 feet of frontage along the major road.
- (2) A drive-through automatic carwash shall have a minimum lot area of 15,000 square feet with a minimum of 120 feet of frontage along the major road.
- (3) A conveyor automatic type carwash shall have a minimum lot area of 20,000 square feet with a minimum of 150 feet of frontage along the major road.
- (4) Front yard setback. All carwashes shall have a minimum 35-foot front yard setback measuring from the right-of-way line to the front wall of the building. All other setback requirements provided in this chapter for the zoning district where a particular carwash is located shall apply.

(b) *Protective wall.* All carwashes shall have a six-foot high, eight-inch thick brick wall or a decorative poured concrete wall at least four inches thick when adjacent to an existing residence or residential district or adjacent to an alley which abuts an existing residence or residential district. All protective walls shall conform to the principal structure's setback requirements.

(c) *Parking.*

- (1) A coin-operated self-service carwash shall have a minimum of three stack spaces per bay not including the wash bay spaces; one dry-off space per bay in addition to the wash bay space, and one parking space per employee.
 - a. A stack space is defined as an area where the car can wait before entering the carwash which shall consist of at least 200 square feet, with a length of 20 feet and a width of ten feet.
 - b. A dry-off space is defined as an area where the car can be parked after leaving the carwash area so that the car can be dried off which shall consist of at least 200 square feet, with a length of 20 feet, and a width of ten feet.
- (2) The automatic drive-through carwash shall have a minimum of five stack spaces per bay and two parking spaces for dry-off and one parking space for every employee during one shift, when the maximum employees are employed.
- (3) The automatic conveyor type carwash shall have a minimum of ten stack spaces per bay and three parking spaces for dry-off and one parking space for every employee employed during one shift, when the maximum employees are employed.

(d) *Lights.* All carwashes shall have lighting systems with a minimum of one footcandle intensity to illuminate the entire premises without disturbing the surrounding area.

(e) *Drainage and wastewater disposal.* Catchbasins shall be provided at the curb cuts of all exits

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for drainage from cars leaving the carwash. Wastewater from car washing shall be emitted into the sanitary sewer after flowing through grease and mud trap. A sewer flow rate will be set in relation to the size of the facility. Failure to maintain acceptably clean grease and mud traps will be cause for revocation of the license.

(f) *Building operations.* All operations shall be conducted within the buildings except for vacuuming and the dispensing of gasoline.

(g) *Prohibited practices and regulations.*

- (1) The licensee shall keep the premises of any carwash free at all times from debris and waste materials. Said licensee shall cause all such debris and waste materials to be removed during each 24-hour period and as often as may be necessary to prevent any such debris or waste materials from being blown to nearby streets and premises.
- (2) No persons shall place or leave any debris or waste materials upon the premises of any carwash unless such debris or waste materials be placed in a waste receptacle provided on the premises for such purposes.
- (3) No persons upon or near the premises of any carwash shall race the engine of any motor vehicle, cause any horn to be blown except as a traffic warning, or cause any disturbance or loud noise upon or nearby said premises.
- (4) No person shall loiter and the licensee shall not permit persons to loiter upon the premises if such persons are not actually engaged in washing cars.
- (5) The licensee shall maintain quiet and order upon the premises. The licensee shall see that entrances and exits and abutting alleys are kept free from congestion and that this chapter is observed.
- (6) It shall be unlawful to keep any establishment open for business between the hours of 10:00 p.m. and 7:00 a.m. the following day.
- (7) The premises on a carwash shall be kept adequately lighted at all times when open to the public. Lights shall be kept adequately shaded or otherwise regulated so as to prevent them from shining upon adjacent premises.

(Code 1987, § 350.785; Ord. No. 61-1993, § 350.785, 2-23-1994)

Sec. 129-328. Acceptable building materials.

(a) *Submittal requirements.* The application for a building permit in addition to other information required shall include exterior elevations of the proposed structure. The information shall be of sufficient detail to adequately and accurately indicate the height, size, design and the appearance of all elevations of the proposed building and description of the construction materials to be used therein.

(b) *Residential construction.*

- (1) For residential structures, required building permit information shall indicate that the exterior architectural design, when erected, will not be similar to the architectural design of any structure or structures already constructed, or in the course of construction, within two lots on each side directly across from or diagonally across from the same unit. The exterior architectural design of a structure shall not be so at variance with the character of the applicable zoning district established by this chapter as to cause a substantial depreciation in the property values of said neighborhood within said district or elsewhere or adversely affect the public health, safety or general welfare. No building permit will be issued to houses inconsistent with this requirement.
- (2) The following criteria shall be utilized in the review of plans to determine similar architectural design. A building permit will be issued providing that the applicant can demonstrate to the building official that no more than two of the following five conditions are applicable:
 - a. The roof style of the proposed structure is similar to the structure it resembles;

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- b. The roof pitch of the proposed structure is less than three vertical units in 12 from the structure it resembles;
- c. More than half of the exterior surface materials of the proposed structure are the same as the structure it resembles;
- d. The relative location of an attached garage, porch, portico, breezeway, gable or other major design feature attached to the proposed structure is similar to the structure it resembles; or
- e. The relative location of entry doors, windows, shutters or chimneys in the proposed construction is similar to the structure it resembles.

(c) *Commercial building materials.* No building permit shall be issued for any commercial or industrial structure that contains unadorned, prestressed concrete panels, concrete block or sheet metal, either corrugated or plain. Acceptable building materials include wood, stone, brick, block or concrete that incorporates significant textured surfacing, exposed aggregate or other patterning. The use of metal on building exteriors is to be limited to the trim detailing and/or the use of metal and glass in curtain walls. Architectural metal roof systems and canopies are permitted.

(d) *Pole buildings.* A pole building which shall be understood to mean any building using wood or metal poles as a principal structural support to achieve alignment and bearing capacity shall be prohibited.

(e) *Additional submittals.* When required by the building official, applicants for building permits shall be required to submit exterior elevations of the proposed structure and photographs of the front exterior of neighboring structures within the limits defined in subsection (b) of this section. A list of exterior finish materials and colors may also be required.

(f) *Appeals process.* Any person aggrieved by a decision of the building official regarding the use of certain materials or regarding questions of architectural design shall be entitled to appeal the building official's decision to the City Council. The City Council shall act on the matter after receiving recommendations from the Planning Commission.

(Code 1987, § 350.790; Ord. No. 61-1993, § 350.790, 2-23-1994)

Sec. 129-329. Breweries, Brewpubs, Taprooms, Microdistilleries, or Cocktail Rooms.

(a) *Licensing.* The owner of the brewery, brewpub, microdistillery, taproom, or cocktail room shall obtain all federal, state, and city licenses necessary for the operations.

(b) *Deliveries.* Adequate space for off-street loading and unloading of all trucks greater than twenty-two (22) feet in length shall be provided. If off-street loading is not possible, the City may impose limits on the number and hours for deliveries that must occur along public rights of way.

(c) *Outdoor Storage.* No outdoor storage is permitted on the site, with the exception that refuse and/or recycling may occur in an enclosure that is fully screened from adjoining streets and residentially zoned properties.

(d) *Noise.* Noise shall not be allowed to exceed MPCA standards

(e) *Odors.* The micro-production facility shall take appropriate measures to reduce or mitigate any odors generated from the operation and be in compliance with any applicable Minnesota Pollution Control Standards. Waste products shall be disposed of in a timely manner and in such a way as to reduce odors.

(Ord. No. 10-2016, 9-4-2016)

Secs. 330—129-350. Reserved.

ARTICLE VII. WETLAND PROTECTION*

*State law reference—Wetland preservation areas, Minn. Stats. § 103F.612.

Sec. 129-351. Purpose and definition for wetlands.

The City Council finds that there are wetlands within the city which, as part of the ecosystem, are critical to the health, safety and welfare of the land, animals and people within the city. The term "wetlands" shall be as defined by state statute and rule. These wetlands, if preserved and maintained, constitute important physical, aesthetic, recreational and economic assets for existing and future residents of the city. Therefore, the purposes of this article is:

- (1) To provide for the protection, preservation, proper maintenance and use of specified wetlands.
- (2) To minimize the disturbance to them as to prevent damage from excessive sedimentation, eutrophication or pollution.
- (3) To prevent loss of fish and other aquatic organisms, wildlife and vegetation and the habitats of the same.
- (4) To provide for the protection of the city's freshwater supplies from the dangers of drought, overdraft, pollution or mismanagement.
- (5) To reduce the financial burdens imposed upon the community through rescue and relief efforts occasioned by the occupancy or use of areas subject to periodic flooding and prevent loss of life, property damage and the losses and risks associated with flood conditions.
- (6) To preserve the location, character and extent of natural drainage courses.

(Ord. No. 06-2002, § 350.1105, 7-7-2002)

Sec. 129-352. Boundaries for wetlands.

The provisions of this article shall apply to wetland areas as defined by state statute and rule.

(Ord. No. 06-2002, § 350.1115, 7-7-2002)

Sec. 129-353. Wetland permit.

(a) *Required for development.* Except as provided in this article, no person shall perform any development in a wetland without first having obtained a wetland permit as required by state statute and rule.

(b) *Standards.* No permit shall be issued unless the city finds and determines that the proposed development complies with the following standards:

- (1) *Dredging.* Dredging may be allowed only when a boat channel is required for access to a navigable lake, for a marina or when it will not have a substantial or significantly adverse effect upon the ecological and hydrological characteristics of the wetland. Dredging, when allowed, shall be limited as follows:
 - a. It shall be located so as to maximize the activity in the areas of lowest vegetation density.
 - b. It shall not significantly change the water flow characteristics.
 - c. The size of the dredged area shall be limited to the absolute minimum.
 - d. Disposal of the dredged material shall not result in a significant change in the current flow, or in a substantial destruction of vegetation, fish spawning areas or water pollution.
 - e. Work in the wetland will not be performed during the breeding season of waterfowl or fish spawning season.
 - f. Only one boat channel or marina shall be allowed per large scale development.
 - g. In other residential developments, dredging shall be located so as to provide for the use of boats, channels and marinas by two or more adjacent property

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owners.

- h. The width of the boat channel to be dredged shall be no more than the minimum required for the safe operation of boats at minimum operating speed.

(2) *Building constraints.*

- a. The lowest floor level or basement elevation shall be at least three feet above the ordinary high-water level of the wetlands.
- b. Development which will result in unusual road maintenance costs or utility line breakages due to said limitations, including high frost action, shall not be permitted.

(Ord. No. 06-2002, § 350.1120, 7-7-2002)

Sec. 129-354. Wetland buffers.

When a site is proposed to be developed or redeveloped in a manner that requires a major subdivision, as defined by chapter 121, a natural wetland buffer shall be provided. The minimum buffer width along a wetland or replacement wetland within each lot may range from 50 to 150 percent of the requirement in order to provide flexibility and encourage a natural appearance.

- (1) *Wetland buffer widths.* Wetland buffer widths are as follows:

<i>Wetland Size (in acres)</i>	<i>Buffer Width (in feet)</i>
0—1.0	16.5
1—2.5	20
2.5—5.0	25
> 5.0	35

- (2) *Setbacks.* All structures, roadways, driveways and parking areas must be located outside of the required buffer. Exceptions to the setback include stairways, walkways and trails.
- (3) *Protection of wetland buffers.* Wetland buffers can be established by preserving existing natural vegetation, supplementing existing vegetation, or replanting the buffer with native vegetation. The wetland buffer shall be left unmaintained, except when burning to promote its continued health. A delineation of both wetland and buffer edges shall be established through the use of monument markers as approved by the city.

(Ord. No. 06-2002, § 350.1121, 7-7-2002)

Sec. 129-355. Responsibility; effects on wetlands.

(a) *Issuance of permit does not relieve responsibility.* Neither the issuance of a permit nor compliance with the conditions thereof, nor compliance with the provisions of this article shall relieve any persons from any responsibility otherwise imposed by law for damage to persons or property. The issuance of any permit hereunder shall not serve to impose any liability on the city or its officers or employees for injury or damage to persons or property. A permit issued pursuant to this article shall not relieve the permittee of the responsibility of complying with any other requirements established by law, regulation or article.

(b) *Special assessment.* The land within a designated wetlands district area for which a developer or other restrictive easement is conveyed to the city shall not be subject to special assessments levied by the city to pay the costs of public water, sewer, curb, gutter or other public municipal improvements for which such assessments are authorized pursuant to Minn. Stats. ch. 429.

(c) *Variance.* The City Council may authorize in specific cases, following appeal and hearing, a variance from the provisions of this article where the literal application of the article would result in substantial

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inequitable hardship to an applicant property owner. In assessing hardship the City Council shall balance the severity of the physical, social and economic effects of the literal application against the interests of the city in effecting the purposes of this article as expressed in subsection (a) of this section. Economic considerations alone shall not constitute a hardship if a reasonable use for the property exists under the terms of this article. No variance may be granted which would allow any use that is prohibited in the zoning district in which the subject property is located. A variance shall be granted in writing accompanied by specific findings of fact as to the necessity for the granting of the variance and its specific provisions. A variance request shall be processed in accordance with the provisions of section 129-39.

(Ord. No. 06-2002, § 350.1125, 7-7-2002)

Sec. 129-356. Fees.

Fees for rezonings, variances, permits, conditional use permits, special permits or other actions requiring administrative time or public expenditures under any section of chapter 129 shall be as established by the city.

(Ord. No. 06-2002, § 350.1130, 7-7-2002)

Secs. 129-357—129-380. Reserved.

ARTICLE VIII. SHORELAND PROTECTION

Sec. 129-381. Authorization and policy.

(a) *Authority.* The shoreland ordinance from which this article is derived is adopted pursuant to the authorization and policies contained in Minn. Stats. § 103F.221, Minn. Rules pts. 6120.2500—6120.3900, and the planning and zoning enabling legislation in Minn. Stats. ch. 462.

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

(Code 1987, § 350.1205)

Sec. 129-382. General provisions.

(a) *Jurisdiction.* The provisions of this article shall apply to the shorelands of the public water bodies as classified in section 129-384. Pursuant to Minn. Rules pts. 6120.2500—6120.3900, no lake, pond, or flowage less than ten acres in size need be regulated in a local government's shoreland regulations. A body of water created by a private user where there was no previous shoreland may, at the discretion of the city, be exempt from this article.

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

(Code 1987, § 350.1210)

Sec. 129-383. Hearing notices; actions after approval.

(a) *Notice postmarked ten days prior to hearing.* Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.

(b) *Final decisions.* A copy of approved amendments and subdivisions/plats, and final decisions

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granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action. 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 shall also include the board of adjustment's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.

(Code 1987, § 350.1215

Sec. 129-384. Shoreland classification system and land use districts.

(a) *Public waters of the city classified.* The public waters of the city have been classified as follows consistent with the criteria found in Minn. Rules pt. 6120.3300, and the protected waters inventory map for the county:

- (1) The shoreland area for the water bodies listed in subsection (a)(2) of this section shall be as defined in section 129-2, and as shown on the official zoning map.
- (2) Lakes.

Recreational Protected Waters

<i>Development Lakes</i>	<i>Inventory I.D. No.</i>
Dutch Lake	27-181P
Lake Langdon	27-182P

General Protected Waters

<i>Development Lakes</i>	<i>Inventory I.D. No.</i>
Lake Minnetonka	27-133P
Lost Lake	27-180

Natural Protected Waters

<i>Environment Lakes</i>	<i>Inventory I.D. No.</i>
Saunders Lake (in Minnetrista)	27-185

(b) *District descriptions.* Within the shoreland area, land use descriptions and allowable land uses therein shall be as identified in sections 129-99 and 129-135. Public, semipublic, commercial and industrial uses without water-oriented needs must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, must either be set back double the normal OHWL setback or be substantially screened from view from the water by vegetation or topography, assuming summer leaf-on conditions.

(Code 1987, § 350.1220; Ord. No. 69-1994, 8-29-1994)

Sec. 129-385. Zoning-shoreland management.

(a) *Lot area and width standards.* The lot area and width standards for residential, commercial and industrial lots within the shoreland area shall be as found in the applicable sections of chapter 129, except R-1, R-1A and R-2 lots shall be as follows:

- (1) *Lot area.* The lot area standards are as follows:
 - a. *Lakeshore lots.* The lot area standards for lakeshore lots are as follows:
 - 1. All new single-family detached lots in the R-1, R-1A and R-2 districts created by subdivision must have a minimum lot area of 10,000 square feet. All new two-family and twin homes in the R-2 district created by subdivision must be located on lots having a minimum area of 17,500 square feet.

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2. All lots in the R-1 district separated through waiver of platting, as defined in section 121-33(2), must have a minimum lot area of 10,000 square feet.
 3. All single-family detached lots in the R-1A and R-2 districts separated through waiver of platting, as defined in section 121-33(2), must have a minimum lot area of 6,000 square feet. All two-family and twin homes in the R-2 district separated through waiver of platting, as defined in section 121-33(2) must be located on lots having a minimum area of 14,000 square feet.
- b. *Nonlakeshore lots.* The lot area standards for nonlakeshore lots are as follows:
1. All new lots in the R-1 district created by subdivision must have a minimum lot area of 10,000 square feet.
 2. All new single-family detached lots in the R-1A and R-2 districts created by subdivision must have a minimum lot area of 6,000 square feet. All new two-family and twin homes in the R-2 district created by subdivision must be located on lots having a minimum area of 14,000 square feet.
 3. All lots in the R-1 district separated through waiver of platting, as defined in section 121-33(2), must have a minimum lot area of 10,000 square feet.
 4. All lots in the R-1A and R-2 districts separated through waiver of platting, as defined in section 121-33(2), must have a minimum lot area of 6,000 square feet. All two-family and twin homes in the R-2 district separated through waiver of platting, as defined in section 121-33(2) must be located on lots having a minimum lot area of 14,000 square feet.

(2) *Lot width.* The lot width standards are as follows:

- a. *Lakeshore lots.* All single-family detached lots in the R-1A and R-2 districts shall be at least 50 feet in width. All two-family and twin homes lots in the R-2 district shall be at least 90 feet in width.
- b. *Nonlakeshore lots.* All single-family detached lots in the R-1A and R-2 districts shall be at least 40 feet in width. All two-family and twin home lots in the R-2 district shall be at least 80 feet in width.

(b) *Redevelopment of existing lot of record.* This subsection shall not be construed to allow the creation of a new, nonconforming buildable lot or a nonconforming lot from a previously conforming lot.

- (1) Existing, developed lots of record which are in separate ownership from abutting lands can be redeveloped as long as the requirements of section 129-35, pertaining to nonconforming uses are met.
- (2) If, in a group of two or more contiguous lots under the same ownership, any existing vacant lot or existing developed lot:
 - a. Is smaller than 6,000 square feet and such lot is proposed to be sold, or is proposed to be developed for a single-family detached home; or
 - b. Is smaller than 14,000 square feet and such lot is proposed to be developed for a two-family or twin home (either before or after sale), then the lot must be combined with the one or more contiguous lots under the same ownership so that each lot has a minimum lot area:
 1. Equal to 6,000 square feet, if subsection (b)(2)a of this section is applicable; or

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2. Equal to 14,000 square feet, if subsection (b)(2)b of this section is applicable.

(c) *Additional special provisions.* Subdivisions with dwelling unit densities exceeding those in sections 129-100(b), 129-101(b), 129-102(b) and (c), and 129-103(c) can only be allowed if designed and approved as planned development areas (PDA) under section 129-387. Only land above the ordinary high-water level of public waters can be used to meet lot area standards. Lots of record must meet lot width standards at the building setback line. Lots created after January 1993 must meet lot width standards at both the building setback line and at the ordinary high-water level.

(d) *Placement, design, and height of structures.*

(1) *Placement of structures on lots.* When more than one setback applies to a parcel, structures and facilities must be located to meet all setbacks. Structures shall be located as follows:

a. *Structure setbacks from ordinary high-water level.* Water-oriented accessory structures designed in accordance with subsection (d)(2)b of this section may be set back a minimum of ten feet from the ordinary high-water level.

<i>Lake Classification</i>	<i>Required Setback*</i>
Natural environment	50 feet
Recreational development	50 feet
General development	50 feet

*Retaining walls, fences and docks are allowed subject to other governing provisions within the required 50-foot setback area.

b. *Additional structure setbacks.* The following additional structure setbacks apply, regardless of the classification of the water body:

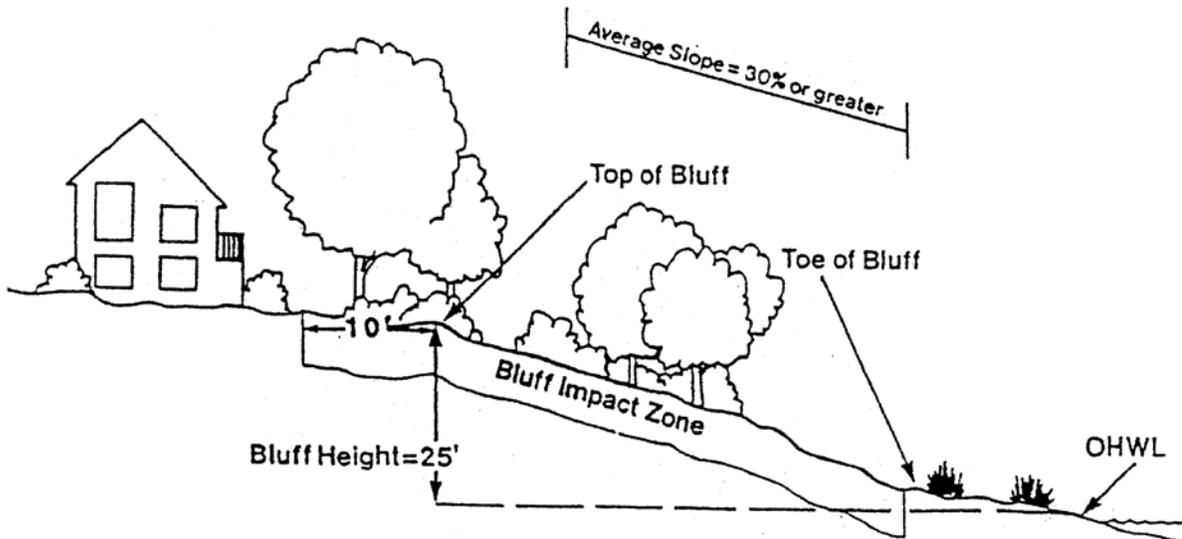
<i>Setback From</i>	<i>Setback</i>
Unplatted cemetery	50 feet
Right-of-way line of federal, state or county highway or local street	20 feet
Top of bluff	

Existing lots of record or lots created through:

Minor subdivisions (three lots or less) consistent with section 121-35(1)	10 feet
Major subdivisions consistent with section 121-35(2)	30 feet

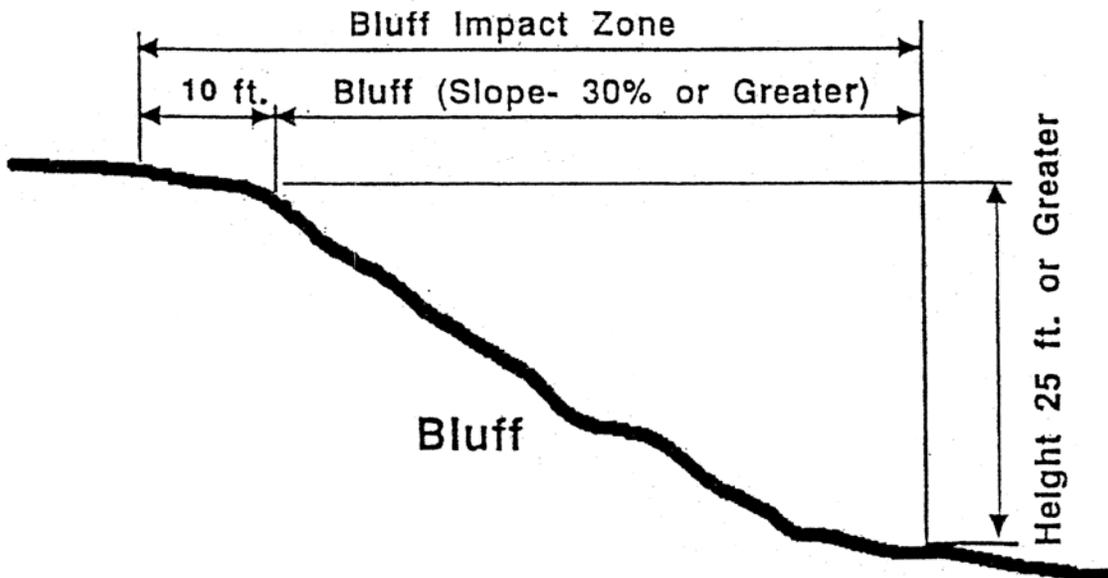
c. *Bluff impact zones.* Stairways and landings shall be allowed within bluff impact zones. Other structures and accessory facilities shall be required to observe a ten-foot setback from the top of the bluff.

Setback From the Top of Bluffs



Bluff Impact Zone

Means the bluff and the land located within 10 feet from the top of the bluff.



(2) *Design criteria for structures.*

a. *High-water elevations.* Structures must be placed in accordance with floodplain

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regulations applicable to the site.

- b. *Water-oriented accessory structures.* Each lot may have one water-oriented accessory structure on a private lakeshore not meeting the normal structure setback in subsection (d)(1)a of this section if the water-oriented accessory structure complies with the following provisions:
 1. An at-grade deck is allowed providing that it does not occupy an area greater than 250 square feet and must not exceed 30 inches above grade at any point.
 2. A lockbox is allowed providing that it does not have a total floor area exceeding 20 square feet and does not exceed four feet in height. Where possible, lockboxes shall be positioned such that the narrowest side of the structure is parallel to the ordinary high-water line.
 3. The setback of water-oriented accessory structures from the ordinary high-water level must be at least ten feet.
 4. Water-oriented accessory structures must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions.
- c. *Stairways, lifts, and landings.* Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet all of the following design requirements:
 1. Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public open-space recreational properties, and planned development areas.
 2. Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public open space recreational properties, and planned development areas.
 3. Canopies or roofs are not allowed on stairways, lifts, or landings.
 4. Stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion.
 5. Stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical.
 6. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas; provided that they comply with the dimensional and performance standards of subsections (d)(2)c.1 through 5 of this section in addition to the requirements of Minn. Rules ch. 1340.
- d. *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 collected and documented in a public repository. Proposed uses or structures in or around significant historic sites shall be subject to the provisions of state statutes, including, but not limited to, Minn. Stats. § 307.08.
- e. *Steep slopes.* The building official and/or city engineer will evaluate possible

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soil erosion impacts and development visibility from public waters before issuing a permit for construction of roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions will be attached to permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.

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

(1) *Vegetation alterations.*

- a. Removal of vegetation necessary for the construction of structures and the construction of roads and parking areas regulated by subsection (e)(2) of this section is exempt from the vegetation alteration standards of this subsection.
- b. Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in subsections (h)(2) and (3) of this section, is allowed subject to the following standards:
 1. Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is prohibited. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed and approved by the soil and water conservation district in which the property is located.
 2. In shore and bluff impact zones and on steep slopes on private property, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented accessory structures or facilities, provided that:
 - (i) The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced.
 - (ii) The provisions in this subsection are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.

(2) *Topographic alterations/grading and filling.*

- a. Grading, filling and excavations necessary for the construction of structures and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit.
- b. Public roads and parking areas are regulated by this subsection.
- c. Notwithstanding subsections (e)(2)a and b of this section, a grading and filling permit will be required for the annual movement of more than:
 1. Ten cubic yards of material on steep slopes or within shore or bluff impact zones; and
 2. Fifty cubic yards of material outside of steep slopes and shore and bluff impact zones.
- d. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use

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permits, variances and subdivision approvals:

1. Grading or filling in any Type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland:
 - (i) Sediment and pollutant trapping and retention.
 - (ii) Storage of surface runoff to prevent flood damage.
 - (iii) Fish and wildlife habitat.
 - (iv) Recreational use.
 - (v) Shoreline or bank stabilization.
 - (vi) Noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.
 2. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible.
 3. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible.
 4. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used.
 5. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service.
 6. Fill or excavated material must not be placed in a manner that creates an unstable slope.
 7. Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30 percent or greater.
 8. Fill or excavated material must not be placed in bluff impact zones with the exception of repairs due to erosion or other natural occurrences.
 9. Any alterations below the ordinary high-water level of public waters must first be authorized by the commissioner of natural resources.
 10. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties.
 11. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high-water level, and the height of the riprap above the ordinary high-water level does not exceed three feet.
- e. *Connections to public waters.* Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors are subject to the requirements of this article. Permission for excavations may be given only after the city has received notification that the commissioner of natural resources has approved the proposed connection to public waters.

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(f) *Shoreland management—Placement and design of roads, driveways, and parking areas.*

- (1) Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided identifying that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the standards and regulations of the Minnehaha Creek watershed district or other applicable agencies.
- (2) Roads, driveways, and parking areas must meet structure setbacks. Such facilities shall not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts.
- (3) Public and private watercraft access ramps, approach roads, and access related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subsection are met.

(g) *Same—Standards for stormwater management.* The following general and specific standards shall apply:

(1) *General standards.*

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

(2) *Specific standards.*

- a. Impervious surface coverage of lots in residential zones shall not exceed 30 percent of the lot area. On existing lots of record, impervious coverage may be permitted by a maximum of 40 percent providing that the following techniques are utilized as applicable:
 1. Impervious areas should be drained to vegetated areas or grass filter strips through the use of crowns on driveways, direction of downspouts on gutters collecting water from roof areas, etc.
 2. Dividing or separating impervious areas into smaller areas through the use of grass or vegetated filter strips such as the use of paving blocks separated by grass or sand allowing infiltration.
 3. Use grading and construction techniques which encourage rapid infiltration such as the installation of sand or gravel sump areas to collect and percolate stormwater.
 4. Install berms to temporarily detain stormwater thereby increasing soil absorption.
- b. Impervious surface coverage in lots in the business and industrial zones shall not exceed 30 percent of the lot area. In business and industrial zones that are included within areas covered by an approved stormwater management plan,

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impervious surface coverage shall not exceed 75 percent of the total lot area.

- c. When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the standards and regulations of the Minnehaha Creek watershed district.
- d. New stormwater outfalls to public waters must provide for the filtering or settling of suspended solids and the skimming of surface debris before discharge.

(h) *Same—Special provisions for commercial, industrial, public/semipublic, agricultural and forestry.*

(1) *Standards for commercial, industrial, public, and semipublic uses.* Surface water-oriented and nonsurface water-oriented commercial uses and industrial, public, or semipublic uses may be located on parcels or lots with frontage on public waters. Such uses must meet the following standards:

- a. In addition to meeting impervious coverage limits, setbacks, and other zoning standards in this article, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures.
- b. Uses that require shortterm watercraft mooring for patrons must centralize these 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 signs and lighting to convey needed information to the public, subject to the following general 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 or under a permit issued by the county sheriff.
 - 2. Signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They must only convey the location and name of the establishment and the general types of goods or services available. The signs must not contain other detailed information such as product brands and prices, must not be located higher than ten feet above the ground, and must not exceed 32 square feet in size. If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters.
 - 3. Other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.

(2) *Agricultural use standards.* General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore and bluff impact zones are maintained in permanent vegetation or operated under an approved conservation plan (Resource Management Systems) consistent with the field office technical guides of the local soil and water conservation districts or the United States Soil Conservation Service, as provided by a qualified individual or agency. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high-water level.

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- (3) Forest management standards. The harvesting of timber and associated reforestation must be conducted consistent with the provisions of the Minnesota Nonpoint Source Pollution Assessment Forestry and the provisions of Water Quality in Forest Management Best Management Practices in Minnesota.

(Code 1987, § 350.1225; Ord. No. 69-1994, 8-29-1994; Ord. No. 19-2006, 10-29-2006; Ord. No. 03-2007, 2-13-2007)

Sec. 129-386. Nonconformities and conditional uses.

(a) *Nonconformities.* All legally established nonconforming uses and structures shall be subject to the provisions of section 129-35.

(b) *Conditional uses.* 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 129-38. The following additional evaluation criteria and conditions apply within shoreland areas:

- (1) *Evaluation criteria.* A thorough evaluation of the water body and the topographic, vegetation, and soils conditions on the site must be made to ensure:
 - a. The prevention of soil erosion or other possible pollution of public waters, both during and after construction.
 - b. The visibility of structures and other facilities as viewed from public waters is limited.
 - c. The site is adequate for water supply and public sewage treatment.
 - d. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.
- (2) *Conditions attached to conditional use permits.* The city, upon consideration of the criteria listed above and the purposes of this article, shall attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this article. Such conditions may include, but are not limited to, the following:
 - a. Increased setbacks from the ordinary high-water level.
 - b. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.
 - c. Special provisions for the location, design, and use of structures, watercraft launching and docking areas, and vehicle parking areas.

(Code 1987, § 350.1230)

Sec. 129-387. Planned development areas (PDA).

(a) *Provisionally allowed.* Planned development areas are allowed in shoreland areas subject to the provisions of section 129-195 and subject to the additional provisions contained herein.

(b) *Site suitable area evaluation.* Proposed new or expansions to existing planned development areas must be evaluated using the following procedures and standards to determine the suitable area for the dwelling unit density evaluation in subsection (c) of this section.

- (1) The project parcel must be divided into tiers by locating one or more lines approximately parallel to a line that identifies the ordinary high-water level at the following intervals, proceeding landward:

<i>Shoreland Tier Dimensions</i>	<i>Intervals (in feet)</i>
General development lakes, first tier	200
General development lakes, second and	267

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<i>Shoreland Tier Dimensions</i>	<i>Intervals (in feet)</i>
additional tiers	
Recreational development lakes	267
Natural environment lakes	320

- (2) The suitable area within each tier is next calculated by excluding from the tier area all wetlands, bluffs, or land below the ordinary high-water level of public waters. This suitable area and the proposed project are then subjected to either the residential or commercial planned unit development density evaluation steps to arrive at an allowable number of dwelling units or sites.

(c) *Residential PDA density evaluation.* The procedures for determining the base density of a PDA and density increase multipliers as stated in subsection (d) of this section. Allowable densities may be transferred from any tier to any other tier further from the water body, but must not be transferred to any other tier closer. The suitable area within each tier is divided by the single residential lot size standard (10,000 square feet). Proposed locations and numbers of dwelling units or sites for the residential planned development areas are then compared with the tier, density, and suitability analyses herein and the design criteria in subsection (e) of this section.

(d) *Density increase multipliers.* The following density increase multipliers shall apply:

- (1) Increases to the dwelling unit base densities previously determined are allowable if the dimensional standards in section 129-385 are met or exceeded and the design criteria in section 129-385(e) are satisfied. The allowable density increases in subsection (d)(2) of this section will only be allowed if structure setbacks from the ordinary high-water level are increased to at least 50 percent greater than the minimum setback, or the impact on the water body is reduced an equivalent amount through vegetative management, topography, or additional means acceptable to the city and the setback is at least 25 percent greater than the minimum setback.
- (2) Allowable dwelling unit increases for residential planned development areas:

<i>Maximum Density</i>	
<i>Density Evaluation Tiers</i>	<i>Increase Within Each Tier (in percent)</i>
First	50
Second	100
Third	200
Fourth	200
Fifth	200

(e) *Maintenance and design criteria.*

- (1) *Maintenance and administration requirements.*
- a. *Prior to final approval.* Before final approval of a planned development area, adequate provisions must be developed for preservation and maintenance in perpetuity of open spaces and for the continued existence and functioning of the development.
 - b. *Open space preservation.* Deed restrictions, covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means must be provided to ensure longterm preservation and maintenance of open space. The instruments must include all of the following protections:
 1. Commercial uses are prohibited.
 2. Vegetation and topographic alterations other than routine maintenance

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are prohibited.

3. Construction of additional buildings or storage of vehicles and other materials is prohibited.
 4. Uncontrolled beaching of watercraft is prohibited.
- c. *Development organization and function.* Unless an equally effective alternative community framework is established, all residential planned development areas must use an owners association with the following features:
1. Membership must be mandatory for each dwelling unit or site purchaser and any successive purchasers.
 2. Each member must pay a pro rata share of the association's expenses, and unpaid assessments can become liens on units.
 3. Assessments must be adjustable to accommodate changing conditions.
 4. The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.
- (2) *Open space requirements.* Planned unit developments must contain open space meeting all of the following criteria:
- a. At least 50 percent of the total project area must be preserved as open space.
 - b. Dwelling units, road rights-of-way, or land covered by road surfaces, parking areas, or other structures, are developed areas and shall not be included in the computation of minimum open space.
 - c. Open space must include areas with physical characteristics unsuitable for development in their natural state, and areas containing significant historic sites or unplatted cemeteries.
 - d. Open space may include outdoor recreational facilities for use by owners of dwelling units or sites, by guests, and by the general public.
 - e. The appearance of open space areas, including topography, vegetation, and allowable uses, must be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means.
 - f. The shore impact zone, based on normal structure setbacks, must be included as open space. For residential PDAs, at least 70 percent of the shore impact zone area must be preserved in its natural or existing state.
- (3) *Erosion control and stormwater management.* Erosion control and stormwater management plans must be developed and the PDA must:
- a. Be designed, and the construction managed, to minimize the likelihood of serious erosion occurring either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers, sediment entrapment facilities, vegetated buffer strips, or other appropriate techniques must be used to minimize erosion impacts on surface water features. Erosion control plans approved by a soil and water conservation district may be required if project size and site physical characteristics warrant.
 - b. Be designed and constructed to effectively manage reasonably expected quantities and qualities of stormwater runoff. Impervious surface coverage within the first tier must not exceed 30 percent of the tier area and the impervious surface coverage of the entire PDA must not exceed 30 percent.
- (4) *Centralization and design of facilities.* Centralization and design of facilities and

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structures must be done according to the following standards:

- a. Dwelling units must be clustered into one or more groups and located on suitable areas of the development. They must be designed and located to meet or exceed the following dimensional standards for the relevant shoreland classification:
 1. Setback from the ordinary high-water level;
 2. Elevation above the surface water features; and
 3. Maximum height.Setbacks from the ordinary high-water level must be increased in accordance with subsection (d) of this section for developments with density increases.
- b. Shore recreation facilities, including, but not limited to, swimming areas, docks, and watercraft mooring areas, must be centralized and located in areas suitable for them. Evaluation of suitability must include consideration of land slope, water depth, vegetation, soils, depth to groundwater and bedrock, or other relevant factors.
- c. Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, color, or other means acceptable to the local unit of government, assuming summer, leaf-on conditions. Vegetative and topographic screening must be preserved, if existing, or may be required to be provided.
- d. Accessory structures and facilities, except water oriented accessory structures, must meet the required principal structure setback and must be centralized.
- e. Water-oriented accessory structures and facilities may be allowed if they meet or exceed design standards contained in section 129-385(d) and are centralized.

(Code 1987, § 350.1235)