

MORALS AND CONDUCT

501 NOISY PARTIES

501.02 Noisy Parties.

Subsection 1. No person shall participate in any party or gathering of people giving rise to noise, disturbing the peace, quiet or repose of another person within the city of Wheaton.

Subsection 2. When a police officer determines that a gathering is creating such a noise disturbance, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave the premises after being ordered by a police officer to do so.

Subsection 3. Every owner of such premises, or tenant in charge of such premises, who has knowledge of the disturbance shall cooperate with such police officer and shall make reasonable effort to stop the disturbance.

Subsection 4: The following shall be prima facie evidence in any prosecution under this ordinance of the owner's or tenant's violation of this ordinance:

- a. As to tenants, and owner if owner resides on the premises, if twice or more on the same day, or if on successive days, the Wheaton Police Department is called upon to enforce the terms of this ordinance either by citizen complaint or by personal investigation of a peace officer.
- b. As to the owner, if the owner does not reside at the premises, if after owner receives written notice of three violations of this ordinance by his tenants at an premises owned by owner in the city of Wheaton within a six-month period and after receipt of such written notice, the Wheaton Police Department is called upon to enforce this ordinance either by citizen complaint or by personal investigation of a peace officer.

Subsection 5. Any person violating any provision of this ordinance shall be, upon conviction of such violation, fined the sum not to exceed \$700.00 or sentenced to the county jail for a period of time not to exceed ninety (90) days, or both.

MORALS AND CONDUCT

502 INTERIM ORDINANCE: MORATORIUM PROHIBITING SEXUALLY ORIENTED BUSINESSES

Findings.

1. Sexually oriented businesses and activities have an impact on the neighborhoods surrounding them which is distinct from the impact caused by other commercial uses.
2. Residential neighborhoods located within close proximity to adult theaters, bookstores, and other moderate to high patronage adult businesses experience increased crime rates (sex-related crimes in particular), lowered property values, increase transiency, and decreased stability of ownership.
3. The adverse impacts which an adult entertainment use or activity has on surrounding areas diminish as the distance from the adult entertainment use or activity increases.
4. Among the crimes which tend to increase either within or in the near vicinity of adult entertainment uses or activities are rapes, prostitution, child molestation, indecent exposure, and other lewd and lascivious behavior.
5. The City of Phoenix study confirmed that the sex crime rate was on an average six times higher in areas with at least one adult entertainment use or activity as it was within comparable areas of their city without such adult uses or activities.
6. The values of both commercial and residential properties are either diminished or fail to appreciate at the rate of other comparable properties when located in proximity to adult entertainment uses and activities.
7. The adverse impact of adult use on commercial areas is increased by the presence of more than one adult entertainment use or activity in close proximity to another such use or activity.
8. That the City Council is currently conducting a study with the help of city staff in order to propose changes to the city ordinances which would lawfully regulate sexually oriented uses and activities.
9. That in order to protect the planning process it is necessary to enact this moratorium.

502.01 Moratorium.

Based upon these findings, it is hereby determined that the development, creation, establishment, conversion to, or operation of any sexually oriented business or adult entertainment, which shall include but not be limited to, the following: erotic dancing, nude dancing, obscene performances, adult theaters, adult arcades, adult cabarets, adult bookstores, adult video stores, adult novelty stores, nude model studio, adult motion picture theaters, massages by a non-licensed masseuse, sexual encounter establishments, and the allowing of wet T-shirt contests, or any other activity in which participants do not have his or her buttocks, anus, breast, or genitals completely covered with a nontransparent material or material in a non-transparent state, on, around or within any commercial premises, within the City of Wheaton is prohibited for a period of one (1) year from the effective date of this Ordinance.

502.02 Penalty.

Any person who violates, neglects, refuses to comply with, or assists or participates in any way in the violation of any of the provisions or requirements of this ordinance is guilty of a misdemeanor and is subject to a penalty of 90 days in jail and/or a \$1000 fine for each violation. Each day such violation continues shall constitute a separate offense.

502.03 Savings.

.In all other ways the City Code will remain in full force and effect.

502.04 Effective Date.

This Ordinance will be in full force and effect from and after its passage and publication according to law.

MORALS AND CONDUCT

503 ADULT ESTABLISHMENTS

503.01 Purpose and Intent.

A. Purpose of the City Council. Studies conducted by the Minnesota Attorney General, the American Planning Association, and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Alexandria, Minnesota; Rochester, Minnesota; Phoenix, Arizona; Los Angeles, California; and Seattle, Washington, have studied the impacts that adult establishments have in those communities. These studies have concluded that adult establishments have adverse impact on the surrounding neighborhoods. Those impacts included increased crime rates, lower property values, increased transiency, neighborhood blight, and potential health risks. Based on these studies and findings, the city council concludes:

1. Adult establishments have adverse secondary impacts of the types set forth above.
2. The adverse impacts caused by adult establishments tend to diminish if adult establishments are-governed by location requirements, licensing requirements, and health requirements.
3. Minnesota Statutes Section 462.357 allows the city to adopt regulations to promote the public health, safety, morals, and general welfare.
4. The public health, safety, morals, and general welfare will be promoted by the city adopting regulations governing adult establishments.
5. The purpose of this Ordinance is to prescribe licensing requirements for sexually-oriented businesses in order to protect the general health, safety, and welfare, and to control certain land uses that may have a direct and detrimental effect on the character of the City's residential and commercial neighborhoods.

B. Findings of the City Council. The City Council of the City of Wheaton makes the following findings regarding the need to license sexually-oriented businesses. The findings are based upon the experience of other cities where such businesses have located.

1. Sexually-oriented businesses can exert a dehumanizing and distracting influence on persons attending places of worship, children attending state licensed family daycare homes, state licensed group family daycare homes, state licensed child care centers, students attending school, people using public parks and libraries, and people entering government buildings for services.
2. Sexually-oriented businesses can contribute to an increase in criminal activity in the area in which such businesses are located, taxing city crime-prevention programs, law enforcement, and public health services.
3. Sexually-oriented businesses 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.
4. Sexually-oriented businesses can increase the risk of exposure to communicable diseases, including, but not limited to, Acquired Immune Deficiency Syndrome

(AIDS), for which there currently 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.

5. Sexually-oriented businesses can cause or contribute to public health problems by the presence of live adult entertainment in conjunction with food and/or drink on the same premises.

6. Sexually-oriented businesses can significantly contribute to the deterioration of residential neighborhoods and can impair the character and quality of residential housing in the area in which such businesses are located. The exterior appearance, including signage, can also have an adverse impact on young people and students.

7. The concentration of sexually-oriented businesses in one area can have a substantially detrimental effect on the area in which such businesses are concentrated and on the overall quality of life in the community. A cycle of decay can result from the influx and concentration of sexually-oriented businesses. The presence of such businesses is often perceived by others as an indication that the community or area is deteriorating, and the result can be devastating to other businesses that may be required to move out of the vicinity and which could influence residents to relocate from the area. It has been noted that the presence of such businesses can have the overall effect of causing declining real estate values, the result which can be exacerbated by the concentration of such business, which can erode the City's tax base and contribute to overall community blight.

C. Intent of the City Council. It is the intent of this Ordinance to regulate Adult Oriented Businesses as 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 Oriented Businesses away from residential areas, schools, places of worship, public parks and playgrounds, and government buildings.
4. Prevent concentration of Adult Oriented Businesses within certain areas of the City.
5. Lessen the risk of exposure to communicable diseases.

503.02. Definitions.

A. Adult Body Painting Studio. An establishment or business which provides the service of applying paint or other substances, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of Specified Anatomical Areas as defined herein.

B. Adult Book and/or Media Store. An establishment which has ten percent (10%) or greater of its current store stock in merchandise, videos, slides, books, magazines, and/or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein.

C. Adult Cabaret. An establishment which provides dancing, modeling, or other live entertainment, if such dancing or modeling is distinguished by an emphasis on the presentation, display, depiction, or description of Specified Sexual Activities or Specified Anatomical Areas as defined herein.

D. Adult Car Wash. A wash facility for any type of motor vehicle that allows employees, independent contractors, or any other person, to appear in a state of partial or total nudity, in terms of Specified Anatomical Areas as defined herein.

E. Adult Companionship Establishment. A companionship establishment which excludes minors by reason of age, or which provides a service for a fee of engaging in or listening to conversation, talk, or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas as defined herein.

F. Adult Entertainment Facility. A building space wherein an admission is charged for entrance, or food or alcoholic and nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment including nude dancing, modeling, or nudity, or which include other parties distinguished or characterized by an emphasis on matters depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein.

G. Adult Establishment. Any business which offers its patrons services, entertainment, or the sale of merchandise characterized by an emphasis on matter depicting, exposing, describing, discussion, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein. Specifically included in this term, but without limitation, are adult book and media stores, adult cabarets, adult hotels or motels, adult mini-picture theaters, adult modeling studios, adult motion picture arcades, adult motion picture theaters, and adult novelty businesses.

H. Adult Hotel or Motel. Any hotel or motel which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein.

I. Adult Mini-Motion Picture Theater.

1. A building or space with a capacity for less than 50 persons used for presenting motion pictures, including but not limited to film and videotape, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein.
2. Any business which presents motion pictures, films and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein, for viewing on the premises, including but not

limited to private booths, viewing by means of coin operated or other mechanical devices, and the viewing of excerpt of motion pictures offered for sale or rent.

J. Adult Modeling Studio. An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in Specified Sexual Activities or display Specified Anatomical Areas as defined herein while being observed, painted, painted upon, sketched, drawn, sculpted, photographed, or other otherwise depicted by such customers.

K. Adult Motion Picture Theater. A building or space with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matters depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein, for observations by patrons therein.

L. Adult Novelty Business. A business which sells, offers to sell, or displays devices which simulate human genitals or devices which are designed for sexual stimulation.

M. Adult Sauna. A sauna which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing, or reducing agent, if the service by the sauna is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

N. Places of Worship. A building or space that is principally used as a place where people of the same faith or religion regularly assemble for worship or religious educational purposes.

O. Public Library. Any library that provides the access to all residents of a city or county without discrimination, received at least half of its financial support from public funds, and is organized under the provisions of Minnesota Statutes.

P. Public Park and Playground. A park, reservation, open space, playground, beach, or recreation center in the City, which is owned, leased, or housed, wholly or in part, by a City, County, State, School District, or the Federal Government for recreation purposes.

Q. School. A building or space that is principally used as a place where persons receive a full course of educational instruction. Any post-secondary or post-high school educational building, including any college or any vocational-technical college, shall not be deemed a school for purposes of this Ordinance.

R. Sexually Oriented Business. An adult book store, adult body painting studio, adult companionship establishment, adult motion picture theater, adult novelty business, adult entertainment facility, adult modeling studio, adult mini-motion picture theater, adult car wash, adult-oriented cabaret, or adult sauna as herein defined.

S. Sign. A name, identification, description, display, or illustration which is affixed to, painted, or represented directly or indirectly upon a building or other outdoor surface or piece of land which directs attention to an object, project, place, activity, person, institution,

organization, or business. However, a "sign" shall not include any display or official court or government office notices nor shall it include the flag, emblem, or insignia for a nation, political unit, school, or religious group. A "sign" shall not include a sign located completely within an enclosed building unless the context shall so indicate. Each display surface of a sign shall be considered a "sign".

T. Specified Anatomical Areas. Any of the following conditions:

1. Less than completely and opaquely covered:
 - a) human genitals, pubic region, or pubic hair
 - b) buttock, anus; and
 - c) female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernible turgid state, completely and opaquely covered.

U. Specified Sexual Activities are any of the following conditions:

1. An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.
2. Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed.
3. Masturbation, actual or simulated, or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ clothed or unclothed.
4. Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or breasts of a female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.
5. Human male genitals in a discernable state of sexual stimulation or arousal.
6. Excretory functions as part of or in connection with any of the activities set forth in Paragraphs 1 through 5 of this definition.

V. State Licensed Family Day Care Home, State Licensed Group Family Day Care Home, State Licensed Child Care Center. A facility holding a license from the State of Minnesota pursuant to Minnesota Statutes, Chapter 235A, and/or Minnesota Rules 9502 or Chapter 9503, as amended.

503.03 Application of this Ordinance.

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

B. No Adult Oriented Business shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited by any ordinance of the City of Wheaton, the laws of the State of Minnesota, or the United States of America. Nothing in this Ordinance shall be construed as authorizing or permitting conduct which 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,

503.04 Location.

A. During the term of this Ordinance, no Adult Oriented Businesses shall be located less than 1500 feet from:

1. Any residential home or site used for residential purposes.
2. Any place of religious worship site.
3. Any school site.
4. Any public library.
5. Any day care or child care facility.
6. Any public theater.
7. Any airport.
8. Any interstate highway.
9. Any public park or recreational area site under the control, operation, or management of the city.
10. Any establishment licensed to sell alcoholic beverages
11. Any state or federal governmental building.
12. Any other Adult Oriented Business.

B. For purposes of this Ordinance, this distance shall be a horizontal measurement made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually-oriented business is conducted, to the nearest existing property line of the premises of a use listed in Section 4A above.

503.05. Hours of Operation.

No Adult Oriented Business site shall be open to the public from the hours of 11:00 p.m. to 10:00 a.m.

503.06 Operation.

A. Off-site Viewing. An establishment operating as an Adult Oriented Business shall prevent offsite viewing of its merchandise, which if viewed by a minor, would be in violation of Minnesota Statutes Chapter 617 or other applicable Federal or State Statutes or local ordinances.

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

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

D. Movie Rentals/Magazines/Books. Display areas for movies/magazines/books that are distinguished or characterized by an emphasis on Specified Anatomical Areas or Specified Sexual Activities shall be restricted from general view and shall be located within a separate room, the access or entrance to which is in clear view and under the control of the persons responsible for the operation. Such items shall not be accessible to minors, and all such magazines and books shall be covered with a wrapper or other means to prevent display of any materials other than the publication title.

E. Illumination. Illumination of the premises exterior shall be adequate to observe the location and activities of all person on the exterior premises.

F. Signs. In order to protect children from exposure to lurid signs and materials and in order to preserve the value of property surrounding sexually-oriented businesses, the following sign regulations shall apply to all sexually-oriented businesses in the City, superseding any other sign regulations contained in the Wheaton City Ordinances.

1. All signs shall be flat wall signs. No signs shall be freestanding, located on the roof, or contain any flashing lights, moving elements, or electronically or mechanically changing messages. No sign shall contain any message or image which identifies specified sexual activities or specified anatomical areas as defined herein.

2. The amount of allowable sign area shall be one (1) square foot of sign area per foot of lot frontage on a street, not to exceed eighty (80) square feet.

3. No merchandise, photos, or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or public right-of-way adjoining the building or structure in which the sexually oriented business is located.

4. No signs shall be placed in any window. A one (1) square foot sign may be placed on the door to state hours of operation and admittance to adults only.

503.07 License Required.

No person shall own or operate a sexually-oriented business within the City unless such person is currently licensed under this Ordinance.

503.08 License Application.

This application for a license under this Ordinance shall be made on a form supplied by Issuing Authority and shall require the following information:

A. All Applicants. For all applicants:

1. Where the applicant is a natural person, corporation, partnership, or other form of organization.

2. The legal description of the premises to be licensed, along with a floor plan of the premises. The floor plan of the premises shall detail all internal operations and activities, including a statement of the total floor space occupied by the business. The floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimension of the interior of the premises to an accuracy of plus or minus six(6) inches.
3. The name and street address of the business. If the business is to be conducted under a designated name, or style other than the name of the applicant, a certified copy of the certificate required by Minnesota Statutes, Section 333.01 shall be submitted.

B. Applicants Who Are Natural Persons. If the applicant is a natural person:

1. The name, place, and date of birth, street and city address, and phone number of the applicant.
2. Where the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places where used.
3. The street and city addresses at which the Applicant has lived during the preceding two (2) years.
4. The type, name, and location of every business or occupation in which the applicant has been engaged during the preceding two (2) years and name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding two (2) years.
5. Whether the applicant has ever been convicted of any crime, be it a felony, gross misdemeanor, or misdemeanor, or violation of any ordinance other than a petty misdemeanor traffic ordinance. If so, the applicant shall furnish information as to the time, place and offense for which convictions were had.

B. Applicants That Are Partnerships. If the applicant is a partnership:

1. The name(s) and address(es) of all general partners and all of the information concerning each general partner that is required of applicants in subpart (2) of this Section.
2. The name(s) of the managing partner(s) and the interest of each partner in the business.
3. A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to Minnesota Statutes Section 333.01, a certified copy of such certificate shall be attached to the application.

C. Corporate or Other Applicants. If the applicant is a corporation or other organization:

1. The name of the corporation or business form, and if incorporated, the state of incorporation.
2. A true copy of the Certificate of Incorporation, Articles of Incorporation or Association Agreement and By-laws shall be attached to the application.

If the applicant is a foreign corporation, a Certificate of Authority as required by Minnesota Statutes Section 303.06, shall be attached.

3. The name of the manager(s), proprietor(s), or other agent(s) in , charge of the business and all of the information concerning each manager, proprietor or agent that is required of the applicants in subpart (2) of this Section.

503.09 License Application Execution.

If the application is that of a natural person, the application shall be signed and sworn to by that person; if of a corporation, by an officer thereof; if of a partnership, by one of the general partners; if of an unincorporated association, by the manager or managing officer thereof.

503.10 License Application Verification.

Applications of licenses under this Ordinance shall be submitted to the City Council (hereinafter referred to as the "Issuing Authority"). Within twenty (20) calendar days of receipt of a complete application and payment of all license application fees, agents and/or employees of the Issuing Authority shall verify any and all of the information requested of the applicant in the application, including the ordering of criminal background checks, and conduct any necessary investigation to assure compliance with this Ordinance.

503.11 License Application Consideration.

No later than ten (10) calendar days after the completion of the license application verification and investigation by the Issuing Authority or its agents and employees, as prescribed in Section 10, the Issuing Authority shall accept or deny the license application in accordance with this Ordinance. If the application is denied, the Issuing Authority shall notify the applicant of the determination in writing. The notice shall be mailed by certified and regular mail to the applicant at the address provided the application form and it shall inform the applicant of the applicant's right within twenty (20) calendar days of receipt of the notice by the applicant, to request an appeal of the determination for reconsideration by the City Council or to immediately challenge the determination in a court of law. If an appeal to the City Council is timely received the hearing before the City Council shall take place within twenty (20) calendar days of the receipt of the appeal. If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises by the City Planning Department. During the application consideration process prescribed herein an applicant operating a business not previously subject to the license provisions of this Ordinance may remain operating pending the outcome of the application consideration by the Issuing Authority.

503.12 License Fees.

A. Application Fee.

1. The license application fee shall be Five Hundred Dollars (\$500.00).
2. The application license fee shall be paid in full before the application for a license is considered. All fees shall be paid to the Issuing Authority for deposit into the general fund of the City. Upon rejection of any application for a license or upon withdrawal of application before approval of the Issuing Authority the license fee shall be refunded to the applicant.

3. When the license is for premises where the building is not ready for occupancy, the time fixed for computation of the license fee of the initial license period shall be ninety (90) days after approval of the license by the Issuing Authority or upon the date an occupancy permit is issued for the building.

B. Investigation Fee.

An applicant for any license under this Division shall deposit with the Issuing Authority, at the time an original application is submitted, \$500.00 to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this Division. The investigation fee shall be nonrefundable.

503.13 Persons and Locations Ineligible for a License.

The Issuing Authority shall issue a license under this division to an applicant unless one (1) or more of the following conditions exists:

A. The applicant is not eighteen (18) years of age or older on the date the application is submitted to the Issuing Authority.

B. The applicant failed to supply all of the information requested on the license application.

C. The applicant gave false, fraudulent, or untruthful information on the license application.

D. The applicant has had a sexually-oriented license revoked from the City or any other jurisdiction within a one (1) year period immediately preceding the date the application was submitted.

E. The applicant has had a conviction for any felony-level offense, or a gross misdemeanor or misdemeanor conviction relating to sex offenses as defined by Minnesota Statutes Sections, obscenity offenses as defined by Minnesota Statutes Sections 617.23 through 617.299 inclusive, or adult uses in the past five (5) years.

F. The sexually-oriented business does not meet the zoning requirements prescribed in this Ordinance.

G. The premises to be licensed as a sexually-oriented business is currently licensed by the City as a tanning facility, tattoo establishment, pawnshop, therapeutic massage enterprise, or an establishment licensed to sell alcoholic beverages.

H. The applicant has not paid the license and investigation fees required in Section 12.

503.14. License Restrictions.

A. Posting of License. A license issued under this Ordinance must be posted in a conspicuous place in the premises for which it is used.

B. Effect of License. A license issued under this Ordinance is only effective for the compact and contiguous space specified in the approved license application.

C. Maintenance of Order. A licensee under this Ordinance shall be responsible for the conduct of the business being operated and shall not allow any illegal activity to take place on or near the licensed premises including but not limited to prostitution, public indecency, indecent exposure, disorderly conduct, or the sale or use of illegal drugs. Every act or omission by an employee or independent contractor of the licensee constituting a violation of this Ordinance shall be deemed the act or omission of the licensee if such act or omission occurs either with the authorization, knowledge, or approval of the licensee or as a result of the licensee's negligent failure to supervise the employee's or independent contractor's conduct.

D. Distance Requirement for Live Adult Entertainment. All performers, dancers, and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed facility or in areas adjoining the licensed facility where such entertainment can be seen by patrons of the licensed facility shall remain at all times a minimum distance of ten (10) feet from all patrons, customers, or spectators and shall dance or provide such entertainment on a platform intended for that purpose, which shall be raised at least two (2) feet from the level of the floor on which patrons or spectators are located.

E. Interaction with Patrons. No dancer, performer, or person providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed facility or in areas adjoining the licensed facility where the entertainment can be seen by patrons of the licensed facility shall fondle or caress any spectator or patron.

F. Gratuity Prohibition. No customers, spectator, or patron of a licensed facility shall directly pay or give any gratuity to any dancer or performer and no dancer or performer shall solicit any pay or gratuity from any patron or spectator.

G. Adult Car Wash Requirements. Sexually-oriented businesses that are adult car washes shall meet all of the requirements of this Ordinance.

H. Minors. No licensee shall allow minors to enter the licensed premises. The licensee shall request proof of age of all persons the licensee believes to be under the age of eighteen (18) years. Proof of age may be established only be: valid driver's license or identification card issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person; a valid military identification card issued by the United States Department of Defense, or in the case of a foreign national from a nation other than Canada, a valid passport.

503.15 Restrictions Regarding License Transfer.

A. The license granted under this Ordinance is for the person and the premises named on the approved license application. No transfer of a license shall be permitted from place to place or from person to person without complying with the requirements of an original application.

B. When a sexually-oriented business licensed under this Ordinance is sold or transferred, the existing licensee shall immediately notify the Issuing Authority of the sale or transfer. If the new owner or operator is to continue operating the sexually-oriented business, the new owner or operator must immediately apply for a license under this Ordinance.

503.16 Inspection.

A. Access. An applicant or licensee shall permit health officials, representatives of the police department, fire department, and building inspection division, to inspect the premises of an Adult Oriented Business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

B. Refusal to Permit Inspections. A person who operates an Adult Oriented Business or his/her agent or employee commits an offense if she or he refuses to permit a lawful inspection of the premises by health officials, representatives of the police department, fire department, and building inspection division at any time it is occupied or open for business. Refusal to permit inspections may result in the suspension of the license as provided in Section 11.

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.

503.17 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 7(A). Application for renewal must be made at least 60 days before the expiration date, and when made less than 60 days before the expiration date, the expiration of the license will not be affected.

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

503.18 Suspension.

A. Causes of Suspension. The City may suspend a license for a period not to exceed 30 days if it determines that licensee or an employee of a licensee has:

1. Violated or is not in compliance with any provision of this chapter.
2. Engaged in the use of alcoholic beverages while on the Adult Oriented Business premises other than at an Adult Hotel or Motel.
3. Refused to allow an inspection of the Adult Oriented Business premises as authorized by this chapter.
4. Knowingly permitted gambling by any person on the Adult Oriented Business premises.
5. Demonstrated inability to operate or manage an Adult Oriented Business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

B. A suspension by the City shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least 10 days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed business premises with the person in charge thereof.

503.19 Revocation.

A. Suspended Licenses. The City may revoke a license if a cause of suspension in Section 11 occurs and the license has been suspended within the preceding 12 months.

B. Causes of Revocation. The City shall revoke a license if it determines that:

1. A licensee gave false or misleading information in the material submitted to the City during the application process.
2. A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises.
3. A licensee or an employee has knowingly allowed prostitution on the premises.
4. A licensee or an employee knowingly operated the Adult Oriented Business during a period of time when the licensee's license was suspended.
5. A licensee has been convicted of an offense listed in Section 13(E), for which the time period required in Section 13(F), has not elapsed.
6. On two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 13(E), for which a conviction has been obtained, and the person or person were employees of the Adult Oriented Business at the time the offenses were committed.
7. A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.

C. Appeals. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

D. Exceptions. Section 19(B)(7) 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 Oriented Business license for one year from the date revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under Section 12, Subdivision 2(e), an applicant may not be granted another license until the appropriate number of years required under Section 7, Subdivision 3(g), has elapsed.

F. Notice. A revocation by the City shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least 10 days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed premises with the person in charge thereof.

503.20 Transfer of License.

A licensee shall not transfer this license to another, nor shall a licensee operate an Adult Oriented Business under the authority of a license at any place other than the address designated in the application.

503.21 Penalty.

A violation of this Ordinance shall be a misdemeanor under Minnesota law, and shall be subject to a penalty of 90 days in jail and/or \$1000 fine for each violation. Each day that a prohibited violation occurs or exists will constitute a separate violation.

503.22 Severability.

Every section, provision, or part of this Ordinance or any permit issued to this ordinance is declared severable from every other section, provision, or part thereof, to the extent that if any section, provision, or part of this Ordinance or any permit. issued pursuant to this ordinance shall be held invalid by a court of competent jurisdiction. It shall not invalidate any other section, provision, or part thereof.

503.23 Effective.

This Ordinance shall be effective upon its passage and publication.

Introduced and read the first time on December 16, 2002.

Read the second time and passed December 26, 2002.

MORALS AND CONDUCT

505 MATERIALS HARMFUL TO MINORS

505.01 Purpose and Policy of This Ordinance.

In enacting this ordinance the council declares its purposes and intent to be as follows: There exists an urgent need to prevent commercial exposure of minors to sexually provocative written, photographic, printed, sound or published materials as these are hereinafter defined and which are hereby declared to be harmful to minors. It is in the best interest of the health, welfare and safety of the citizens of this city, that commercial dissemination of such sexually provocative written, photographic, printed, sound or published materials deemed harmful to minors be restricted to persons over the age of 17 years; or, if available to minors under the age of 18 years, that the availability of such materials be restricted to sources within established and recognized schools, churches, museums, medical clinics and physicians, hospitals, public libraries, or government sponsored organizations.

505.02 Definitions.

As used in this ordinance the terms defined in this section have the meanings given them:

- Subdivision 1. "Minor" means any person under the age of 18 years.
- Subdivision 2. "Nudity" means the showing of the human male or female genitals, pubic area or buttocks, with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
- Subdivision 3. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks or if such a person be a female, her breast.
- Subdivision 4. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- Subdivision 5. "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- Subdivision 6. "Harmful to Minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:
 - 1. predominantly appeals to the prurient, shameful, or morbid interest of minors, and
 - 2. is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and
 - 3. is utterly without redeeming social importance for minors. -

Subdivision 7. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both;

1. the character and content of any material which is reasonably susceptible of examination by the defendant, and
2. the age of the minor, provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

505.03 Harmful Materials: Dissemination to Minors Prohibited.

It is unlawful for any person knowingly to sell or loan for monetary consideration to a minor:

1. any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors, or
2. any book, pamphlet, magazine, printed matter however, reproduced, or sound recording which contains any matter enumerated in clause (1), or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse, which taken as a whole, is harmful to minors.

505.04 Commercial Exhibition Prohibited.

it is unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited, a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors.

505.05 Exemptions.

The following are exempt from criminal or other action hereunder:

Recognized and established schools, churches, museums, medical clinics and physicians, hospitals, public libraries, governmental agencies or quasi-governmental sponsored organizations, and the persons acting in their capacity as employees or agents of such organization. For the purpose of this section "recognized and established" shall mean an organization or agency having a full time faculty and diversified curriculum in the case of school; a church affiliated with a national or regional denomination; a licensed physician or psychiatrist or clinic of licensed physicians or psychiatrists; and in all other cases exempt organizations shall refer only to income tax exempted organizations which are supported in whole or in part by tax funds or which receive at least one third of their support from publicly donated funds.

505.06 Individuals in a parental relationship with the minor.

3. Motion picture machine operators, stagehands or other theater employees such

as cashiers, doormen, ushers, and concession employees, if such person or persons have no financial interest in the entertainment presented other than the salary or wage, or in any theater or place where such employee has no financial interest when his services are obtained solely for salary or wage; provided, that such employee is under the direct supervision of a theater manager who is a resident of this state and who is not exempt from action under this ordinance.

505.07 Violations.

A violation of any provision of this ordinance shall constitute a misdemeanor punishable to W.M.C. 005.05.

505.08 Evidence of Adherence to Motion Picture Rating System

In any prosecution involving the exhibitor or owner of any motion picture theater, evidence of compliance or noncompliance with an adherence to a rating system recognized in the motion picture industry is admissible.

ORDINANCE SECTION 506
AN ORDINANCE SETTING A CITY-WIDE, NIGHTTIME CURFEW FOR
JUVENILES

That Wheaton City Ordinance Section 506 is hereby enacted to read as follows:

SECTION 506.01: PURPOSE

- (A) To protect the public from illegal acts of minors committed during the curfew hours.
- (B) To protect minors from improper influences that prevail during the curfew hours and also curb involvement with drugs or alcohol.
- (C) To protect minors from criminal activity that occurs during the curfew hours.
- (D) To help parents control their minor children.

SECTION 506.02: DEFINITIONS

- (A) "Juvenile" means a person under the age of seventeen (17). The term does not include persons under 18 who are married or have been legally emancipated.
- (B) "Parent" means birth parents, adoptive parents, and step-parents.
- (C) "Guardian" means an adult appointed pursuant to Minn. Stat. §525.6155 or §525.6165 who has the powers and responsibilities of a parent as defined by Minn. Stat. §525.619.
- (D) "Responsible adult" means a person eighteen (18) years or older specifically authorized by law or by a parent or guardian to have custody and control of a juvenile.
- (E) "Public Place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
- (F) "Emergency" means a circumstance or combination of circumstances requiring immediate action to prevent property damage, serious bodily injury or loss of life.
- (G) "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss of impairment of the function of any body part or organ.
- (H) "Establishment" means any privately-owned place of business to which the public is invited, including but not limited to any place of amusement, entertainment, or refreshment.

SECTION 506.03: PROHIBITED ACTS

- (A) It is unlawful for a juvenile to be present on the streets, alleys, parks, fairgrounds, or in any other public place or establishment within the City of Wheaton between the hours of 11:00 p.m. and 5:30 a.m. the following day. The time of day is determined by reference to the master clock used at the Traverse County Law Enforcement Center.
- (B) It is unlawful for a parent or guardian of a juvenile knowingly, or through negligent supervision, to permit the juvenile to be in any public place or establishment within the City of Wheaton during the hours prohibited in paragraph (A) of this section.

SECTION 506.04: EXCEPTIONS

- (A) It is an affirmative defense for a juvenile to prove that:
 - (1) the juvenile was accompanied by his or her parent, guardian, or other responsible adult.
 - (2) the juvenile was engaged in a lawful employment activity or was going to or returning home from his or her place of employment, without any detour or stop.
 - (3) the juvenile was involved in an emergency situation.
 - (4) the juvenile was going to, attending, or returning home from an official school, religious, or other recreational activity sponsored and/or supervised by a public entity or a civic organization, without any detour or stop.
 - (5) the juvenile was on an errand at the direction of a parent or guardian, without any detour or stop.
 - (6) the juvenile was exercising First Amendment rights protected by the United States Constitution or Article I of the Constitution of the State of Minnesota.
 - (7) the juvenile was engaged in interstate travel.
 - (8) the juvenile was on the public right-of-way boulevard or sidewalk abutting the property containing the juvenile's residence or abutting the neighboring property, structure, or residence.
 - (9) the juvenile is at a place of amusement, entertainment, or refreshment. These places include, but are not limited to, movie theaters, arcades, nightclubs or restaurants catering to minors.
- (B) A law enforcement officer must determine whether juvenile has an affirmative defense before making an arrest, taking the juvenile into custody, or issuing a citation.

SECTION 506.05: PENALTY

- (A) Any minor found to be in violation of Section 3(A) may be adjudicated delinquent and shall be subject to the disposition and penalties of the Traverse County Court.
- (B) Any adult person found to be in violation of Section 3(B) shall be guilty of a misdemeanor, and may be sentenced up to the maximum penalty authorized by state law for a misdemeanor."

SUMMARY OF ORDINANCE NO. 506

A SUMMARY OF AN ORDINANCE PROHIBITING DISRUPTIVE PUBLIC INTOXICATION

In order to better serve the citizens of the City of Wheaton, it shall henceforth be unlawful for any person in the City of Wheaton, while intoxicated, to conduct him or herself in a public place in such a manner so as to be a danger to themselves or others and/or engage in a public disruption. A violation of this Ordinance shall be a misdemeanor.

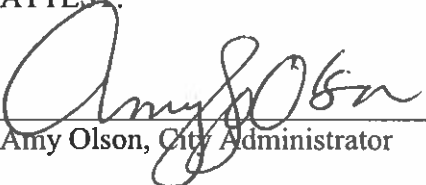
This summary is being published in compliance with Minnesota Statutes Section 331A.01, Subdivision 10 and Minnesota Statutes Section 412.191, Subdivision 4. A copy of the full text of this Ordinance shall be available at regular office hours of the office of the Wheaton City Administrator. The full text of this Ordinance will be in full force and effect from and after its passage and publication according to law.

PASSED AND ADOPTED this 25th day of April, 2019.

WHEATON CITY COUNCIL


Leonard Zimmer, Mayor

ATTEST:


Amy Olson, City Administrator

Motion:
Seconded:
Published:
Passed:

ORDINANCE SECTION 507
AN ORDINANCE DEALING WITH DISRUPTIVE INTOXICATION

Findings.

1. There have been incidents regarding residents becoming intoxicated and disrupting the peace within the City of Wheaton in a nearby community.
2. While there have not been similar incidents in the City of Wheaton, there is a possibility that they could also occur within the City of Wheaton
3. Based upon this, the Wheaton City Council believes it is in the best interests of the residents of the City of Wheaton to modify its Ordinance to enact a provision prohibiting people from engaging in disruptive behavior while intoxicated.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS FOLLOWS:

1. That Wheaton City Ordinance Section 507 is hereby enacted to read as follows:

“507 DISRUPTIVE INTOXICATION

507.01 Declaration of Policy.

It is the policy of the City of Wheaton to provide for the safety, health and welfare of the public while prohibiting certain harmful conduct of intoxicated persons.

507.02 Definitions.

Section 1. **Public.** A building or place controlled by the City, a school, a place of worship, any public street, including public sidewalk, alley, walk or other publicly owned lands. Public place excludes the premises of a licensed alcohol establishment.

Section 2. **Intoxicated Person.** A person who is presently impaired, mentally or emotionally, as a result of the presence of alcohol, drugs, or a controlled substance in the person's body. Evidence of an intoxicated person may include, but is not limited to, any combination of the following indicators:

- (1) odor of intoxicants on the breath,
- (2) bloodshot, watery eyes,
- (3) dilated pupils,
- (4) stumbling or staggering,
- (5) slurred speech,
- (6) failure of Standardized Field Sobriety Test,
- (7) failure of Drug Recognition Protocol, or
- (8) alcohol concentration of .08 or more.

Section 3. **Public Disruption.** Conduct by an individual to include loud, boisterous yelling, urinating in public, lewd or combative conduct, or disobeying a police officer's lawful command.

507.03 Disruptive Intoxication.

No person, while intoxicated, in a public place shall conduct him or herself so as to be a danger to themselves or others and/or engage in a public disruption.

507.04 Sobriety Testing.

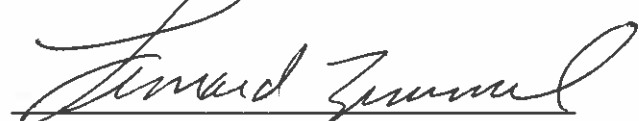
No person shall be cited under this section without first having been offered and failed the Standardized Field Sobriety Test or a Portable Breath Test (PBT); however, a person incapable and/or having refused Field Sobriety Testing or a PBT may still be cited under the criteria set forth in Section (B) under the definition of an Intoxicated Person.

507.05 Misdemeanor.

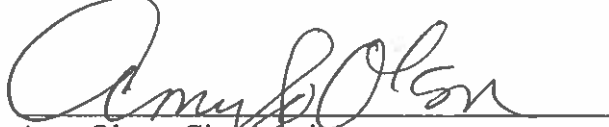
A violation of this Section is designated a misdemeanor.

PASSED AND ADOPTED this 25th day of April, 2019.

WHEATON CITY COUNCIL


Leonard Zimmer, Mayor

ATTEST:


Amy Olson, City Administrator

Motion:

Seconded:

Published:

Passed:

SUMMARY OF ORDINANCE NO. 507

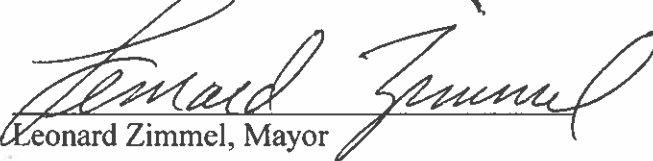
A SUMMARY OF AN ORDINANCE PROHIBITING DISRUPTIVE PUBLIC INTOXICATION

In order to better serve the citizens of the City of Wheaton, it shall henceforth be unlawful for any person in the City of Wheaton, while intoxicated, to conduct him or herself in a public place in such a manner so as to be a danger to themselves or others and/or engage in a public disruption. A violation of this Ordinance shall be a misdemeanor.

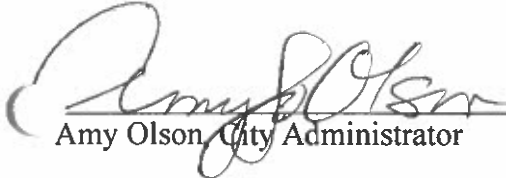
This summary is being published in compliance with Minnesota Statutes Section 331A.01, Subdivision 10 and Minnesota Statutes Section 412.191, Subdivision 4. A copy of the full text of this Ordinance shall be available at regular office hours of the office of the Wheaton City Administrator. The full text of this Ordinance will be in full force and effect from and after its passage and publication according to law.

PASSED AND ADOPTED this 25th day of April, 2019.

WHEATON CITY COUNCIL


Leonard Zimmer, Mayor

ATTEST:


Amy Olson, City Administrator

Motion:

Seconded:

Published:

Passed:

BUILDING REGULATIONS

550 LAND USE ORDINANCE

ARTICLE 1: PURPOSE AND RELATION TO LAND USE PLAN

550.1.01 PURPOSE

This chapter is adopted for the purpose of:

- A.) Protecting the public health, safety, comfort, convenience and general welfare.
- B.) Inaugurating and effectuating the goals of any Comprehensive Plan or other land use policies adopted by the City.
- C.) Promoting order in development by dividing the area of the City into zones and regulating therein the location, construction, reconstruction, alteration and use of the structures and land.
- D.) Conserving the natural and scenic beauty and attractiveness of the City, for the health and welfare of the public.
- E.) Providing for adequate light, air and access to property by regulating the use of the land and buildings and the bulk of structures in relation to surrounding properties.
- F.) Providing for the administration of the provisions of the ordinance and defining the authority and duties of the Zoning Administrator, Planning Commission, Board of Adjustment, and City Council under this ordinance.
- G.) Promoting the economic wellbeing of the community by providing an attractive, stable and viable venue for new businesses.
- H.) Minimizing disputes between neighboring property owners.

550.1.02 RELATION TO LAND USE PLAN

It is the policy of the City that the enforcement, amendment, and administration of this Chapter be accomplished with due consideration of the recommendations contained in any Comprehensive Plan which may be developed and amended from time to time by the City as well as any other City land use and development plans enacted from time to time.

ARTICLE 2: RULES AND DEFINITIONS

550.2.01 RULES

The language set forth in the text of this Chapter shall be interpreted in accordance with the following rules of construction:

- A.) The word person includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.
- B.) The masculine gender includes the feminine gender and the neuter gender.
- C.) The singular includes the plural and the plural includes the singular.
- D.) The present tense includes the past and future tenses and the future includes the present.
- E.) The word "may" is permissive. The word "shall" is mandatory. Mandatory compliance with the Ordinance shall allow for variances thereto.
- F.) All horizontal and vertical measured distances shall be expressed to the nearest tenth of a foot and its metric equivalent, unless specifically stated otherwise.
- G.) The words "lot," "plot," "piece" and "parcel" of land are interchangeable.
- H.) The words "used for," shall include the phrases "arranged for," "designed for," "intended for," "improved for," "maintained for," and "occupied for."

550.2.02 DEFINITIONS

The following words shall be defined as follows for the purpose of this Chapter:

- 1. **Abandoned Building.** A building as defined hereinafter on public or private property, which no longer serves a practical use and, due to its location or structural condition, is considered a safety hazard in the opinion of the Zoning Administrator.
- 2. **Abandoned Motor Vehicle.** A motor vehicle as defined in Minnesota Statutes Chapter 169.011, as amended, that (a) has remained on public property in an inoperable condition for more than 48 hours, or (b) has remained on private property for more than 48 hours without the permission of the owner, or (c) has remained on private property for more than thirty days and is inoperable or is unlicensed unless kept in a garage or other storage structure.
- 3. **Abutting.** Making direct contact with or immediately bordering.
- 4. **Accessory Structure.** A building or other structure that is supportive, secondary and subordinate in use and/or size to the principle structure on the same parcel or lot which, because of the nature of its use, can reasonably be located at or greater than minimum structure setbacks. Includes all non-incidental structures not considered the principle structure including, but not limited to, T.V. towers antennas, dish antennas, outdoor swimming pools, outdoor hot-tubs, detached garages, sheds, guest quarters and boathouses.

5. **Accessory Use.** A use naturally and normally incident and subordinate to the main use of the premises.
6. **Addition.** A physical enlargement of an existing structure.
7. **Adjacent.** In close proximity to or neighboring, not necessarily abutting.
8. **Agent.** Any person acting on behalf of a landowner in dealing with activities under the jurisdiction of the Ordinance, including but not limited to realtors, contractors or attorneys.
9. **Agricultural Use.** The use of land for agricultural purposes including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and animal and poultry husbandry and the necessary accessory uses used for packing, treating or storing the product, provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities.
10. **Alteration.** A change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or by moving from one location to another, of a building or a structure.
11. **Animal Feedlot.** A lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. Open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. Pastures shall not be considered to be animal feedlots.
12. **Animal Unit.** A unit of measure based on the approximate production of wastes from 1000 pounds of live weight of poultry or animals.

Animal Units:

One (1) slaughter weight steer or heifer	1
One (1) mature dairy cow or horse	1.4
One (1) swine over 55 pounds	0.4
One (1) sheep	0.1
One (1) goose	0.1
One (1) duck	0.05
One (1) turkey	0.18
One (1) chicken	0.1

13. **Antenna.** Any structure or device used for the purpose of collecting or radiating electromagnetic waves including but not limited to directional antennas such as panels, microwave dishes, satellite dishes, and omni-directional antennas such as whip antennas. Dishes under 36 inches are excluded from the definition of antenna.
14. **Apartment.** A room or suite of rooms that is designed for, intended for, or occupied as a residence by a family or individual, and is equipped with sanitary facilities.

15. **Appeal.** An application for the review of an order, requirement, decision, determination, or interpretation of this Chapter made by an administrative officer in the application and/or enforcement of this Chapter.
16. **Attached.** Two buildings or structures that combine to form one building or structure through the use of at least one common wall, not including a breezeway.
17. **Attorney.** The attorney duly appointed by the Council to represent the City.
18. **Auto Salvage Yard.** A lot or yard where four or more motor vehicles are stored while parts are removed, where crushing occurs or where storage pending crushing may occur.
19. **Balcony.** Same as a deck.
20. **Bathroom.** A room containing a shower or bathtub or a sink and toilet.
21. **Basement.** The space below the first story of a structure which is greater than four (4) feet in height.
22. **Bedroom.** A portion of a dwelling unit intended to be used for sleeping purposes, which may contain closets and may have access to a bathroom.
23. **Board of Adjustment.** The Board, appointed by the City Council, to hear appeals from actions of the Zoning Administrator, and variance requests.
24. **Building.** Any structure used or intended for storage, shelter or occupancy.
25. **Building Height.** The vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of any roof.
26. **Building Line.** A line parallel to a lot line at the required setback beyond which a structure may not extend.
27. **Cemetery, Unplatted.** Any human remains or burials found outside of platted, recorded or identified cemeteries pursuant to Minnesota Statutes, Chapter 307.08, as amended.
28. **Chairman.** The individual elected by the Planning Commission to chair their meetings. A vice-chair may also be elected and would serve as chairman when the elected chairman was absent.
29. **Church.** 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 and related community activities.
30. **City.** The City of Wheaton, located in Traverse County, Minnesota.
31. **City Clerk.** The appointed person responsible for administration of the City affairs.
32. **City Council.** The duly elected governing body of the City.
33. **City Sewer or Water System.** A system of municipally maintained utilities, approved by the State, and serving more than one building or property.
34. **Civic Building.** See "Government Building"

35. **Commercial Use.** The principle use of land or buildings for the sale, lease, rental, trade of products, goods or services. The principle use of land or buildings for the sale, lease, rental, or trade of products, goods or services.
36. **Comprehensive Plan.** A compilation of policy statements, goals, standards and/or maps for guiding the physical, social and economic development, both private and public, of the City and its environs and may include, but is not limited to, the following items: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan and recommendations for plan execution.
37. **Conditional Use.** A land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the zoning ordinance exist, the use or development conforms to the comprehensive land use plan of the community, and the use is compatible with the existing neighborhood.
38. **Contiguous.** The sharing of a common border at more than a single point. Lots, parcels or boundaries may be considered contiguous where separated by rights-of-way, rivers or streams.
39. **Council.** The City Council, as established by State Law.
40. **Crawl Space.** The space below the first story of a structure not more than four feet high and not intended for human habitation.
41. **Cul-de-sac.** A short local street terminating in a vehicular turnaround.
42. **Deck.** An uncovered, unscreened structure or on-grade patio not including on-grade walks four (4) feet wide or less.
43. **Drainage way.** A watercourse, gully, dry stream, creek or ditch which concentrates and carries storm/rain water runoff from the land in a manner which creates the potential for significant erosion, siltation, flooding or ponding. A drainage way may be fed by natural overland flow or by constructed means, such as culverts, road ditches, outlets of storm water treatment ponds, or other similar facilities.
44. **Duplex, Triplex, or Quad.** A structure on a single lot having two, three or four dwelling units respectively being attached by common walls, and each being equipped with separate sleeping, cooking, eating, living and sanitation facilities.
45. **Dwelling, Accessory.** A structure used as a dwelling unit that is no greater than 700 sq. ft. in floor area and is on the same lot as a primary dwelling unit. An accessory dwelling unit may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling on the lot. Any accessory structure with kitchen or bathroom facilities shall be considered an accessory dwelling unit.
46. **Dwelling, Multi-Family.** Two or more dwelling units attached together by any point including duplexes, triplexes, townhouses and multi-level units regardless of type of ownership.
47. **Dwelling, Single Family.** A dwelling unit totally separated from any other dwelling unit.

48. **Dwelling, Townhouse.** A type of multi-family housing consisting of dwelling units attached by common party walls. Ownership may be defined by Plat or Condominium Plan.
49. **Dwelling Width.** The smallest horizontal dimension of the major portion of a dwelling.
50. **Engineer.** The engineer duly appointed by the Council to perform technical services for the City.
51. **Exterior Storage.** Storage of goods, materials, equipment, manufactured products outside a fully enclosed building and are not in regular use by the owner or occupants of said property.
52. **Family.** An individual, or two or more persons related by blood, marriage, adoption, or a relationship legally recognized in Minnesota, or not more than five unrelated persons maintaining a common household.
53. **Fee Schedule.** The official schedule of land use related fees and penalties adopted by the City Council.
54. **Fence.** A constructed barrier, including berms, intended to prevent escape or intrusion, or to mark a boundary, to shield or screen view, or to perform any similar function.
55. **Filling.** The act of depositing any clean earthen material.
56. **Final Plat.** A drawing, in final form, showing a proposed subdivision containing all information and detail required by state statutes and by the Subdivision Ordinance to be presented to the City for approval, and which, if approved, may be duly filed with the County Recorder.
57. **Floodplain.** The areas adjoining a water course, intermittent or permanently flowing, which have been or will be covered by the runoff waters of a storm with a 1% chance of occurrence any year (100 year storm).
58. **Floodway.** The channel of the water course and those portions of the adjoining floodplain which are reasonably required to carry and discharge the regional flood (100 year chance of occurrence.)
59. **Footprint.** The horizontal extent to which a structure covers the ground plane as represented in a plan view including cantilevered building elements but excluding eaves and similar architectural projections of the roof plane.
60. **Foundation.** A concrete, concrete and concrete block, or treated wood portion of a structure that supports the bearing loads of the superstructure and penetrates the ground providing frost protection. Must meet the provisions of the building code adopted by the State of Minnesota. Concrete pillars may be used as a foundation for manufactured homes so long as the installation is done to the manufacturer's specifications and skirting is provided around the perimeter to provide the look of a completely enclosed foundation.
61. **Frontage.** The uninterrupted front boundary line of a lot, or the length of such line, that abuts on a street or protected water.
62. **Garage, Attached.** A part of the principle structure designed for the storage of motor vehicles.

63. **Garage, Detached.** An accessory structure not attached to the principle structure on the property designed and used for storage.
64. **Gazebo.** A freestanding accessory structure with no kitchen, sleeping, sanitary facilities, or pressurized water intended as weather and insect protection for such activities as picnicking and lake viewing.
65. **Government Building.** A building or structure owned, operated or occupied by a governmental agency to provide a governmental service to the public. Schools shall not be considered a government building for the purposes of this ordinance.
66. **Grading.** The movement of dirt, by mechanical means, so as to alter the existing topography of a property.
67. **Gross Acreage.** The total area of a parcel.
68. **Gross Floor Area.** The total horizontal area within the inside perimeter of the exterior walls of a building.
69. **Home Occupation.** A use of commercial nature conducted by an occupant entirely within the dwelling or accessory buildings which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the residential character thereof.
70. **Impervious Surface.** The horizontal area of buildings, patios, walks, driveways, accessory structures and other surfaces generally impervious to the penetration of storm water, including gravel drives and parking.
71. **Incidental Structure.** Any structure which is smaller than thirty (30) square feet or is otherwise not typically considered a typical principal or accessory structure. Examples include , fish houses and play structures.
72. **Industrial Use.** The use of land or buildings for the production, manufacture, warehousing, storage or transfer of goods, products, commodities or other wholesale items.
73. **Junk Yard.** An area where used waste, discarded or salvaged materials are bought, sold, exchanged, stored, baled, cleared, parked, disassembled or handled, including but not limited to scrap iron and other metals, paper, rags, rubber products, bottles, and used building materials. Storage of materials in conjunction with the construction of a manufacturing process shall not be included. Three or more automobiles without current licenses constitute a junk yard. Such use shall not include putrid wastes such as garbage.
74. **Land Use Permit.** A permit authorizing an Applicant under this Ordinance to undertake construction or other development activity.
75. **Landscaping.** Plantings such as trees, grass, shrubs, and decorative timbers, arbors, rocks, and water displays.
76. **Licensed Engineer.** A person licensed as a professional engineer by the State of Minnesota.
77. **Licensed Surveyor.** A person licensed as a professional surveyor by the State of Minnesota.

78. **Lot.** A parcel, piece or portion of land described by metes and bounds, registered land survey, auditor's plat, or subdivision plat and separated from other parcels or portions of land by said description for purposes of sale, lease, mortgage, building or separation.
79. **Lot Area.** The horizontal area of a lot bounded by the lot lines.
80. **Lot, Corner.** A lot situated at the junction of and abutting on two or more intersecting streets or a lot at the point of deflection in alignment of one street with the internal angle less than 135 degrees.
81. **Lot, Front.** The boundary of a lot which abuts on a public right of way, or if a corner lot, the shortest of the two boundaries. If the lot abuts public water, the lake side shall be considered the lot front.
82. **Lot Line.** The property lines bounding a lot except that where the description extends into a public right of way, the right of way line shall be considered the lot line.
83. **Lot, Pre-existing.** A lot which is one unit of a subdivision plat heretofore duly approved and filed or one unit of an auditor's subdivision, or registered land survey, or a lot created by metes and bounds that has been recorded in the office of the County Recorder prior to the effective date of this Ordinance.
84. **Lot Width.** The shortest distance between lot lines measured at the midpoint of the building line.
85. **Maintenance.** The normal upkeep of a structure including the replacement of windows, siding, roofs, nonbearing walls or interior remodeling that does not expand the footprint of the existing structure, add volume to the usable living space or intensify a non-conforming use.
86. **Manufactured Home.** A structure, transportable in one or more sections, which, when erected on site, is a minimum of 640 square feet, is built on a permanent foundation, contains the heating, plumbing and electrical systems within and meets the requirements of the building code adopted by the State of Minnesota.
87. **Medical Facility.** A facility or location at which medical care is provided regularly, such as hospitals, clinics, urgent care centers, trauma centers and rehabilitation centers.
88. **Metes and Bounds.** A method of property description utilizing directions and distances commencing from and terminating at an identifiable point.
89. **Natural Drainage way.** All land surface areas which, by nature of their contour or configuration, collect, store and channel surface or runoff water.
90. **Non-conforming.** The building, structure or land lawfully existing prior to and not in conformance with the provisions of this ordinance.
91. **Nuisance.** By authority and direction of Minn. Stat. §412.221, Subdivision 23 and 24, as amended, nuisance is anything that interferes with the use or enjoyment of property, endangers personal health or public safety, or is offensive to the senses such as excessive smoke, odor, noise, heat, vibration, glare, traffic generation, visual impact and other similar interferences or offenses.

92. **Off-street Parking.** A designated space or area of land with a paved or all-weather surface not within a public street or right-of-way and used for the parking of vehicles.
93. **Open Storage.** Storage of material outside of a building.
94. **Owner.** An individual, firm, association, syndicate, partnership, corporation, trust or any other legal entity having proprietary interest in the land and/or building.
95. **Parking Space.** A space maintained and sized to accommodate the parking of one automobile.
96. **Permitted Use.** A land use conforming to the character of a zoning district which is permitted by ordinance requiring only a zoning permit issued by the Zoning Administrator.
97. **Pet.** An animal commonly associated with human habitation, not considered under animal units and not raised for production of income.
98. **Place of Worship.** See "Church"
99. **Planned Unit Development (PUD).** A land use characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common green space, density increases, and mix of structure types and land uses. Does not include a duplex where specifically allowed in a zoning district on a single parcel of land.
100. **Planning Commission.** The body duly appointed by the City Council to determine the development of the City and make recommendations to the City Council on comprehensive plans, zoning district boundaries, conditional use permits, subdivision of land and other issues related to its duties.
101. **Porch.** A covered platform attached to a structure.
102. **Porch, Enclosed.** A covered platform attached to a structure with more permanent enclosures than those described in "porch".
103. **Portable.** Capable of being transferred or moved from one place to another.
104. **Pre-Built Home.** Same as Manufactured Home
105. **Preliminary Plat or Plan.** A plan prepared in accordance with the Subdivision Ordinance depicting the proposed subdivision of property by Final Plat or Final Floor Plan.
106. **Principal Structure or Use.** The single primary structure or use on a lot, as distinguished from accessory uses or structures. To be considered a principal structure, the structure must be at least 400 square feet in area and must be utilized for the purpose of the principal use of the property.
107. **Recorder.** The County Recorder of Traverse County.
108. **Recreational Equipment.** Equipment, both motorized and non-motorized, that is subject to licensing by the State of Minnesota and is designed primarily for recreational use.

109. **Recreational Vehicle.** Vehicles for recreational use that can be driven, towed or hauled. These vehicles are designed to be temporary living space for camping or travel use. RVs shall include travel trailers, camper trailers, truck campers, self-propelled motor homes and other similar vehicles.
110. **Retail Use.** The principal use of land or buildings for the sale of goods to consumers. The goods are normally not for resale, and usually sold in small quantities.
111. **Right-of-Way.** A parcel of property dedicated to the public, connecting to other public right of ways, which affords primary access by pedestrians and vehicles to abutting properties.
112. **School.** A public, private or parochial education facility offering instruction at the elementary, junior and/or senior high school levels or a facility providing full- or part-time education beyond high school on a regular basis.
113. **Screening.** Fencing, an earthen berm or vegetative growth that visually separates one object from another.
114. **Setback.** The minimum horizontal distance between a structure or other facility and a road, highway, property line or other facility.
115. **Setback, Road.** The closest horizontal distance between the road right-of-way line and the foundation or wall of a structure. Three (3) feet of roof overhang, stoops not exceeding 30 square feet and steps from stoop to ground not over 4 feet wide may protrude into the setback.
116. **Sewer System.** Pipe lines or conduits, pumping stations and force main and all other constructions, devices, appliances or appurtenances used for conducting sewage or industrial waste or other waste to a point of ultimate disposal.
117. **Signs.** A name, identification, description, display, illustration, advertisement or device which is displayed for the purpose of attracting attention to a person, product, place, activity, institution or business, including all associated brackets, braces, supports, wires and structures.
118. **Sketch Plan.** A plan drawn to scale used for planning and discussion purposes only.
119. **Stoop.** An entry platform into a structure.
120. **Storage Shed.** See "Accessory Structure".
121. **Street.** A public right-of-way that provides primary vehicular access to abutting property and shall include avenue, road or highway. Street classifications are defined in the Comprehensive Plan unless defined in a roadway classification plan or other similar road specific plan.
122. **Structure.** Any building, appurtenance or other facility constructed, placed or erected by man except aerial or underground utility lines such as sewer, electric, telephone, telegraph, gas lines and except walks or steps on grade not more than 4 feet wide, stoops not exceeding 30 square feet, temporary furniture, planter, or decorative material and retaining walls consisting of wood, rock, stone or decorative block. Structures shall include decks, carports, hoop sheds and other structures, the use of which

requires more or less permanent location on the ground; or attached to something having a permanent location on the ground.

123. **Subdivision.** The division of real estate into two or more parcels for the purpose of sale, rent or lease, including planned unit development.
124. **Subdivision by Plat.** The subdivision into two or more parcels of any size by the authority of Minnesota Statutes, Chapter 505 or 515B, as amended, with documents prepared by a Licensed Land Surveyor and duly approved by the City.
125. **Subdivision by Condominium Plan.** The subdivision of a building or the subdivision of real estate into two or more spaces or parcels of any size by the authority of Minnesota Statutes, Chapter 515A, as amended, with documents prepared by a Licensed Land Surveyor and duly approved by the City.
126. **Subdivision by metes and bounds.** Any division of real estate resulting in two or more parcels which are not platted, but divided by description prepared and signed by a Licensed Land Surveyor.
127. **Temporary.** A use or structure that lasts longer than three days and is discontinued within 14 days.
128. **Temporary Structure.** A structure of a temporary character including but not limited to house boats, fish houses, recreational vehicles and tents.
129. **Tower.** A structure situated on a site that is intended for transmitting or receiving television, radio, telephone, cellular or wireless communications.
130. **Travel Trailer.** Refer to Recreational Vehicle.
131. **Tree.** A woody plant 4 inches or more in diameter or 8 feet or more in height.
132. **Variance.** A legally permitted deviation from the provisions of this ordinance, as defined or described in Minnesota Statutes Chapter 462.
133. **Vegetation Removal, Intensive.** The complete removal of trees or shrubs in a continuous path, strip row or block, excluding that clearing needed for the construction of roads, driveways, walkways or permitted stairways, lifts or landings.
134. **Walkway.** A parcel of property dedicated to the public for non-vehicular access purposes.
135. **Warehousing.** The principle use is the storage of materials or equipment within an enclosed building.
136. **Warehousing, Commercial.** The rental or sale of warehousing space.
137. **Yard.** A required green space occupied and unobstructed by a structure or portion of a structure provided that fences, signs, utility poles, lawn lights, antenna and related minor equipment may be permitted in any yard provided that they do not create a safety hazard or constitute a nuisance.
138. **Zoning Administrator.** The duly appointed person responsible for the enforcement and administration of this Chapter.

139. **Zoning District.** An area of the City defined on the zoning map, having uniform zoning provisions.
140. **Zoning District Overlay.** A zoning district containing regulations superimposed upon other zoning district regulations and superseding the underlying zoning district regulations.
141. **Zoning Map.** The map of the City, amended from time to time, which defines the boundaries of the zoning districts.
142. **Zoning Permit.** A permit issued by the Zoning Administrator to allow the construction of a structure or to allow a land use when the provisions of this ordinance have been met, when approval of any conditional use permits or variances have been granted and when the fees are paid. A zoning permit may have administrative conditions specific to the subject site when called for by the Ordinance.

ARTICLE 3: GENERAL PROVISIONS

550.3.01 APPLICATION OF THE ORDINANCE

- A.) The provisions of this Chapter shall be held to be the minimum requirements for the maintaining of the public health, safety, and welfare.
- B.) Where the provisions of the Ordinance are either more restrictive or less restrictive than applicable provision of other laws, ordinances, statutes, resolutions, covenants or regulations of any kind, the more restrictive condition, standard or requirement shall prevail, except as authorized by the more restrictive agency.
- C.) Except as this Chapter 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 ordinance.
- D.) Ambiguities in the Ordinance shall be resolved by interpretation of the Zoning Administrator. If an applicant wishes to appeal the interpretation of the Administrator, an appeal can be made through a hearing of the City Council.

550.3.02 ENVIRONMENTAL DOCUMENTS AND CONCURRENT PERMITS

- A.) It shall be the property owner's responsibility to secure necessary concurrent permits such as Pollution Control Agency, State Waste Disposal Permits; Health Department Permits; Department of Natural Resource Permits; and Corps of Engineers Permits. Approval by the City does not imply approval by other agencies.
- B.) The City will prepare an Environmental Assessment Worksheet (EAW) where a proposed project exceeds the limits defined in the Environmental Quality Council's Rules and Regulations for Environmental review program or when a valid petition from the public has been received and the City has determined that an EAW is

warranted.

- C.) The administration of an EAW or EIS shall be in accordance with the rules and regulations of the Minnesota Environmental Quality Board. The Zoning Administrator shall be responsible to the City Council and have the authority to administer the preparation of the environmental document. The City Council shall approve all final environmental documents prepared on its behalf.

550.3.03 USE OF PRE-EXISTING LOTS

- A.) A legal nonconforming single lot of record located may be allowed as a building site without variances from lot size requirements, provided that:
 - 1.) The lot fronts on a public right-of-way, or legal access to a public right-of-way via a permanent easement for the purposes of ingress and egress;
 - 2.) All structure and septic system setback distance requirements can be met;
 - 3.) The lot is connected to a public sewer; and
 - 4.) The impervious surface cover will not exceed the requirements of the underlying zone.
- B.) In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:
 - 1.) The lot must be at least 66 percent of the dimensional standard for lot width and lot size contained within this ordinance;
 - 2.) The lot must be connected to a public sewer;
 - 3.) Impervious surface coverage must not exceed the requirements of the underlying zoning district; and
 - 4.) Development of the lot must not be inconsistent with any Comprehensive Plan adopted by the City.
- C.) A lot subject to 4.3.2 above not meeting the requirements of 4.3.2 must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.
- D.) Notwithstanding the above, contiguous nonconforming lots of record under common ownership must be able to be sold or purchased individually if each lot contained a

habitable residential dwelling or other structurally sound building at the time the lots came under common ownership and the lots are connected to a public sewer.

- E.) Where a landowner chooses to develop two more contiguous lots under common ownership, internal side yard setbacks, maximum impervious coverage limits and other applicable zoning regulations shall continue to apply unless the landowner has combined the applicable lots into one parcel for tax purposes.

550.3.04 NON-CONFORMING STRUCTURES AND USES

Any structure or use existing upon the effective date of the adoption of this Ordinance and which does not conform to the provisions of the Ordinance may be continued subject to the following:

- A.) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control, may be continued in the same physical location, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion (except as allowed under paragraph B.) of this section), unless:

- 1.) The nonconformity or occupancy is discontinued for a period of more than one year; or
- 2.) Any nonconforming structure or use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no land use permit has been applied for within 180 days of when the property is damaged.
- 3.) For the purposes of this section, a structure shall not be considered to have expanded if it does not increase the amount of land covered by the structure being replaced and does not result in more than a 10 percent increase in the percentage of the structure being within a required setback, not to exceed an additional 100 square feet. The Zoning Administrator may require that the applicant submit reasonable evidence of the dimensions of the structure to be replaced, including but not limited to photos, surveys or building plans.

- B.) In cases where an expansion of a nonconforming structure or use is requested, the landowner may apply for a conditional use permit and in the review of such request, the City may allow for the nonconforming structure or use to be expanded only upon a finding that the expansion will not create an appreciable increase in, or will help to prevent or abate, existing nuisances or other issues related to the public health, safety and welfare. Practicable and reasonable conditions may be imposed in such approval to ensure such a finding, in addition to any conditions allowed for any other conditional use permit request

- C.) Notwithstanding paragraphs 1 and 2 above, any repair, replacement, maintenance,

improvement, or expansion of a nonconforming use or structure in floodplain areas shall be regulated to the extent necessary to maintain eligibility in the National Flood Insurance Program and to not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

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

E.) Private sewage treatment systems shall be connected to public sewer upon its availability to the property, as determined by the City Council. Such connections shall be made regardless of the conformance or non-conformance of the individual system.

550.3.05 OTHER STANDARDS

The provisions of this Chapter do not take precedent over other Federal, State or Local laws that may be more restrictive. In the case of a more restrictive standard applied by a governing body that has land use authority within the City, the non-local standard would apply. In the case where this Chapter is the most restrictive standard, the provisions of the Ordinance shall apply where allowed by law.

ARTICLE 4. ZONING DISTRICTS AND DISTRICT PROVISIONS

550.4.01 GENERAL

- A.) The City is hereby divided into Zoning Districts as shown on the official Zoning Map.
- B.) The boundaries are generally on the center of the streets, on lot lines, on the center of streams or rivers, and following the contour of the land.
- C.) The following districts are hereby established

Residential District	R
Commercial/Light Industrial	C
Industrial	I
Agricultural District	AG
Open Space District	OS

550.4.02 RESIDENTIAL DISTRICT (R)

A.) Purpose

The purpose of the Residential District is to provide for development characterized primarily by single-unit or two-unit attached dwellings and limited numbers of higher density residential buildings on lot sizes which allow for efficient use of street and utility infrastructure.

Areas of the City generally appropriate for this zoning classification include those adjacent to the Commercial/Light Industrial District nearest the traditional center of the City and those areas which would represent desirable extensions of residential areas within the City.

B.) Prohibited Uses

- 1.) Animal Feedlots
- 2.) Uses identified as Conditional or Prohibited Uses within the Industrial District.

C.) Permitted Uses

The following are permitted uses in the Residential District:

- 1.) Any pre-existing use that was legally created or located in accordance with applicable regulations at the time, subject to other local, state or federal regulations that may apply.
- 2.) Single-unit detached dwellings (one per lot)
- 3.) Public Parks, Playgrounds

- 4.) Residential accessory buildings, including private garages, carports, detached gazebos and screen rooms, and storage buildings consistent with the performance standards of this section.
- 5.) Home occupations provided that such occupations are carried on in the main building, and further provided that not more than twenty-five (25) percent of the floor space of the dwelling is used for such occupations, and that only articles made on the premises shall be sold on the premises, and that no articles for sale shall be displayed so as to be visible from the street.

D.) Conditional Uses

The following are conditional uses in the Residential District only upon the issuance of a conditional use permit as specified in this Ordinance.

- 1.) Accessory dwellings
- 2.) Two-unit residential buildings (one per lot)
- 3.) Three- and higher unit residential buildings
- 4.) Apartment buildings
- 5.) Churches, and other places of worship.
- 6.) Government/civic buildings
- 7.) Medical Facility
- 8.) School
- 9.) Other uses of the same general character provided they are deemed fitting and compatible to the district by the City Council.

E.) Lot Requirements

- 1) The following minimum lot requirements shall apply to all lots created in the R-1 zone after the date this ordinance is enacted:

Lot Width – single unit dwelling (including those with accessory dwellings)	60 feet
Lot Width – 2 unit dwellings	60 feet
Lot Depth	100 feet

- 2.) The following minimum structure setback requirements shall apply to any structure or building constructed, placed or moved on a property, except as specifically authorized otherwise by this Ordinance:

Setback, alley – minimum (measured from centerline)	20 feet*
Setback, City Street – minimum	30 feet**
Setback, County Road– minimum	30 feet**

Setback, State Highway-- minimum (measured from right-of-way)	30 feet*
Setback, side - feet, minimum	3 feet*
Setback, rear – minimum	25 feet* (primary building) 10 feet* (accessory building)
Impervious coverage – maximum	50%
Building height - feet, maximum	36
Dwelling width – feet, minimum	24

* Setbacks shall be measured between the property line (or the back of the curb in the case of streets and the centerline in the case of alleys) and the closest point of a structure, including overhangs, unless otherwise specified.

** In already developed areas, the right-of-way setback may be reduced to coincide with the average setback of the two adjacent properties fronting the same right-of-way, or 15 feet – whichever is greater. If an adjacent lot is undeveloped, it shall be considered to have a 30 foot setback. The above calculation shall apply separately to primary buildings and accessory dwellings.

- 1.) Lot Frontage: All newly created lots shall front on and have ingress and egress by means of a public right-of-way.
- 2.) Accessory Dwelling: An accessory dwelling may be allowed as a conditional use, and may be permitted within a dwelling (i.e. basement or second story) or above a garage (whether the garage is attached or detached), but not as a stand-alone building.
- 3.) Fences and Other Constructed Screening
 - a.) Fences or other constructed screening not exceeding 72 inches in height may be constructed no closer than two (2) feet from the public right-of-way or as otherwise approved by conditional use permit so as to allow sufficient room for maintenance.
 - b.) Under no circumstances shall a fence be constructed closer than 10 feet from the surface of a public road and in all cases not within the public right-of-way.
 - c.) All fences, including boundary line fences, shall be subject to the other requirements of Section 550.5.02.
- 4.) Accessory Buildings. Accessory buildings may be built or placed on lots regardless of whether a principal structure is also located on the property.

550.4.03 COMMERCIAL/LIGHT INDUSTRIAL (C)

A.) Purpose

To provide a zoning classification for commercial and light industrial uses.

B.) Prohibited Uses

1.) Animal Feedlots

2.) Uses identified as Conditional or Prohibited Uses within the Industrial District.

C.) Permitted Uses

1.) Any pre-existing use that was legally created or located in accordance with applicable regulations at the time, subject to other local, state or federal regulations that may apply.

2.) Any commercial use where:

- a.) the use of the property is primarily for retail or service activities, and;
- b.) the space used by a single tenant does not exceed five thousand (5,000) square feet in gross floor area (excepting a basement or attic space), and;
- c.) the hours of operation are between 6:00am and 11:00pm, and;
- d.) the use would not expose the surrounding area to significant noise, dust, vibrations, glare or other nuisance characteristics, and;
- e.) wastewater generated on the property shall not be in an amount or of a type that would excessively burden municipal sewer treatment abilities or capacities, and;
- f.) water consumed by activities on the property shall not be in an amount that would excessively burden the municipal water supply system.

3.) Any industrial or similar use involving the manufacture, assembly, packaging or processing of products in a manner where:

- a.) the activities of the business are completely contained within a building (no outdoor storage of materials, equipment or waste materials except as would normally be associated with any business), and;
- b.) the space used by a single tenant does not exceed thirty-thousand (30,000) square feet in ground floor area (excepting a basement or attic space), and;
- c.) the hours of operation are between 7:00am and 7:00pm, and;
- d.) there are no overhead doors or other openings to the building which are left open and would expose the surrounding area to significant noise, dust, vibrations, glare or other nuisance characteristics, and;
- e.) wastewater generated on the property shall not be in an amount or of a type that would excessively burden municipal sewer treatment abilities or capacities, and;

f.) water consumed by activities on the property shall not be in an amount that would excessively burden the municipal water supply system.

4.) Single-unit detached dwellings (one per lot)

5.) Residential buildings containing up to twelve (12) dwelling units.

6.) Home occupations provided that such occupations are carried on in the main building, and further provided that not more than twenty-five (25) percent of the floor space of the dwelling is used for such occupations, and that only articles made on the premises shall be sold on the premises, and that no articles for sale shall be displayed so as to be visible from the street.

7.) Churches, and other places of worship.

D.) Conditional Uses

1.) Any commercial use with hours of operation between the hours of 11:00 pm and 6:00 am

2.) Any industrial use with hours of operation between the hours of 7:00 pm and 7:00 am

3.) Any commercial use of a building by a single tenant which exceeds five thousand (5,000) square feet in gross floor area (excepting a basement or attic space)

4.) Any industrial use of a building by a single tenant which exceeds thirty thousand (30,000) square feet in gross floor area (excepting a basement or attic space)

5.) Residential buildings containing greater than 12 dwelling units

6.) Residential accessory buildings, including private garages, carports, detached gazebos and screen rooms, and storage buildings consistent with the performance standards of Section 550.4.02.

7.) Government/civic buildings

8.) Medical Facility

9.) School

10.) Any other use provided it is of the same general character as those listed under Permitted Uses, but that do not meet the specific criteria required for a Permitted Use, and provided they are deemed fitting and compatible to the district by the City Council.

D.) Lot Requirements

1.) The following minimum lot requirements shall apply to all lots created in the Commercial/Light Industrial District after the date this ordinance is enacted:

Lot Width	50 feet
Lot Depth	50 feet
Lot Size	2,500 sq. ft.

- 2.) The following minimum structure setback requirements shall apply to any structure or building constructed, placed or moved on a property, except as specifically authorized otherwise by this Ordinance:

Setback, alley – minimum	20 feet*
Setback, City Street – minimum	30 feet**
Setback, County Road– minimum	30 feet**
Setback, State Highway– minimum (measured from right-of-way)	30 feet*
Setback, side - feet, minimum	10 feet*
Setback, rear – minimum	10 feet*

* Setbacks shall be measured between the property line (or the back of the curb in the case of streets and the centerline in the case of alleys) and the closest point of a structure, including overhangs, unless otherwise specified.

**In already developed areas, the right-of-way setback may be reduced to coincide with the average setback of the two adjacent properties fronting the same right-of-way, or 15 feet – whichever is greater. If an adjacent lot is undeveloped, it shall be considered to have a 30 foot setback. The above calculation shall apply separately to primary buildings and accessory dwellings.

- 3.) Lot Frontage: All newly created lots shall front on and have ingress and egress by means of a public right-of-way.
- 4.) Impervious Coverage. Impervious coverage shall be limited to 75%, except that it may be increased to 100% if the following is provided and approved by the City:
- a.) A storm water retention plan showing containment of the 10-year, 24-hour storm event on the parcel.
- 5.) Compatibility of Use. Use shall be compatible with the purpose of the zoning district and in consideration of the surrounding neighborhood. Uses shall not present excessive noise, odor, light nuisances or any other nuisances inconsistent with the purpose of the zoning district or the surrounding neighborhood.
- 6.) Fences and Other Constructed Screening
- a.) Fences or other constructed screening not exceeding 84 inches in height may be constructed no closer than two (2) feet from the public right-of-way or as otherwise approved by conditional use permit so as to allow sufficient room for maintenance.
 - b.) Under no circumstances shall a fence be constructed closer than 10 feet from the surface of a public road and in all cases not within the public right-of-way.

c.) All fences, including boundary line fences, shall be subject to the other requirements of Section 505.5.02.

7.) Accessory Buildings. Accessory buildings may be built or placed on lots regardless of whether a principal structure is also located on the property.

550.4.04 INDUSTRIAL (I)

A.) Purpose

The purpose of the Industrial District is to establish and preserve areas for heavy and light industrial uses. Uses in this district can be effectively serviced with existing municipal sewer and water or areas where extension of existing sewer and water infrastructure is feasible both physically and financially. These areas are intended for business and industry that, by their nature and/or operation, involve the potential for nuisance characteristics that cannot always be contained within a building and thus would not be compatible with certain areas of the City. Uses that involve significant outdoor storage, large parking lots or loading/unloading areas, or other nuisance characteristics that are difficult to control are intended for this area provided that their operation is not of a nature incompatible with current or anticipated surrounding land uses.

B.) Prohibited Uses

- 1.) Animal Feedlots
- 2.) Residential uses

C.) Permitted Uses

- 1.) Any pre-existing use that was legally created or located in accordance with applicable regulations at the time, subject to other local, state or federal regulations that may apply.
- 2.) Any permitted use within the commercial/light industrial district, except residential uses.

D.) Conditional Uses

- 1.) Manufacturing, Wholesaling, bulk storage plants.
- 2.) Warehousing and other indoor storage facilities.
- 3.) Sales of large equipment or machinery involving outdoor display or storage.
- 4.) Concrete, bituminous storage/recycling facilities
- 5.) Gravel or other mining
- 6.) Hot mix plant
- 7.) Ready mix plant

- 8.) Junk/Salvage yard
- 9.) Solid waste processing or transfer
- 10.) Recycling facilities
- 11.) Industrial or similar uses which may generate significant and regular nuisance characteristics
- 12.) Industrial or similar uses which may generate significant and regular heavy truck or heavy rail traffic
- 13.) Any other use provided it is of the same general character as those listed under Permitted or Conditional Uses above and provided they are deemed fitting and compatible to the district by the City Council.

E.) Lot and Building Requirements

- 1.) The following minimum lot requirements shall apply to all lots created in the Industrial District after the date this ordinance is enacted:

Lot Width	50 feet
Lot Depth	100 feet
Lot Size	5,000 sq. ft.

- 2.) The following minimum structure setback requirements shall apply to any structure or building constructed, placed or moved on a property, except as specifically authorized otherwise by this Ordinance:

Setback, alley – minimum	20 feet*
Setback, City Street – minimum	30 feet**
Setback, County Road– minimum	30 feet**
Setback, State Highway– minimum (measured from right-of-way)	30 feet*
Setback, side - feet, minimum	10 feet*
Setback, rear – minimum	10 feet*

* Setbacks shall be measured between the property line (or the back of the curb in the case of streets and the centerline in the case of alleys) and the closest point of a structure, including overhangs, unless otherwise specified.

**In already developed areas, the right-of-way setback may be reduced to coincide with the average setback of the two adjacent properties fronting the same right-of-way, or 15 feet – whichever is greater. If an adjacent lot is undeveloped, it shall be considered to have a 30 foot setback. The above calculation shall apply separately to primary buildings and accessory dwellings.

- 3.) Lot Frontage: All newly created lots shall front on and have ingress and egress by means of a public right-of-way.

4.) Impervious Coverage. Impervious coverage shall be limited to 75%, except that it may be increased to 100% if the following is provided and approved by the City:

a.) A storm water retention plan showing containment and/or infiltration of the 10-year, 24-hour storm event on the parcel.

5.) Compatibility of Use. Use shall be compatible with the purpose of the zoning district and in consideration of the surrounding neighborhood. Uses shall not present excessive noise, odor, light nuisances or any other nuisances inconsistent with the purpose of the zoning district or the surrounding neighborhood.

6.) Fences and Other Constructed Screening

a.) Fences or other constructed screening not exceeding 120 inches in height may be constructed no closer than two (2) feet from the public right-of-way or as otherwise approved by conditional use permit so as to allow sufficient room for maintenance.

b.) Under no circumstances shall a fence be constructed closer than 10 feet from the surface of a public road and in all cases not within the public right-of-way.

c.) All fences, including boundary line fences, shall be subject to the other requirements of Section 505.5.02.

550.4.05 AGRICULTURAL (AG)

C.) Purpose

The purpose of the Agricultural District is to allow for the use of land for agricultural uses (excepting animal feedlots) and to reserve such lands for future development consistent with any adopted plans or policies of the City or of the existing character of the City. All lands hereafter annexed shall be immediately considered within the Agricultural District, and shall remain so until rezoned by the Council.

D.) Prohibited Uses

1.) New Animal Feedlots

2.) Subdivisions creating more than one new parcel less than 20 acres in size from a parcel that legally existed on January 1, 2013, except when specifically allowed under C.) below.

E.) Permitted Uses

1.) Any pre-existing use that was legally created or located in accordance with applicable regulations at the time, subject to other local, state or federal regulations that may apply.

2.) Agricultural use

- 3.) Animal Feedlots existing on January 1, 2013, up to a maximum of fifty (50) animal units.
- 4.) Single-unit detached dwellings (one per lot)
- 5.) Residential accessory buildings, including private garages, carports, detached gazebos and screen rooms, and storage buildings consistent with the performance standards of this section
- 6.) Agricultural accessory buildings, including machine sheds, barns, haysheds, silos, grain bins and other accessory uses typically associated with farmsteads or agricultural activities.
- 7.) Subdivisions where all parcels created are at no less than 20 acres in size, or for one of the following purposes regardless of size:
 - a.) Subdivisions creating cemetery lots
 - b.) Transfers of small parcels to governmental units in case of encroachments, road right-of-way, or utility easements;
 - c.) Subdivisions resulting from court orders or mortgage foreclosures; or
 - d.) Common property line adjustments intended to eliminate encroachments, reduce pre-existing setback violations or eliminate boundary disputes and where the legal descriptions involved are adjusted so as to not create a new lot that does not conform to the minimum lot dimensions required for the district.
- 8.) Home occupations provided that such occupations are carried on in the main building, and further provided that not more than twenty-five (25) percent of the floor space of the dwelling is used for such occupations, and that only articles made on the premises shall be sold on the premises, and that no articles for sale shall be displayed so as to be visible from the street.

F.) Conditional Uses

- 1.) Subdivisions creating no more than one new parcel less than 20 acres in size from a parcel that legally existed on January 1, 2013, except where additional subdivisions are permitted in C.) 5.) above.
- 2.) Any other use provided it is of the same general character as those listed under Permitted or Conditional Uses above and provided they are deemed fitting and compatible to the district by the City Council.

G.) Lot Requirements

- 1.) The following minimum dimension requirements shall apply to all lots in the Agricultural District after the date this ordinance is enacted:

Lot Width	50 feet
Lot Depth	100 feet

Lot Size

10,000 sq. ft.

- 2.) The following minimum structure setback requirements shall apply to any structure or building constructed, placed or moved on a property, except as specifically authorized otherwise by this Ordinance:

Structure Setback, alley – minimum	20 feet*
Setback, City Street – minimum	30 feet**
Structure Setback, right-of-way, County Road – minimum	30 feet**
Structure Setback, State Highway – minimum (measured from right-of-way)	30 feet*
Structure Setback, side - feet, minimum	10 feet*
Structure Setback, rear – minimum	10 feet*

* Setbacks shall be measured between the property line (or the back of the curb in the case of streets and the centerline in the case of alleys) and the closest point of a structure, including overhangs, unless otherwise specified.

**In already developed areas, the right-of-way setback may be reduced to coincide with the average setback of the two adjacent properties fronting the same right-of-way, or 15 feet – whichever is greater. If an adjacent lot is undeveloped, it shall be considered to have a 30 foot setback. The above calculation shall apply separately to primary buildings and accessory dwellings.

- 3.) Lot Frontage: All newly created lots shall front on and have ingress and egress by means of a public right-of-way.
- 4.) Fences and Other Constructed Screening
- a.) Fences or other constructed screening not exceeding 72 inches in height may be constructed no closer than two (2) feet from the public right-of-way or as otherwise approved by conditional use permit so as to allow sufficient room for maintenance.
 - b.) Under no circumstances shall a fence be constructed closer than 10 feet from the surface of a public road and in all cases not within the public right-of-way.
 - c.) All fences, including boundary line fences, shall be subject to the other requirements of Section 505.5.02.

550.4.06 OPEN SPACE

A.) Purpose

The purpose of the Open Space District is to establish areas which should remain undeveloped and shall be preserved for sensitive natural or cultural features, such as

wetlands, near-shore areas, threatened or endangered species habitat, historic sites, and lands set aside specifically as part of a development process for non-development or recreational purposes.

B.) Prohibited Uses

- 1.) Animal Feedlots
- 2.) Structures of any kind, except for incidental structures related to the primary use of the property.

C.) Permitted Uses

- 1.) Any pre-existing use that was legally created or located in accordance with applicable regulations at the time, subject to other local, state or federal regulations that may apply.
- 2.) Agricultural uses not involving more than incidental buildings or structures.

D.) Conditional Uses

- 1.) Any other use provided it is of the same general character as those listed under Permitted or Conditional Uses above and provided they are deemed fitting and compatible to the district by the City Council.

E.) Lot Requirements

- 1.) The following minimum dimension requirements shall apply to all lots in the Open Space District after the date this ordinance is enacted:

Lot Width	50 feet
Lot Depth	100 feet
Lot Size	10,000 sq. ft.

- 2.) Lot Frontage: All newly created lots shall front on and have ingress and egress by means of a public right-of-way.
- 3.) Fences and Other Constructed Screening
 - a.) Fences or other constructed screening not exceeding 72 inches in height may be constructed no closer than two (2) feet from the public right-of-way or as otherwise approved by conditional use permit so as to allow sufficient room for maintenance.
 - b.) Under no circumstances shall a fence be constructed closer than 10 feet from the surface of a public road and in all cases not within the public right-of-way.
 - c.) All fences, including boundary line fences, shall be subject to the other requirements of Section 550.5.02.

ARTICLE 5. PERFORMANCE STANDARDS

550.5.01 NUISANCE STANDARDS

A.) Performance Standards.

- 1.) Compliance Required. Every use permitted by this Chapter shall be so established and maintained as to comply with the provisions of this section. The Zoning Administrator may require the complaining party to provide such tests or investigations by an independent testing organization satisfactory to the Zoning Administrator as are necessary to show non-compliance with these standards. The entire cost of such investigations and tests shall be paid for by the complaining party unless the results disclose non-compliance with these standards; in that event, the entire cost shall be borne by the owner or operator of the parcel or business committing the violation. This provision does not preclude the City from making any investigations and tests it finds appropriate to determine compliance with these standards.
- 2.) Noise. Noise shall be measured on any property line of the tract on which the source of the noise is located. Noise shall be muffled so as not to become objectionable due to intermittence, beat frequency, shrillness, or intensity. In addition, no persons shall make or cause to be made, any impulsive and loudly audible noise that injures or endangers comfort, repose, health, peace, safety or welfare of any persons or precludes their enjoyment of property or affects their property value.
- 3.) Odor. No use shall cause the discharge of toxic, noxious or odorous matter beyond the limits of the site where it is located in such concentrations as to be obnoxious or otherwise detrimental to the public health, safety, comfort or welfare or cause injury to property or business.
- 4.) Glare. Direct or reflected glare, such as from floodlights, spotlights or high temperature process, and as differentiated from general illumination, shall not be visible beyond the sight of origin at any property line. Any lights used for exterior illumination shall be hooded or controlled in some manner so as not to light adjacent property. Bare incandescent light bulbs shall not be permitted where in view of adjacent property or public right-of-way. Except for public street lights, any light or combination of lights which cast light on a public street shall not exceed one foot-candle as measured from the property line of said street. Any light or combination of lights which cast light on residential property shall not exceed one foot-candle as measured from the property line of said property.
- 5.) Vibration. Vibration at any property line shall not be discernible to the human sense of feeling for three (3) minutes or more duration in any one (1) hour period. Vibration of any kind shall not produce at any time an acceleration of more than one-tenth (1/10) gravities or result in any combination of amplitudes and

frequencies beyond the "safe" range of Table VII United States Bureau of Mines Bulletin No. 442, "Seismic Effects of Quarry Blasting" on any structure. The methods and equations of that bulletin shall be used to compute all values for the enforcement of this provision.

- 6.) Smoke. The emission of smoke by any use shall be in compliance with and regulated by the State of Minnesota Pollution Control Standards, Minnesota Regulations APC 7017. Open burning shall require a DNR burning permit.
- 7.) Dust and Other Particulate Matter. The emission of dust, fly ash or other particulate matter by any use shall be in compliance with and regulated by the State of Minnesota Pollution Control Standards, Minnesota Regulation APC 7011.
- 8.) Fumes or Gases. Fumes or gases shall not be emitted at any point in concentrations that are noxious, toxic or corrosive. The values given in Table I (Industrial Hygiene Standards - Maximum Allowable Concentration for eight hour day, five days per week), Table III (Odor Thresholds), Table IV (Concentrations of Substances Causing Pain in the Eyes), and Table V (Exposure to Substances Causing Damage to Vegetation) in the latest revision of Chapter 5, "Physiological Effects" that contains such tables, in the "Air Pollution Abatement Manual" published by the Manufacturing Chemists' Association, Inc., Washington D.C., are hereby established as guides for the determination of permissible concentration and amounts. The City may require detailed plans for the elimination of fumes or gases before the issuance of a Zoning Permit.
- 9.) Fire Hazards. Any activity involving the use or storage of flammable or explosive materials shall be protected by adequate fire-fighting and fire prevention equipment and by such safety devices as are normally used in the handling of such materials. Such hazards shall be kept removed from adjacent activities to a distance that is compatible with the potential danger involved.
- 10.) Wastes.
 - a.) All waste generated shall be disposed of in a manner consistent with all Minnesota Pollution Control Agency rules and Section 415 of the City ordinances.
 - b.) Any accumulation of waste generated on any premises not stored in a closed container, or any accumulation of mixed solid waste generated on any premises which has remained thereon for more than one week, or any accumulation of infectious, nuclear, pathological, or hazardous waste which is not stored or disposed in a manner consistent with Minnesota Pollution Control Agency rules, is a nuisance and may be abated and the cost of abatement may be addressed against the property where the nuisance is found.

- c.) The accumulation, storage, processing, and disposal of waste on any premises, which is not generated on that premises, is prohibited, except as specifically provided in this Chapter.
- 11.) Air Pollution. Every activity shall conform to State regulations relating to air quality standards and air pollution control.
- 12.) Erosion and Drainage.
- a.) No land shall be developed and no use or topographic alterations shall be permitted that would reasonably be expected to result in water runoff causing flooding, erosion, or deposit of sediment on adjacent properties.
 - b.) All storm sewer inlets and drainage ways that are functioning during construction shall be protected so that sediment laden water does not enter the conveyance system without first being filtered or otherwise treated to remove sediment.
 - c.) All on-site storm water conveyance systems must be designed and constructed to withstand the design volume of storm water with appropriate stabilization to prevent scour and erosion. Erosion controls must be provided at the outlets of all storm sewer pipes or drainage ways.
 - d.) All temporary and permanent erosion and sediment control practices shall be maintained and repaired to assure the continued performance of their intended function.
 - e.) All disturbed ground left inactive for seven or more days shall be stabilized by seeding or sodding or by mulching or covering or other equivalent control measure.
 - f.) All temporary erosion control devices, including silt fence, gravel, hay bales or other measures shall be removed from the construction site and properly disposed of or recycled. This removal and disposal must occur within 60 days of the establishment of permanent vegetative cover on the disturbed area.
- 13.) Radioactivity or Electrical Disturbance. No activity shall emit dangerous radioactivity at any point or any electrical disturbance adversely affecting the operation of any equipment at any point other than that of the creator of such disturbance. Adverse effects shall be measured by FCC standards.
- 14.) Fertilizers, herbicides and pesticides. No person shall place, spread or store fertilizers, herbicides and/or pesticides in any manner other than that recommended by the manufacturer or in any manner which allows any escape of nutrients or toxins into the air, ground water or surface water of the City.

- 15.) Abandoned Buildings. No person shall allow a building, mobile home/manufactured house, or other structure to be abandoned, deteriorated or a safety hazard. All abandoned, deteriorated or unsafe structures shall be removed. If the owner fails to remove the structure, the City shall do so and assess the cost against the property through the County taxation method.

550.5.02 FENCES

Fences, except where noted below, require a land use permit. Permits shall require compliance with the following standards:

- A.) Safety Hazards. Fences shall not be erected where they create a safety hazard. Fences shall not be electrified or contain barbed wire except for electric pet fences which are buried or placed in such a way so as to not pose a hazard, unless otherwise approved by the City Council.
- B.) Location and Orientation. All fences shall be located a minimum of two (2) feet from any property line. Landowners are responsible for identifying their property lines.
- C.) Construction. Allowable construction materials for fences shall consist of metal, wood, chain link, plastic, concrete, brick or smooth wire and be constructed and maintained in such a way that it does not create a visual blight or safety hazard. The finished side of the fence shall face the adjacent landowner or right-of-way. The finished side is the side opposite the structural elements of the fence (posts, rails, framing or other supporting elements). Fences where the non-structural elements (i.e. fence boards or rails on a split rail fence) alternate on both sides of the supporting elements or which are attached to the middle of the posts are considered finished on both sides.
- D.) Temporary Fences. Temporary and seasonal fences, such as those used to protect active construction areas, snow fences, or are otherwise placed and removed on a daily basis shall not require a permit nor be subject to the setback requirements of this section.

550.5.03 PERMITTED ENCROACHMENTS

The following shall be considered as permitted encroachments on setback and height requirements except as herein provided:

- A.) In any yard: Posts, off-street open parking spaces, flues, leaders, sills, pilasters, lintels, cornices, eaves, gutters, awnings, open terraces, service station pump islands, open canopies, steps, chimneys, flag poles, ornamental features, and fences, and all other similar devices incidental and appurtenant to the principal structure except as restricted elsewhere herein. Stoops not exceeding 30 square feet and steps from stoop to ground not over 4 feet wide may protrude into the setback.

AMENDMENT TO ORDINANCE NO. 550.5.02

ORDINANCE DEALING WITH FENCES IN THE CITY OF WHEATON

Findings.

1. The City of Wheaton has enacted a Zoning Ordinance which regulates the use of fencing within the City of Wheaton.
2. There have been recent issues in interpreting the fencing provisions that have caused confusion about what type of fencing requires a Land Use Permit.
3. The City Council believes that it is in the best interests of the citizens of the City of Wheaton to amend the Zoning Ordinance so as to make it easier to understand its fencing requirements.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS FOLLOWS:

That Ordinance No. 550.5.02 of the Code of Ordinance for the City of Wheaton is hereby amended to read as follows:

"A.) Definitions.

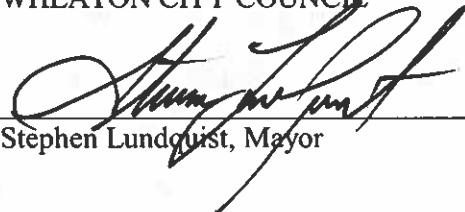
- 1.) Permanent Fence. A permanent fence is one which is permanently secured or anchored to the ground or other building or structure, by posts or footings. Permanent fences are installed in a fixed or enduring manner.
 - 2.) Temporary Fence. A temporary fence is one which is not permanently secured or anchored to the ground or other building or structure, by posts or footings. The length of time a fence is in place in a given period of time, such as a seasonal fence, is irrelevant. Portable and seasonal fences are considered to be temporary fencing in this Ordinance.
 - 3.) Portable Fence. A portable fence is one whose location and orientation can be easily moved and/or manipulated by human or non-mechanical means.
 - 4.) Seasonal Fence. A seasonal fence is one which is temporary or semi-permanent in nature and installed for a specific period of time, often to address seasonal needs like containing snow during winter months or protecting gardens from wildlife during growing seasons.
- B.) Location and Orientation. All fences shall be located a minimum of two (2) feet from any property line. Landowners are responsible for identifying their property lines.
- C.) Fence Materials. Allowable construction materials for fences shall consist of metal, wood, chain link, plastic, concrete, brick or smooth wire and be constructed and maintained in such a way that it does not create a visual blight or safety hazard.
- D.) Finished Side. The finished side of the fence shall face the adjacent landowner or right-of-way. The finished side is the side opposite the structural elements of the fence (posts, rails, a framing or other supporting elements). Fences where the non-structural

elements (i.e. fence boards or rails on a split rail fence) alternate on both sides of the supporting elements or which are attached to the middle of the posts are considered finished on both sides.

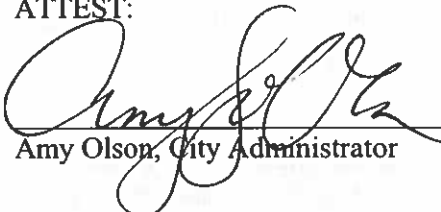
- E.) Safety Hazards. Fences shall not be erected where they create a safety hazard. Fences shall not be electrified or contain barbed wire except for electric pet fences which are buried or placed in such a way so as to not pose a hazard, unless otherwise approved by the City Council.
- F.) Permit Required. A Land Use Permit is required to be obtained prior to the construction of a fence, regardless of whether the fence is permanent or temporary in nature.
- 1.) The permit application for a permanent fence shall be accompanied by a sketch drawing showing the proposed location of the fence and the proposed fence type.
 - 2.) A temporary fence that is planned on being taken down for a portion of the year only needs to obtain a Land Use Permit prior to its first use. The applicant shall note on the application that the planned use is temporary in nature, and the approximate dates of usage each year.
 - 3.) A Land Use Permit is not required for:
 - a.) Snow fencing, which may only be erected between November 1 and the following May 1, unless snow occurs outside that time period, thereby allowing snow fencing to be erected earlier or remain later.
 - b.) Temporary fencing which encloses a garden area between April 1 and November 1 of each year.
 - c.) Safety fencing erected on a temporary basis in connection with a construction project on the property, but only after a Land Use Permit has been issued for the construction. The applicant for the Land Use Permit shall note on the application that safety fencing will be utilized as part of the project.”

PASSED AND ADOPTED this 26th day of January, 2026.

WHEATON CITY COUNCIL


Stephen Lundquist, Mayor

ATTEST:


Amy Olson, City Administrator

- B.) Height limitations shall not apply to barns, silos, and other non-residential farm structures; to church spires, belfries, cupolas and domes; monuments; chimneys and smokestacks; flag poles, public utility facilities; transmission towers of commercial and private radio broadcasting station; television antenna, private ham radio towers and parapet walls extending not more than four (4) feet above the limiting height of the building except as provided in municipal airport zoning provisions.

550.5.04 DEMOLITION

Demolition of buildings or other structures with a permanent foundation or whose removal would create open excavation areas or steep slopes shall require a land use permit. Demolition shall require compliance with the following standards:

- A.) The landowner shall submit a restoration plan as part of the permit application, indicating whether replacement buildings or structures will be constructed, how excavations or steep sloped areas will be filled and graded, whether disturbed areas will be stabilized by establishment of vegetation or other methods and timelines associated with the above activities. The restoration plan is subject to review, amendment and approval by the City.
- B.) Any foundation or other supportive elements, including footings, slabs, or basements, shall be removed, unless they are to be re-used within one (1) year.
- C.) Any open excavations or other safety hazards shall be properly fenced or protected from entry by unauthorized persons when left unattended or when active work is not being conducted.
- D.) Where, after demolition, no building or structure with plumbing facilities remains on the property, the landowner shall be responsible for capping the property's water service line at the curb-stop and the sanitary sewer service line must be filled with concrete. All water and sanitary sewer service lines that are capped and filled must be inspected by a Public Works employee before the excavation can be filled. This condition need not be met if a new building will be built on the site within one (1) year.
- E.) Demolition debris must be properly disposed within ninety (90) days of the date the demolition is approved by the City.

550.05.05 EXTERIOR SIDING AND ROOFING

All buildings having a metal sheeting as the exterior siding and/or roofing shall be required to have painted color metal sheeting or roofing. All buildings must also have a floor of concrete, wood or metal."

550.05.07 WIRELESS TELECOMMUNICATION STANDARDS

I. Purpose and Legislative Intent.

The purpose of this Wireless Telecommunications Standard is to ensure that residents, public safety operations and businesses in the City of Wheaton have reliable access to wireless telecommunications networks and state of the art communications services while also ensuring that this objective is achieved in a fashion that preserves the intrinsic aesthetic character of the community and is accomplished according to the City's zoning, planning, and design standards. The Telecommunications Act of 1996 preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless telecommunications facilities.

To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable Federal laws and is consistent with Wheaton's land use policies, the City of Wheaton adopts this single, comprehensive, Wireless Telecommunications Standard. No provisions of this Standard shall apply to the siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.

This Standard establishes parameters for the siting of Wireless Telecommunications Facilities. By enacting this Standard, it is the City of Wheaton's intent to:

- (1) Ensure Wheaton has sufficient wireless infrastructure to support its public safety communications throughout the City;
- (2) Ensure access to reliable wireless communications services throughout all areas of the City;
- (3) Encourage the use of Existing Structures for the collocation of Telecommunications Facilities;
- (4) Encourage the location of Support Structures, to the extent possible, in areas where any potential adverse impacts on the community will be minimized;
- (5) Facilitate the responsible deployment of Telecommunications Facilities in residential areas to ensure comprehensive wireless services across the city;
- (6) Minimize the potential adverse effects associated with the construction of Monopoles and Towers through the implementation of reasonable design, landscaping, and construction practices;
- (7) Ensure public health, safety, welfare, and convenience.
- (8) To help the City amend their ordinances in light of federal legislative changes to zoning authority under the 1996 Telecommunications Act.

II. Special Wireless Communication Definitions.

For the purposes of this Standard, the following definitions apply:

Abandon – Occurs when an owner of a Support Structure intends to permanently and completely cease all business activity associated therewith.

Accessory Equipment -- Any equipment serving or being used in conjunction with a **Telecommunications Facility or Support Structure**. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval -- Zoning approval that the Zoning Administrator or designee is authorized to grant after Administrative Review.

Administrative Review -- Non-discretionary evaluation of an application by the Zoning Administrator or designee. This process is not subject to a public hearing. The procedures for Administrative Review are established in Section IV E of this Standard.

Antenna -- Any structure or device used to collect or radiate electromagnetic waves for the provision of services including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

Carrier on Wheels or Cell on Wheels ("COW") -- A portable self-contained Telecommunications Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure

Collocation -- The act of siting Telecommunications Facilities on an Existing Structure without the need to construct a new support structure and without a Substantial Increase in the size of an Existing Structure.

Concealed Telecommunications Facility -- Any Telecommunications Facility that is integrated as an architectural feature of an Existing Structure or any new Support Structure designed so that the purpose of the Facility or Support Structure for providing wireless services is not readily apparent to a casual observer.

Existing Structure -- Previously erected Support Structure or any other structure, including but not limited to, buildings and water tanks, to which Telecommunications Facilities can be attached.

Major Modifications -- Improvements to existing Telecommunications Facilities or Support Structures that result in a Substantial Increase to the Existing Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification.

Minor Modifications -- Improvements to Existing Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a Substantial Increase. Minor Modifications include the Replacement of the structure.

Monopole -- A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.

Ordinary Maintenance -- Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example, the strengthening of a Support Structure's foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas of a similar size, weight, shape and color and Accessory Equipment within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.

Replacement -- Constructing a new Support Structure of proportions and of equal height or such other height that would not constitute a Substantial Increase to a pre-existing Support

Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

Substantial Increase: Occurs when:

(1) The mounting of the proposed antenna on an Existing Structure would increase the existing height of the Existing Structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or (

2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the Existing Structure that would protrude from the edge of the Existing Structure more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(4) The mounting of the proposed antenna would involve excavation outside the current Existing Structure site, defined as the current boundaries of the leased or owned property surrounding the Existing Structure and any access or utility easements currently related to the site.

Support Structure(s) – A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, and other freestanding self-supporting structures.

Telecommunications Facility(ies) -- Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunication Facility can consist of one or more Antennas and Accessory Equipment or one base station.

Tower -- A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

III. Approvals Required for Telecommunications Facilities and Support Structures.

(A) Administrative Review

(i) Collocations and Minor Modifications shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Standard.

(ii) New Support Structures that are less than sixty-one (61) feet in height shall be permitted in any zoning district except residential after Administrative Review and Administrative Approval in accordance with the standards set forth in this Standard.

(iii) Concealed Telecommunications Facilities that are less than forty-one (41) feet in height shall be permitted in any residential district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Standard.

(iv) Concealed Telecommunications Facilities up to 150 feet shall be permitted in any zoning district other than residential after Administrative Review and Administrative Approval in accordance with the standards set forth in this Standard except as noted above.

(v) New Support Structures up to one hundred ninety-nine (179) feet in height shall be permitted in any Industrial District after Administrative Review and Administrative Approval in accordance with the standards set forth in this Standard.

(vi) Monopoles or Replacement poles located in utility easements or rights-of-way that are less than forty-one (41) feet in height shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Standard.

(vii) The use of COWs shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Standard if the use is not otherwise exempt. If the use of the COW is either not in response to a declaration or emergency, or will last in excess of one hundred-twenty (120) days, Administrative Review and Administrative Approval shall also be required.

(B) Conditional Use Permit. Telecommunications Facilities and Support Structures not permitted by Administrative Approval shall be permitted in any district upon the granting of a Conditional Use Permit from the Planning Commission in accordance with the standards set forth in this Ordinance.

(C) Exempt. Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this Standard:

- (1) antennas used by residential households solely for broadcast radio and television reception;
- (2) satellite antennas used solely for residential or household purposes;
- (3) COWs placed for a period of not more than one hundred twenty (120) days at any location within the City of Wheaton after a declaration of an emergency or a disaster; and
- (4) television and AM/FM radio broadcast towers and associated facilities.

III. Telecommunications Facilities and Support Structures Permitted by Administrative Approval.

(A) Telecommunications Facilities Located on Existing Structures

- (1) Telecommunications Facilities are permitted in all zoning districts when located on any Existing Structure subject to Administrative Approval in accordance with the requirements of this Part.
- (2) Antennas and Accessory Equipment may exceed the maximum building height limitations within a zoning district, provided they do not constitute a Substantial Increase.

(3) Minor Modifications are permitted in all zoning districts subject to Administrative Approval in accordance with the requirements of this Part.

(B) New Support Structures

(1) New Support Structure less than sixty-one (61) feet in height shall be permitted in all zoning districts except residential districts in accordance with the requirements of this Part.

(2) Concealed Telecommunications Facilities that are less than forty-one (41) feet in height shall be permitted in any residential district after Administrative Review and Administrative Approval provided that it meets the applicable Concealed Telecommunications Facility standards in accordance with this Standard

(3) New Support Structures up to one hundred ninety-nine (179) feet in height shall be permitted in all Industrial Districts in accordance with the requirements of this Part. The setback of the structure shall be governed by the setback requirements of the underlying zoning district.

(4) A Monopole or Replacement pole that will support utility lines as well as a Telecommunications Facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this Part.

(a) The utility easement or right-of-way shall be a minimum of sixty-six (66) feet in width.

(b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are thirty (30) feet or greater in height.

(c) The height of the Monopole or replacement pole may not exceed by more than ten (10) feet the height of existing utility support structures.

(d) Monopoles and the Accessory Equipment shall be set back a minimum of five (5) feet from all boundaries of the easement or right-of-way.

(e) Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.

(f) Poles that use the structure of a utility tower for support are permitted under this Part. Such poles may extend up to ten (10) feet above the height of the utility tower.

(5) Monopoles or Replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to Telecommunications Facilities shall be permitted in accordance with requirements of this Part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-way.

(C) Concealed Telecommunications Facilities

(1) Concealed Telecommunications Facilities shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the requirements below. Concealed facilities in residential

areas must be less than forty-one (41) feet in height and comply with the requirements below in order to qualify for Administrative Review.

(a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.

(b) Existing Structures utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.

(c) Setbacks for Concealed Facilities that utilize a new structure shall be governed by the setback requirements of the underlying zoning district.

(D) COW Facilities and Minor Modifications

(1) The use of COWs shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Standard if the use of the COW is either not in response to a declaration or emergency by the Governor or will last in excess of one hundred-twenty (120) days.

(E) General Standards, Design Requirements, and Miscellaneous Provisions

(1) Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to the applicable general standards and design requirements of Section VI and the provisions of Section VII.

(F) Administrative Review Process

(1) All Administrative Review applications must contain the following:

(a) Administrative Review application form signed by applicant.

(b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms.

(c) Site plans detailing proposed improvements. Drawings must depict improvements related to the requirements listed in this Part, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.

(d) In the case of a new Support Structure:

(i) Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include justifications, including why collocation is either not reasonably available or technologically feasible as necessary to document the reasons why collocation is not a viable option; and

(ii) The applicant shall provide a list of all the existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unavailable, or technologically or reasonably infeasible.

(iii) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered together as one application requiring only a single application fee.

(e) Administrative Review application fee.

(2) Procedure

(a) Within fifteen (15) business days of the receipt of an application for Administrative Review, the Zoning Administrator shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) deem the application complete. If the Zoning Administrator informs the Applicant of an incomplete application within fifteen (15) business days, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.

(b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's unreasonable failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal of the application without prejudice. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.

(c) The Zoning Administrator must issue a written decision granting or denying the request within sixty (60) days of the submission of the initial application unless:

(i) [Zoning Administrator] notified applicant that its application was incomplete within fifteen (15) business days of filing. If so, the remaining time from the sixty (60) day total review time is suspended until the Applicant provides the missing information; or

(ii) Extension of time is asked for by Zoning Administrator before the original sixty (60) days has expired. The maximum extension time that can be asked for is sixty (60) days. This sixty (60) day extension is not available for a Non-Substantial Increase in size applications on an existing wireless facility. On a Substantial Increase in size application on an existing wireless facility, only a maximum of thirty (30) days may be requested.

Failure to issue a written decision within sixty (60) days or properly asked for extension shall constitute an approval of the application.

(d) Should the Zoning Administrator deny the application; the Zoning Administrator shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Standard. The Zoning Administrator may not deny an application for a Non-Substantial change to an existing wireless facility.

(f) Applicant may appeal any decision of the Zoning Administrator approving, approving with conditions, or denying an application or deeming an application incomplete, within thirty (30) days to Board of Adjustment in accordance with this Ordinance.

IV. Telecommunications Facilities and Support Structures Permitted by Conditional Use Permit.

(A) Any Telecommunications Facility or Support Structures Not Meeting the Requirements of Section IV Shall Be Permitted by Conditional Use Permit in all Zoning Districts Subject to:

- (1) The submission requirements of Section V (B) below; and
- (2) The applicable standards of Sections VI and VII below; and
- (3) The requirements of the Conditional Use Permit general conditions at Ordinance Section 550.7.04.

(B) Submission Requirements for Conditional Use Permit Applications

(1) All Conditional Use Permit applications for Telecommunications Facility and Support Structures must contain the following:

- (a) Conditional Permit application form signed by applicant.
- (b) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms
- (c) Written description and scaled drawings of the proposed Support Structure, including structure height, ground and structure design, and proposed materials.
- (d) Number of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Support Structure.
- (e) When locating within a residential area, a written technical and operational analysis of why a Monopole or similar structure at a height of more than forty (40) feet cannot be used.
- (f) Line-of-sight diagram or photo simulation, showing the proposed Support Structure set against the skyline and viewed from the most prominent location within the surrounding areas.
- (g) A statement justifying why Collocation is not feasible. Such statement shall include:
 - (i) Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and
 - (ii) A list of the existing structures considered as possible alternatives to the proposed location and a written explanation why the alternatives considered were either unavailable or technologically infeasible.
- (h) A statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.

(i) Conditional Use Permit application fee.

(C) Procedure

(1) Within fifteen (15) business days of the receipt of an application for Administrative Review, the Zoning Administrator shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) deem the application complete and meet with the applicant. If the Zoning Administrator informs the Applicant of an incomplete application within fifteen (15) business days, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.

(2) If an application is deemed incomplete, an Applicant may submit additional materials to complete the application. An applicant's unreasonable failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal of the application without prejudice. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.

(3) A complete application for a Conditional Use Permit shall be scheduled for a hearing date as required by Ordinance Sec 550.7.04.

(4) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered as one application requiring only a single application fee.

(5) The posting of the property and public notification of the application shall be accomplished in the same manner required for any Conditional Use Permit application under this Ordinance.

(6) The Zoning Administrator must issue a written decision granting or denying the request within sixty (60) days of the submission of the initial application unless:

(i) Zoning Administrator notified applicant that its application was incomplete within fifteen (15) business days of filing. If so, the remaining time from the sixty (60) day total review time is suspended until the Applicant provides the missing information; or

(ii) Extension of time is asked for by Zoning Administrator before the original sixty (60) days has expired. The maximum extension time that can be asked for is sixty (60) days. On a Substantial Increase in size application on an existing wireless facility, only a maximum of thirty (30) days may be requested.

Failure to issue a written decision within sixty (60) days or properly asked for extension shall constitute an approval of the application.

V. General Standards and Design Requirements.

(A) Design

(1) Non-Concealed Support Structures shall be subject to the following:

(a) Shall be designed to accommodate a minimum number of collocations based upon their height:

(i) Support structures sixty (60) to one hundred (100) feet shall support at least two (2) telecommunications providers;

(ii) Support structures from one hundred (100) to one hundred-fifty feet (150) shall support at least three (3) telecommunications providers;

(iii) Support structures greater than one hundred-fifty (150) feet in height shall support at least four (4) telecommunications carriers.

(iv) One of the required telecommunication providers co-locations that a new Support Structure in (i), (ii), or (iii) are required to support can be designed as a future 20' extension to the original Support Structure.

(b) The compound area surrounding the Structure must be of sufficient size to accommodate Accessory Equipment for the appropriate number of telecommunications providers in accordance with Section VI(A)(1)(a).

(2) Concealed Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible.

(3) New Support Structures shall be designed as follows:

(a) Concealment type structures in Residential Districts

(b) Monopole type structures in Commercial/Light Industrial and Open Space Districts.

(c) Free-standing self-support structures in Agricultural and Industrial Districts

(4) Upon request of the Applicant, the Planning Commission may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

(B) Setbacks

(1) Property Lines. Unless otherwise stated herein, Support Structures shall be set back from all property lines in accordance with the minimum setback requirements in the underlying zoning district.

(2) Residential Dwellings. Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be set back from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement structures shall not be subject to a setback requirement.

(3) Unless otherwise stated herein, all Accessory Equipment shall be set back from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a setback requirement.

(C) Height

(1) In non-residential districts, Support Structures shall not exceed a height equal to one hundred seventy-nine (179) feet from the base of the structure to the top of the highest point, including appurtenances.

(2) In residential districts, Support Structures shall not exceed a height equal to seventy-nine (79) feet from the base of the structure to the top of the highest point, including appurtenances.

(3) In all districts, the Planning Commission shall have the authority to vary the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the Planning Commission.

(D) Aesthetics

(1) Lighting and Marking. Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).

(2) Signage. Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.

(3) Landscaping. In all districts, the Planning Commission or Zoning Administrator shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The Planning Commission or Zoning Administrator may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the Planning Commission or Zoning Administrator, landscaping is not appropriate or necessary.

(E) Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Telecommunication Facility or Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.

The Accessory Equipment must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the Planning Commission or Zoning Administrator.

VI. Miscellaneous Provisions.

(A) Fencing

(1) Ground mounted Accessory Equipment and Support Structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the Planning Commission or Zoning Administrator.

(2) The Planning Commission or Zoning Administrator may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.

(B) Abandonment and Removal. If a Support Structure is Abandoned, and it remains Abandoned for a period in excess of twelve (12) consecutive months, the City may require that such Support Structure be removed only after first providing written notice to the owner of the Support Structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the Support Structure within thirty (30) days of receipt of said written notice. In the event the owner of the Support Structure fails to reclaim the Support Structure within the thirty (30) day period, the owner of the Support Structure shall be required to remove the same within six (6) months thereafter. The City shall ensure and enforce removal by means of its existing regulatory authority.

(C) Multiple Uses on a Single Parcel or Lot. Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site or may be the principal use itself

VII. Telecommunications Facilities and Support Structures in Existence on the Date of Adoption of this Ordinance.

(A) Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.

(B) The provisions of this Part are limited to those structures that do not meet the height or setback requirements set forth in these regulations.

(C) Non-conforming Support Structures

(1) Non-conforming Support Structure. Ordinary Maintenance may be performed on a Non-Conforming Support Structure or Telecommunications Facility.

(2) Collocation and/or Minor Modifications of Telecommunications Facilities on an existing non-conforming Support Structure shall not be construed as an expansion, enlargement or increase in intensity of a non-conforming structure and/or use and shall be permitted through the Administrative Approval process defined in Section IV.

(3) Major Modifications may be made to non-conforming Support Structures utilizing the regulatory approval process defined in Section V.

ARTICLE 6. SPECIAL PROVISIONS

RESERVED

ARTICLE 7. ADMINISTRATION

550.7.01 ZONING ADMINISTRATOR

- A.) The City Administrator, or the Council's designee, shall act as the Zoning Administrator.
- B.) Duties of the Zoning Administrator:
 - 1.) Determine if applications are complete and comply with the terms of this Chapter.
 - 2.) Direct or conduct inspections of buildings and other uses of the land to determine compliance with the terms of this Chapter.
 - 3.) Maintain permanent and current records of this Chapter including, but not limited to, maps, amendments, Land Use or Use Permits, Conditional Use Permits, Variances, appeals and applications, and a separate file for future conditions or expiration of permits.
 - 4.) Review, file and forward applications for appeals, Variances, Conditional Uses and Zoning amendments in a timely manner.
 - 5.) Enforce the provisions of this Chapter by reviewing complaints and by pursuing contacts with any violator in accordance with standard procedures as adopted and modified from time to time.
 - 6.) Attend meetings and provide research and findings to the Board of Adjustment, Planning Commission or City Council as needed.
 - 7.) Issue permitted Land Use Permits upon approval by the City Council for structures on lots conforming to this Chapter when the conditions of this Chapter are met; to issue Conditional Use Permits when directed; to issue notices of a Zoning change when directed.
 - 8.) To mail a copy of the findings to an applicant.
 - 9.) To file copies of Conditional Use Permits and Variances with the County Recorder.
 - 10.) To communicate with the DNR where required by this Chapter or State Law.

- 11.) To ensure that the City Council, Planning Commission and Board Adjustment review land use application or public hearing applications as prescribed by State Statutes or this Ordinance.
 - 12.) To conduct periodic and final inspections with a member of the Planning & Zoning Commission, of property subject to conditions of approval relating to variances, conditional use permits and other land use applications.
 - 13.) To issue Land Use Certificates of Compliance, when applicable.
- C.) The Zoning Administrator and their duly authorized deputies shall have the right to trespass, consistent with state and federal laws and precedents, within the City in the pursuit of their duties.

550.7.02 BOARD OF ADJUSTMENT

- A.) The City Council shall serve as the Board of Adjustment, and shall hold meetings as determined necessary.
- B.) Duties of the Board of Adjustment.
- 1.) To consider appeals from the action of the Zoning Administrator wherein the Board will take the authority of the Administrator.
 - 2.) To hold hearings on Variances after proper public notice in the official newspaper and individual notice by regular mail to any property owners within a minimum of 350 feet distance of any Variance in question. Such notice shall be given at least 10 days before the hearing date.
 - 3.) To act on Variances within the required time frame with complete findings to justify the action.
 - 4.) To keep a record of the proceedings, notifications and justifications for their actions.

550.7.03 PLANNING COMMISSION

- A.) The City Council shall serve as the Planning Commission, and shall hold meetings as determined necessary.
- B.) Duties of the Planning Commission
- 1.) To hold hearings after proper public notice in the official newspaper and individual notice by regular mail of any property owners within a minimum of 350 feet of any land use in question. Such notices shall be given at least 10 days before the hearing date.

- 2.) To make a recommendation to the City Council, within the required time frame, the following:
 - a.) Requested Zoning District boundary changes or amendments to this Chapter.
 - b.) Requested preliminary plats and final plats.
 - c.) Requested metes and bounds property divisions within the City.
 - d.) Requested Conditional and Interim Use Permits with complete findings to support the decision.
- 3.) To periodically review the Zoning map and Ordinances and consider their role in shaping the growth of the community and to make changes to these documents to guide growth and current land use toward the goals of any adopted Comprehensive Plan.
- 4.) To create and review a Comprehensive Plan, or other land use planning documents, as deemed necessary or appropriate by the City Council. The Commission may initiate discussions and provide recommendations to the Council as to the structure and contents of a Comprehensive Plan or other land use planning documents.

550.7.04 CONDITIONAL USE PERMITS

- A.) Conditional Use Permits shall be issued to the property for structures or other specified uses after a public hearing and approval by the Planning Commission. All applications for a Conditional Use Permit shall be submitted to the City 30 days ahead of the hearing date, accompanied by a certificate of survey (unless waived by the Zoning Administrator) showing the details of the proposal and an accurate legal description, along with the appropriate fee. The fee or contract owner of the property shall sign the application. The City shall notify all property owners within a minimum of 350 feet by regular mail and shall advertise the hearing once in the legal section of the official newspaper at least 10 days ahead of the public hearing. The City shall send the same notice 10 days in advance of this hearing to the DNR if the proposed is in shore land. At the applicant's option, the applicant may request a sketch plan review with no action by the Planning Commission prior to making a formal application.
- B.) Submissions for Conditional Use Permit. The applicant shall complete the Conditional Use Permit application approved by the City Council. The application shall contain submittal requirements, criteria for approval, procedure for consideration and City contact information. The City shall not accept applications where the applicant has past due fees or charges due to the City until the account is

made current.

C.) In permitting a new Conditional Use or alteration of an existing Conditional Use, the City may impose, in addition to the standards and requirements expressly specified by this Ordinance, additional conditions that the City considers necessary to protect the best interest of the surrounding area or the City as a whole. These conditions may include, but are not limited to the following:

- 1.) Increasing the required lot size or yard dimension
- 2.) Limiting the height, size or location of buildings
- 3.) Controlling the location and number of vehicle access points
- 4.) Increasing the street width
- 5.) Increasing or decreasing the number of required off-street parking spaces
- 6.) Limiting the number, size, location or lighting of signs
- 7.) Requiring berming, fencing screening, landscaping or other facilities to protect adjacent or nearby property
- 8.) Designating sites for open space
- 9.) Storm water runoff management
- 10.) Reducing impervious surfaces
- 11.) Increasing setbacks
- 12.) Restoration of wetlands, vegetative buffers, and other conservation-designed actions

D.) The City Council, upon recommendation from the Planning Commission shall decide the issue with consideration to the following criteria:

- 1.) Required findings of fact:
 - a.) The use or development is an appropriate conditional use in the land use zone
 - b.) The use or development, with conditions, conforms to the comprehensive land use plan
 - c.) The use with conditions is compatible with the existing neighborhood.

- d.) The use with conditions would not be injurious to the public health, safety, welfare, decency, order, comfort, convenience, appearance or prosperity of the City.

2.) Other considerations:

- a.) The conditional use should not substantially diminish or impair values in the immediate vicinity.
- b.) The conditional use should not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
- c.) The conditional use should not be detrimental to the economic welfare of the community.
- d.) The conditional use will have vehicular approaches to the property which are so designed as not to create traffic congestion or hazards for traffic on adjacent or nearby public thoroughfares.
- e.) Adequate measures should be taken to provide sufficient off-street parking and loading space to serve the proposed use.
- f.) Adequate measures have been taken or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so none of these will constitute a nuisance and to control lights and signs in such a manner, that no disturbance to neighboring properties will result.
- g.) The conditional use will not result in the destruction, loss or damage of a natural, scenic or historical feature of major significance.
- h.) The conditional use will promote the prevention and control of pollution of the ground and surface waters including sedimentation and control of nutrients.

- 3.) When costs to the City involved in processing and reviewing an application exceeds the original application fees, the applicant shall reimburse the City for any additional costs. Such expenses may include, but are not limited to, payroll, mailing costs, consultant fees and other professional services the City may need to retain in reviewing permits.

- 4.) Violations of the conditions of a Conditional Use Permit shall automatically suspend the permit. A review of the violation shall be conducted by the Planning Commission, which shall provide its recommendation, including conditions for reinstating the permit or revocation, to the City Council.

- 5.) Failure by the owner to act on a Conditional Use Permit within 12 months, or failure to complete the work under a Conditional Use Permit within 2 years, unless extended by the City Council, shall void the permit. A second extension shall require a new public hearing. This provision shall apply to any Conditional Use Permit outstanding at the time of the Ordinance adoption.

550.7.05 VARIANCES

- A.) Variances shall not create a use not provided for in a zoning district.
- B.) Variances shall be issued to the property and are not transferable.
- C.) Variances shall be issued to the property for structures or other specified uses only after a public hearing and approval by the Board of Adjustment. All applications for a Variance shall be submitted to the City 30 days ahead of the hearing date, accompanied by a certificate of survey (unless waived by the Zoning Administrator) showing the details of the proposal and an accurate legal description, along with the appropriate fee. The fee or contract owner of the property shall sign the application. The City shall notify all property owners within a minimum of 350 feet by regular mail and shall advertise the hearing once in the legal section of the official newspaper at least 10 days ahead of the public hearing. The City shall send the same notice 10 days in advance of this hearing to the DNR if the proposed is in shore land. At the applicant's option, the applicant may request a sketch plan review with no action by the Board of Adjustment prior to making a formal application..
- D.) Submissions for Variances. The applicant shall complete the Variance application approved by the City Council. The application shall contain submittal requirements, criteria for approval, procedure for consideration and City contact information. The City shall not accept applications where the applicant has past due fees or charges due to the City until the account is made current.
- E.) Variances shall be decided by the Board of Adjustment within the required time frame with consideration for the following:
- 1.) The variance is in harmony with the general purpose and intent of this Ordinance and consistent with any adopted comprehensive plan or policies of the City.
 - 2.) The request involves practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that:
 - a.) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
 - b.) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and

- c.) the variance, if granted, will not alter the essential character of the locality.
 - d.) there are special circumstances or conditions affecting the land, building, or use referred to in the variance request that do not apply generally to other property in the same vicinity.
 - e.) Economic considerations alone do not constitute practical difficulties.
- F.) The city may impose conditions in the granting of variances provided it is directly related to and bears a rough proportionality to the impact created by the variance.
- G.) When costs to the City involved in processing and reviewing an application exceeds the original application fees, the applicant shall reimburse the City for any additional costs. Such expenses may include, but are not limited to, payroll, mailing costs, consultant fees and other professional services the City may need to retain in reviewing permits.
- H.) Failure by the owner to act within 6 months on a Variance unless extended by the Board of Adjustment shall void the Variance. A second extension shall require a new public hearing. This provision shall apply to any Variance outstanding at the time of the Ordinance adoption.

550.7.06 LAND USE PERMITS

- A.) It shall be unlawful for any person, persons, or corporation to build, construct, erect or move any building or structure within the City of Wheaton, without first obtaining a land use permit from the City Council.
- B.) Where a proposed building, structure, or use is required by this Chapter to obtain approval from the Board of Adjustment, Planning Commission or City Council, or is required to post a financial security, a land use permit shall not be issued until these required actions or posting of a financial security have occurred.
- C.) The City shall not accept applications where the applicant has past due fees or charges due to the City or the County until the account is made current.
- D.) No applications shall be accepted by the City from a contractor or property owner having outstanding violations. Permits can only be issued to contractors or property owners with outstanding violations by majority vote of the City Council after the violation has been resolved to the satisfaction of the Council.
- E.) The Land Use Permit application shall, at a minimum, contain the parcel number or other identifying information for the property, a description of the proposed work, a sketch drawing of the location of the project (where applicable), and the signature of the fee or contract owner of the property or his authorized agent.

F.) Granting of a Land Use Permit shall occur when all requirements of this Chapter have been met, but shall not be considered a statement of compliance with regional, State or Federal codes, statutes or laws or approval of the design of the structure or accessories, or description of the property. Subsequent actions of the City shall not be considered acceptance of structural components or workmanship, but rather shall be for the purpose of determining general compliance with this Chapter.

G.) If the Zoning Administrator determines that any violation of the permit or other section of the Ordinance has occurred, the permit shall become null and void.

H.) In evaluating all variances, zoning and land use permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, and other conservation-designed actions.

ARTICLE 8. ENFORCEMENT

550.8.01 VIOLATIONS AND PENALTIES

Violation of any provision of this Chapter shall be considered either an administrative offense subject to an administrative fine; a criminal offense; or a civil offense subject to enforcement through civil remedies. Each act of violation in every calendar day upon which said violation occurs or continues may be considered a separate offense.

In all cases where the City reviewing, investigating, or administering a land use application for purposes of enforcing compliance with this Chapter, the offending party, real estate owner, and/or permit holder shall be required jointly and severally to reimburse the City for the City's fees and costs associated with enforcing compliance with this Chapter. Fees and costs include, but are not limited to, attorney's fees, engineering fees, consultant fees, and other professional services deemed necessary by the City. The City also reserves the right to record a lien against real estate that is the subject of a land use enforcement action pursuant to Section 514.67 of Minnesota Statutes, for any of the aforementioned unpaid fees and services.

550.8.02 LIABILITY OF CITY OFFICIALS

The failure of any officer of the City or Board or employees of the City to act pursuant to this Ordinance, except as an individual acting in his own behalf, shall not be an offense and shall not subject the officer, Board or employee to any penalty except those provided under the City personnel policies.

550.8.03 EQUITABLE RELIEF

In the event of a violation or threatened violation of any provision of this Chapter the conditions of any permit issued pursuant to the ordinance, the City, in addition to other remedies, may act or institute action to prevent, restrain, correct, or abate such violation or threatened violation.

ARTICLE 9. SEPARABILITY, SUPREMACY, EFFECTUATION, AMENDMENTS, NOTICES

550.9.01 SEPARABILITY

Every section, provision or part of this Chapter or any permit issued pursuant to this Chapter is declared separable from every other section, provision or part thereof to the extent that if any section, provision or part of this Chapter or any permit issued pursuant to this Chapter shall be held invalid by a court of competent jurisdiction, it shall not invalidate any other section, provision, or part thereof.

550.9.02 SUPREMACY

When any condition implied by this Chapter on the use of land or buildings is more restrictive or less restrictive than applicable conditions imposed by statute, rules and regulations, other City ordinance or regulation or other jurisdiction, the more restrictive shall apply. This Chapter does not abrogate any easements, restriction or covenants imposed on the land by private declaration or agreement, but where such provisions are less restrictive than an applicable of this Chapter, this Chapter shall prevail.

550.9.03 EFFECTUATION

This Chapter shall be in full force and effect from and after its passage by the City Council and subsequent publication.

550.9.04 AMENDMENT

The City Council may adopt amendments pursuant to Minn. Stat. §462.357, as amended, to either the Zoning Chapter, Zoning Map or Overlay Maps in relation to the land uses within a District or the boundaries of the District(s). Such amendments shall not be issued indiscriminately, but shall only be used as a means to reflect changes in the goals of the community or changes in the conditions of the City.

A.) Procedure.

- 1.) An amendment may be initiated by the Council, the Planning Commission or by a petition of affected property owner.
- 2.) The City shall make a reasonable attempt to cause all property owners within a minimum of 350 feet of proposed Zoning District change to be notified by regular

mail and shall publish a hearing notice for either a Zoning District change or Zoning Ordinance change in the legal section of the official newspaper and shall provide notice to the DNR at least 10 days ahead of the public hearing. The Planning Commission shall hold the hearing and make a timely recommendation to the City Council. Adoption of a new Zoning map shall require published notice in the newspaper only.

- 3.) The City Council shall review the recommendation of the Planning Commission and shall make a timely decision on a request for an amendment in accordance with the requirements of MN Statutes 15.99. The City Council may amend the Land Use and Subdivision Chapter by a majority vote of all its members. The adoption of an amendment of any portion of the zoning chapter which changes all or part of the existing classification of a zoning district from residential to other commercial or industrial requires a two thirds majority vote of all members of the governing body.
- 4.) The City Clerk shall publish a summary of the text of the change or description of boundary change or a new Zoning map, whichever is appropriate, in the official newspaper within 30 days after action by the Council.

550.9.05 NOTICES

The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bonafide attempt to comply with this Chapter has been made.

[illegible]

Ag = Agricultural
C = Commercial/Light Industrial
I = Industrial
OS = Open Space
R = Residential

AMENDMENT TO ORDINANCE NOS. 550.4.03 AND 550.4.05

**ORDINANCES DEALING WITH ZONING DISTRICTS
IN THE CITY OF WHEATON**

Findings.

1. The City of Wheaton has enacted a Zoning Ordinance creating four different zoning areas and regulating therein the location, construction, reconstruction, alteration, and use of the structures and land within those areas.
2. Said Ordinances contain minor typos resulting in misnumbering of certain paragraphs.
3. The City Council believes that it is in the best interests of the citizens of the City of Wheaton to correct the typos so as to foment easier understanding of the Zoning Ordinance.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS
FOLLOWS:**

Section 1. That Ordinance No. 550.4.03(D) "Lot Requirements" of the Code of Ordinance for the City of Wheaton is hereby amended to read as follows:

"E.) Lot Requirements"

Section 2. That the numbering of the paragraphs for Ordinance No. 550.4.05 of the Code of Ordinance for the City of Wheaton is hereby amended to read as follows:

"A.) Purpose

B.) Prohibited Uses

C.) Permitted Uses

D.) Conditional Uses

E.) Lot Requirements"

PASSED AND ADOPTED this 25th day of May, 2017.

WHEATON CITY COUNCIL

Leonard Zimmer, Mayor

ATTEST:

Kris Krenz, City Administrator

SUMMARY OF AMENDMENT TO ORDINANCE NOS. 550.4.03 AND 550.4.05

**A SUMMARY OF AN ORDINANCE DEALING WITH ZONING DISTRICTS
IN THE CITY OF WHEATON**

In order to correct drafting errors in certain provisions of the City of Wheaton Zoning Ordinance, Code of Ordinance Nos. 550.4.03 and 550.4.05 have been corrected so that the paragraphs are properly numbered, to-wit: Ordinance No. 550.4.03(D) with the caption of "Lot Requirements" is amended to "E.) Lot Requirements," and the paragraphs for Ordinance No. 550.4.05 is amended to "A.) Purpose, B.) Prohibited Uses, C.) Permitted Uses, D.) Conditional Uses, and E.) Lot Requirements."

This summary is being published in compliance with Minnesota Statutes Section 331A.01, Subdivision 10 and Minnesota Statutes Section 412.191, Subdivision 4. A copy of the full text of this Ordinance shall be available at regular office hours of the office of the Wheaton City Administrator. The full text of this Ordinance will be in full force and effect from and after its passage and publication according to law.

PASSED AND ADOPTED this 25th day of May, 2017.

WHEATON CITY COUNCIL

Leonard Zimmer, Mayor

ATTEST:

Kris Krenz, City Administrator

Motion:

Seconded:

Adopted:

Published:

AMENDMENT TO ORDINANCE NOS. 550.4.02, 550.4.03, 550.4.04, 550.4.05, AND 550.4.06

**ORDINANCES DEALING WITH ZONING DISTRICTS
IN THE CITY OF WHEATON**

Findings.

1. The City of Wheaton has enacted a Zoning Ordinance creating four different zoning areas and regulating therein the location, construction, reconstruction, alteration, and use of the structures and land within those areas.
2. Said Ordinances do not contain provisions regulating the distance that vegetation can be placed from an adjacent property.
3. The City Council believes that it is in the best interests of the citizens of the City of Wheaton to require property owners to plant vegetation at least three feet from an adjacent property.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS
FOLLOWS:**

Section 1. That Ordinance No. 550.4.02(E) of the Code of Ordinance for the City of Wheaton is hereby amended to add the following provision:

- "5) Vegetation. No trees, hedges or other living plant material or inorganic material may be sited, placed, or planted closer than three (3) feet from any property line. Landowners are responsible for identifying their property lines."

Section 2. That Ordinance No. 550.4.03(E) of the Code of Ordinance for the City of Wheaton is hereby amended to add the following provision:

- "8) Vegetation. No trees, hedges or other living plant material or inorganic material may be sited, placed, or planted closer than three (3) feet from any property line. Landowners are responsible for identifying their property lines."

Section 3. That Ordinance No. 550.4.04(E) of the Code of Ordinance for the City of Wheaton is hereby amended to add the following provision:

- "7) Vegetation. No trees, hedges or other living plant material or inorganic material may be sited, placed, or planted closer than three (3) feet from any property line. Landowners are responsible for identifying their property lines."

Section 4. That Ordinance No. 550.4.05(E) of the Code of Ordinance for the City of Wheaton is hereby amended to add the following provision:

- "5) Vegetation. No trees, hedges or other living plant material or inorganic material may be sited, placed, or planted closer than three (3) feet from any property line. Landowners are responsible for identifying their property lines."

Section 5. That Ordinance No. 550.4.06(E) of the Code of Ordinance for the City of Wheaton is hereby amended to add the following provision:

- "4) Vegetation. No trees, hedges or other living plant material or inorganic material may be sited, placed, or planted closer than three (3) feet from any property line. Landowners are responsible for identifying their property lines."

PASSED AND ADOPTED this 25th day of May, 2017.

WHEATON CITY COUNCIL

Leonard Zimmer, Mayor

ATTEST:

Kris Krenz, City Administrator

Adoption:

Motion:

Seconded:

Published:

SUMMARY OF AMENDMENT TO ORDINANCE NO. 550.7.05(C)

**AN ORDINANCE DEALING WITH
VARIANCES IN THE CITY OF WHEATON**

The variance ordinance has been amended to require the City to notify only property owners whose property is adjacent to the property for which a variance is being sought by regular mail, and shall advertise the hearing once in the legal section of the official newspaper at least 7 days ahead of the public hearing. No other changes to the Ordinance were made.

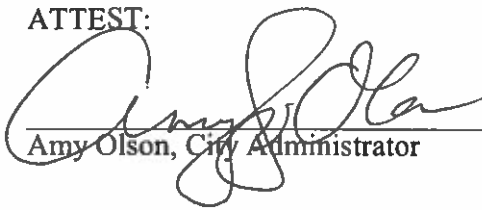
This summary is being published in compliance with Minnesota Statutes Section 331A.01, Subdivision 10 and Minnesota Statutes Section 412.191, Subdivision 4. A copy of the full text of this Ordinance shall be available at regular office hours of the office of the Wheaton City Clerk. The full text of this Ordinance will be in full force and effect from and after its passage and publication according to law.

PASSED AND ADOPTED this 10th day of November, 2022.

WHEATON CITY COUNCIL


Leonard Zimmer, Mayor

ATTEST:


Amy Olson, City Administrator

AMENDMENT TO ORDINANCE NO. 550.7.05

**ORDINANCE DEALING WITH VARIANCES
IN THE CITY OF WHEATON**

Findings.

1. The City of Wheaton has enacted a Zoning Ordinance which allows the City Council to grant variances to be based upon the nature of the land and the proposed variance.
2. The City Council believes that the existing variance ordinance is too burdensome and overly broad in its variance hearing notice requirements.
3. The City Council believes that it is in the best interests of the citizens of the City of Wheaton to amend the Zoning Ordinance so as to make it easier to conduct variance hearings.

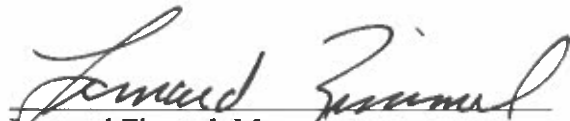
**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS
FOLLOWS:**

Section 1. That Ordinance No. 550.7.05(C) of the Code of Ordinance for the City of Wheaton is hereby amended to read as follows:

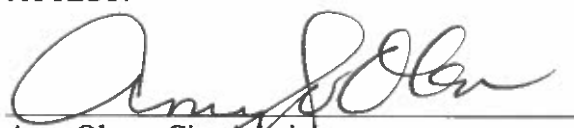
“C.) Variances shall be issued to the property for structures or other specified uses only after a public hearing and approval by the Board of Adjustment. All applications for a Variance shall be submitted to the City 30 days ahead of the hearing date, accompanied by a certificate of survey (unless waived by the Zoning Administrator) showing the details of the proposal and an accurate legal description, along with the appropriate fee. The fee or contract owner of the property shall sign the application. The City shall notify all property owners adjacent to the property for which a variance is being sought by regular mail and shall advertise the hearing once in the legal section of the official newspaper at least 7 days ahead of the public hearing. The City shall send the same notice 7 days in advance of this hearing to the DNR if the proposed is in shore land. At the applicant's option, the applicant may request a sketch plan review with no action by the Board of Adjustment prior to making a formal application.”

PASSED AND ADOPTED this 10th day of November, 2022.

WHEATON CITY COUNCIL


Leonard Zimmer, Mayor

ATTEST:


Amy Olson, City Administrator

AMENDMENT TO ORDINANCE NOS. 550.7.06

ORDINANCES DEALING WITH LAND USE PERMITS
IN THE CITY OF WHEATON

Findings.

1. The City of Wheaton has enacted a Zoning Ordinance which includes a section dealing with land use permits.
2. Said section does not specifically have a provision dealing with how long a land use permit obtained from the City of Wheaton is valid.
3. The City Council believes that it is in the best interests of the citizens of the City of Wheaton to amend the ordinance section dealing with land use permits to set an end date for a land use permit that has been issued.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS FOLLOWS:

Section 1. That Ordinance No. 550.7.06 of the Code of Ordinance for the City of Wheaton is hereby amended to add the following provision:

- "l) All land use permits issued under this section shall become null and void if work or construction authorized by the permit is not completed within 12 months from the date of issuance. If not completed, the applicant must submit a new application and pay a new fee. A new permit shall not automatically be given, and may be denied based upon the City Council's assessment of the ability of the project to get completed and condition of the property that the permit is being sought. An applicant may only re-apply for a new permit twice, unless extenuating circumstances exist to grant additional extensions."

PASSED AND ADOPTED this 9th day of November, 2023.

WHEATON CITY COUNCIL



Jacob Veldhouse, Mayor

ATTEST:



Amy Olson, City Administrator

ORDINANCE NO. 550.05.06.01

**AN INTERIM ORDINANCE ADOPTING A MORATORIUM
ON THE PLACEMENT OF GASOLINE TANKS
ON REAL PROPERTY WITHIN THE CITY OF WHEATON**

Findings.

1. There presently exists at least one gasoline tank located upon a residential property within the City of Wheaton.
2. The Wheaton Code of Ordinance does not contain an existing provision regulating the use and storage of gasoline tanks on real property within the City of Wheaton.
3. Section 2306.2.3 of the Minnesota State Fire Code prohibits the placement of a gasoline tank within thirty (30) feet of a property line and within five (5) feet of any building, among other regulations.
4. A large number of lots within the City of Wheaton are fifty-foot lots, making it difficult to properly place a gasoline tank on them.
5. Minnesota Administrative Rules Section 7151 contains additional regulations for the placement and usage of gasoline tanks on real property.
6. The Wheaton City Council is concerned about having other gasoline tanks possibly being placed on real property within the City of Wheaton without having any ordinance regulating their placement and usage, in particular the lack of any requirement for a property to first obtain a permit before placing a gasoline tank on their property without the City's knowledge or ability to inspect the proposed placement and usage of the gasoline tank.
7. The Wheaton City Council believes an interim moratorium is needed to prohibit the placement of any gasoline tanks onto real property within the City of Wheaton until such time that the Wheaton City Council can conduct an informal study to determine what types of regulations should be enacted through ordinance pertaining to placing a gasoline tank on real property within the City of Wheaton.
8. That in order to protect the planning process and determine what new ordinance to enact, if any, the Wheaton City Council believes it is necessary to enact this moratorium, pursuant to the authority granted by M.S.A. §462.355.
9. The Wheaton City Council further believes an interim moratorium is needed to protect the public health, safety and welfare of the citizens of Wheaton while the Council considers appropriate ordinances.

Section 1. Moratorium.

- A. Based upon these findings, it is hereby determined that no gasoline tanks in excess of five (5) gallons shall be allowed to be placed upon any real property within the City of Wheaton for a period of six (6) months from the effective date of this interim ordinance, or until such earlier time as the City Council has adopted a new ordinance governing the placement and use of gasoline tanks.
- B. During the period of this moratorium, the City Council hereby authorizes an informal study to be conducted by City Council members and staff to determine what regulations,

if any, should be enacted through ordinance pertaining to the placement and use of gasoline tanks on real property within the City of Wheaton, and then make recommendations whether adoption or amendment of the City of Wheaton's official controls is warranted. The City plans on holding a hearing following the review of additional available information.

Section 2. Penalty.

Any person who violates, neglects, refuses to comply with, or assists or participates in any way in the violation of any of the provisions or requirements of this ordinance is guilty of a misdemeanor and is subject to a penalty of 90 days in jail and/or a \$1000 fine for each violation. Each day such violation continues shall constitute a separate offense. In addition, there shall be a complete removal of the violating drainage system, with the cost of said removal borne by the person in violation of this Ordinance.

Section 3. Effective Date.

This Ordinance establishing a moratorium will be in full force and effect for a period of six (6) months after its passage and publication, or until such earlier time as the City Council has adopted a new ordinance, according to law.

PASSED AND ADOPTED this 8th day of February, 2024.

WHEATON CITY COUNCIL


Steven Lundquist, Mayor

ATTEST:


Amy Olson, City Administrator

BUILDING REGULATIONS
555 TRAILER HOMES

555.01 Definitions.

Whenever used in this ordinance, unless a different meaning appears in the context:

Trailer - A trailer means an automobile trailer, trailer coach, mobile home, or any vehicle or structure so designed and constructed in such manner as will permit occupancy thereof as sleeping, living, business or storage purposes, and so designed that it is or may be mounted on wheels and used as a conveyance on highways or streets, propelled or drawn by its own or other motive power, and the fact that the wheels have been removed thereof or a foundation, of whatever nature, placed thereunder shall not exclude it herefrom.

Person - The word "person" shall be construed to include persons, partnership, firm, company, corporation, tenant, owner, lessee, or licensee, their agents, heirs and assigns.

Trailer Coach Park - The words "trailer coach park" shall be construed to mean any site, lot, field or tract of land upon which two or more occupied trailer coaches are harbored, either free of charge, or for revenue purposes, and shall include any building, structure, tent, vehicle, or enclosure used or intended for use as part of the equipment of such trailer coach park.

Residential Area - The words "residential area" shall mean, as of any time, any area within the city defined as residential by the then current zoning ordinance of the city.

City - The word "city" shall mean the City of Wheaton, Minnesota.

555.02 Location Outside Camps

It shall be unlawful, within the limits of the City of Wheaton, for any person to park any trailer on any street, alley, highway or other public place, or on any tract of land owned by any person, occupied or unoccupied, within the City of Wheaton, except as provided in this ordinance

555.03 Specifications.

Trailer must be properly connected with an approved water system and with an approved sewer system and constructed and located in compliance with all requirements of the plumbing, sanitary, health, zoning and electrical ordinances and regulations effective in the City of Wheaton, and not inhabited by a greater number of occupants than that for which it was designed.

555.04 Separability and Conflict.

Subsection 1. Nothing herein contained shall be construed to apply to any trailer coach park in the limits of the City of Wheaton, which is regulated by the Minnesota State Board of Health pursuant to Chapter 428, Laws of Minnesota, 1951, nor any area specifically set aside by the City Council for overnight trailer parking and camping purposes.

Subsection 2. The following addresses will be the lots that are grandfathered in:

- 207 1st Avenue North 1511 Broadway Avenue
- 1506 Broadway Avenue 11 2nd Street North
- 308 1st Avenue South 1305 2nd Avenue North

Nothing herein contained shall be construed to apply to any lot upon which a trailer, at the effective date of this amended ordinance, is being used for sleeping, living or business purposes, provided said trailer house is so parked pursuant to a valid permit issued by the City Council prior to the enactment of this ordinance. However, if any lot referred to above has its trailer removed, and a replacement trailer is not parked on said lot within 90 (ninety) days, then the terms of City Ordinance #555 shall apply to said lot and the benefits contained in this subsection shall be lost to said lot.

Subsection 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed to be separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

555.05 Penalty.

Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor punishable pursuant to W.M.C. 005.05. Each day that the violation is permitted to continue after any such conviction shall constitute a separate and distinct offense. The city or any individual adversely affected by the parking of a trailer house in
This ordinance shall be in full force and effect from and after its passage and publication according to law.

ORDINANCE NO. 560

**AN ORDINANCE DEALING WITH RESIDENTIAL RENTAL PROPERTIES
IN THE CITY OF WHEATON**

Findings.

1. There have been several concerns concerning the condition of residences that may be rented out to third parties.
2. The existing Ordinance does not contain a provision which deals with regulating residential rental properties.
3. The Wheaton City Council believes that it is in the best interests of the residents of the City of Wheaton to regulate residential rental properties within the City of Wheaton.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS
FOLLOWS:**

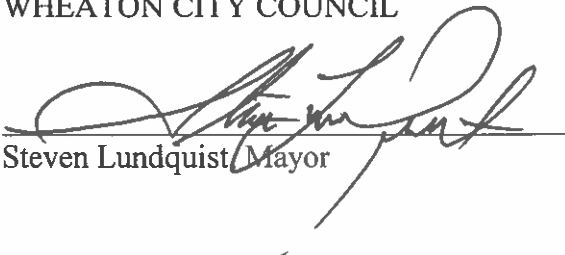
1. That Wheaton City Ordinance 560, Section 2(B) is amended to read as follows:

“(B) *RENTAL* means the leasing of a rental unit to a non-owner for a fixed or non-fixed period of time. This does not include the following:

- (1) Property in which the owner of the property is also residing.
- (2) Property in which a member of the owner immediate family is residing. Immediate family is limited to a child, sibling, or parent of the owner.
- (3) Property which is being transferred to a non-owner pursuant to a written agreement that is recorded at the Traverse County Recorder’s Office, such as a lease to buy, contract for deed, installment sale, purchase, or other similar arrangement whereby nonpayment of a periodic payment means the occupants may be evicted with the necessity of either a statutory mortgage foreclosure procedure, a statutory termination of contract for deed, or other similar statutory repossession procedure.

PASSED AND ADOPTED this 14th day of November, 2024.

WHEATON CITY COUNCIL


Steven Lundquist, Mayor

ATTEST:


Amy Olson, City Administrator

ORDINANCE NO. 560

AN ORDINANCE DEALING WITH RESIDENTIAL RENTAL PROPERTIES IN THE CITY OF WHEATON

Findings.

1. There have been several concerns concerning the condition of residences that may be rented out to third parties.
2. The existing Ordinance does not contain a provision which deals with regulating residential rental properties.
3. The Wheaton City Council believes that it is in the best interests of the residents of the City of Wheaton to regulate residential rental properties within the City of Wheaton.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS FOLLOWS:

1. That Wheaton City Ordinance 560 is hereby enacted to read as follows:

“560. RESIDENTIAL RENTAL PROPERTY REGISTRATION AND LICENSING.

Section 1: PURPOSE. The City recognizes a need for an organized inspection program of residential rental units within the City in order to establish and enforce minimum standards for rental units to meet City and State safety, health, fire, and zoning codes within the City and to provide a more efficient system to ensure that rental property is properly maintained. The City recognizes that the most efficient system to provide for rental inspections is the creation of a program requiring the registration and license of all residential rental units within the City so that orderly inspections can be undertaken.

Section 2: DEFINITIONS.

- (A) *RESIDENTIAL RENTAL PROPERTY* means any building, structure, room, enclosure, or mobile home, including the real property upon which it is located and which surrounds it, which is rented or offered for rent as living quarters.
- (B) *RENTAL* means the leasing of a rental unit to a non-owner for a fixed or non-fixed period of time. This does not include property which is being transferred to a non-owner pursuant to a written agreement that is recorded at the Traverse County Recorder's Office, such as a lease to buy, contract for deed, installment sale, purchase, or other similar arrangement whereby nonpayment of a periodic payment means the occupants may be evicted with the necessity of either a statutory mortgage foreclosure procedure, a statutory termination of contract for deed, or other similar statutory repossession procedure.
- (C) *PERSON* includes natural persons as well as business entities, whether one or more.
- (D) *ENFORCEMENT OFFICER* means any person designated by the City to perform inspections and determine compliance with the applicable rules, standards, statutes and ordinances.

Section 3: REGISTRATION AND LICENSE REQUIREMENTS. It is unlawful for any person to hereafter occupy, allow to be occupied, advertise for occupancy, solicit occupants of, or let to another

person for occupancy any residential rental property within the City for which an application for license has not been properly made and filed with the City of Wheaton and for which there is not an effective license. Initial application and renewal shall be made upon forms furnished by the City for such purpose and shall specifically require the following minimum information:

- (A) Name, address and phone number of the property owner and, if the owner is not a natural person, the name, address and phone number of a designated agent for the owner.
- (B) The name, phone number, and address of any person authorized to make or order made repairs or services for the property, if in violation of City or State Codes, if the person is different from the owner.
- (C) The street address of the rental property.
- (D) The number and types of units within the rental property (dwelling units or sleeping rooms).

A rental property owner and/or the designated agent must notify the City in writing within 15 calendar days after any change in the above information.

Section 4: FEES AND PENALTIES. There shall be a license fee for the initial license, and a renewal fee every year thereafter. The fee shall be based upon the number of units in the case of multiple unit dwellings. There shall also be a license transfer fee and a license reinstatement fee. All fees shall be as established by annual resolution of the City Council. A delinquency fee of 5% of the license fee shall be assessed for each day of operation without a valid license to rental dwelling operators, and shall be assessed against the rental property as outline in Section 99(B) below.

Section 5: MANNER OF REGISTRATION, LICENSING AND RENEWAL.

- (A) Initial application for license of property which is not licensed as residential rental property on the effective date of this Section, or for licensed residential rental property when there is a change in type of occupancy, shall be made by personally filing an application for license with the City of Wheaton before the property is used as residential rental property or before use as a new type of occupancy.
- (B) If there is a change in the type of occupancy from the type stated on the registration statement, a new registration statement and license will be required.

Section 6: METHOD AND MANNER OF CERTIFICATION.

- (A) Upon receipt of an initial application, the City of Wheaton shall forward a copy to the Enforcement Officer, who shall then, at the next time he is scheduled to perform inspections in the City, perform an inspection of the property to determine whether such property complies with the provisions of applicable rules, standards, statutes and ordinances. A temporary license shall be issued by the City Administrator upon the receipt of a properly completed application.
- (B) The Enforcement Officer shall then conduct an inspection and make a report thereon. No permanent license shall be issued if the premises and building do not fully comply with all the provisions of the applicable rules, standards, statutes and ordinances which pertain to such

dwelling units.

- (C) After being certified, each property which has had an occupant in the preceding two years shall be inspected every two years thereafter in order to maintain its certification. An inspection shall also be conducted in the event a property goes more than seven days without being connected to a major utility service (water/sewer or electricity). The City Council may elect to postpone a scheduled inspection for a particular property only upon a showing of good cause, and for a period not exceeding twelve (12) months. A postponement may only be given once every ten (10) years for a particular property.

Section 7: METHOD OF RENEWAL.

- (A) Registration shall be required annually and be issued prior to the annual renewal date. The City shall be required annually to mail registration renewal forms to the property owner or designated local manager thirty (30) days prior to expiration and such renewal forms may be returned by mail, or in person to the City of Wheaton.
- (B) The City shall not register a rental unit unless the owner has paid all property taxes assessed to the property and the property is not delinquent in any other obligations to the City of Wheaton.

Section 8: TRANSFER OF PROPERTY. To transfer the license from one property owner to another, the licensee shall give written notice, including the name and address of the transferee, to the City of Wheaton of the proposed transfer, within thirty-days (30) before such transfer. The transferee must make application with the City and pay the required fee for a transfer of the license before taking possession of the rental property. Failure to make application within the specified time limit shall result in automatic forfeiture of the license. Relicensing of any property for which the license has been forfeited shall require application for a new license. Issuance of any license when there is a transfer of property shall require the property to be in compliance with all requirements of the applicable rules, codes, statutes and ordinances. The fee for license transfer shall be set by Council resolution.

Section 9: OWNER AND OCCUPANT RESPONSIBILITIES.

- (A) Sanitation. No owners or other person shall occupy or let to another person any residential real property unless it and the premises are clean, sanitary, fit for human occupancy, and complies with all applicable legal requirements of City and state law.
- (B) Shared or Public Areas. Every owner of residential real property containing 2 or more dwelling units shall maintain in a clean and sanitary condition the shared or public areas of the dwelling and premises.
- (C) Occupied Areas. Every occupant of residential real property shall maintain in a clean and sanitary condition that part or those parts of the residential real property which he or she occupies and controls.
- (D) Pest Extermination. Every owner and occupant of residential real property shall be responsible for the extermination of infestations of vermin, rodents, cockroaches, bedbugs, or any other similar type of animal or insect, on the premises.

- (E) Rodent Harborages and Food. No owner or occupant of residential real property shall accumulate boxes, lumber, scrap metal, or any other similar materials in such a manner which may provide a rodent harborage in or about any residential real property. Stored materials shall be stacked neatly in piles. No owner or occupant of a residential real property shall store, place or allow the accumulation any materials which may serve as food for rodents in a site accessible to rodents.
- (F) Snow and Ice Removal. The owner of residential real property containing multiple units shall be responsible for the removal of snow and ice from parking lots, driveways, steps and walkways on the premises pursuant to the City Code.
- (G) Minimum Exterior Lighting. The owner of residential real property containing multiple units shall be responsible for providing and maintaining effective illumination in all exterior parking lots and walkways.
- (H) Driving and Parking Areas. The owners of residential real property containing multiple units shall be responsible for providing and maintaining in good condition parking areas and driveways for tenants consistent with the City Code.
- (I) Yards. The owner of residential real property containing multiple units shall be responsible for providing and maintaining premises' yards consistent with the City zoning ordinance and City Code.

Section 10: UNFIT FOR HUMAN HABITATION.

- (A) Building Vacation. Any residential real property which is damaged, decayed, dilapidated, unsanitary, unsafe, vermin or rodent infested, or which lacks provision for basic illumination, ventilation or sanitary facilities to the extent that the defects create a hazard to the health, safety or welfare of the occupants or of the public may be declared unfit for human habitation. Whenever any residential real property has been declared unfit for human habitation, the Enforcement Officer shall order the premises vacated within a reasonable time and shall post a placard on the premises indicating that it is unfit for human habitation, and any operating license previously issued for the residential real property shall be revoked.
- (B) Reoccupation. It shall be unlawful for any residential real property to be used for human habitation until the defective conditions have been corrected and the Enforcement Officer has issued written approval. It shall be unlawful for any person to deface or remove the declaration placard from any residential real property.
- (C) Secure Units and Vacated Dwellings. The owner of any residential real property which has been declared unfit for human habitation, or which is otherwise vacant for a period of 60 days or more, shall make the premises safe and secure so that it is not hazardous to the public's health, safety and welfare and does not constitute a public nuisance. Any vacant residential real property open at doors or windows, if unguarded, shall be deemed to be a hazard to the public's health, safety and welfare and a public nuisance within this Ordinance's meaning.
- (D) Hazardous Building Declaration. If a residential real property has been declared unfit for human habitation and the owner has not remedied the defects within a prescribed reasonable time, the residential real property may be declared a hazardous building and treated consistent with city

ordinance and state law.

Section 11: RESIDENTIAL REAL PROPERTY LICENSES: CONDUCT ON LICENSED PREMISES.

- (A) It shall be the responsibility of the rental license holder to take appropriate action, with the assistance of the City, to prevent conduct by tenants or their guests on the licensed premises which is hereby deemed to be disorderly, in violation of any of the following statutes or ordinances:
- (1) Minnesota Statutes, Sections 609.75 through 609.76, which prohibits gambling;
 - (2) Minnesota Statutes, Section 609.321 through 609.324, which prohibits prostitution and acts relating thereto;
 - (3) Minnesota Statutes, Sections 152.01 through 152.025, and Section 152.072, Subdivisions 1 and 2, which prohibit the unlawful sale or possession of controlled substances;
 - (4) Minnesota Statutes, Section 340A.401, which prohibits the unlawful sale of alcoholic beverages;
 - (5) Section 501.02 of this Code, which prohibits noise and noisy assemblies;
 - (6) Minnesota Statutes, Sections 97B.021, 97B.045, 609.66 through 609.67 and 624.712 through 624.716, which prohibit the unlawful possession, transportation, sale, or use of a weapon; or
 - (7) Minnesota Statutes, Section 609.72, which prohibits disorderly conduct, when the violation disturbs the peace and quiet of the occupants of at least one unit on the licensed premises or other premises, other than the unit occupied by the person(s) committing the violation.
 - (8) Failure to comply with dangerous dog requirements in violation of Minnesota Statutes Chapter 347.
 - (9) Indecent exposure in violation of Minnesota Statutes Section 617.23.
 - (10) Assault, as defined by Minnesota Statutes Sections 609.221, 609.222, 609.223, 609.2231, and 609.224, excluding domestic assaults.
 - (11) Public nuisance, as defined by Minnesota Statutes sections 609.75 - .745.
 - (12) The unlawful sale, furnishing, use, or possession of intoxicating liquor or non intoxicating malt liquor in violation of Minnesota law.
 - (13) Criminal damage to property in violation of Minnesota Statutes 609.595.
 - (14) The unlawful sale or possession of small amounts of marijuana in violation of Minnesota

Statutes 152.07 Subd. 4.

- (15) The unlawful possession or use of drug paraphernalia in violation of Minnesota Statutes 152.092.
- (16) Contributing to the delinquency or status as a juvenile.
- (B) A determination that the licensed premises have been used in a disorderly manner as described in this section shall be made upon evidence to support such a determination. It shall not be necessary that criminal charges are brought to support a determination of disorderly use, nor shall the fact of dismissal or acquittal of such a criminal charge operate as a bar to adverse license actions under this section.
- (C) Upon determination by the Enforcement Officer utilizing established procedures, that a licensed premises was used in a disorderly manner, as described in this section, the City shall notify the licensee by certified mail of the violation and direct the licensee to take appropriate action with the assistance of the City to prevent further violations.
- (D) If another instance of disorderly use of the licensed premises at the same residential real property occurs within 365 days of an incident for which a notice in this section was given, the City shall notify the licensee by certified mail of the violation and shall also require the licensee to submit a written report of the actions taken, and proposed to be taken, by the licensee to prevent further disorderly use of the premises. This written report shall be submitted to the City within five (5) business days of receipt of the notice (excluding holidays) of disorderly use of the premises and shall detail all actions taken by the licensee in response to all notices of disorderly use of the premises within the preceding 365 days.
- (E) If another instance of disorderly use of the licensed premises at the same residential real property occurs within 365 days after the second of any two previous instances of disorderly use for which notices were sent to the licensee pursuant to this section, the residential real property license for the premises may be denied, revoked, suspended, placed on probation, or not renewed. An action to deny, revoke, suspend, place on probation, or not renew a license under this section shall be initiated by the City in the manner described in Section 13, and shall proceed according to the procedures established therein.
- (F) No adverse license action shall be imposed where the instance of disorderly use of the licensed premises occurred during the pendency of eviction proceedings (unlawful detainer) or within 30 days after a notice is given by the licensee to a tenant to vacate the premises, where the disorderly use was related to conduct by that tenant or the tenant's guests. Eviction proceedings shall not be a bar to adverse license action, however, unless the licensee diligently pursues them. A notice to vacate shall not be a bar to adverse license action unless a copy of the notice is submitted to the City within 10 days of receipt of the violation notice. Further, an action to deny, revoke, suspend, place on probation, or not renew a license based upon violations of this section may be postponed or discontinued by the Enforcement Officer at any time if it appears that the licensee has taken appropriate action to prevent further instances of disorderly use.

Section 12: METHOD OF CORRECTION. Whenever an Enforcement Officer determines that any residential rental property fails to meet the requirements set forth in the applicable rules, standards,

statutes or ordinances, the City shall issue a Correction Order setting forth the violations and ordering the occupant, owner and/or owner's designated agent to correct such violations. This notice and order shall:

- (A) Be in written form;
- (B) Describe the location and nature of the violation;
- (C) Establish a reasonable time for the correction of any violation;
- (D) Be served upon the owner, the owner's designated agent and/or the occupant as the case may require. Such notice shall be deemed to be properly served if a copy thereof is:
 - (1) Served upon the owner, designated agent and/or occupant personally; or
 - (2) Sent by certified mail, return receipt requested.

Failure to correct violations within the time period stated in the Correction Order shall result in an administrative penalty to be set by Council resolution, as well as other sanctions provided by law or this ordinance, which may include a fine of \$100 per day up for up to 20 days, with any unpaid fine. If the Correction Order relates to actions or omissions of the occupant, and the occupant fails to make the necessary correction, the licensee may be required to remedy the condition by whatever means necessary. No adverse action shall be taken against a licensee for failure to remedy a condition during the pendency of a bona fide eviction proceeding being pursued diligently by the licensee.

Section 13: LICENSE SUSPENSION AND REVOCATION.

- (A) Any license may be revoked or suspended at any time during the life of said license for grounds including, but not limited to the following:
 - (1) False or misleading information given or provided in connection with the license application or renewal;
 - (2) Failure to pay any fee herein provided for;
 - (3) Failure to comply with Section 19 below;
 - (4) Failure to correct violations in the time period prescribed; or
 - (5) Violations committed or permitted by the licensed owner and/or the owner's designated agent, of any rules, codes, statutes and ordinances relating to, pertaining to, or governing the license and the premises.
- (B) A suspended license shall be reinstated when the circumstances leading to the suspension have been remedied and a reinstatement fee as set by Council resolution has been paid.
- (C) The license may be suspended, revoked, or placed on a probation status by the Council after a written notice is sent to the license holder specifying the Ordinance or law violations with which

they are charged. This notice shall also specify the date for hearing before the Council, which shall not be less than 10 business days from the date of the notice. At such hearing before the Council, the license holder or their attorneys may submit and present witnesses on their behalf.

(D) Summary Action.

- (1) When the condition of the residential real property of any license holder or their agent, representative, employee or lessee is detrimental to the public health, safety and general welfare as to constitute a nuisance, fire hazard or other unsafe or dangerous condition and thus give rise to an emergency. The Enforcement Officer shall have the authority to summarily condemn or close off such area of the residential real property.
- (2) Any person aggrieved by a decision of the Enforcement Officer to cease business or revoke or suspend the license or permit shall be entitled to appeal to the Council immediately, by filing a Notice of Appeal. The City Clerk shall schedule a date for hearing before the Council and notify the aggrieved person of the date.
- (3) The hearing shall be conducted in the same manner as if the aggrieved person had not received summary action.
- (4) The decision of the Enforcement Officer shall not be voided by the filing of such appeal. Only after the Council has held its hearing will the decision of the Enforcement Officer be affected.

(E) Applicable Laws. Licenses shall be subject to all of the ordinances of the City and the State of Minnesota relating to residential real properties and this ordinance shall not be construed or interpreted to supersede or limit any other such applicable ordinance or law.

(F) Vacation. When the City Council revokes or suspends a rental license, the property shall be vacated as of the effective date as established by the City Council and remain vacated until restoration of the license.

(G) Restoration. In the case of a suspension, restoration shall occur automatically at the end of the suspension period. In the case of revocation, restoration of the license shall occur only after the premises' owner has applied for a new license and paid a new application fee. The City Council may then issue a new license upon completion of the revocation period.

Section 14: MAINTENANCE OF RECORDS. All records, files, and documents pertaining to the Rental License Program shall be maintained for five years after the license expiration, in the office of the City of Wheaton and made available to the public as allowed or required by the applicable laws, rules, codes, statutes or ordinances.

Section 15: RENTAL APPEALS BOARD. The Rental Appeals Board shall consist of the five members of the Wheaton City Council. The Board shall hear appeals arising from a Correction Order and either affirm, modify or reverse, in whole or in part, such order. This Board shall also review and approve administrative policies and procedures pursuant to this ordinance, and regularly review and make such changes, as the Board deems reasonable and necessary, as to the schedules of fees and penalties required under this Section.

Section 16: APPEAL PROCESS.

- (A) When it is alleged by any person to whom a Correction Order is directed that such order is based upon erroneous interpretation of the applicable rules, standards, statutes or ordinance or mistake in fact, such person may appeal the Correction Order to the Rental Appeals Board.
- (B) Such appeal must be in writing, must specify the grounds for the appeal, must be accompanied by any filing fee set by Council resolution, and must be filed within five (5) business days after service of the Correction Order. Upon receipt of the written appeal, the City shall set a date for a hearing and give the appellant at least five (5) days prior written notice of the date, time and place of the hearing. By mutual agreement between the appellant and the City Administrator, the five (5) day notice may be waived.
- (C) The appellant shall have the right to appear and be represented by counsel. The Rental Appeals Board shall hear and consider the matter within thirty-days (30) of the filing of an appeal. The filing of an appeal shall stay all proceedings in furtherance of the action appealed from unless the Enforcement Officer certifies that such a stay would cause imminent peril to life, health, or property.
- (D) The Rental Appeals Board shall issue its decision to the appellant in writing within thirty-days (30) after the hearing affirming, modifying, or reversing the Correction Order upon such terms as the Council deems necessary to accomplish the purposes of this ordinance. A copy of the decision shall be mailed to the appellant.
- (E) Restrictions on Ownership Transfer. It shall be unlawful for the owner of any residential real property upon whom a pending Correction Order has been issued to sell, transfer, mortgage, lease or otherwise dispose of the premises to another person until the provisions of the tag or Correction Order have been complied with, unless the owners shall furnish to the grantee, lessee, or mortgagee a true copy of any notice of violation or compliance order and shall obtain and possess a receipt of acknowledgment. Anyone securing an interest in the residential real property who has received notice of the existence of a violation tag or Correction Order shall be bound by it without further service of notice and shall be liable to all penalties and procedure provided by this Ordinance.
- (F) Disposition. If the City Council determines that an owner is in violation of this Ordinance, or has not complied with a Correction Order within the specified time, after right of appeal has expired, the rental license may be revoked or suspended by the City Council. The Council may stay execution of the suspension or revocation on reasonable conditions established by the Council, including but not limited to, the payment of an administrative penalty not to exceed \$1,000.

Section 17: AUTHORITY. Nothing in this Section shall prevent the City from taking action under any applicable rule, standard, statute or ordinance for violations thereof to seek either injunctive relief or criminal prosecution for such violations as therein provided. Nothing contained in this Section shall prevent the City from seeking injunctive relief against a property owner or designated agent who fails to comply with the terms and conditions of this Section on registration and licensing including an order prohibiting the occupancy of such rental units until violations of this Section have been remedied by the property owner or designated agent.

Section 18: POSTING. Every licensee of residential rental property shall conspicuously post a receipted copy of the current license (in a frame with transparent cover) in a public corridor, hallway, or lobby of the rental property for which it is issued. For other than residential real property with multiple units, the licensee must post the license certificate in a frame with a transparent cover in such a manner so as to be easily viewed and readable at or near the front entrance of the building for which it was issued.

Section 19: INSPECTION ACCESS.

- (A) Property owners and their agents shall permit the Enforcement Officer to inspect all premises governed by this ordinance to determine if the building is operated as a rental property and/or to determine compliance with the provisions of this section, and shall fully cooperate with such inspections. The property owners or their agents shall make reasonable efforts to notify tenants of planned inspections of their rental units to the extent required by state law.
- (B) If an owner, occupant, or other person in charge of a residential real property fails or refuses to permit free access and entry to the structure or premises, or any part thereof, for an inspection authorized by this section, the Enforcement Officer may, pursuant to City of Golden Valley v. Wiebesick, 899 N.W.2d 152 (Minn. 2017) petition and obtain an order to inspect and/or a search warrant from a court of competent jurisdiction. Except as specifically authorized to the contrary by the court in exigent circumstances, search warrants under this section shall be executed at reasonable times and after reasonable efforts to give the owner (or other person in charge) and the occupant at least five (5) days written notice of the date and time of the inspection authorized by the warrant. Property owners shall cooperate in the execution of all administrative search warrants and court orders, including providing access and entry to rented premises where directed to do so. An authorized representative of the property owner shall be present on the premises during inspections; however, failure of a property owner to comply with this requirement shall not deprive the City of the authority to inspect.
- (C) Failure of a property owner to obey any of the requirements of this subdivision shall subject the property owner to suspension or revocation of license, in addition to other remedies and/or penalties provided by law. Any such suspension or revocation shall continue until the inspection sought has been completed, any violations satisfactorily remedied and any outstanding fees or penalties have been paid.

Section 20: APPLICABLE LAWS. Licensees shall be subject to all applicable rules, standards, statutes and ordinances; and this Section shall not be construed or interpreted to supersede any other such applicable rules, standards, statutes or ordinances.

Section 21: TENANT IDENTIFICATION. Licensees must, as a continuing obligation of a license, maintain a current register of tenants and other persons who have a lawful right to occupancy of residential rental property and promptly notify the City Administrator with an updated register whenever there is a new tenant. Said register must contain the names, addresses, and telephone numbers of all occupants, in addition to the license plate number of all vehicles of said occupants. In its application for a license, the licensee must designate the person or persons who will have possession of the residential rental property and must promptly notify the City Administrator of any change of the identity, address, or telephone numbers of such persons. The register must be available for inspection by the City Administrator or a law Enforcement Officer at all times.

Section 22: TENANT REQUESTED INSPECTION. A tenant may at any time request an inspection of the rental property in which they currently reside. A fee for such inspection shall be imposed on the tenant only if the Council finds, by a preponderance of the evidence that the request was made in bad faith.

Section 23: RULES, POLICIES AND PROCEDURES. The City Council may adopt from time to time, by resolution, rules, policies and procedures for the implementation of this section. Violation of any such rule, policy or procedure by a property owner shall be considered a violation of this ordinance.

Section 24: INSPECTION STANDARDS. All rental property will be required to meet basic standards set forth herein on Appendix A in order to obtain and/or maintain a license pursuant to this ordinance. Additionally, all buildings are subject to the State Fire Code, as amended.

Section 25: SEVERABILITY. If any provision of this section or amendment thereto, or the application thereof to any person, entity or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, the remainder of this section shall remain in full force and effect and the application thereof to other persons, entities or circumstances shall not be affected thereby.

Section 99: PENALTIES.

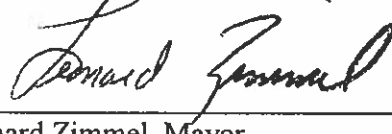
(A) **Criminal.** A violation of any provision of this Ordinance shall be deemed a misdemeanor offense. Each day upon which such violation occurs shall be deemed to constitute a distinct and separate violation, and each day shall therefore be deemed to constitute a distinct and separate offense.

(B) **Civil.**

- (1) Any owner, occupant, operator, or agent of residential real property who has received an Order or notice of an alleged violation of this Ordinance and has not corrected the violation during the period of time given on the Order or notice to correct the violation, may be subject to a daily fine in the amount of \$100 for each day said violation has not been corrected thereafter, to a maximum of 20 days.
- (2) The City Administrator shall, after consultation with the Enforcement Officer, certify to the City Council which persons are subject to a fine and the applicable fine amount at each meeting of the City Council. No later than five (5) business days before the meeting of the City Council, the City Administrator shall cause any such persons to be notified, by sending of certified mail or by personal service, of the fine amount believed to be due for violation. The City Council shall approve and levy such fines proposed by the City Administrator as appear proper upon a determination of good cause, and notice of fines imposed shall be mailed to the persons fined.
- (3) Each and every fine or fee levied pursuant to this Ordinance is hereby made a lien upon the residential real property at issue, and all such charges are, on October 20 of each year, past due and delinquent, may be certified to the County Auditor as taxes or assessments on the real estate. Nothing in this Ordinance or other Ordinances of the City shall be held or construed as in any way stopping or interfering with the right of the City to levy taxes or assessments against any premises affected by any delinquent fine or fee.

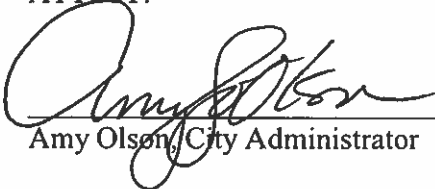
PASSED AND ADOPTED this 25th day of July, 2019.

WHEATON CITY COUNCIL



Leonard Zimmer, Mayor

ATTEST:



Amy Olson, City Administrator

Motion: Larson

Seconded: Wohlenhaus

Published: April 2019

Passed: July 25, 2019

SUMMARY OF ORDINANCE NO. 560

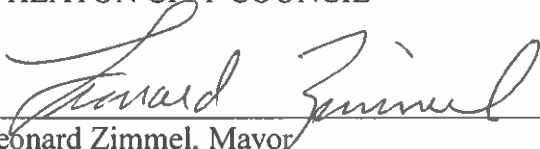
A SUMMARY OF AN ORDINANCE DEALING WITH RESIDENTIAL RENTAL PROPERTIES IN THE CITY OF WHEATON

In order to better serve the citizens of the City of Wheaton, the Wheaton City Council has enacted an Ordinance regulating residential rental properties within the City. The Ordinance describes the purpose for enacting the Ordinance; defines certain words contained within the Ordinance; lists registration and license requirements; describes fees and penalties; describes the manner of registration, licensing and renewal; describes the method and manner of certification of a license, as well as license renewal; describes how to transfer property; lists owner and occupant responsibilities; discusses buildings unfit for human habitation; describes conduct prohibited as disorderly; describes the method of correcting violations; discusses license suspension and revocation; requires maintenance of records; creates a rental appeals board and how to appeal a decision that after a violation is alleged; requires inspections of the rental property, as requested by the City or a tenant and the standards for the inspection; and requires posting of the rental license at the property and identification of all tenants at the property. A violation of this ordinance shall be a misdemeanor offense, and may include civil penalties of \$100 per day up to 20 days which may be assessed against the land.

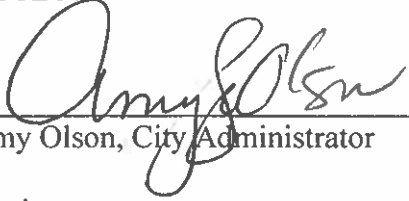
This summary is being published in compliance with Minnesota Statutes Section 331A.01, Subdivision 10 and Minnesota Statutes Section 412.191, Subdivision 4. A copy of the full text of this Ordinance shall be available at regular office hours of the office of the Wheaton City Administrator. The full text of this Ordinance will be in full force and effect from and after its passage and publication according to law.

PASSED AND ADOPTED this 8th day of July, 2019.

WHEATON CITY COUNCIL


Leonard Zimmer, Mayor

ATTEST:


Amy Olson, City Administrator

Motion:

Seconded:

Published:

Passed:

ORDINANCE NO. 560

AN ORDINANCE DEALING WITH RESIDENTIAL RENTAL PROPERTIES
IN THE CITY OF WHEATON

Findings.

1. There have been several concerns concerning the condition of residences that may be rented out to third parties.
2. The existing Ordinance does not contain a provision which deals with regulating residential rental properties.
3. The Wheaton City Council believes that it is in the best interests of the residents of the City of Wheaton to regulate residential rental properties within the City of Wheaton.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS
FOLLOWS:**

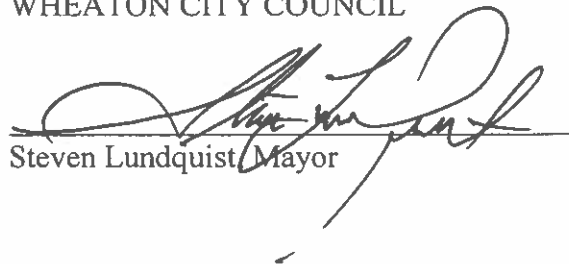
1. That Wheaton City Ordinance 560, Section 2(B) is amended to read as follows:

“(B) *RENTAL* means the leasing of a rental unit to a non-owner for a fixed or non-fixed period of time. This does not include the following:

- (1) Property in which the owner of the property is also residing.
- (2) Property in which a member of the owner immediate family is residing. Immediate family is limited to a child, sibling, or parent of the owner.
- (3) Property which is being transferred to a non-owner pursuant to a written agreement that is recorded at the Traverse County Recorder’s Office, such as a lease to buy, contract for deed, installment sale, purchase, or other similar arrangement whereby nonpayment of a periodic payment means the occupants may be evicted with the necessity of either a statutory mortgage foreclosure procedure, a statutory termination of contract for deed, or other similar statutory repossession procedure.

PASSED AND ADOPTED this 14th day of November, 2024.

WHEATON CITY COUNCIL


Steven Lundquist Mayor

ATTEST:


Amy Olson, City Administrator

**CITY OF WHEATON
RESOLUTION 2019-10**

**A RESOLUTION SETTING FEES FOR ORDINANCE NO. 560 FOR 2019
IN THE CITY OF WHEATON, MINNESOTA**

WHEREAS, the City of Wheaton Municipal Code requires the setting of fees and charges on a periodic basis through a resolution of the City Council;

WHEREAS, a review of these rates has been completed; and

WHEREAS, a resolution is needed to set fees and charges for the year 2019.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Wheaton, Minnesota, that the annual fee and charge schedule for the following categories in 2019 shall be set as follows:

Annual Rental License Fee for the Initial License, and a renewal Fee every year thereafter will be:
\$65.00 for one unit, + \$15.00 for each additional unit.

License Transfer Fee: \$25.00

License Reinstatement Fee: \$25.00

Appeal Filing Fee: \$250.00

Failure to Register: \$250.00

Failure to comply with Correction Order:

30 days OR 2nd Re-inspection \$50.00

60 days OR Each Additional Re-inspection \$100.00

Missed appointment for inspection \$25.00

Adopted by the City Council of the City of Wheaton on August 8th , 2019.

WHEATON CITY COUNCIL

Leonard Zimmer, Mayor

ATTEST:

Amy Olson, City Administrator

Motion:

Seconded:

Vote:

BUILDING REGULATIONS

570 SUBSTANDARD BUILDINGS AND STRUCTURES

570.01 Definitions.

For purposes of this ordinance the words and phrases defined in this section shall have the meanings given to them herein.

- a. "Building" includes any structure or part of a structure, including without limitation, residential structures, commercial structures, agricultural outbuildings (e.g. barns) and structures supporting signs.
- b. "Building official" shall mean a State Fire Marshal or other official appointed by the City Council of the City of Wheaton as the Building Official of the City of Wheaton.
- c. "Hazardous Building" means any building which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment constitutes a fire hazard or a hazard to public safety or health.
- d. "Owner" means those shown to be such on the records of the County Auditor and/or Recorder.

570.02 Statutory Authorization.

These regulations are authorized by Chapter 412 and 463 of the Minnesota Statutes.

570.03 General Provisions.

When the existence of a hazardous building comes to the attention of the Building official, the building official shall make an inspection of such building. Following such inspection the Building Official shall make an appropriate order for the elimination of the hazard, if any created by such building. The order shall be in writing; recite the grounds upon which the Building Official concluded it was a hazardous building; specify the actions required to be taken to eliminate the hazard and provide a reasonable time for compliance with the order (which shall be no more than thirty (30) days from the date of the order).

Such order shall be mailed to the owner of the property on which the hazardous building is located.

Following the expiration of the time specified in the order for compliance the Building Official shall re-inspect the building to determine whether the hazard has been eliminated.

In the event it is determined by the Building Official that the order has not been complied with, the Building Official shall notify the mayor in writing and said writing shall also contain recommendations for the abatement of the hazard.

No extensions shall be allowed, unless an appeal provided for in Section 5 hereof is taken, the Building Official shall communicate such information to the City Council in writing.

570.04 Failure to Comply With Order.

Should it be determined by the City Council or the Mayor, that the order of the Building Official has not been complied with then the City shall serve notice upon the owner and said notice shall state that a motion for summary enforcement of the order will be made to the District Court of the county in which the hazardous building or property is situated unless corrective action is taken or unless an answer is filed within then (10) days of the day of service. Summary enforcement may include demolition of the hazardous building at issue, and any expenses incurred by the City in acting pursuant to a Court Order, including any court costs, shall be a lien upon such real estate. The City Administrator shall certify to the County Auditor of Traverse County a statement of the amount of the cost incurred by the City. Such amount together with interest shall be entered as a special assessment against such lot or parcel of land and be collected in the same manner as real estate taxes.

570.05 Appeal by Owner.

If an answer is filed and served as provided by Section 4, further proceedings in the action shall be governed by the Rules of Civil Procedure for the District Courts.

570.06 Limitation on Liability.

The City of Wheaton, the Building Official and/or any employee charged with the enforcement of this Ordinance, shall not be liable for any damage that may occur to persons or property as a result of any act required of the Building Official or any employee of the City of Wheaton or by reason of any act or omission of the Building Official or any such employee.

570.07 Severability.

In the event any clause or provision hereof shall be determined to be illegal or unconstitutional such determination shall not affect the validity of any other provisions of this Ordinance.

570.08. Violations and Penalties.

Any person who fails to comply with an order of the Building Official within the time allowed made pursuant to this Ordinance shall be guilty of a misdemeanor. Each day or portion thereof during which such violation continues shall constitute a separate offense.

570.09 Effective Dates.

This Ordinance shall be effective immediately after its adoption and publication once in the legal newspaper of the City of Wheaton.

AMENDMENT TO ORDINANCES SECTION NO. 570

AN ORDINANCE DEALING WITH SUBSTANDARD BUILDINGS IN THE CITY OF WHEATON

Findings.

1. The Wheaton Code of Ordinance contains provisions for dealing with substandard and dilapidated buildings and structures.
2. The Wheaton City Council does not believe that the existing Ordinance contains adequate procedures to deal with handling these substandard and dilapidated buildings and structures.
3. The Wheaton City Council believes that it is in the best interests of the residents of the City of Wheaton to amend the existing Ordinance dealing with substandard and dilapidated buildings and structures in order to allow better abatement procedures.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS FOLLOWS:

1. **That the existing provisions of Section 570 are hereby repealed.**
2. **That Section 570 of the Wheaton City Ordinance is hereby amended to read as follows:**

“570.01 Declaration of nuisance. Buildings, fences and other structures that have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood are declared to be public nuisances because they (a) are unsightly, (b) decrease adjoining landowners and occupants’ enjoyment of their property and neighborhood, and (c) adversely affect property values and neighborhood patterns. Additionally, these buildings, fences, and other structures, because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment constitute a fire hazard or a hazard to public safety or health.

570.02 Hazards.

(1) Structural Hazards.

- (a) Any stress in any material, element, member or portion thereof, due to all dead and live loads, which is greater than the working stresses deemed reasonable and safe by the Building Official.
- (b) Damage to any portion of a building by earthquake, wind, fire, flood, or by any other cause, in such a manner that the structural ability or strength thereof is appreciably less than the minimum requirements set forth in existing codes for a new building or structure of similar size, construction, location, and purpose.
- (c) Likelihood of any portion or member or appurtenance of a building to fall, or become dislodged or detached, or to collapse, and thereby cause bodily injury or property damage.
- (d) Settling of any building or portion thereof to such an extent that walls or other structural portions have been displaced or distorted and rendered

structurally unstable or dangerous, or that the basic function of such element has been impaired.

- (e) The building or structure, or any portion thereof, because of dilapidation, deterioration, decay, faulty construction, or because of the removal or movement of some portion of the ground necessary for the purpose of supporting such building or structure or portion thereof, or other cause, is likely to partially or completely collapse, or some portion of the foundation or underpinning is likely to fall or give way.
- (f) The building or structure, or any portion thereof, is for any reason whatsoever manifestly unsafe for the purpose for which it is used or intended to be used.
- (g) The exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity of that wall or structural member does not fall inside the middle third of the base.
- (h) The building or structure, exclusive of the foundation, shows 33% or more of damage or deterioration to the member or members, or 50% of damage or deterioration of a non-supporting enclosing or outside wall covering.
- (i) The building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated, from any cause whatsoever, as to become an attractive nuisance to children who might play therein to their danger, or as to afford a harbor for vagrants, criminals, or as to enable persons to resort thereto for the purpose of committing nuisances or unlawful acts.
- (j) Any building or structure which has been constructed or now exists or is maintained in violation of a specific requirement or prohibition, applicable to such building or structure, of the building code provisions of the city or of any law or ordinance of this state or city relating to the location, use and physical condition of buildings or structures.
- (k) Any building or structure which, whether or not erected in accordance with all applicable laws and this code, because of dilapidation, deterioration, damage, or other cause is so weakened or defective as to have in any non-support part, member or portion less than 50%, or in a supporting member less than 66%, of the strength or fire-resistive qualities or characteristics or weather-resistive qualities or characteristics required by law or ordinance in the case of a newly constructed building or structure of similar size, purpose and location.
- (l) Any chimney, antennae, air vent, or other similar projections that is structurally unsound and not in good repair (i.e., the projections are not secured properly, where applicable, to an exterior wall or exterior roof).

- (2) *Hazardous wiring.* All wiring except that which conformed with all applicable

laws in effect at the time of installation and which has been maintained in good condition and is being used in a safe manner.

- (3) *Hazardous plumbing.* All plumbing except that which conformed with all applicable laws in effect at the time of installation and which has been maintained in operating condition and which is free of cross-connections and siphonage between fixtures.
- (4) *Hazardous mechanical equipment.* All mechanical equipment, including vents, except that which conforms to all applicable laws in effect at the time of installation and which has been maintained in safe condition.
- (5) *Faulty weather protection.*
 - (a) Broken, rotted, split, or buckled exterior walls or roof coverings.
 - (b) Unsecured and/or improperly hung roof drainage system.
- (6) *Inadequate fire protection.* All buildings which are not provided with the fire-resistive construction required by the Minnesota State Building Code except those buildings which conformed to all applicable laws at the time of their construction and whose fire-resistive integrity has been adequately maintained or improved.

570.03

Inspections and Orders; Appeals.

- (1) Inspection responsibilities of official. Whenever it shall come to the attention of the Building Official by written complaint of any person or agency, or otherwise, that a building or structure is a dangerous or substandard building, the Official shall cause a preliminary examination to be made of the building or structure and premises. In the execution of the inspection, the Official shall avail to the services of such other agencies, employees, departments and officers of the city as the Official deems necessary. Upon completion of the inspection, if it then appears that the building or structure is a dangerous or substandard building, the city shall issue a written order to the owner or occupant requiring repair, removal, demolition or compliance. If no appeal is filed within ten days of the order, the order shall be deemed final.
- (2) Appeal of order. Any person who deems to be aggrieved by any such order may appeal the order of the city to the City Council by filing a written appeal with the Clerk within ten days of such order being served. Such appeal shall fully state the order appealed from, the date thereof, and the facts of the matter. Upon such an appeal being filed, the Official also shall make a written report, supplemented by written reports from the other agencies, employees, departments and officials called upon by the Official in the execution of the inspection, and submit the reports to the Council.

570.04

Appeal Procedure.

- (1) Council to Call Hearing. The Council shall examine the report of the Official, and if there is probable cause to believe that the building or structure is a

dangerous or substandard building, shall have the matter set for hearing.

- (2) Notice of Hearing. The Council shall hear the appeal not later than 30 days after the date the appeal is filed. Notice of the hearing shall be given in a form prescribed by the Council. It shall set forth the street address and legal description sufficient for identification of the premises upon which the building or structure is located. It shall contain a brief statement of the conditions mentioned in the report of the Official which show probable cause to believe that the building or structure is a nuisance within the meaning of this section. It shall also state the date, hour and place of the hearing and shall order all interested parties who desire to be heard in the matter to appear before the Council to show cause why the building or structure should not be ordered repaired, vacated and repaired, removed, or demolished.
- (3) Service of Notice.
 - (a) *Person to whom notice is served.* One copy of the notice shall be served upon the person, if any, in real or apparent charge and control of the premises involved; the record owner, the holder of any mortgage, trust, deed or other lien or encumbrance of record; the owner or holder of any lease of record; and the record holder of any other estate or interest in or to the building or structure or and upon which it is located.
 - (b) *Posting of notice.* One copy of the notice shall be posted in a conspicuous place upon the building or structure or premises involved.
 - (c) *Date of serving and posting notice.* The notice of hearing shall be posted and served at least ten days prior to the date set for the hearing.
 - (d) *Notice sent by certified mail.* The notice of hearing shall be served upon all persons entitled thereto either personally or by certified mail. Service by certified mail shall be effective on the date of mailing if a copy of such notice is so mailed, postage prepaid, return receipt requested, to each such person at the address of such person as it appears on the last equalized assessment roll of the County or as known to the Clerk. If no such address so appears or is known to the Clerk, then a copy of the notice shall be addressed to such person at the address of the building or structure involved in the proceedings. The failure of any owner or other person to receive such notice shall not affect in any manner the validity of any of the proceedings taken.
 - (e) *Affidavit of notice served.* The officer or employee upon serving the notice as provided herein shall file an affidavit thereof with the Clerk certifying to the time and manner in which such notice was served. The officer or employee shall also file therewith any receipt which may have been returned to the officer or employee in acknowledgment of the receipt of such notice by certified mail.

- (1) Hearing and considering evidence. The Council shall, at such hearing, hear and

consider any evidence offered by the person or persons having any estate or interest in such building or structure pertaining to the matter set forth in the report of the Official.

- (2) Conclusion of hearing. After hearing the oral and written views of all interested persons, the Council shall make its decision at the same meeting or at a specified future meeting.

570.06 Order to Repair, Vacate and Repair, Remove or Demolish. If the Council finds that the building or structure involved is a dangerous or substandard building within the terms of this section, then it shall issue an order:

- (1) That the building or structure must be repaired, or vacated and repaired, or removed or demolished.
- (2) That the occupant, lessee, or other person in possession must vacate the building, or that the occupant, lessee, or other person may remain in possession while repairs are being made.
- (3) That any mortgage, beneficiary under deed of trust, or any other person having an interest or estate in said building may, at their own risk, repair, vacate and repair, remove or demolish said building or structure according to existing law and code provisions.

570.07 Order to Be Served. Copies of the order to repair, or vacate and repair, or remove or demolish shall be served upon the individuals and in the manner as prescribed in §570.04(3). A copy of the order shall also be posted in a conspicuous place upon the building or structure as prescribed in said subsection.

570.08 Standards for Repair, Vacation and Repair, Removal or Demolition. The following standards shall be followed in substance and spirit by ordering the repair, vacation and repair, removal or demolition of any building or structure. Any order to remove or demolish, rendered pursuant to this section, shall not indicate an alternative permission to repair; however, an order to repair may be satisfied by removal or demolition.

- (1) Repairing building. If the dangerous or substandard building can reasonably and economically be repaired so that it will no longer exist in violation of the provisions of this section, it shall be ordered repaired. For the purposes of this section, the term REPAIR shall include any improvements necessary to make such building comply with the applicable provisions of this code.
- (2) Vacating building. If the dangerous or substandard building is in such condition as to make it dangerous to the health, moral, safety, or general welfare of its occupants, it shall be ordered to be vacated.
- (3) Damaged buildings. In any case where a dangerous building is 50% or more damaged, decayed, or deteriorated, it shall be ordered to be removed or demolished.
- (4) Unrepairable buildings. In all cases where a dangerous or substandard building cannot be repaired, with reasonable economy, so that it will no longer exist in

violation of the terms of this section, it shall be ordered to be vacated and removed or demolished.

- (5) Fire hazardous buildings. In all cases where a dangerous or substandard building is a fire hazard, whether existing or erected in violation of the provisions of this code, or state law, and cannot reasonably and economically be repaired pursuant to M.S.A. §470.08, it shall be ordered demolished.
- (6) Particulars of order. The order shall set forth the street address of the building or structure and a legal description of the premises sufficient for identification. It shall contain a statement of the particulars which render the building or structure a dangerous or substandard building, and a statement of the things required to be done. The order shall state the time within which the work required must be commenced, the time being not earlier than ten days and no later than 30 days after the issuance of the order, and the order shall further specify a reasonable time within which the work shall be completed.

The time for completion may, by action of the council, be extended for just causes and such authority for extended time shall be given in writing by the Council upon written application of any interested party or parties.

570.09 Penalty for Disregarding, Defacing or Destroying Order; Council May Order Work.

- (1) Penalty.
 - (a) The owner or other person having charge and control of the building or structure cited in the order who shall fail to comply with any order to repair, or vacate and repair, or remove or demolish said building or structure shall be subject to the penalties as provided by §10.99 of the code.
 - (b) The occupant or lessee in possession cited in the order who shall fail to comply with any order to vacate said building or structure in accordance with any order given as provided for in this section shall be subject to the penalties provided by §10.99 of the code.
- (2) Defacing or destroying order. Any person who removes or defaces or destroys a notice or order posted as required in this section shall be subject to the penalties provided by §10.99 of the code.
- (3) Council may order repair or removal. The Council may order the repair or removal of the building or structure cited in the order and obtain enforcement of the order and entry of judgment by the district court shall be in accordance with M.S.A. §§463.15 to 463.26 where such statutory provisions apply, which statutes are hereby adopted and incorporated into this chapter by reference and made a part of this chapter.

570.10 Limitation on liability. The City of Wheaton, the Building Official, a law enforcement officer and/or any employee charged with the enforcement of this Ordinance, shall not be liable for any damage that may occur to persons or property as a result of any act required of the Building Official, a law enforcement officer, or any employee of the City of

Wheaton or by reason of any act or omission of the Building Official, law enforcement officer, or any such employee

570.11

Emergency procedure; summary enforcement. In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in this section will permit a continuing nuisance to unreasonably endanger public health safety or welfare, the City Council may order summary enforcement and abate the nuisance.

- (1) To proceed with summary enforcement, the Building Official or law enforcement officer shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare.
- (2) The Building Official or law enforcement officer shall notify in writing the occupant or owner of the premises of the nature of the nuisance and of the city's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement.
- (3) The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in this section, and may order that the nuisance be immediately terminated or abated.
- (4) If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

570.12

Immediate abatement. Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety."

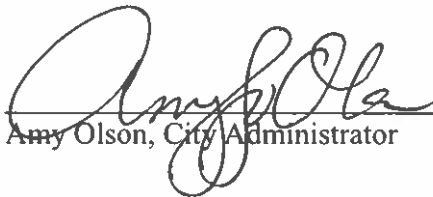
PASSED AND ADOPTED this 27th day of July, 2023.

WHEATON CITY COUNCIL



Jacob Veldhouse, Mayor

ATTEST:



Amy Olson, City Administrator

**SUMMARY OF AN AMENDMENT TO ORDINANCES SECTION NO. 570
AND ESTABLISHMENT OF ORDINANCE SECTION 571**

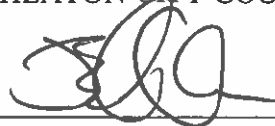
**ORDINANCES DEALING WITH ABATEMENT PROCEDURES OF STRUCTURES
THAT ARE SUBSTANDARD OR IN A STATE OF DISREPAIR
WITHIN THE CITY OF WHEATON, STATE OF MINNESOTA**

In order to protect the public health, safety, and welfare of the residents of the City of Wheaton, the Wheaton City Council hereby amends its Ordinances dealing with structures that are substandard or in a state of disrepair. For Section 570, what constitutes a hazard pertaining to a buildings structure, wiring, plumbing, mechanical equipment, faulty weather protection, inadequate fire protection and deteriorating exterior finish, the process by which the City Council has a building declared to be in violation of the ordinance and how to have the violation abated, including having a hearing before the City Council and the District Court, and the possibility of having the structure removed, have been amended. For new Section 571, the ordinance defines what constitutes a structure in disrepair, as opposed to being hazardous, and lays out the procedure for having a nuisance declared and how to have the violation abated, including having a criminal citation issued.

This summary is being published in compliance with Minnesota Statutes Section 331A.01, Subdivision 10 and Minnesota Statutes Section 412.191, Subdivision 4. A copy of the full text of this Ordinance shall be available at regular office hours of the office of the Wheaton City Administrator. The full text of this Ordinance will be in full force and effect from and after its passage and publication according to law.

PASSED AND ADOPTED this 27th day of July, 2023.

WHEATON CITY COUNCIL



Jacob Veldhouse, Mayor

ATTEST:



Amy Olson, City Administrator

AMENDMENT TO ORDINANCE NO. 570.09

**AN ORDINANCE DEALING WITH SUBSTANDARD BUILDINGS AND STRUCTURES
IN THE CITY OF WHEATON**

Findings.

1. The City of Wheaton presently has an Ordinance dealing with substandard buildings and structures.
2. Said Ordinance erroneously cites to a non-existent penalty section.
3. The City Council believes that it is in the best interests of the citizens of the City of Wheaton to cite to the correct penalty section.

THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS:

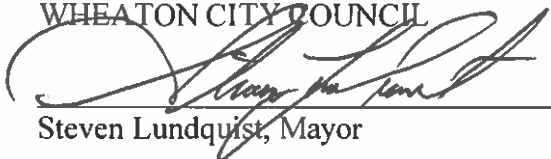
Section 1. That Ordinance No. 570.09 of the Code of Ordinance for the City of Wheaton is hereby amended to read as follows:

“(1) Penalty.

- (a) The owner or other person having charge and control of the building or structure cited in the order who shall fail to comply with any order to repair, or vacate and repair, or remove or demolish said building or structure shall be subject to the penalties as provided by **W.M.C. 005.05** of the code.
 - (b) The occupant or lessee in possession cited in the order who shall fail to comply with any order to vacate said building or structure in accordance with any order given as provided for in this section shall be subject to the penalties provided by **W.M.C. 005.05** of the code.
- (2) Defacing or destroying order. Any person who removes or defaces or destroys a notice or order posted as required in this section shall be subject to the penalties provided by **W.M.C. 005.05** of the code.

PASSED AND ADOPTED this 23rd day of August, 2024.

WHEATON CITY COUNCIL


Steven Lundquist, Mayor

ATTEST:


Amy Olson, City Administrator

SUMMARY OF AMENDMENT TO ORDINANCE NO. 570.09

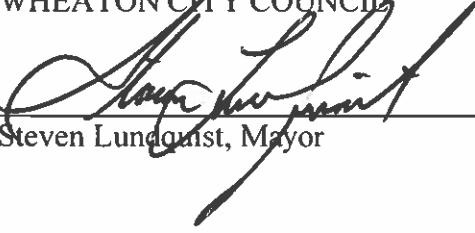
**AN ORDINANCE DEALING WITH SUBSTANDARD BUILDINGS AND STRUCTURES
IN THE CITY OF WHEATON**

The ordinance dealing with substandard buildings and structures has been amended to correctly cite W.M.C. 005.05 as the ordinance containing the penalty provisions for violating a provision of Ordinance Section 570.

This summary is being published in compliance with Minnesota Statutes Section 331A.01, Subdivision 10 and Minnesota Statutes Section 412.191, Subdivision 4. A copy of the full text of this Ordinance shall be available at regular office hours of the office of the Wheaton City Administrator. The full text of this Ordinance will be in full force and effect from and after its passage and publication according to law.

PASSED AND ADOPTED this 23rd day of August, 2024.

WHEATON CITY COUNCIL



Steven Lundquist, Mayor

ATTEST:



Amy Olson, City Administrator

ESTABLISHMENT OF ORDINANCE SECTION 571

AN ORDINANCE DEALING WITH ABATEMENT PROCEDURES FOR STRUCTURES IN DISREPAIR IN THE CITY OF WHEATON

Findings.

1. The Wheaton Code of Ordinance does not contain provisions for dealing with and structures in disrepair.
2. The Wheaton City Council believes that the existing Ordinance does not contain adequate procedures to deal with handling these structures, which could lead to their one day becoming substandard.
3. The Wheaton City Council believes that it is in the best interests of the residents of the City of Wheaton to amend the existing Ordinance to add a section dealing with the abatement of structures in disrepair.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS FOLLOWS:

1. **That Section 571 of Wheaton City Ordinance be enacted to read as follows:**

“§571 STRUCTURES IN DISREPAIR

571.01 Requirements for Structures.

- (1) **Maintenance.** All structures which are intended to be occupied or let to another for occupancy, and all dwellings or apartments existing for the purpose of living therein, whether occupied or vacant, must comply with the requirements of this section.
- (2) **Foundations, exterior walls and surfaces, roofs.** Every foundation, chimney, exterior wall and surface, and roof shall be weathertight, watertight, rodent-proof and insect proof, and shall be kept in a workmanlike state of maintenance and repair.
 - (a) The foundation elements shall support the building at all points.
 - (b) Every exterior wall shall be free of holes, breaks, loose or rotten boards or timbers, and any other condition which might admit rodents to the interior portions of the walls or to the interior space of the dwelling.
 - (c) Any exterior surface or plane required to be repaired under the provisions of this section shall be repaired in its entirety to make it weathertight, watertight, and rodent-proof.
- (3) **Windows, exterior doors, basement hatchways.** Every window, exterior door and basement hatchway shall be rodent-proof and shall be kept in working condition and in a workmanlike state of maintenance and repair.
 - (a) Every window shall be fully supplied with window panes which are without open cracks or holes.
 - (b) Every window sash shall be in good condition and fit tight within its frame.
 - (c) Every exterior door when closed shall fit in a workmanlike condition within its frame.

- (d) Every basement hatchway shall be so constructed and maintained as to prevent the entrance of rodents into the dwelling.
- (4) Exterior stairways, exterior porches and decks, landings, and floor levels. All outside stairways, fire escapes and exits shall be maintained unobstructed, and free of ice and snow. All outside stairways that serve as an entrance to an upper story apartment or rooming unit shall have a light located at the head of the stairway capable of lighting the entire stairway. This light may be controlled by three-way switches, one at the bottom of the stairway, and one at the top, or it may be a sensor light, activated by motion or dusk.
- (5) Discontinuance of required services, facilities, equipment or utilities. No owner or operator shall cause any service, facility, equipment or utility which is required to be supplied under the provisions of this code to be removed, shut off, or discontinued in any structure owned, let or occupied by such person, except for such temporary interruption as may be necessary while actual repairs, replacements, or alterations are in process of being made.
- (6) Responsibility of owner for public areas. Every owner of a structure containing two or more apartments shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwellings and premises thereof.
- (7) Responsibility for rubbish and garbage. Every occupant of a structure shall dispose of all refuse in a clean and sanitary manner by placing it in garbage disposal facilities or refuse storage containers as prescribed in §51.02 of this code.
- (8) Extermination. Every occupant of a single family structure shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises; and every occupant of an apartment in a structure containing more than one apartment shall be responsible for such extermination whenever his or her apartment is the only one infested.

Notwithstanding the foregoing provisions of this division, whenever infestation is caused by failure of the owner to maintain a dwelling in a rat-proof or reasonably insect-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two or more of the apartments in any dwelling, or in the shared or public parts of any dwelling containing two or more apartments, extermination thereof shall be the responsibility of the owner.

- (9) Non-dwelling structures. Every foundation, exterior wall, roof, window, exterior door, basement hatchway, and every other entranceway of every structure, whether intended for occupancy or not, shall be so maintained as to prevent the structure from becoming a harborage for rodents, vermin and insects and shall be kept in a reasonably good state of maintenance. In addition, every non-dwelling structure located on any dwelling premises shall be maintained in accordance with the provisions of division (B) of this section.
- (10) Fences. Every fence in such condition as to constitute a public health or safety hazard shall be repaired or removed.
- (11) Open areas.

- (a) **OPEN AREA** means that part of a lot or property that is not covered by an enclosed building or structure, regardless of whether the view from outside the property is shielded by a fence, vegetation or other structure. The term OPEN AREA includes, but is not limited to, the yard, open porches, and areas under structures that are not entirely enclosed, such as a carport.
- (b) All open areas and parts of premises shall be maintained and kept in a reasonably clean and neat condition. This requirement shall include the removal of dead trees and brush, the removal of inoperable machines, appliances, fixtures and equipment; the removal of lumber piles and building materials not being used in actual construction on the premises unless such premises are being used by a business dealing in or requiring the use of such lumber and materials, and the storage of these materials for business use is allowed or permitted by ordinance; the removal of tin cans, broken glass, broken furniture, mattresses, box springs, boxes, crates, cardboard, tires, and other garbage and debris; and the removal of furniture and other items of the type not designed or intended to be stored outside or in such a manner that they are exposed to weather and climatic conditions.

571.02 **Nuisance Declared.** Violations a public nuisance. A person or business entity that creates, maintains or allows to continue a condition in violation of this chapter shall be deemed to have created a public nuisance as defined in § 93.01 of this code, which is subject to abatement by the city as provided in this code.

571.03 **Abatement.** Abatement with or without special assessments. Any nuisance created by a condition in violation of this chapter may be, subject to the discretion of the City Council, abated with or without special assessments as described in Chapter 93 of this code.

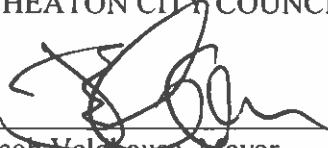
571.04 **Citation.**

- (1) Violations subject to citation. After the notice required by §92.25(E), any person or business entity that allows a nuisance condition in violation of this chapter to continue past the deadline given in the notice letter may be issued a citation by the Police Department.
- (2) Issuance of citation. The citation shall be issued in person or by mail to the occupant of the property on which the violation exists and to the owner of the property if not owner-occupied. The citation shall state the date, time and nature of the offense, the name of the peace officer issuing the citation, the amount of the penalty, the manner for paying the penalty, and that the violator has the right to contest the citation.
- (3) Continued violation. Each day that a violation continues, or is permitted to continue, shall constitute a separate offense in prosecution of such unlawful act.

571.05 **Notice.** Prior to the issuance of a citation as described in §92.25(D), notice of the violation shall be given to the occupant of the property on which the violation exists, as well as the owner of the property if not owner-occupied. This notice shall be in the form of a letter either hand delivered or sent via certified mail to the address shown on the real estate tax certificate. This notice shall state the nature of the violation, the steps needed to remedy the violation, and the date by which the violation must be remedied. This date shall be determined by the City Council.”

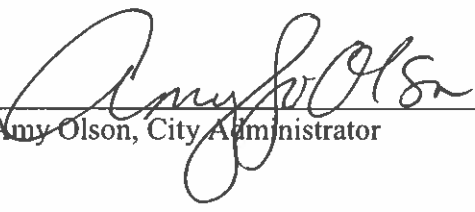
PASSED AND ADOPTED this 27th day of July, 2023.

WHEATON CITY COUNCIL



Jacob Veldhouse, Mayor

ATTEST:



Amy Olson, City Administrator