

**Wheaton, Minnesota
Municipal
Ordinances**

City of Wheaton,
County of Traverse,
State of Minnesota

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CONTACT THE CITY ATTORNEY FOR THE MOST UP-TO-DATE WHEATON
MUNICIPAL CODE.

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HOW TO USE THIS CODE

The primary tools available for finding desired provisions are as follows:

1. A glance at the **table of contents** may lead you to the general area of interest and the particular chapter involved in your situation. By using the handy tabs which divide the major areas of the code you will quickly find the specific chapter at which point you can make use of the “catch” lines” at the beginning of most sections. In many instances you will thus locate the desired code provisions.
 2. The extensive **alphabetical subject index** may be used to locate particular provisions. There will be a direct reference to the section number which you should then be able to turn to without difficulty.
 3. In the event that you know the number of an old ordinance you can simply use the **Derivation Table** which tells you at a glance whether an old ordinance has been repealed or pulled into the code, and if the latter, the code number.
 4. If your problem involves licenses you will want to use **Table A** which lists businesses and activities alphabetically and states code and licensing sections.
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MUNICIPAL CODE

005 ADOPTION OF MUNICIPAL CODE OF WHEATON

005.01 Adoption of Code.

The Ordinances of the City of Wheaton are hereby revised and codified. Such codification is hereby adopted as the "Wheaton Municipal Code".

005.02 Subsequent Ordinances.

Ordinances passed after the effective date of this Code shall be passed as amendments or additions to this Code (unless they are of limited or special application or are designated as not a part of this Code). Such Ordinances shall be incorporated into this Code.

005.03 Consecutive Numbering to Continue.

Consecutive chronological numbering of all Ordinances as passed shall continue and an ordinance book containing all Ordinances, past and future, in chronological order shall be permanently maintained in the office of the City Clerk.

005.04 Severability.

If any chapter, section, subsection, sentence, clause or other part of the Wheaton Municipal Code shall be adjudged void or of no effect, for any reason whatsoever, such decision shall not affect the validity of any other portion or portions of the Code.

005.05 Penalty Clause.

Every person convicted of a violation of any provision of this Code shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$700.00 or by imprisonment for not to exceed 90 days, or both, and in either event at the court's discretion by assessing costs of prosecution, unless otherwise provided in this Code with reference to specific misdemeanors.

005.06 Publication of Code and Effective Date.

This Ordinance, the Wheaton Municipal Code, together with such indexes, supplements, tables, appendices, or other material as the Council may designate, shall be published in book, loose-leaf, pamphlet or newspaper form, and a substantial quantity of copies shall be printed and available for general distribution to the public. The Wheaton Municipal Code shall become operative and effective as soon as the City Clerk shall publish a notice in the Wheaton Gazette for two successive weeks stating that the Code has been passed and adopted and that printed copies thereof are available at the office of the City Clerk for general distribution.

005.07 Repeater Clause.

The following ordinances are hereby repealed and are not included in or made a part of the Wheaton Municipal Code: 3(3); 12; 16; 20; 28; 31; 37; 38; 44; 47; 53; 64; 128; and 152. Further, any and all ordinances of the City of Wheaton not heretofore or hereby repealed which are wholly or in part inconsistent with this ordinance or the Wheaton Municipal Code herein adopted are hereby expressly repealed to the extent of the inconsistency.



005.08 Effect of Repeal.

The repeal of any ordinance or portion thereof by the proceeding section shall not affect or impair any act done or right vested or accrued and any proceeding, suit or prosecution had or commenced shall remain in full force and effect to all intents and purposes as if such ordinance or part thereof so repealed has remained in force. No offense committed and no liability, penalty or forfeiture either civilly or criminally incurred prior to the time when any such ordinance or part thereof was repealed or altered by the Wheaton Municipal Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

005.09 Prima Facie Evidence

Copies of the Wheaton Municipal Code certified by the mayor and the city clerk, under the city seal, and copies of the same printed in any newspaper, book, pamphlet, or other form, and which purport to be published by authority of the council of the City of Wheaton, shall be prima facie evidence of the law of said City.

MUNICIPAL CODE

010 RULES OF CONSTRUCTION

010.01 General.

Words and phrases not specifically defined herein shall be construed in their plain, ordinary and usual sense, except that technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

010.02 Masculine, Feminine or Neuter.

Unless the context clearly requires otherwise, the use of either masculine, feminine or neuter gender shall include the other genders.

010.03 Singular or Plural.

Unless the context clearly requires otherwise, the use of either singular or plural numbers shall include the other number.

010.04 Past, Present or Future.

Unless the context clearly requires otherwise, the use of either past, present or future tense shall include the other tenses.

010.05 Joint Authority.

Words importing joint authority to three or more persons shall be construed as authority to a majority of such persons.

010.06 Computation of Time.

The time within which an act shall be done shall be computed by excluding the first and including the last day. If the last day is Sunday or legal holiday, such day shall be excluded.

010.07 Deputies.

Whenever the Wheaton Municipal Code requires an act to be done, which act may legally be done by an agent or employee as well as the principal, such requirement shall be satisfied by the performance of such act by an authorized agent or employee.

010.08 City Clerk.

The term City Clerk and City Treasurer are used interchangeably herein.

010.09 Conjunctions.

The words "or" and "and" may be read interchangeable where the context requires it.

010.10 Catch Lines.

The catch lines of the various sections of the Wheaton Municipal Code printed in bold face type or underlined are intended to indicate the contents of the section for the convenience of the reader, but shall not be construed as a part of the section.

010.11 Codifier's Notes.

Codifier's notes appearing in the Wheaton Municipal Code are advisory only and do not have the force and effect of law.

010.12 Citation.

It shall be proper to cite specific sections of the Wheaton Municipal Code by indicating "W.M.C." followed by the section number. The citation to this section would thus be W.M.C. 010.12.

AIRPORTS AND AIRCRAFT

50 VEHICULAR TRAFFIC

50.01

No person, firm or corporation shall operate or move any motor vehicle, automobile, truck, tractor or farm machine whether self-propelled or not upon the runways of the Wheaton Municipal Airport or in the ditches adjacent thereto, said airport being located in Section 26, Township 127 North, Range 47 West, Traverse County, Minnesota, except in connection with maintenance of said runways or ditches, or maintenance of an aircraft, or in the event of emergencies involving an aircraft.

50.02

Persons, firms, or corporations operating machinery on cultivated fields adjacent to said runways and ditches shall not park said machines or leave them unattended within a distance of 200 feet of said runways.

50.03

Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

AIRPORTS AND AIRCRAFT

60 MINIMUM STANDARDS FOR AERONAUTICAL ACTIVITY

Section 1. Definitions.

1. Airport. Any reference to "airport" herein shall be to the Wheaton Municipal Airport.
2. City. Any reference to "City" herein shall be to the City of Wheaton.
3. City Administrator. Any reference to "City Administrator" herein shall be to the Wheaton City Administrator.
4. City Council. Any reference to "City Council" herein shall be to the Wheaton City Council.
5. Fix-Based Operator (FBO). An aeronautical service operator who has received permission from the City Council and has designated the airport as the place of business for purposes of a Minnesota Commercial Operator's License. The FBO will provide more than one aeronautical service to the public, for example, flight instruction and airplane maintenance services.
6. Specialized Aviation Service Operator (SASO). An operator who has received permission from the City Council and has designated the airport as the place of business for purposes of a Minnesota Commercial Operator's License and will be providing only one aeronautical service to the public, for example Aerial Agricultural Spraying or Aerial Photography.
7. Temporary Aerial Agricultural Spraying Operator (TAASO). An operator who has not designated the airport as the place of business for purposes of a Minnesota Commercial Operator's License, but wishes to temporarily use the airport as a base for temporary Operations, typically less than 120 days.
8. Operator. Any person, firm, partnership, corporation, association or group and all associated employees (full time, part-time, or contract) that has been awarded a FBO, SASO, or TAASO status

Section 2. Minimum Standards and Airport Rules for All FBOs and SASOs.

- A. Required Documentation for Pilots. All pilots must annually submit to the City Administrator the following documentation to legally conduct commercial business at or from the airport, this includes full time, part-time or contracted pilots of an FBO or SASO:

- 1 FAA Operating Certificate.
- 2 FAA Commercial Pilots License.
- 3 Current Second Class Flight Physical.
- 4 Bi-Annual Log Entrees.
- 5 Current FAA and State Aircraft Registration and Airworthiness Certificate.

B. Required Annual Documentation for All FBOs and SASOs.

1. Minnesota Department of Transportation Commercial License or ability to obtain.
2. Proof of Liability Insurance. Per M.S.A. §360.59, Subd. 10, the minimum insurance coverage for each aircraft must be the following types and amounts: \$100,000 per person and \$300,000 per occurrence for bodily injury and \$100,000 for property damage.
3. Proof of Liability Insurance on all ground vehicles, used in the commercial operation.
4. Proof of Workman's Compensation on all ground and air labor.

C. Required Documentation to request FBO or SASO status. All parties who wish to become a FBO or SASO at the airport must submit an application containing the following information to the City Council for approval before commencing operations:

1. The name, address, and phone number of all individuals who would be owners, partners, or managers, employees that own more than 10% of the business.
2. Type of proposed business, along with copies of current FAA and State of Minnesota licenses and certificates which would be required for the proposed business.
3. The name, address, and phone number of all airports that the operator has worked from for the five-year period immediately prior to submitting the application.
4. Land and/or building space, including undeveloped property, required for business operation. A map must be submitted with the application indicating where the proposed business activity will take place at the airport.

D. Lease. All FBO's or SASO's must agree to a lease for a term to be mutually agreed upon between the parties, with due consideration for an operator's financial investment and the need to amortize improvements to the leasehold.

E. Insurance Cancellation. Any contract of insurance required above must carry an endorsement stating that the contract cannot be cancelled by the insurer until five days' notice (or longer) in writing of cancellation has been given the

City Administrator by the insurer. In any case, when an insurance contract is canceled, notice of cancellation must immediately thereafter be given to the City Administrator by the insurer.

- F. Public Facilities. All operators and employees may use the Arrival Departure building, i.e.: bathroom, phone, etc. They must keep said premises in a clean orderly manner.
- G. Radio Communications. All operators must use radio communications (Unicom) for all take-offs and landings on airport property.

Section 3. Minimum Standards Specific to All Aerial Spray Applicators

- A. Trucks. After a FBO, SASO or Temporary Operator status is granted; all trucks must not exceed 9 tons per axel. Each tire must have a pad of 1' wide by 4' long by 1" thick (1' x 4' x 1") to help prevent sinking into the tarmac. All vehicles must abide by a 10 mph speed limit.
- B. Chemicals: Storage and Disposal. All operators must submit Material Data Safety Sheets (MSDS) to the City Administrator for all chemicals that will be brought onto the airport. In addition, these sheets must be prominently displayed in the areas where the chemicals are being loaded.
 - 1. No chemicals may be stored outdoors unattended.
 - 2. No disposing, discarding, or spillage, of chemicals or their containers on airport premises, or any other city-owned property.
 - 3. All applicators are responsible for spills, theft, vandalism, and injury caused by chemicals and operation of aerial application while operating at the Wheaton Municipal Airport.
 - 4. No Chemicals will be stored at the airport beyond the end of the spray season, which would typically be on or about October 31 of each year.
- C. Minnesota Department of Agriculture. All applicators must abide by all Department of Agriculture rules and regulations and all other pertinent regulations, which includes maintaining a valid Minnesota Department of Agriculture Commercial Pesticide license.
- D. Annual Bond. All spray applicators must submit a bond or post \$2,000 to the City to go towards any clean-up costs. If after 30 (thirty) days from the expiration of the permit and/or end of the spray season, no clean-up is necessary, all money less a 5% administration fee will be refunded. All FBOs, SASOs, or TAASOs will be responsible for their own clean-up costs.

Section 4. Temporary Aerial Agricultural Spraying Operator (TAASO)

- A. All temporary sprayers are to submit to the City Administrator a request to use the airport, accompanied by the documentation required in Section 2A, 2B, 3B, 3C and 3D. The information will be included at the next City Council agenda. The City Council will review the materials, and consider the operator's request to use the facility.
- B. The operator may request a seasonal or daily permit. A standard seasonal, temporary permit must not exceed 120 days. Temporary spray operators requesting a permit longer than this duration must request an exception from the City Council for approval.
- C. The City must be notified when business is begun and completed.
- D. The Temporary Operator will sign/submit the appropriate ground lease agreement supplied by the City Administrator.

Section 5. Rejection of Application for FBO or SASO status.

All applications must be reviewed and acted upon by the City Council within 30 days from the receipt of the completed written documentation. Applications may be denied for one or more of the following reasons:

- A. The operator does not meet qualifications, standards, and/or requirements established by the above-listed Minimum Standards Guidelines.
- B. The granting of the application will require the expenditure of airport funds, labor, or materials on the facilities described in or related to the application, or the operation could have a negative impact on the airport's financial operations.
- C. The proposed operation, airport development, or construction does not comply with the approved Master Plan and/or Airport Layout Plan and the FAA will not agree to the suggested changes.
- D. The applicant has supplied false information, or has misrepresented any material fact in the application or in the supporting documents, or has failed to make full disclosure on the application.
- E. The applicant has a record of violating the rules, regulations, or minimum standards of the airport or any other airport, the Federal Aviation Regulations, other local, state or federal law, or local health regulations.
- F. The applicant has defaulted in the performance of any lease or other agreement with the airport or the City.

Section 6. Miscellaneous Provisions.

- A. Any construction required by an operator must be in accordance with design and construction requirements and regulations of the airport, State, and Federal governments, as well as all applicable local codes. All plans and specifications must be submitted to the City for approval. All operators must be required to furnish to the City any payment and performance bonds commensurate with any construction required under the minimum standards set forth for their individual type of operation.
- B. The location of any operation must be at a site or area determined by the City Council in keeping with the airport Layout Plan. It must also be the right of the City Council to determine the availability of suitable space in keeping with the type of operation to be performed.
- C. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the airport from obstructions, together with the right to prevent any operator from erecting any buildings, signs, or other structures on the airport which, in the opinion of the City, would limit the usefulness of the airport or constitute a hazard to aircraft.
- D. Upon notification by the City Administrator, the operator must provide access within a reasonable time limit to allow for inspection of the interior of the hangar.
- E. In the event of damage to or destruction of the operator's facilities, the operator must agree to repair such facilities or return the site to its original state.
- F. Upon the expiration or earlier termination of any agreement, the operator's rights granted in the agreement must cease, and the operator must immediately surrender such to the City.
- G. All operators must observe and comply with all laws, ordinances, rules and regulations of the United States Government, the State of Minnesota, the County of Traverse, City of Wheaton, and all agencies thereof which may be applicable to its operation, or the operation, management, maintenance, and administration of the airport now in effect or hereafter promulgated. Further, the operator must take out and keep current all City, County, State, and Federal licenses and permits that may be required in its operation, and display to the City Administrator, upon request, said permits and licenses as evidence of compliance.
- H. All contracts and leases between the operator and the airport must be subordinate to the provisions of any existing or future agreement between the

City and the United States Government, relative to the operation or maintenance of the airport, the execution of which has been, or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

- I. All contracts and leases between the operator and the airport must be subordinate to the right of the City, during time of war, national emergency, riot or natural disaster, to lease the entire airport, or any part thereof, to the United States or the State of Minnesota for military or National Guard use and, in such event, the provisions of any contract or lease with such operators, insofar as they are inconsistent with the provisions of any lease to any such unit of government, must be suspended for the period of such government lease.

Section 7. Appeal Process.

Any operator who believes they have been unfairly treated by this process or by interpretations or decisions of the City Council may submit a written request to the City Council for a formal review in front of the City Council.

Section 8. Violation.

A violation of any provision of this Ordinance shall be deemed a misdemeanor offense.”

POLICE AND FIRE DEPARTMENTS

75 INTERFERENCE WITH OPERATIONS

75.01 False Alarms.

It shall be unlawful for any person to tamper, meddle or interfere in any way with any fire alarm, any fire warning system, any wire or telegraphic or telephonic equipment of any kind, provided and used to transmit fire alarms or messages forwarded or sent to or received by any member of the Wheaton Fire Department or official reporting station in the performance of his official duties, and it shall be further unlawful for any person to falsely report a fire or attempt to falsely report a fire to any member of the police or fire departments of the City of Wheaton, through any means whatsoever.

75.02 Interference With Equipment.

It shall be unlawful for any person to tamper, meddle or interfere in any way with any equipment of the police or fire departments of the City of Wheaton or to use any of said equipment for unofficial or unauthorized purposes; and it shall further be unlawful for any person to interfere with or obstruct any member or members of the said fire and police departments in the discharge of their official duties. Nothing herein shall be construed to limit or reduce the supervisory or disciplinary powers of the City Council over members of the said departments.

75.03

It shall be unlawful for any person to tamper meddle or interfere in any way with the radio or radar equipment of the police department of the City of Wheaton, or to use any of said equipment for unauthorized or unofficial purposes, or to use any of said equipment to transmit false messages, alarms or reports or to register, in the case of radar equipment, false or inaccurate readings.

75.04 Penalty.

Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

CROSS REFERENCE: W.M.C. 269.40 and .41

80 ADMINISTRATIVE OFFENSE PROCEDURES

80.01 Purpose.

Administrative Offense Procedures established pursuant to this Ordinance are intended to provide the public and City of Wheaton with an informal, cost effective, and expeditious alternative to traditional court actions for violation of certain traffic and criminal offenses.

The procedures are intended to be voluntary on the part of those who have been charged with administrative offenses. At any time prior to the payment of the administrative penalty, as provided for hereafter, the individual may withdraw from participation in the administrative offense procedures in which event the City may bring traffic or criminal charges in accordance with the law.

Likewise, City of Wheaton, in its discretion, may choose not to initiate administrative offense procedures and may bring criminal or traffic charges in the first instance.

80.02 Administrative Offense.

An administrative offense is a violation of those City ordinances identified by the City of Wheaton City Council and is subject to the administrative penalties set forth on a Schedule of Administrative Offenses and Penalties to be adopted by the City of Wheaton City Council.

Violations which may be charged as administrative offenses and the penalties for such offenses may be established, changed or modified by resolution of the City Council from time-to-time. Copies of such resolutions shall be maintained at the Office of the City Administrator.

80.03 Notice.

Any officer of the City of Wheaton Police Department and/or the City Administrator, having authority to enforce City ordinances, shall, upon determining that there has been a violation, notify the violator, or if a motor vehicle is involved in the violation and the violator is not present at the time, attach the notice of the violation to the vehicle. Said notice shall set forth the nature, date and time of the violation, the name of the official issuing the notice, and the amount of the scheduled penalty.

80.04 Payment.

Once such notice is given, the alleged violator may, within thirty (30) days of the time of issuance of the notice, pay to the City the amount set forth on the schedule of penalties for the violation, or request in writing a hearing, as is provided for hereafter. The penalty may be paid in person or by mail, and payment shall be deemed to be an admission of the violation.

80.05 Administrative Hearing

Any person contesting an administrative offense pursuant to this Ordinance, may, in writing and within fifteen (15) days of the time of issuance of the notice, request a hearing by a hearing officer who shall conduct a hearing to determine if an administrative offense has occurred. The hearing shall be held within 21 days of receipt of a written request for hearing.

The hearing officer shall have authority to dismiss the violation, or to reduce or waive the penalty. If the hearing officer determines that the violation is proven by the preponderance of evidence, the violator shall pay the penalty imposed within thirty (30) days of the decision.

80.06 Hearing Officer.

The Chief of Police and City Administrator will act as hearing officers. Any individual appointed in writing by the City Council may also act as a hearing officer. The appointment is for an indefinite term. At least one hearing officer is authorized to hear and determine any controversy relating to administrative offenses provided for in this Ordinance, and will be assigned on a case-by-case basis. The issuer of a citation to a specific individual may not act as a hearing officer for the same citation.

80.07 Failure to Pay.

In the event a party charged with an administrative offense:

- a. fails to pay the penalty within thirty (30) days of issuance of the notice, or
- b. following a hearing, fails to pay the penalty within thirty (30) days of a decision by the hearing officer, or
- c. fails to attend a scheduled administrative hearing, a traffic or criminal charge may be brought against the alleged violator in accordance with applicable statutes or ordinances.

If the penalty is paid within the times stated above, or if an individual is found not to have committed the administrative offense by the hearing officer, no traffic or criminal charge will be brought by City of Wheaton for the same violation.

80.08 Disposition of Penalties.

All penalties collected pursuant to this Subdivision shall be paid to City of Wheaton and deposited in the City general fund.

80.09 Effective Date.

This Ordinance shall be in full force and effect on and after January 1, 2009.

85 TRAFFIC AND CRIMINAL CODE

85.01 Purpose and Authority.

The City of Wheaton City Council adopts this Ordinance to better protect the safety and welfare of its citizens. The Ordinance is adopted pursuant to Minnesota Statutes 169.022, 412.191, and 412.231.

This Ordinance, in conjunction with the City of Wheaton Administrative Offense Procedures Ordinance, will provide an informal and cost effective alternative to traditional court actions for the violation of certain criminal and traffic offenses. It will provide a more prompt resolution of minor criminal and traffic offenses, will conserve resource of the criminal justice system and will reserve the scarce resources of the court system for the more serious offenses.

85.02 Offenses.

The following acts are violations of the City of Wheaton Traffic and Criminal Code:

- a. **Failure to Obey Traffic Control Signals.** The language of Minnesota Statute 169.06 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.
- b. **Speeding.** The language of Minnesota Statute 169.14 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.
- c. **Improper Lane Use.** The language of Minnesota Statute 169.18 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.
- d. **Improper Turns.** The language of Minnesota Statute 169.19 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.
- e. **Failure to Yield Right of Way.** The language of Minnesota Statute 169.20 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.
- f. **Stopping or Parking on a Roadway.** The language of Minnesota Statute 169.32 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.
- g. **Other Parking Violations.** The language of Minnesota Statute 169.34 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.
- h. **Littering.** The language of Minnesota Statute 169.42 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.
- i. **Equipment Violations.** The language of Minnesota Statutes 169.46 to Minnesota Statutes 169.75, inclusive and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.
- j. **Failure to Use Passenger Restraint for Children.** The language of Minnesota Statute 169.685 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

k. **Seat Belt Violations.** The language of Minnesota Statute 169.686 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

l. **Theft, less than \$50.00.** The language of Minnesota Statute 609.52 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance, except that the value of the stolen property may not exceed \$50.00.

m. **Trespass.** The language of Minnesota Statute 609.605, Subd. 1, and any subsequent amendments thereto, are hereby incorporated in and made part of this Ordinance.

n. **Disorderly Conduct.** The language of Minnesota Statute 609.72 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

o. **Public Nuisance.** The language of Minnesota Statute 609.74 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

p. **Unlawful Deposit of Garbage.** The language of Minnesota Statute 609.68 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

q. **Loud Exhaust.** No driver or operator of a motor vehicle shall allow the discharge into the open air of the exhaust of any vehicle, except through a properly installed and operating muffler or other device which will effectively prevents loud or explosive noises there from.

r. **Exhibition Driving.** No person shall operate a motor vehicle anywhere in the county in such a manner as to cause the spinning or skidding of tires, the squealing of tires, defacing the roadway with black marks or harming the road surface, fishtailing or skidding, accelerating excessively, drag racing, or in any other manner which creates a hazard to the driver or other persons or property, or interferes with traffic in the area.

s. **Off-road Vehicle Violations.** The language of Minnesota Statute 84.804 subd. 1-4 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

t. **Snowmobile Violations.** The language of Minnesota Statute 84.87 subd. 1-2a and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

u. **Animals Running Loose.** No owner of any animal of the species of cattle, horse, ass, mule, sheep, swine, or goat, or any animal which is otherwise domesticated, shall permit said animal to run at large upon the land of another without that landowner's permission.

v. **Animal Welfare Violations.** The language of Minnesota Statute 346.36 to 346.43, and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

w. **Failure To Secure A Load.** The language of Minnesota Statute 169.81, Subd. 5b and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

x. **Inattentive Driving.** The language of Minnesota Statute 169.14, Subd. 1, and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

y. **Tinted Windows.** The language of Minnesota Statute 169.71, Subd. 4, and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

z. **Provisional License.** The language of Minnesota Statute 171.055, and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

aa. **Illegal Burning.** The language of Minnesota Statute 88.16 through 88.171 and any subsequent amendments thereto, is hereby incorporated in and made part of this Ordinance.

85.03 Penalty.

The maximum penalty for a violation of this Ordinance shall not exceed \$300.00

85.04 Effective Date.

This Ordinance shall be in full force and effect on and after January 1, 2009.

90 AN ORDINANCE ESTABLISHING FEES FOR EMERGENCY PROTECTION SERVICES

90.01. Purpose and Intent.

This ordinance is adopted for the purpose of authorizing the City of Wheaton to charge for fire service as authorized by Minn. Stat. §§ 366.011, 366.012, and 415.01.

90.02. Definitions.

- (A) "False alarm" means a request for emergency protection services that is requested when not needed.
- (B) "Fire protection contract" means a contract between the City and a town or other city for the City to provide fire service.
- (C) "Fire service" means any deployment of fire fighting personnel and/or equipment to extinguish a fire or perform any preventative measure in an effort to protect equipment, life, or property in an area threatened by fire. It also includes the deployment of fire fighting personnel and/or equipment to provide fire suppression, rescue, extrication, and any other services related to fire and rescue as may occasionally occur.
- (D) "Fire service charge" means the charge imposed by the City for receiving fire service.
- (E) "Motor vehicle" means any self-propelled vehicle designed and originally manufactured to operate primarily upon public roads and highways, and not operated exclusively upon railroad tracks. It includes semi trailers. It does not include snowmobiles, manufactured homes, all terrain vehicles, or park trailers.
- (F) "Mutual aid agreement" means an agreement between the City and a town or other city for the City's fire department to provide assistance to the fire department of a town or other city.

90.03. Persons Affected.

- (A) Owners of property within the City who receive fire service.
- (B) Anyone who receives fire service from the Wheaton Fire Department as a result of a motor vehicle accident or fire.
- (C) Owners of property in towns or cities to which the City provides fire service pursuant to a fire protection contract.

90.04. Rates.

- (A) \$500 per call flat fee.

90.05. Billing and Collection.

(A) Parties requesting and receiving fire services may be billed directly by the City. Additionally, if the party receiving fire services did not request services but a fire or other situation exists which, at the discretion of the fire department personnel in charge requires fire service, the party will be charged and billed. All parties will be billed whether or not

the fire service is covered by insurance. Any billable amount of the fire charge not covered by a party's insurance remains a debt of the party receiving the fire service.

(B) Parties billed for fire service will have 90 days to pay. If the fire service charge is not paid by that time, it will be considered delinquent and the City will send a notice of delinquency.

(C) If the fire service charge remains unpaid for 90 days after this notice of delinquency is sent, on or before November 15 of each year, the City will certify the unpaid fire service charge to the County Auditor in which the recipient of the services owns real property for collection with property taxes. The County Auditor is responsible for remitting to the city all charges collected on behalf of the city. The City must give the property owner notice of its intent to certify the unpaid fire service charge by October 25.

(D) False alarms will not be billed as fire calls, unless they are based on false reports (ie, whereby an individual intentionally gives false warning of a fire). However, a party will be allowed only one false alarm within a twelve-month span, and will be billed for any other calls made.

90.06. Mutual Aid Agreement.

When the City fire department provides fire service to another fire department pursuant to a Mutual Aid Agreement, the billing will be determined by the Mutual Aid Agreement.

90.07. Application of Collections to Budget. All collected fire charges will be city funds and used to offset the expenses of the City Fire Department in providing fire services, including the maintenance and acquisition of fire equipment and vehicles.

90.08. Effective Date.

The ordinance shall become effective January 1, 2017.

DANGEROUS WEAPONS, EXPLOSIVES, INFLAMMABLES

100 FIREARMS AND OTHER DANGEROUS WEAPONS

100.01 Unlawful to Discharge.

It shall be unlawful to discharge any firearms within the City of Wheaton, except in such places as may be designated by the City Council as rifle ranges or trap-shooting grounds.

100.02 Definition of "Firearms".

The term "firearms" as used herein shall include all guns, pistols, rifles, revolvers, paint guns, CO2 propelled device or other similar devices or weapons.

100.03 Peace Officers Exempted.

The prohibitions contained herein relative to "firearms" shall not apply to duly constituted peace officers in the discharge of their duties.

100.04 Air Rifles, B-B Guns, Pellet Guns, Sling Shots, Bows and Arrows, Cross-bows, Paint-Gun, etc. or any CO2 propelled device.

No person shall use, possess or discharge any air rifle, B-B gun, pellet gun, sling shot, bow and arrow, cross-bow, paint gun or any other CO2 propelled device or other similar weapon within the limits of the city of Wheaton, except in such places as may be designated by the City council as rifle ranges or archery ranges or on the owner's private property.

100.05 Penalty.

Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

DANGEROUS WEAPONS, EXPLOSIVES, INFLAMMABLES

105 FIRE PREVENTION CODE

105.01 Adoption of Fire Prevention Code.

The 1982 Edition of the UNIFORM FIRE PREVENTION CODE as amended is hereby adopted as the uniform fire code of the City of Wheaton for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion. Every provision contained in this code is hereby adopted and made a part of this ordinance as if fully set forth herein, except such portions as are hereinafter deleted, modified or amended.

105.02 Enforcement.

The code hereby adopted shall be enforced by the Chief of the Fire Department.

105.03 Definition.

Wherever the word "Municipality" is used in the code hereby adopted, it shall be held to mean the City of Wheaton, Minnesota.

105.04 Penalties.

Any person who shall violate any of the provisions of the code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the City Council or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively, be guilty of a misdemeanor, punishable pursuant to W.M.C. 005.05.

The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

105.05 Validity

Should any section, paragraph, sentence or word of this ordinance or of the code hereby adopted be declared for any reason to be invalid, it is the intent of the enacting body that it would have passed all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

DANGEROUS WEAPONS, EXPLOSIVES, INFLAMMABLES

110 BOMB THREATS

110.01 Bomb Threats.

It shall be unlawful for anyone:

- a. as a hoax, to communicate or cause to be communicated the fact that a bomb or any other explosive device has been placed in any building or in any location other than a building;
- b. as a hoax, to threaten to bomb any persons, place or building;
- c. to knowingly permit any telephone or other means of communication under his control to be used for any purposes prohibited by this section;
- d. as a hoax, to place or cause to be placed in any location, any article, constructed or placed with intent to give the impression that said article possesses explosive capability.

110.02 Penalty.

Any person who shall violate any provision of this ordinance shall be guilty of a misdemeanor and shall be punished in accordance with W.M.C. 005.05.

ANIMALS

150 DOGS, CATS and COMPANION ANIMALS

150.01 Definitions.

The following definitions shall apply unless specifically stated otherwise in this ordinance:

- Subsection 1. Dog, cat and companion animals shall mean any dog or cat over the age of six (6) months of age of either sex;
- Subsection 2. Owner shall mean any person who keeps, harbors, possesses, owns, cares, or has companion aid with or for a dog or cat;
- Subsection 3. Any dog or cat shall be deemed running at large when such dog or cat is not on a leash which leash is controlled by a person. No leashed dog or cat shall be able to reach a point 15 feet from street curb. When such dog or cat is not securely confined, fenced, penned, or otherwise adequately contained on the premises of the owner or keeper.
- Subsection 4. Law enforcement officer shall include any designated employee of the City of Wheaton as well as recognized law officers of the County of Traverse or the State of Minnesota.
- Subsection 5. The definition of "a dangerous dog" and "potentially dangerous dog" as defined in Minnesota Statutes #347.50, as amended, are incorporated herein.

150.02 Running at Large Prohibited.

No dog or cat shall at any time, be permitted to run at large within the limits of this city. Any dog or cat impounded in violation of this section shall be treated and the owner thereof charged with a violation of this ordinance. No leashed dog or cat shall be able to reach a point 15 feet from street curb.

150.03 Barking or Howling as a Nuisance.

Any dog or cat within this city, which by continual barking, howling or yelping shall annoy the neighborhood, is hereby declared to be a public nuisance, and any owner or keeper of such dog or cat, upon being notified by an law enforcement officer, shall cause such dog or cat to cease & desist or shall so confine such dog or cat so as to effectively terminate the annoyance.

150.04 Vicious Dogs or Cats.

It shall be unlawful for any person to keep and harbor, within this city, any dangerous or potentially dangerous dog or cat, knowing the same to be dangerous or vicious.

150.05 Impounding of Dogs or Cats.

- Subsection 1. **General Authorization.** All law enforcement officers shall be authorized and directed to impound any dog or cat in violation of this ordinance in such a manner as humane as possible but with due regard for the dangerous propensities of such animal.
- Subsection 2. **Suspected Rabies Carrier.** Any dog or cat which has bitten or is

believed to have bitten a human being shall be immediately impounded by the city police and kept at such location and in such manner, as this council shall from time to time designate for a period not to exceed 18 days. It shall be the duty of the Chief of Police to see that such impounded dog or cat is observed by appropriate health authorities so as to determine if said dog or cat is infected with rabies. If it is determined that said dog or cat is so infected, it shall be destroyed and such determination is not reviewable. Further any dog or cat which shall give evidence of sickness or disease or is believed to have bitten by or exposed to a rabid animal may be similarly impounded for a period not to exceed 18 days except that such dog or cat shall be released sooner upon proof of rabies immunization within the preceding two year period and after "booster" injections have been given at owner's expense by a veterinarian licensed in Minnesota.

Subsection 3. **Notice of Impounding.** Upon impounding any dog or cat for any reason the law enforcement officer so acting shall direct the city clerk to post immediately a notice at the City Hall stating the description of said dog or cat, the date of said impounding and the date of posting said notice.

Subsection 4. **Release of Certain Dogs.** Any dog or cat impounded under the provisions of this ordinance, other than under Subsection 2 above shall be held for three days after notice has been posted as provided in Subsection 3 above unless sooner claimed by said owner and upon compliance with all licensing requirements and upon payment of all impounding fees and fines. If said dog or cat is not claimed or the owner found within such period of time, said dog or cat shall be destroyed, provided, however, that any person may claim said dog or cat at the expiration of said above time limit by complying with all licensing requirements and by payment of all impounding fees and fines assessed for violation of this ordinance.

Subsection 5. **Vicious Dogs or Cats**

If any dog or cat is observed in violation of this ordinance and cannot be safely impounded, said law enforcement officer shall be authorized and directed to destroy said animal and any such decision shall not be reviewable.

150.06 Penalty.

Every person convicted of a violation of any provision of this ordinance shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$700.00 or by imprisonment for not to exceed 90 days, or both, and in either event at the court's discretion by assessing costs of prosecution. Impounder's fees shall be in addition to the penalty provided herein.



AMENDMENT TO ORDINANCE NO. 150.03

AN ORDINANCE DEALING WITH ANIMAL NUISANCE
IN THE CITY OF WHEATON

Findings.

1. Whereas the Wheaton City Council has received numerous complaints about dogs barking excessively in the City of Wheaton.
2. Whereas the existing Code of Ordinance contains a provision regulating barking dogs, but the Wheaton City Council does not believe it is sufficiently strong enough to remedy the issue.
3. Whereas, the Wheaton City Council believes it is necessary to modify the existing Ordinance in order to provide stronger enforcement provisions regulating animal nuisances within the City of Wheaton.

THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS:

Section 1. That Ordinance No. 150.03 of the Code of Ordinance for the City of Wheaton is hereby amended, and shall read as follows:

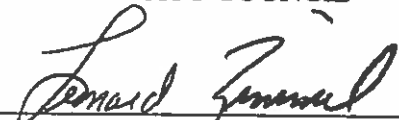
"150.03. Animal Nuisance.

Subsection 1. Any dog or cat within this city, which by continual barking, howling or yelping shall annoy at least one neighbor is hereby declared to be a public nuisance, and any owner or keeper of such dog or cat, upon being notified by a law enforcement officer, shall cause such dog or cat to cease & desist or shall so confine such dog or cat so as to effectively terminate the annoyance.

Subsection 2. The first two times that a law enforcement officer is called to a residence concerning a barking, howling, or yelping dog or cat shall result in a verbal warning to the animal's owner or caretaker by the law enforcement officer. For each time thereafter, the animal's owner or caretaker shall be charged with a misdemeanor offense."

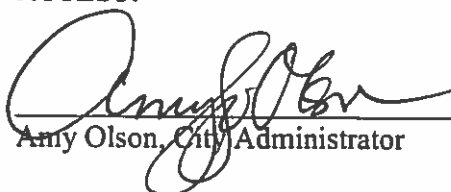
PASSED AND ADOPTED this 27th day of May, 2021.

WHEATON CITY COUNCIL



Leonard Zimmel, Mayor

ATTEST:



Amy Olson, City Administrator



ANIMALS

155 DOMESTIC ANIMALS RUNNING AT LARGE

155.01 Running at large prohibited.

No cattle, horse, mule, sheep, swine, or poultry shall be permitted to run at large within the City of Wheaton, Minnesota.

155.02 Restraining such animals; conditions of release.

If any cattle, horse, mule, swine, sheep or poultry shall be found running at large within the limits of the City of Wheaton, Minnesota, each and every such animal or fowl so found may be restrained by any person, and when restrained may be kept in any place of safe keeping until such restrained animal or animals, fowl or fowls, can be properly placed in the charge of said pound-master and shall not be released therefrom until the owner or claimant shall have paid the said pound-master.

155.03 Duties of Pound-master.

It shall be the duty of the pound master to provide and keep in suitable repair a proper place wherein to keep securely all animals or fowls impounded, and to provide them with proper sustenance while remaining in his charge.

155.04 Public Auction.

And it shall be lawful for the city pound-master, after any animals or fowl have been impounded for five days, and have not been reclaimed, to sell the same at public auction or venue, on giving at least three days notice by posting three notices of sale in three of the most conspicuous places in the City of Wheaton, Minnesota, stating the time when and the place where each sale will be held, and particularly describing in such notice the animals or animals, fowl or fowls, to be sold; providing that any owner or claimant shall have the right to redeem any impounded animal or fowl before the sale thereof, by paying to said pound-master all lawful costs and charges.

155.05 Accounting by Pound-master.

It shall be the duty of the pound-master to render to the City Council a statement at the end of each month, of all fees or moneys collected by him under the provisions of this title, and he shall at the time of rendering said statement to the council, pay over to the city clerk/treasurer all sums due said city, under the provisions of this act, including the amounts received from the sale of any animals or fowls, after having first deducted his lawful fee therefrom.

155.06 Breaking into pound.

Any person or persons who shall break open or attempt to break or open, or in any way directly or indirectly, aid or assist in breaking open any city pound established within the proper limits of the City of Wheaton, Minnesota, shall upon conviction thereof, be punished pursuant to W.M.C. 005.05.

155.07 Appointment of pound-master; vacancies.



Whenever there is a vacancy in the office of the pound-master, the City Police Department shall act as such until such vacancy has been filled by an appointment of the City Council. The City Council shall each year at its first meeting after the annual election, appoint a city pound-master who shall hold office at its pleasure. The duties of the pound-master are defined by the provisions of this ordinance. (Derivation 27(11) no date indicated).

ANIMALS

156 KEEPING OF DOMESTIC ANIMALS

156.01

That no person, persons, corporation or association shall keep any horses, mules, cattle, sheep, goats, hogs, pigs or poultry within the platted portion of the City of Wheaton, or within 200 feet thereof. Exception permits may be issued.

156.02

Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

CABLE TELEVISION

181 FRANCHISE AGREEMENT

This Franchise Agreement is between the City of Wheaton, Minnesota hereinafter referred to as "the Franchising Authority" and Mediacom Minnesota LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware, hereinafter referred to as "the Grantee."

The Franchising Authority hereby acknowledges that the Grantee has substantially complied with the material terms of the current franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise Agreement with the Grantee for the construction and operation of a cable system on the terms set forth herein.

181.01 Terms.

For the purpose of this Franchise Agreement, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. "Basic Cable Service" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- B. "Cable Act" means Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)), the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.
- C. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- D. "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and other services to Subscribers within the Cable Service Area.

- E. "FCC" means Federal Communications Commission or successor governmental entity thereto.
- F. "Franchise" means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. §546) issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other facilities to provide Cable Service or video programming.
- G. "Franchising Authority" means the City of Wheaton.
- H. "Grantee" means Mediacom Minnesota LLC, or the lawful successor, transferee, or assignee thereof.
- I. "Gross Revenues" means revenues derived from Cable Services received by Grantee from Subscribers in the Service Area; provided, however, that Gross Revenues shall include franchise fees, the FCC User Fee, bad debt, tower rent, fees for the sale, leasing, or servicing of equipment, System capacity and/or facilities rent for the provision of non-Cable Services (voice or data services), investment income, advertising revenues, any fees itemized and passed through as a result of Franchise imposed requirements or any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency.
- J. "Multichannel Video Program Distributor or MVPD" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.
- K. "Open Video Services or OVS" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.
- L. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- M. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee

to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.

- N. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.
- O. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.
- P. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

181.02 Grant of Franchise

- A. **Franchise Required.** It shall be unlawful for any Person to construct, operate or maintain a Cable System, an OVS system or other facilities to provide Cable Service or other video programming in the Service Area without a Franchise in the form of this Franchise Agreement authorizing the same, unless applicable federal or State law prohibits the Franchising Authority's enforcement of such a requirement.
- B. **Compliance with Minnesota Statutes.** This Franchise Agreement shall comply with all provisions contained in Minnesota Statutes Chapter 238, and as amended
- C. **Nonexclusive Franchise.** This Franchise Agreement shall be nonexclusive.
- D. **Grant of Franchise.** Grantee is authorized to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services or for any other lawful purposes.
- E. **Additional Franchises.** The Franchising Authority may grant an additional Franchise(s) pursuant to Minn. Stat. §238.081 which is consistent with Minn. Stat. §238.081, subdivision 1(b) and 47 U.S.C. § 541. The Franchising Authority agrees that any grant of additional Franchises or other authorizations including OVS authorizations shall require service to the entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the Grantee. In any renewal of this Franchise Agreement, the Franchising Authority, should it seek to impose increased obligations upon the Grantee, must take into account any additional Franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal are not more burdensome and/or less favorable than those contained in any such additional Franchise(s) or authorizations.

1. In the event Franchising Authority grants one or more additional Franchises or one or more non-franchised MVPD's commence providing Cable Service in the Franchising Authority, Grantee shall have the right to modify this Franchise Agreement as provided herein, terminate the Franchise Agreement or reduce the term of this Franchise Agreement in its sole discretion. All Franchises granted or renewed after the date of this Franchise Agreement shall have the same substantive terms and conditions as this Franchise Agreement in order that one MVPD not be granted a competitive advantage over another. Nothing in this provision shall be constructed in such a way as to limit the Franchising Authority's authority to enter into other Franchises.

2. In the event a MVPD commences operation without a Franchise or is granted a Franchise or permit to operate by the Franchising Authority, the terms and conditions of which do not comply with this Franchise Agreement, Grantee shall notify the Franchising Authority whether it wishes to modify its Franchise Agreement in addition to any rights it may have to modify its Franchise Agreement under state or federal law, terminate the Franchise Agreement or reduce the term of this Franchise Agreement in its sole discretion. The Franchising Authority and the Grantee shall work together in good faith to develop Franchise Agreement modifications which address any competitive inequity and the Franchising Authority shall adopt those modifications within ninety (90) days after receiving notice from Grantee. Failure to adopt the modifications shall allow Grantee to unilaterally opt into the competitor's Franchise or to otherwise reduce or eliminate any obligations imposed by this Franchise Agreement which are not imposed on a competitor in its sole discretion. A MVPD is not an entity that provides direct broadcast satellite services for purposes of this Section. Notwithstanding any provisions of this Section to the contrary, if the Franchising Authority does not possess authority under applicable laws to require a Franchise from any Person, the provisions of this Section shall not apply.

- F. **Conformance with State and Federal Laws and Rules.** The Franchising Authority and Grantee shall conform to state laws and rules regarding Cable Services no later than one (1) year after they become effective, unless otherwise stated. The Franchising Authority and Grantee shall conform to federal laws and regulations regarding Cable Services as they become effective. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable nondiscriminatory local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise Agreement. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise Agreement. In the event of a conflict between any lawful ordinance, regulation or resolution and this Franchise Agreement, the Franchise Agreement shall control.

- A. **Compliance with Code.** The Cable System and any wires, conduits, cable, and other property and facilities of the Grantee shall be located, constructed, installed, and maintained in compliance with applicable law. The Grantee must keep and maintain its property so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places of the Service Area or endanger the life or property of any person.
- B. **Permits.** Pursuant to applicable local law, the Grantee shall obtain a permit from the proper municipal authority before commencing construction on its Cable System, including the opening or disturbance of a street, sidewalk, driveway, or public place. In the event that Grantee fails to meet the conditions of such a permit, the Franchising Authority may seek remedies pursuant to applicable local law.
- C. **Restoration of Public Ways.** Grantee shall comply with applicable law if during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee. Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.
- D. **Procedure for Relocation or Removal for the Franchising Authority.** Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.
- E. **Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.
- F. **No Relief from Liability.** Nothing contained in the Franchise Agreement shall be construed to relieve a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's Cable System while performing work connected with grading, regrading, or changing the line of a

street or public place or with the construction or reconstruction of a sewer or water system.

- G. **Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System.
- H. **Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.
- I. **Access to Open Trenches.** The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.
- J. **Required Extensions of the Cable System.** Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing Cable System where there are at least 10 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the connection point to Grantee's System, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.
- K. **Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of 181.03 paragraph A above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the

remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

- L. **Cable Service to Public Buildings.** The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable Service to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. Falk Park Lodge is owned by the City of Wheaton and will also get free video service. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any inappropriate use of the Grantee's Cable System or any loss or damage to Grantee's Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide a connection to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable Service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.
- M. **Emergency Alert.** Any Emergency Alert System ("EAS") provided by Grantee shall be operated in accordance with FCC regulations. Any use of such EAS by the Franchising Authority will be only in accordance with the applicable state and local plans as approved in accordance with such FCC regulations. Except to the extent expressly prohibited by law, the Franchising Authority will hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including but not limited to reasonable attorneys' fees and costs.
- N. **Reimbursement of Costs.** If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.
- O. **Abandonment.** Notwithstanding any provision in a Franchise, Grantee may not abandon the Cable System or a portion of it without having given three months prior written notice to the Franchising Authority. Grantee may not abandon the Cable System or a portion of it without compensating the Franchising Authority for damages resulting to it from the abandonment.

- P. **Compliance with FCC Technical Standards.** The Grantee shall comply with the technical standards for Cable Systems provided in 47 C.F.R. §§ 76.601-76.617, which regulations are incorporated herein by reference as if fully set forth herein. The results of tests required by the FCC must be filed within ten (10) days of the conduct of the tests with the Franchising Authority. The Franchising Authority shall pay for the cost of any special testing requested by the Franchising Authority to determine if the Cable System is in compliance with these technical standards, unless such testing demonstrates non-compliance in which case Grantee shall pay.
- Q. **Public Inspection.** The Grantee shall make available for public inspection: (1) the length and terms of residential subscriber contracts; (2) the current subscriber charges; and (3) the procedure by which subscriber charges are established, unless such provision is contrary to state or federal law.
- R. **Subscriber Privacy.** No signals of class IV cable communications channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one year, which is renewable at the option of the Subscriber. No penalty may be invoked for a Subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the Subscriber without penalty of any kind. Grantee shall further comply with 47 U.S.C. § 551, which is incorporated herein by reference.
1. No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of the Subscribers or lists that identify the viewing habits of Subscribers, may be sold or otherwise made available to any person other than to the company and its employees for internal business use, or to the Subscriber who is the subject of that information, unless the company has received specific written authorization from the Subscriber to make the data available or unless said information is ordered by a court or subpoenaed;
 2. Written permission from the Subscriber must not be required for the systems conducting ~~system-wide~~ system-wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to clause A;

3. For purposes of this provision, a "class IV cable communications channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the communications system.
- S. **Complaint Resolution Procedure.** Grantee shall comply with the customer service standards promulgated by the FCC under 47 C.F.R. § 76.309.
 - T. **Receipt of Complaints.** Grantee shall provide a toll-free or collect telephone number for the reception of complaints to all Subscribers and shall maintain a repair service cable of responding to Subscriber complaints or requests for service within 24 hours after receipt of the complaint or request.
 - U. **Access Channels.** The Grantee shall provide to each of its Subscribers who receive Cable Service offered on the Cable System, reception on at least one specially designated access channel. Grantee shall establish rules for the administration of the specially designated access channel, unless such channel is administered by the Franchising Authority. Grantee shall make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the access channel in Grantee's sole discretion.

181.04 Regulation by the Franchising Authority

A. **Franchise Fee.**

1. The Grantee shall not pay to the Franchising Authority a franchise fee percent of annual Gross Revenues (as defined in subsection 1.1 of this Franchise Agreement). The city may implement up to a five (5%) fee at their discretion. Written request must be sent to Mediacom 90 days before the fee is implemented. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due annually and payable within 90 days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

2. **Limitation on Franchise Fee Actions.** The period of limitation for audit and recovery by the Franchising Authority of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due to the Franchising Authority, after which period any such payment shall be considered final.

B. **Audit.** The Franchising Authority shall have the right to audit the Grantee's accounting and financial records solely to calculate the Franchising Authority's

franchise fees upon thirty (30) days prior written notice. The Grantee shall file annual reports with the Franchising Authority detailing Gross Revenues and other information the Franchising Authority deems appropriate; provided, however, such information shall be deemed a trade secret under applicable Minnesota law and shall not be disclosed by the Franchising Authority.

C. **Rates and Charges.** The Franchising Authority may regulate rates for the provision of Basic Cable Service and equipment only as expressly permitted by federal law.

D. **Renewal of Franchise.**

1. Any subsequent renewal term of the Franchise Agreement shall be limited to not more than 15 years each. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Franchise Agreement shall be governed by and comply with the renewal provisions of federal law.
2. In addition to the procedures set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise Agreement term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the Franchise Agreement prior to expiration of its term.
3. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal law the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.
4. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.4 to be consistent with the express renewal provisions of the Cable Act.

E. **Conditions of Sale.** If a renewal or extension of the Grantee's Franchise Agreement is denied or the Franchise Agreement is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

1. The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise Agreement, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise Agreement during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

F. **Franchise Transfer.** No sale or transfer of this Franchise Agreement or sale or transfer of stock so as to create a new controlling interest under Minn. Stat. §238.083, shall take place without the written approval of the Franchising Authority, which approval shall not be unreasonably withheld. The Grantee's right, title, or interest in the Franchise Agreement shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without prior written notice to the Franchising Authority. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise Agreement or Cable System in order to secure indebtedness. Pursuant to Minn. Stat. §238.084, Subd. 1(y), if the Franchise Agreement is transferred or sold by Grantee, the Franchising Authority shall have the right to purchase the Cable System. City shall be deemed to have waived its right to purchase the Cable System under this section in the following circumstances:

1. If it does not indicate to Grantee in writing, within thirty (30) days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or
2. It approves the assignment or sale of the Franchise as provided within this section.

181.05 Books and Records

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee and no more than once annually may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise Agreement. Such notice shall specifically reference the subsection of the Franchise Agreement that is under review so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's

representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise Agreement compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

184.06 Insurance and Indemnification

- A. **Insurance.** The Grantee shall maintain insurance as listed below in full force and effect, at its own cost and expense, during the term of the Franchise Agreement. The Franchising Authority shall be designated as an additional insured (excepting for Workers' Compensation) and such insurance shall not be cancelled, materially modified, or not renewed except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.
1. Insurance for liability for damage to property, which shall be no less than One Million Dollars (\$1,000,000.00) as to any one occurrence?
 2. Insurance for liability for injury or death to any person, which shall be no less than One Million Dollars (\$1,000,000.00) as to any one occurrence?
 3. Insurance for excess liability, which shall be Twenty-Five Million Dollars (\$25,000,000.00) in umbrella form?
 4. Insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability, which shall be in the amount of One Million Dollars (\$1,000,000.00)?
 5. Workers' Compensation Insurance which meets all legal requirements of the State of Minnesota.
- B. **Indemnification.** During the term of the Franchise Agreement, the Grantee shall indemnify, defend and hold harmless the Franchising Authority, its officers, boards, commissions, councils, elected officials, agents and employees (collectively the "Indemnitees") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System in the Service Area provided that the Franchising Authority shall give Grantee prompt written notice of its obligation to indemnify the Franchising Authority within a reasonable time of receipt of a claim or action pursuant to this subsection.
1. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting solely from the willful misconduct or negligence of the Indemnitees.

- C. **Municipal Immunities.** The provisions of this section, including the indemnity provisions in 186.06, paragraph B and the procurement by the Grantee of insurance policies meeting the requirements of this section, shall not be interpreted or construed to effect any waiver, suspension, release or alteration of or to any and all immunity or other immunities or damage limits as may be available to the Franchising Authority by law.
- D. **Security.** The Grantee at the time the Franchise Agreement becomes effective and thereafter until the Grantee has liquidated all of its obligation with the franchising authority, shall furnish a performance bond, certificate of deposit, or other type of instrument in the amount of \$10,000 in order to compensate Franchising Authority for Grantee's non-performance. The Franchising Authority may, from year to year and in its sole discretion, reduce the amount of the performance bond or instrument.

181.07 Enforcement and Termination of Franchise

- A. **Franchise Termination.** The Franchising Authority has the right to terminate and cancel the Franchise Agreement and the rights and privileges of the Franchise Agreement if the Grantee substantially violates a provision of the Franchise Agreement, attempts to evade the provisions of the Franchise Agreement, or practices fraud or deceit upon the Franchising Authority. The Franchising Authority shall provide the Grantee with a written notice of the cause for termination and its intention to terminate the Franchise Agreement and shall allow the Grantee a minimum of 30 days after service of the notice in which to correct the violation. The Grantee must be provided with an opportunity to be heard at a public hearing before the governing body of the Franchising Authority before the termination of the Franchise Agreement.
- B. **The Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the notice described in subsection 181.07 paragraph A: (A) to respond to the Franchising Authority, contesting the assertion of such noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of such default, it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.
- C. **Public Hearing.** In the event that the Grantee fails to respond to the notice described in subsection pursuant to the procedures set forth in subsection 181.07, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing,

which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

- D. **Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in paragraph C determines that the Grantee is in material default of any provision of the Franchise Agreement, the Franchising Authority may:
1. Commence an action at law for monetary damages or seek other equitable relief; or
 2. In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise Agreement, seek to revoke the Franchise Agreement in accordance with paragraph E.
- E. **Revocation.** Should the Franchising Authority seek to revoke the Franchise Agreement after following the procedures set forth in subsections A-D above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the Franchise Agreement. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise Agreement at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise Agreement.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise Agreement shall be revoked. If the Franchising Authority determines that the Franchise Agreement shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court which shall have the power to review the decision of the Franchising Authority de novo. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority.

1. The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise Agreement in lieu of revocation.

F. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

1. Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise Agreement for violations of the Franchise Agreement where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

G. **Removal of Facilities.** Upon termination or forfeiture of the Franchise Agreement, unless otherwise required by applicable law, the Grantee shall remove its cable, wires, and appliances from the streets, alleys, and other public places within the Service Area if the Franchising Authority so requests; provided, however, that if Grantee is providing services other than Cable Services or pursuant to applicable law, City shall not require the removal of the Cable System. In the event the Grantee fails to remove its cable, wires, and appliances from the streets, alleys, and other public places within the Service Area, the Grantee will be subject to the procedures of applicable local law.

181.08 Miscellaneous Provisions

- A. **Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
- B. **Entire Agreement.** This Franchise Agreement constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise Agreement shall be mutually agreed to in writing by the parties.

- C. **Reservation of Rights.** Acceptance of the terms and conditions of this Franchise Agreement will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Franchising Authority acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitutions and laws.
- D. **Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise Agreement to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, c) within five (5) business days after having been posted in the regular mail or d) or the next business day if sent by express mail or overnight air courier.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Wheaton
Kris Krenz, City
Administrator
PO Box 868
Wheaton, MN 56296

The notices or responses to the Grantee shall be addressed as follows:

Mediacom Minnesota
LLC
Attn: Legal Department
One Mediacom Way
Mediacom Park, NY
10918

With a copy to:

Mediacom Minnesota LLC
Attn: Regional Vice President
1504 2nd Street SE
Waseca, MN 56093

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

- E. **Franchise Administration.** The Franchising Authority shall notify Grantee of the office or officer of the Franchising Authority responsible for the continuing administration of the Franchise Agreement.
- F. **Descriptive Headings.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.
- G. **Severability.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise Agreement.
- H. **Franchise Term and Effective Date.** The Effective Date of this Franchise Agreement is the date of final adoption by the Franchising Authority as set forth below subject to Grantee's acceptance by countersigning where indicated below. This Franchise Agreement shall be for a term of Ten (10) years from such Effective Date. Considered and approved this 15th day of November, 2014.

This Franchise Agreement shall be for the term of ten (10) years from such Effective Date upon Mediacom signed execution and shall expire on November 15, 2024

Prairieview Trails Development – to be serviced by Mediacom contingent with the 10 year term of this franchise agreement with the City of Wheaton

STREETS, SIDEWALKS, CURBS, ETC.

200 DESIGN AND CONSTRUCTION OF SIDEWALKS, CURBS AND CROSSINGS

200.01 Acceptable Surfaces.

All sidewalks hereafter constructed or replaced on any street in the platted portion of the City of Wheaton, Traverse County, Minnesota, shall be constructed with a top surface of either cement, stone, or tile brick and when completed to be a flat surface on top.

200.02 Dimensions, Certain Sidewalks.

All sidewalks hereafter constructed or replaced in or along the north and south side of Broadway Avenue, from 8th Street to 13th Street and those sidewalks bordering 10th Street and 11th Street between 1st Avenue North and 1st Avenue South, shall be eight (8) feet six (6) inches wide including the curb, and all other street sidewalks within the platted portion shall be five (5) feet wide. The elevation of the edge of the sidewalk along the block line, should be 3" above the top of the curb and shall be 2" on the street side.

200.03 Location of Sidewalks.

All sidewalks (are) to be built up on the block line on the inner side, except in such blocks of the residence portion of said city where cement walks have been heretofore laid, the inner side of which is not more than six inches outside of the block line, all other sidewalks laid in the same block shall be in the line therewith and the top surface thereof, shall be according to grade.

200.04 Curbs, Certain Streets.

All sidewalks constructed, repaired or replaced bordering on Broadway Avenue shall have a curb made of the same material as the sidewalk not less than six inches wide, and not less than sixteen inches deep.

200.05 Non-conforming Sidewalks.

All sidewalks hereafter constructed, repaired, or replaced on the streets and cross alleys of said city, hereafter shall be subject to the supervision of the City Council and any sidewalk or street crossing hereafter constructed; repaired or replaced in violation of the provisions of this ordinance may be removed by said City Council or under their direction and a new walk put in which will be in conformity with the terms of this ordinance.

200.06 "Guards" During Construction.

All persons while constructing sidewalks shall keep up barricades to make the sidewalk's space safe and secure against accidents to persons or property.

STREETS, SIDEWALKS, CURBS, ETC.

201 REPAIR OF SIDEWALKS: INSPECTIONS

201.01 Repairs Required.

The owner of any property within the city abutting a public sidewalk shall keep the said sidewalk in repair and safe for pedestrians. Repairs shall be made in accordance with standards and specifications adopted by this council.

201.02 Inspections, Orders to Repairs, Assessments.

It shall be the duty of the City Council to make such inspections as are necessary to determine that public sidewalks within the city are kept in repair and are safe for pedestrians. If it is found that any public sidewalks abutting on private property are unsafe and in need of repair, the City Clerk shall cause a notice to be served by certified mail - return receipt requested or by personal service, upon the owner of record of the property, and the occupant if the owner does not reside within the city or cannot be found therein. Said notice shall order such owner to have the said sidewalk repaired and made safe or removed within thirty (30) days and shall state that if the owner fails to do so, the City of Wheaton, through its proper officials, will do so and that the expense thereof, must be paid by the owner, and that if unpaid will be made a special assessment against the property concerned.

201.03 Repairs by City.

If the sidewalk is not repaired or removed within thirty (30) days after receipt of the said notice, the City Council shall by resolution order the repair or removal to be carried out by the city maintenance staff or may order the work done by contract as provided by law. The total cost of the repair attributable to each lot or parcel shall be reported to the City Clerk.

201.04 Permit Required for Certain Repairs.

Any person, firm or corporation desiring to lay, re-lay, substantially repair, or construct any public sidewalk, crossing or curb (with the exception of repairs ordered by the terms of this ordinance) may do so only after making application to the City Clerk for a permit therefor; said applicant shall furnish a description of the property adjacent to, or upon which, the work is to be done; if a new grade and grade line is proposed the city maintenance staff or the City Engineer shall be instructed to establish the proper grade and grade line and level for said work; after the issuance of the permit the proposed work may be accomplished and done by the owner or applicant, in accordance with the standards and specifications adopted by this council, and if a new grade or grade line is contemplated, in accordance with the information furnished by the city maintenance staff of the City Engineer; it shall be a misdemeanor punishable pursuant to W.M.C. 005.05 to proceed with sidewalk work as described above without having first secured such permit, to proceed contrary to standards and specifications adopted by this council or contrary to any grade line or level established by the city maintenance crew or the City Engineer.

STREETS, SIDEWALKS, CURBS, ETC.

202 OBSTRUCTION OF STREETS AND SIDEWALKS

202.01 Obstruction of Sidewalks and Streets Prohibited

That whoever at any time obstructs any of the streets, alleys, sidewalks, or crosswalks, within the limits of said City of Wheaton, by allowing such obstruction to remain thereon for a longer time than five (5) minutes, thereby preventing the free use of such streets, alleys, sidewalks, or crosswalks, by the public shall be guilty of a misdemeanor punishable pursuant to W.M.C. 005.05.

STREETS, SIDEWALKS, CURBS, ETC.

203 REMOVAL OF SNOW, ICE AND DEBRIS FROM SIDEWALKS

203.01 Removal by Owner or Occupant.

The owner or occupant of any lot or parcel of real estate with the City of Wheaton which fronts on a sidewalk or is adjacent thereto, shall remove or cause to be removed from said sidewalk within 24 hours after the cessation of any snow or windstorm, all snow, ice, or other debris thereon and shall keep said sidewalk open for the use of pedestrians as above stated. Snow removal operations shall not cause snow to be placed on the street.

203.02 Removal by City.

Upon the failure of the owner of any lot or real estate to remove or cause the removal of the snow, ice or other debris as aforesaid, then and in that event the City shall cause the removal thereof at the owner's expense and the cost thereof assessed against said property as provided by law.

204 DEALING WITH MANAGING THE PUBLIC RIGHT-OF-WAY

1.01 Election to Manage the Public Right-of-Way.

In accordance with the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant to this chapter to manage rights-of-way within its jurisdiction.

1.02 Definitions.

The definitions included in Minnesota Statute Section 237.162, Minnesota Rules 7819.0100 subps. 1 through 23, and Minnesota Rules 7560.0100 subps. 1 through 12 are hereby adopted by reference and are incorporated into this chapter as if set out in full.

1.03 Permit Requirement.

Subdivision 1. *Excavation Permit Required.*

Except as otherwise provided in this code, no person may excavate any right-of-way without first having obtained the appropriate permit from the city. Said permit is required to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

Subdivision 2. *Permit Extensions.*

No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (i) makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

Subdivision 3. *Delay Penalty.*

In accordance with Minnesota Rule 7819.1000 subp. 3, and notwithstanding subd. 2 of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution.

Subdivision 4. *Permit Display.*

Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the director.

1.03 Permit Applications.

Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- (A) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project

and the location of all known existing and proposed facilities, and the following information:

- (1) Each permittee's name, Gopher One-Call registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.
- (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- (3) A certificate of insurance or self-insurance:
 - (a) Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the director;
 - (b) Verifying that the permittee is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the permittee, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of way by the permittee, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
 - (c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - (d) Requiring that the director be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
 - (e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the director in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
 - (f) The city may require a copy of the actual insurance policies.
 - (g) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

(B) Payment of money due the city for:

- (1) Permit fees, estimated restoration costs and other management costs;
- (2) Prior obstructions or excavations;

- (3) Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;
- (4) Franchise fees or other charges, if applicable.

1.05. Issuance of Permit; Conditions

Subdivision 1. *Permit Issuance.*

If the applicant has satisfied the requirements of this chapter, the director shall issue a permit.

Subdivision 2. *Conditions.*

The director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, Section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.

Subdivision 3. *Trenchless Excavation.*

As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City.

1.06. Permit Fees.

Subdivision 1. *Fees*

The city shall establish an Excavation permit fee in an amount sufficient to recover the following costs:

- (A) The city management costs; and
- (B) Degradation costs, if applicable.

Subdivision 2. *Payment of Permit Fees.*

No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit Fees. The city may allow applicant to pay such fees within thirty (30) days of billing.

Subdivision 3. *Nonrefundable.*

Permit fees that were paid for a permit that the director has revoked for a breach as stated in Section 1.21 are not refundable.

Subdivision 4. *Application to franchises.*

Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

Subdivision 5. All permit fees shall be established consistent with the provisions of Minnesota Rule 7819.100.

1.07. Right-of-Way Patching and Restoration.

Subdivision 1. *Timing.*

The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under Section 1.15.

Subdivision 2. *Patch and Restoration.*

Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

(1) City Restoration. If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with having to correct the defective work.

(2) Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rules 7819.3000.

(3) Degradation Fee in Lieu of Restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

Subdivision 3. *Standards.*

The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100

Subdivision 4. *Duty to correct defects.*

The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the director, correct all restoration work to the extent necessary, using the method required by the director. Said work shall be completed within five (5) calendar days of the receipt of the notice from the director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 1.15.

Subdivision 5. *Failure to Restore.*

If the permittee fails to restore the right-of-way in the manner and to the condition required by the director, or fails to satisfactorily and timely complete all restoration required by the director, the director at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

1.08. Supplementary Applications.

Subdivision 1. *Limitation on Area.*

A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided

herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

Subdivision 2. *Limitation on Dates.*

A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

1.09. Denial of Permit.

The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

1.10. Installation Requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right- of-way shall be done in conformance with Minnesota Rules 7819.1100 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes Secs. 237.162 and 237.163.

1.11. Inspection.

Subdivision 1. *Notice of Completion.*

When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules 7819.1300.

Subdivision 2. *Site Inspection.*

Permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subdivision 3. *Authority of City Administrator.*

(1) At the time of inspection the City Administrator may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or wellbeing of the public.

(2) The City Administrator may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the City Administrator that the violation has been corrected. If such proof has not been presented within the required time, the City Administrator may revoke the permit pursuant to Sec. 1.21.

1.12. Work Done Without a Permit.

Subdivision 1. *Emergency Situations.*

(A) Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities that it considers being an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the Emergency.

(B) If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

Subdivision 2. *Non-Emergency Situations.*

Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

1.13. Supplementary Notification.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the director of the accurate information as soon as this information is known.

1.14. Revocation of Permits.

Subdivision 1. *Substantial Breach.* The city reserves its right, as provided herein, to revoke any right of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or

(5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 1.18.

Subdivision 2. *Written Notice of Breach.*

If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations might be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subdivision 3. *Response to Notice of Breach.*

Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, which will cure the breach. Permittee's failure to so contact the city or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the permit.

Subdivision 4. *Reimbursement of City Costs.*

If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

1.15. Mapping Data.

Subdivision 1. *Information Required.*

Each permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100.

Subdivision 2. *Service Laterals.*

All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or their subcontractors shall submit to the city evidence of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals install after December 31, 2005, shall be a condition of any city approval necessary for 1) payments to contractors working on a public improvement project including those under Minnesota Statutes, Chapter 429, and 2) City approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes, Chapter 462. The city shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

1.16. Location of Facilities.

Subdivision 1.

Placement, location, and relocation of facilities must comply with the act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

Subdivision 2. *Limitation of Space.*

To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the director shall have the power to prohibit or director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

1.17. Damage to Other Facilities.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the director shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the city's response to an emergency occasioned by that owner's facilities.

1.18. Right-of-Way Vacation.

If the city vacates a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

1.19. Indemnification and Liability.

By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

1.20. Abandoned Facilities.

Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the director waives this requirement.

1.21. Appeal.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; (4) believes that the fees imposed are invalid; or (5) disputes a determination of the city regarding Section 1.23 subd. 2 of this ordinance may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

1.22. Reservation of Regulatory and Police Powers.

A permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

269 WHEATON TRAFFIC REGULATION ORDINANCE

269.246. Turning and Starting.

Resolved that effective September 27, 1973, with the exception of subdivision 2.

A "U turn" is hereby defined to be a turn made by any vehicle, whereby the said vehicle completes half of a circle in its course; thereby reversing the direction in which it is proceeding to one opposite to that in which it was proceeding before the turn was commenced. No vehicle shall in the City of Wheaton make a U turn other than at an intersection, and further no vehicle shall make a U turn at the intersections of Broadway and 8th, 9th, 10th, 11th and Front Streets.

269.246. Parking for the physically handicapped: Prohibitions, Penalties.

269.35. Snow Alert.

a. Definitions. For purposes of this Section:

(1) "Snow Alert" means a condition created on roadways within the City of Wheaton because of the presence of snow, freezing rain, sleet, ice, or snowdrifts thereon, or other natural phenomenon which, in the judgment of the individual declaring it, creates or is likely to create hazardous road conditions or impede or is likely to impede the free movement of fire, health, police, emergency, or other vehicular traffic.

(2) "Street" means any street, avenue, alley, or other public road or way within the City of Wheaton.

(3) "Media" means the Wheaton City Access channel and the Morris radio stations KMRS radio 1230 AM and KKOK radio 95.7 FM, and the City of Wheaton website.

(4) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a street or highway, and includes but is not limited to automobiles, vans, trucks, buses, motorcycles, bicycles, recreational vehicles, tractors, all-terrain vehicles, snowmobiles, and trailers.

b. Declaration of Snow Alert

A snow alert may be called by the Mayor or the Mayor's designee, or the Chief of Police or Street Supervisor in conjunction with any member of the City Council. When a snow alert is to be declared, notice will be given to the residents by the media. Notice will be given 12 hours prior to declaring the snow alert. The snow alert shall remain in effect until the event has ended and the streets have been cleared of snow from curb to curb by city plows, or until notification is otherwise of its ending

is given through the media. A snow alert may be also extended for additional time by giving notice to the media.

c. Parking During Snow Alert

It shall be unlawful for any person to park, abandon, or otherwise leave any unattended vehicle on the street during the snow alert. Proof that a person or entity was the owner or lessee of a vehicle at the time of an alleged violation of this Section shall constitute prima facie evidence that such owner or lessee is the person or entity that committed the violation.

d. Other Winter Parking

In cases calling for routine snow removal when a snow alert has not been declared, where a vehicle has not been moved after the street has been plowed, notice shall be given to the owner or person in control of the vehicle. Notice shall be given in writing, either in person, by U.S. mail, or by attaching the notice to the vehicle. Notice can be given by any member of the Wheaton Police Department, the City Administrator, or the Street Supervisor. The notice shall state the time that the vehicle must be moved by, and said vehicle shall be removed prior to said time and not placed back upon the street until the street has been cleared of snow.

269.354 Violations and Impound.

If any vehicle is parked, abandoned, or left standing in violation of Subdivision 3, the following consequences shall be applied:

- a. **First Offense.** The vehicle shall be towed and impounded. A \$25.00 impound fee shall be assessed to the tow fee.
- b. **Second or Subsequent Offense.** The vehicle will be impounded, a \$25.00 impound fee will assessed to the tow fee, and a petty misdemeanor citation shall be issued for violation of this Section pursuant to Subdivision 10 below.
- c. No vehicle shall be released from impound until the tow and impound fees have been paid in full to the City Administrator Office.
- d. Any vehicle impounded under this section and not claimed within 30 days will be dealt with pursuant to the provisions of Wheaton City Ordinance No. 277.
- e. Vehicles that are impounded under this section will be towed to a location determined by the Wheaton Police Department.

269.355 Loading Zone.

a. Definitions.

- a. "Loading Zone" means an area of a public street or alley, within the city of Wheaton, which is reserved for the use of vehicles loading and

unloading inventory, goods or equipment being shipped by, or delivered to, a place of business.

- b. The City Council shall, by resolution, designate the location of loading zones, specifying the days of the week, and hours of each day, during which the designation shall be enforced.
- c. The City Council shall erect and maintain official signs identifying loading zones and the time of day such designation is in effect.

b. Penalty.

No person shall stop or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer, in any area designated and posted as a loading zone. Any vehicle using a loading zone to load or unload inventory, goods or equipment being shipped by, or delivered to, a place of business, shall not be considered either stopped or parked within the loading zone for purposes of this ordinance. Every person convicted of a violation of this ordinance shall be guilty of a petty misdemeanor and pay a fine of \$25.00.

c. Tow away, fees.

The City shall have the authority to have any vehicle stopped or parked in violation of this ordinance towed away at the owner's expense. The vehicle owner shall also be liable to the City for an impound and storage fee of \$10.00 per day.

269.357

Parking.

The marking of fire lane on public property and private property devoted to public use shall be as designated by the fire chief and approved by the City Council. No person shall park a motor vehicle or otherwise obstruct a duly designated and approved fire lane on either private or public property unless said person is a duly authorized member of the City of Wheaton Fire Department and/or Police Department and in the exercise of his official duties during an actual emergency. Any person who violates the provisions of Subdivision 7 is guilty of a petty misdemeanor and shall be fined not more than \$100.00. The above ordinances shall be in full force and effect thirty (30) days after their passage and publication.

269.359

School Bus Zone.

Subd. 1 Definitions

- a. "School Bus Zone" means an area of a public street, within the City of Wheaton, which is reserved for the use of school buses for the purpose of receiving or discharging any school child or children.
- b. "School Bus" means a motor vehicle as defined in MN Stat. 169.01, subd. 6, which said section is hereby incorporated by reference for purposes of this Ordinance.

- c. The city Council shall, by resolution, designate the location of School Bus Zones, specifying the hours of each school day, during which the designation shall be enforced.
- d. The City Council shall erect and maintain official signs identifying School Bus Zones and the time of each school day such designation is in effect.

Subd. 2. Violation: penalty

No person shall stop or park a vehicle, except a school bus, in any area designated and posted as a School Bus Zone, except:

- a. When necessary to avoid conflict with other traffic, or
- b. in compliance with the direction of a police officer.

Every person convicted of a violation of this Ordinance shall be guilty of a petty misdemeanor and pay a fine of \$50.00.

Subd. 3. Tow away, fees.

The City shall have the authority to have any vehicle which is stopped or parked in violation of this Ordinance towed away at the owner's expense. The vehicle owner shall also be liable to the City for an impound and storage fee of \$10.00 per day.

This ordinance shall be in force and effect from and after its adoption and publication as required by law.

Passed by the Wheaton City Council this 28th day of October, 1993.

Subsection 3. All persons in control of all other vehicles shall yield the right of way to any fire apparatus traveling upon the streets of said City, and all persons in control of other vehicles when any fire apparatus is approaching shall drive such vehicle to the curb and stop the same and such vehicle shall remain stationary until such fire apparatus shall have passed.

CROSS REFERENCE: W.M.C. 75.01 "insert": (Parking for the Physically Handicapped: Prohibitions, Penalties)

M.S.A. 169.79 is adopted by reference.

269.80 Size, Weight, Load and Weight Limitations.

Subsection 1. The operation of vehicles upon the improved portions of the streets in the City of Wheaton in excess of ten thousand (10,000) pounds per axle weight is prohibited except under the following circum-

stances:

- a. That said street, roadway, or highway has been designated by City Council as a truck route and posted as same.
- b. Unless application is made, presented, and granted for moving such a motor vehicle in excess of the above stated weight limitations. Said application to be approved by the city clerk, chief of police, and one member of the City Council.
(Derivation 140(2) March 8, 1962).
- c. No truck parking on any residential street in the city.
- d. Garbage trucks, utility trucks and other essential vehicles will be allowed on city streets with an annual permit.

Subsection 2. No street, roadway or highway shall be deemed to be a "truck route" within the above exception (sic) until such street, roadway, highway is designated as such at a regular meeting of the city council and by passage of said resolution by a majority of the members of said council and further, that such street, roadway or highway is clearly designated as a truck route by the placing of signs along such street, roadway or highway under the direction of the City Council.

Subsection 3. Such truck routes and weight limitation as set forth in subdivision 3, may be changed by an affirmative vote of the City Council from time to time as said council deems just and proper.

269.85 Weighing

A police officer having reason to believe that the weight of a vehicle and load is unlawful pursuant to W.M.C. 269.80 is authorized to require the driver to stop and submit to a weighing of the same, either by means of portable or stationary scales and may require that such vehicle be driven to the nearest public scales in the event such scales are within five miles. Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing, or who fails or refuses, when directed by an officer upon a weighing of the vehicle, to stop the vehicle and otherwise comply with the provisions of W.M.C. 269.80 shall be guilty of a misdemeanor.

269.88 Damages; Liability.

Any person driving any vehicle, object or contrivance upon any highway or street structure in the city shall be liable for all damage which the highway or street may sustain as a result of any illegal operation, driving, or moving of such vehicle, object or contrivance, or as a result of operation, driving, or moving any vehicle, object or contrivance weighing in excess of the maximum weight provided in Ordinance 140 but authorized by a special permit issued pursuant to said ordinance. When such driver is not the owner of such vehicle, object or contrivance but is operating, driving or moving the same with the express or implied permission of the owner, then the owner and driver shall be jointly and severally liable for any such damage. Any person who by his willful acts or failure to exercise due care, damages

any road, street or highway shall be liable for the amount thereof. Damages under this section may be recovered in a civil action brought by the city.

TRAFFIC and REGULATIONS

270 OPERATION OF SNOWMOBILES AND SNOWMOBILE ROUTES

270.01: No snowmobile shall be operated on any street or alley in the City of Wheaton, Minnesota in excess of 20 miles per hour.

270.02: No snowmobile shall be operated in the City of Wheaton, Minnesota between the hours of 1:00 a.m. and 7:00 a.m.

270.03: No snowmobile shall be operated on any street, avenue or alley in the City of Wheaton, Minnesota without displaying a red or orange flag, the top of which, when mounted on the snowmobile, shall not be less than 72 inches from the ground.

270.04: The snowmobile shall yield at all intersections before entering the intersection.

270.05: No snowmobile shall be operated at or upon any of the following:

- a. on any public sidewalk
- b. on the private property of another without first obtaining permission from the owner.
- c. upon city airport
- d. on the school grounds unless authorized by the school board.

270.06: No snowmobile shall be operated in a careless, reckless or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.

270.07: No snowmobile shall be operated while under the influence of intoxicating liquor or narcotics or habit forming drugs.

270.08: No snowmobile shall be operated without a lighted head and tail light when required for safety.

270.09: No snowmobile shall be operated without registration numbers as required by law.

270.10. There shall be no operation of a snowmobile in violation of state law or in violation of any regulation of the Department of Natural Resources.

270.11 **Snowmobile Routes.**

Snowmobiles shall be operated on the alleys and snowmobile routes herein established and shall not be operated on any other street of the City of Wheaton except for the purpose of reaching and leaving the established routes by the most direct street route to the home of the operator, or the usual place of storage of the snowmobiles. The snowmobile routes as established are as follows:

West to East South Route:

2nd Avenue South from Highway 27 West to Highway 27 East Junction Highway 75. Also 1st Avenue South from 7th Street South to 2nd Street South.

West to East North Route:

Along 3rd Avenue North, from 18th Street North, to Trail Street. Then North along Trail to Cottonwood Avenue; then Cottonwood Avenue to 13th Street North. Then along 13th Street South to 5th Avenue North then 5th Avenue Northeast to Highway 75 North. Then Highway 75 Northeast along 5th Avenue North to 3rd Street North.

North to South Route West:

Along 18th Street North from 3rd Avenue North to Broadway West, then along Broadway West, to West Highway 27.

North to South Route West Central:

Trail Street to 1st Avenue North. Then east to Front Street then Front Street to Highway 75 South.

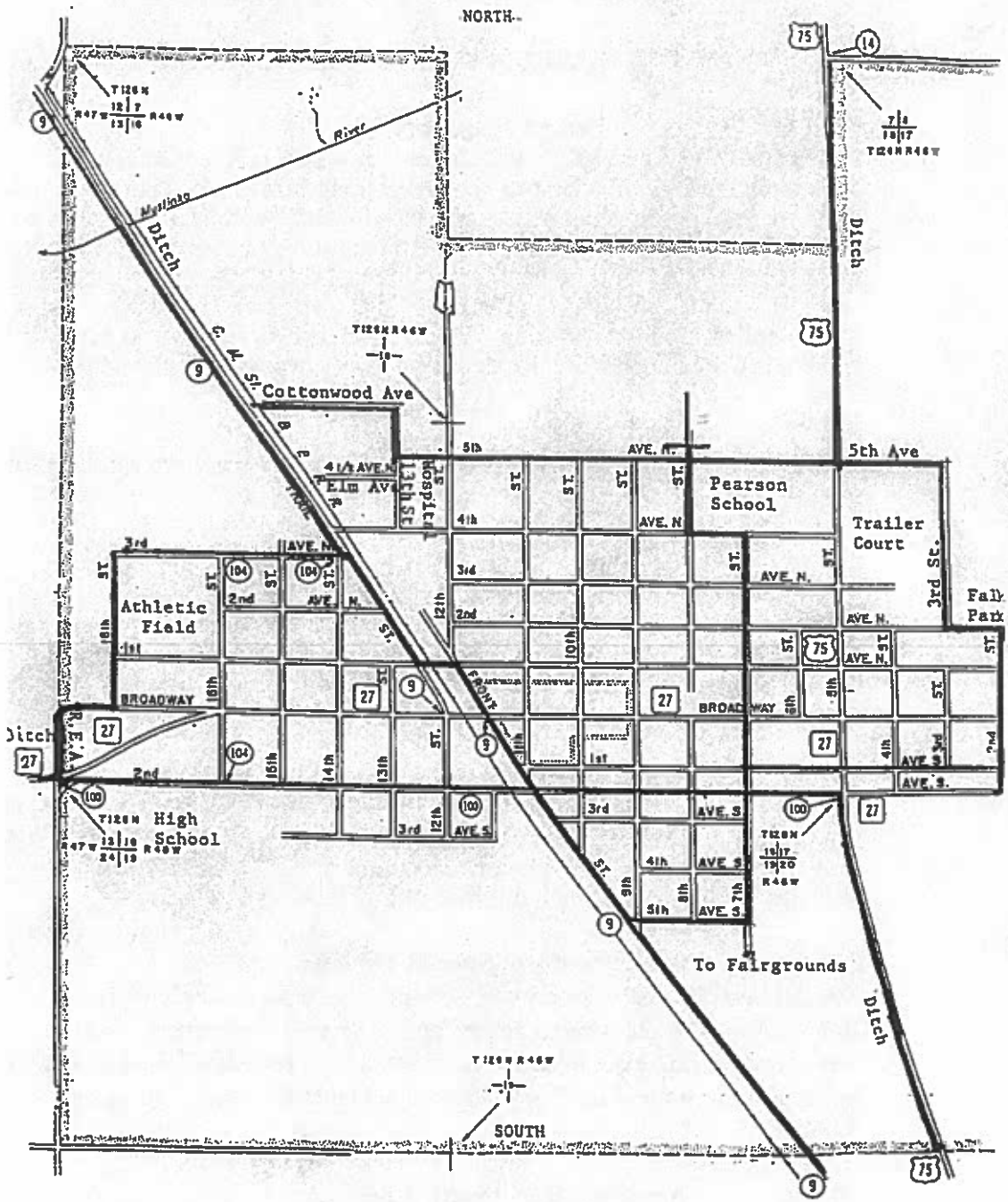
North to South Route Central:

Along 8th Street from 6th Avenue North to 4th Avenue North. Then 4th Avenue North East to 7th Street North. Then along 7th Street North to 5th Avenue South. Then 5th Avenue South to Front Street.

North to South Route East:

Along 3rd Street from 5th Avenue North to 2nd Avenue North. Then East along 2nd Avenue North to 2nd Street then South on 2nd Street to Highway 27 East.

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



TRAFFIC AND TRAFFIC REGULATIONS

271 USE OF SPECIAL VEHICLES ON ROADWAYS

271.011 Permit Required.

In order to drive a special vehicle, defined as a golf cart or other similar vehicle, in the City of Wheaton, the driver must first obtain a permit in order to do so. Said permit shall be issued through the Wheaton City Council upon application to them and subsequent certification by a medical physician that the driver has the ability to handle the special vehicle. The permit shall be valid for exactly one (1) year after its issuance, after which the driver must make application for a new one. The permit may also be revoked at any time if there is evidence that the driver cannot safely operate the special vehicle.

271.02 Age Restriction.

No one under the age of 16 years of age is eligible to receive a special vehicle permit.

271.03. Location.

Special vehicles may be driven on any street in the City of Wheaton, with the exception that they may not be used on Highway 75, Highway 27, and Second Avenue South. This exception does not include preventing the driver of a special vehicle from making a direct crossing at the intersection of these roads.

271.04 Times of Operation.

Special vehicles may be operated only from sunrise to sunset. They shall also not be operated in inclement weather, smoke, fog, or other similar conditions, or at any time when there is insufficient light to clearly see persons and vehicles on the roadway at a distance of 500 feet.

271.05 Attachments to Special Vehicle.

Special vehicles shall display the slow-moving vehicle emblem provided for in M.S.A. § 169.522 when operated on designated roadways, as well as a red or orange flag extending no less than two (2) feet above the highest point of the vehicle. The flag shall be attached to the rear of the special vehicle.

271.06 Application of Traffic Laws.

Every person operating a special vehicle under permit on designated roadways has all the rights and duties applicable to the driver of any other vehicle under state law, except when those provisions cannot reasonably be applied to special vehicles and except as otherwise specifically provided in subdivision 7.

271.07 Nonapplication of Certain Laws.

The provisions of M.S.A. §171 are not applicable to drivers operating special vehicles under permit on designated roadways pursuant to this Ordinance.

Except for the requirements of section M.S.A. § 169.70, the provisions of this chapter relating to equipment on vehicles is not applicable to special vehicles operating, under permit, on designated roadways.

271.08 Insurance.

In the event drivers operating a special vehicle under this section cannot obtain liability insurance in the private market, that person may purchase automobile insurance, including no-fault coverage, from the Minnesota Automobile Assigned Risk Plan at a rate to be determined by the commissioner of commerce. If no insurance can be obtained, then a security payment in the amount of \$50,000 for tort liabilities must be maintained at the Wheaton City Hall.

271.09 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 shall constitute a separate offense.

TRAFFIC AND TRAFFIC REGULATIONS

276 REMOVAL OF ILLEGALLY PARKED CARS

276.01

If any vehicle or other object is parked, placed, or left anywhere in the City in violation of any of the provisions of a State Statute, any police officer of the city shall have the right to take possession of such vehicle or other object and cause the same to be removed and placed in storage. The owner of such vehicle or other object, or other person in charge of or entitled to possession of the same, shall be liable for the following impounding and storage fees which fees shall be paid in full prior to releasing the vehicle or other object from storage: Fifty and no/100, \$50.00 Dollars shall be charged for the first seventy two (72) hours and Ten and no/100 (\$10.00) Dollar per day shall be charged thereafter. Said fees shall be in addition to any towing fees which may have been charged. Should any vehicle remain in storage for fourteen (14) days or more, it shall be deemed to be an abandoned vehicle and shall be dealt with pursuant to Wheaton City ordinance number 277. Any fees payable hereunder shall be paid to the City Police Department at least monthly to the City Clerk – Treasurer. Prior to the release of any vehicle or other object impounded pursuant to this Ordinance, the person seeking the release thereof shall furnish evidence of ownership sufficient to indicate he has the right to possession of the vehicle or other object. The costs provided for in this ordinance are in addition to any penalty herein provided for the violation of this Ordinance. The provisions of this ordinance relating to impounding and storage fees shall also be applicable to any vehicle lawfully seized by officers of the City Police department for any reason. All vehicles lawfully impounded for any reason shall be searched and the contents thereof shall be inventoried for the protection of all parties involved.

276.02 **Exhibition Driving Prohibited.**

No person shall turn, accelerate, decelerate or otherwise operate a motor vehicle within the city in a manner which causes unnecessary engine noise or backfire, squealing tires, skidding, sliding, swaying, throwing of sand or gravel, or in a manner simulating a race. Unreasonable squealing or screeching sounds emitted by tires is prima facie evidence of a violation of this section. Violation of this ordinance shall constitute a petty misdemeanor.

TRAFFIC AND TRAFFIC REGULATION

277 DISPOSAL OF UNCLAIMED PROPERTY

277.01 All property lawfully coming into the possession of the City of Wheaton, Minnesota, and unclaimed by its owner, shall be disposed of as provided by this ordinance.

277.02 The department of the City into whose possession property comes shall arrange for the storage of same. If municipal facilities for storage are unavailable or inadequate, arrangements for storage at privately owned facilities may be arranged.

277.02.01 The owner of property may claim the same by exhibiting satisfactory proof of ownership and paying the City any storage or maintenance costs incurred by the City. A receipt for the property shall be obtained upon release to the owner.

277.02 .02 In the event that the property remains unclaimed in the possession of the city for a period of three (3) months, the property shall thereafter be sold to the highest bidder at a public auction conducted by the Chief of Police. Such auction shall be held after two (2) weeks published notice setting forth the time and place thereof and the property to be sold.

277.03 The net proceeds from the sale of such property after deduction of storage costs incurred, if any, shall be placed in the treasury of the City.

277.04 Notwithstanding any provision of this ordinance hereinbefore to the contrary, the provisions of this ordinance shall apply to abandoned motor vehicles:

Section A: the City Police Department shall take into custody and impound any abandoned motor vehicle.

Section B: When an abandoned motor vehicle is taken into custody the Police Department shall give notice of the taking within ten (10) days. The notice shall set forth the date and place of the taking, the year, make, model, and serial number of the abandoned vehicle, and the place where the vehicle is being held and shall inform the owner, and any lien holders, of their right to reclaim the motor vehicle under the provisions of Section C of this Article hereinafter set forth, and shall state that failure of the owner or lien holders to exercise their right to reclaim the vehicle shall be deemed a waiver by them of all right, title and interest in the vehicle and a consent to the sale of the vehicle at a public auction pursuant to the provisions of this ordinance. The notice shall be sent by certified mail to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lien holders of record. If it is impossible to determine, with reasonable certainty, the identity and address of the registered owner and all lien holders, the notice shall be published once in the official newspaper of the city.

Section C: The owner or any lien holder of an abandoned motor vehicle shall have a right to reclaim such vehicle from the City upon payment of all towing and storage charges resulting from taking the vehicle into custody within fifteen (15) days after the date of the notice described in Section B above. Nothing contained in this Ordinance shall be construed so as to impair any lien of any garage keeper under the laws of this State or the right of a lien of any garage keeper under the laws of this State or the right of a lien holder to foreclose. For the purpose of this Section, "garage keeper" is an operator of a parking facility, or operator of an establishment, for the servicing, repair or maintenance of motor vehicles.

Section D: An abandoned motor vehicle taken into custody and not reclaimed shall be sold to the highest bidder at public auction or sale. Notice of such auction or sale shall be given one (1) publication in the official newspaper for the City. The sale or auction may take place at any time ten (10) days after the date of such publication. The purchaser shall be given a receipt which shall be sufficient title to dispose of the vehicle. The receipt shall also entitle the purchaser to register the vehicle and receive a Certificate of Title free and clear of all liens and claims of ownership.

Section E: When an abandoned motor vehicle is more than seven (7) model years of age, is lacking vital component parts, and does not display a license plate currently valid in Minnesota, or any other State or foreign country, it shall immediately be eligible for sale at public auction and shall not be subject to the notification, reclamation, or title provisions of the foregoing Sections of this Ordinance.

Section F: From the proceeds of the sale of an abandoned motor vehicle, the City shall reimburse itself for cost of towing, preserving, and storing the vehicle and all notice and publications costs incurred pursuant to this Ordinance. Any remainder from the proceeds of the sale shall be held for the owner of the vehicle or entitled lien holder, for ninety (90) days and then shall be deposited in the general fund of the City.

Section G: As used in this Ordinance, the following terms have the following definitions:

"Abandoned motor vehicle" means a motor vehicle as defined in Minnesota Statutes Section 169.01 that has remained for a period of more than forty (48) hours on public property illegally or lacking vital component parts or has remained for a period of more than forty eight (48) hours on private property, without consent of the person in control of such property, or in an inoperable condition such that it has no substantial, potential further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building. A "classic car" or "pioneer car" as defined in Minnesota Statutes Section 168.10, shall not be considered an abandoned motor vehicle within the meaning of this ordinance.

“Vital component parts” means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle including, but not limited to the motor, drive train and wheels.

Section H: When no bid has been received for an abandoned motor vehicle, the City may utilize its equipment and personnel for the disposal of such motor vehicle or may contract with others for the disposal of such motor vehicle in accordance with the laws of the State of Minnesota.

277.05. Any person who abandons a motor vehicle on any public or private property without the consent of the person in control of such property is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Seven Hundred and no/100 (\$700.00) Dollars or by imprisonment for not more than ninety (90) days or both.

BEERS AND LIQUORS

300 3.2 PERCENT MALT LIQUOR

300.01 Definition of Terms.

Subsection 1. As used herein the term "person" shall mean and include all natural person or persons, co-partnerships, corporations, and associations of persons: and shall include the agent or manager of any of the aforesaid. The singular number shall include the plural. The masculine pronoun shall include the feminine and neuter.

Subsection 2. "3.2 malt liquor" shall mean any drinkable malt 3.2 percent beverage with an alcoholic content of more than $\frac{1}{2}$ of 1 percent liquor by volume and not less than 3.2 percent by weight .

Subsection 3. "Original Package" as used herein shall mean the sealed container in which the liquor is placed at the place of manufacturer or as hereafter defined by law.

300.02 License Required.

No person shall sell, vend, deal in or dispose of, by gift, sale or otherwise, or keep or offer for sale, any 3.2 percent intoxicating malt liquor within this city without first having received a license therefore as hereinafter provided. Licenses shall be of two kinds: "on sale" and "off sale".

300.03 Applications for Licenses.

All applications for licenses to sell 3.2 percent liquor shall be made on forms supplied by the city with such information as the council may require from time to time. It shall be unlawful to make any false statement in an application.

300.04 License Fees.

All applications for licenses shall be accompanied with payment of the license fee hereinafter indicated, which fee shall be paid into the general fund of the city. Said fee shall be refunded upon rejection of the application. Annual fees shall be adjusted at the first meeting in January of each year. Each applicant shall pay to the city Clerk a non-refundable fee of \$5.00 for receiving and filing each application.

300.05 Illegal Consumption

Subsection 1. There shall be no sale or consumption of intoxicating malt liquor on any public street or alley, on any city owned property, or on any lot used for public gatherings unless such establishment as may be located thereon is duly and properly licensed to sell intoxicating malt liquor for on premises consumption.

Nor shall there be any sale or consumption of intoxicating malt liquor in any theater, in any city owned building, in any recreation hall or center, dance hall or in any building used for public gatherings unless such establishment is duly and properly licensed to sell intoxicating malt liquor for on premises consumption.

Subsection 2. No person shall drink any liquor containing more than $\frac{1}{2}$ of 1 percent of alcohol by volume as a beverage in any theater, picture show, hall, dance, ball park or any place of public gathering nor in any place of business while open to the public, excepting such places as have been by law duly licensed for such purpose, or cause to be given to any other person in any of said places, such liquor as a beverage, within the City of Wheaton.

Subsection 3. No person and no corporation engaged in business and maintaining a place of business within the City of Wheaton, their agent, servants or employees shall knowingly permit any person to drink any such liquor as a beverage within the place of business operated or maintained by said person, persons or corporation and while open to the public unless said place of business has obtained a license permitting same to be consumed therein.

300.06 Sale to Minors

No sale of any 3.2 percent malt liquor shall be made to any person under guardianship, nor to any person under 21 years of age.

300.07 Inspection of Premises

All premises where any license hereunder is granted shall be open to inspection by any police or health officer or other properly designated officer or employee of the city at any time.

300.08 Licenses Non-transferable.

All licenses granted under this ordinance shall be issued to the applicant only and shall be issued for the premises described in the application. Such license shall not be transferred to another place without the approval of the city council.

300.09 No license shall be granted for sale within three hundred feet of any public school building, church or hospital.

300.10 Hours of Operation.

No sale of any 3.2 percent malt liquor shall be made on any week-day between the hours of 1:00 o'clock a.m. and 8:00 o'clock a.m., nor on Sunday between the hours of 1:00 o'clock a.m. and 12:00 o'clock noon.

Hours of operation for the sale of all 3.2 percent malt liquor in the City of Wheaton shall conform to Minnesota State Statute Chapter #340A.504.

300.12 Miscellaneous Provisions

In any place licensed for "on sales" windows in the front of any such place shall be of clear glass, and the view of the whole interior shall be unobstructed by screens, curtains, or partitions. There shall be no partition, box, stall, screen, curtain or other device which shall obstruct the view of any part of said room from the general observation of persons in said room, provided however, that partitions, subdivisions, or panels not higher than fifty-four inches from the floor shall not be construed as in conflict with the foregoing; and provided, however, such license shall entitle the holder thereof to serve 3.2 percent malt liquors in a separate room to banquets or dinners at which are present not less than 12 persons.

300.13 Revocation of Licenses.

Any license granted hereunder may be revoked or suspended by the council without notice to the grantee. Hearing will first be held by the council and the revocation then made for cause. Any violation of any provision or condition of this ordinance or any statement in the application shall be grounds for revocation. No portion of the licenses fee paid into the city treasury shall be returned upon revocation.

300.14 Penalty

Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

BEERS AND LIQUOR

301 INTOXICATING LIQUOR

301.01 Definition of Terms.

M.S.A. §340A, as amended, is hereby adopted and made part of this ordinance in all respects as if set out in full herein. Section 1 of Chapter 46, Special Session Laws of M.S.A. §340A for 1933-34, is hereby adopted and made part of this ordinance in all respects as if set out in full herein.

For purposes of this Ordinance, a restaurant is defined as follows: an eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus, and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this section, an establishment shall have a license from the state as required by M.S.A. §157.16, as it may be amended from time to time, and meet the definition of either a small establishment, medium establishment or large establishment as defined in M.S.A. §157.16, Subd. 3d, as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served, shall not be considered to be a restaurant for purposes of this chapter unless it meets the definitions of small establishment, medium establishment or large establishment.

301.02 License Required.

No person shall directly or indirectly, upon any pretense or by any device manufacture, import, sell, exchange, barter, dispose of or keep for sale any intoxicating liquor without first having obtained a license therefore as hereinafter provided. A license shall be for one of the following: on-sale, off-sale wine license, and Sundays.

Section 1. On-Sale Licenses. On-sale licenses may be granted to entities allowed under state statute. Not more than four such licenses shall be granted at any one time.

Section 2. Wine License. The City Council may issue an on-sale wine license with approval of the liquor control director to a restaurant having facilities for seating at least 25 guests at one time. A wine license authorizes the sale of wine on all days of the week between the hours of 11:00 a.m. and 1:00 a.m. The city holder of an on-sale wine license who is also licensed 3.2 malt liquors at on-sale, and whose gross receipts are at least 60 percent attributable to the sale of food may also sell intoxicating malt liquors at on-sale without an additional license.

Section 3. Off-Sale Licenses. Off-sale licenses may be granted to permit the sale of intoxicating liquor at retail in the original package and such license may be issued only to liquor stores. No more than four off-sale licenses will be granted.

Section 4. Sunday Licenses. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant (as defined in Section 301.01 herein), club, bowling center, or hotel which has a seating capacity of at least 30 persons, which

holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food.

301.03 Municipal Liquor Store.

The governing body of said city may, in its discretion, direct the establishing and conducting of an exclusive liquor store municipally, owned and operated for the sale of intoxicating liquor or retail, either on-sale or off-sale, or both. During all the time such exclusive liquor store shall be operated and maintained, no other on-sale or off-sale licenses shall be granted to any other party. If a municipal liquor store is established and operated, all provisions of this ordinance except the provisions with respect to licenses and bonds shall apply thereto so far as the same shall be applicable.

301.04 Application for License.

Every person desiring a license for either a license under this Ordinance shall file a verified written application therefore with the clerk of the municipality in the form to be prescribed by the City Council and with such additional information as the City Council of the municipality may require. A proof of liability insurance with limit, pursuant to M.S.A. §340.A, as amended, shall accompany each such application for a license.

301.05 Fees.

All applications for licenses shall be accompanied by a receipt from the City Administrator for the required fee for the respective licenses. All said fees shall be paid into the general funds of the municipality and are non-refundable. The annual fee for all on-sale licenses shall be set at the first meeting January of each year. All licenses shall expire on the last day of December in each year. Where such licenses shall be issued for less than one year, the charge may be a pro rata share of the annual license fee.

301.06 Granting of Licenses.

The City Council may, in its discretion, grant or refuse any license applied for. No off-sale license shall become effective until approved by the City Council. All licensed premises shall have the granted license posted in a conspicuous place therein at all times. No license shall be transferable either as to licensee or premises without the approval of the City Council.

301.07 Conditions of License.

- Subsection 1. All the licenses granted hereunder shall be subject to the following conditions, and all other conditions of this ordinance and all other ordinances of this city, applicable thereto and all regulations by the commissioner applicable thereto and the provisions of said Chapter.
- Subsection 2. Every licensee shall be responsible for the conduct of his place of business and the condition of sobriety and order thereon. No on-sale dealer shall sell liquor by the bottle or container for consumption on the premises. No dealer license for off-sale only shall permit the consumption of any liquor on such licensed premises.
- Subsection 3. No off-sale license shall be issued for any place where 3.2 percent malt beverages shall be sold for consumption on the premises.

- Subsection 4. No liquor shall be sold to any minor. No license shall be granted to any minor, and no minor shall be employed in any room, constituting the place in which intoxicating liquors are sold retail at on-sale.
- Subsection 5. No licensee shall keep, possess or operate, or permit the keeping, possession or operation of, on the premises, or in any room adjoining the licensed premises controlled by him, any slot machine dice or other gambling devices or apparatus nor permit any gambling therein or permit the licensed premises or any room in the same or any adjoining buildings, directly or indirectly under his control to be used as a resort for prostitutes or other disorderly persons.
- Subsection 6. No license shall be issued to any person who shall hereafter be convicted of any willful violation of any law of the United States, or the State of Minnesota, or of any local ordinance with regard to the manufacture, sale, distribution of possession for sale or distribution intoxicating liquors, or to any person whose license under this ordinance shall be revoked for any willful violation of any of such laws or ordinances.
- Subsection 7. No license shall be granted to any manufacturer or distiller of intoxicating liquors, nor to anyone interested in the ownership or operation of any place where intoxicating liquor is manufactured or distilled nor to a person operating a licensed place owned by a manufacturer, distiller, or exclusive wholesale distributing agent unless such interest was acquired at least six months prior to January 1, 1934; and no equipment or fixtures in any licensed place shall be owned in whole or in part by any such manufacturer or distiller.
- Subsection 8. No license shall be issued in conjunction with any business either for on-sale or off-sale until such business has been in continuous operation in the premises proposed to be licensed for at least six months immediately preceding the date of application for such license.
- Subsection 9. No license shall be granted for operation on any premises upon which taxes or assessments of the city are delinquent and not paid.
- Subsection 10. All premises where any license hereunder is granted shall be open to inspection by any police or health officer or other properly designated officer or employee of the city at any time during which the place so licensed shall be open to the public for business.
- Subsection 11. No license shall be granted within 300 feet of any school building, church or hospital.

301.08 Hours of Operation.

Hours of operation for the sale of all intoxicating liquor in the City of Wheaton shall conform to Minnesota State Statute Chapter 340A.504.

No sale of intoxicating liquor shall be made on Sundays after 1 a.m. unless licensed to do so. Licensed sales of intoxicating liquor shall be allowed on Sundays between the hours of 10 a.m. and 1 a.m. Monday morning. No on-sale shall be made between 1 a.m. and 8 a.m. of any day during which an on-sale licensee may sell intoxicating liquor under the laws of the

State of Minnesota. No off-sale shall be made before 8 a.m. or after 10 clock p.m. of any day during which an off-sale licensee may sell intoxicating liquor under the laws of the State of Minnesota.

301.09 Restrictions.

The view of the interior from the exterior of on-sale establishments shall be unobstructed by screen, partition or otherwise. There shall be no partitions, boxes, stalls, curtains, or other devices which shall obstruct the view of any part of said room from the general observation of persons in said room. No liquor shall be sold to any intoxicated person. It shall be unlawful for any person or persons to mix or prepare liquor for consumption in any public place of business where no on-sale license is held or to consume liquor in said places. No liquor shall be sold or consumed on any roadway or in any automobile with in the city.

301.10 Revocation of License.

A hearing shall be held by the council, and the council may revoke a license upon a finding of a violation of any provision or condition of this ordinance or state licensing law, or upon a finding of any falsification of any statement in any application. Any such license shall be revoked automatically upon the conviction of the licensee of a felony offense. No portion of the license fee paid into the city treasury shall be returned upon revocation.

301.11 Penalties.

Section 1. Criminal Penalty. Any person, firm, or corporation who violates any provision of this Ordinance shall, upon conviction, be guilty of a petty misdemeanor and punished by a fine of not more than \$700.

Section 2. Civil Penalty. When after a hearing the City Council makes a finding that there has been a violation of any provision or condition of this ordinance or state licensing law, or upon a showing of any falsification of any statement in any application, the City Council may impose any of the following as a civil penalty: suspension of a license for up to 60 (sixty) days, revoke the license or permit, or impose a civil fine not to exceed \$2,000 for each violation.

BEERS AND LIQUORS

302 RESTRICTION OF THE SALE OF INTOXICATING LIQUORS AND INTOXICATING MALT LIQUORS

302.01

The City Council shall establish a City of Wheaton liquor Board of Hearing and Review consisting of five council members, which shall be the hearing group for the purpose of providing a hearing to any person receiving notice pursuant to this Ordinance.

Upon receipt of request for hearing by any person under this ordinance, the liquor board shall set a time and place for said hearing and give reasonable notice by U.S. Mail to all persons concerned, including the person requesting the hearing and the person signing the original application for restriction. At said hearing the liquor board shall hear from all persons interested or concerned on the issues presented at said hearing including the alleged defender and the person requesting the restriction. The liquor board of review shall reach a finding of fact and conclusion in writing.

BEERS AND LIQUORS

303 UNDERAGE PERSONS

303.01 3.2 Percent Malt Liquor

It shall be unlawful for any:

- Subsection 1. Licensee or his employee to sell or serve 3.2 percent malt liquor to any persons under 21 years of age or to permit any person under 21 years of age to consume intoxicating malt liquor on the licensed premises.
- Subsection 2. Person other than the parent or legal guardian to procure 3.2 percent malt liquor for any person under 21 years of age for consumption in their own home.
- Subsection 3. Person to induce a person under 21 years of age to purchase or procure 3.2 percent malt liquor.
- Subsection 4. Persons under 21 years of age to misrepresent his/her age for the purpose of obtaining 3.2 percent malt liquor.
- Subsection 5. Any person under 21 years of age to have in his possession any 3.2 percent malt liquor with intent to consume same at a place other than the household of his parent or guardian.

303.02 Intoxicating Liquor.

It shall be unlawful for Underage Persons:

- Subsection 1. To enter any premises licensed for the retail sale of alcoholic beverages or any liquor store for the purpose of purchasing, or having served or delivered to him or her, any alcoholic beverage containing more than one-half of one percent of alcohol by volume, or
- Subsection 2. To consume any alcoholic beverage, on premises licensed for retail sale of alcoholic beverages, or any municipal liquor store, or to purchase, attempt to purchase or have another purchase for him or her any alcoholic beverage, or,
- Subsection 3. Any person to misrepresent or misstate his or her age, or the age of any person for the purpose of inducing any licensee or employee of any licensee, or any employee of any municipal liquor store, to sell, or serve or deliver any alcoholic beverage to underage persons, or,
- Subsection 4. A underage person to have in his possession any intoxicating liquor with intent to consume same at a place other than the household of his parent or guardian.
- Subsection 5. Persons other than the parent or legal guardian to procure intoxicating liquor for any person under 21 years of age for consumption in his own home.

303.03 Penalty.

Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05

303.04 Regulating the use of alcoholic beverages and controlled substances at open house parties; Providing definitions and prescribing a penalty.

Subsection 1: Definitions.

“Adult” means any person eighteen (18) years of age or older.

“Alcoholic Beverage” means any beverage containing more than one half of 1% alcohol by weight.

“Resided” or “Premises” means a home, apartment, condominium, premises, or other dwelling unit or meeting room or hall, whether occupied on a temporary basis or permanent basis, whether occupied as a dwelling or for a social function, owned, rented, leased, or under the control of any person or persons including the curtilage of such residence or premises.

“Open House Party” means a social gathering of persons at a residence or premises, other than the owners thereof, or those with rights of possession, or their immediate family members.

“Controlled Substance” means any drug, agent, or substances, or defined by Minnesota State Statutes.

“Control” means the right of possession of a residence or premises.

Section 2. Acts Prohibited.

No adult having control of any residence or premises shall allow an open house party to take place at the residence or premises if any alcoholic beverage or controlled substance is possessed or consumed at the open house party by any person under 21 years of age where the adult knew or reasonably should have known that any alcoholic beverage or controlled substance was in the possession of or being consumed by such person under 21 years of age at the open house party, and where the adult failed to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or controlled substance by such person under 21 years of age at the open house party.

Section 3. Penalty.

Any persons violating this ordinance shall be guilty of a misdemeanors punishable pursuant to W.M.C. 005.05.

BEERS AND LIQUORS

304 VACATION OF PREMISES

304.01 Consumption.

It is unlawful for any person, including employees of licensed premises or of the cleaning service, to consume, or any licensee to permit consumption of, intoxicating liquor or non-intoxicating malt liquor in any quantity, on licensed premises more than sixty minutes after the hour when a sale thereof can legally be made.

304.02 Removal of Containers.

It is unlawful for any on-sale licensee to permit any glass, bottle, or other container, containing intoxicating liquor or non-intoxicating malt liquor in any quantity, to remain upon any table, bar, stool, or other place where customers are served, more than sixty minutes after the hour when a sale thereof can legally be made. No unconsumed intoxicating liquor or non-intoxicating malt liquor shall be removed from the premises for consumption at a different place by any employee or patron.

304.03 Closing.

It is unlawful for any person, other than an on-sale licensee's bona fide employee actually engaged in the performance of his duties, to be on premises licensed under this Chapter more than sixty minutes after the legal time for making licensed sales. Provided, however, that this Subdivision does not apply to licensees, employees of licensees, and patrons on licensed premises for the sole purposed of preparing, serving, or consuming food or beverages other than intoxicating liquor or non-intoxicating malt liquor in any quantity.

304.04 Conduct on Licensed Premises.

Except as herein provided, every licensee under this Chapter shall be responsible for the conduct of his or her place of business, and shall maintain conditions of sobriety and order therein.

304.05 Sale by Employee.

Any sale of intoxicating liquor or non-intoxicating malt liquor in any quantity in or from any premises licensed under this Chapter by any employee authorized to make such sale in or from such place is the act of the employer as well as the person actually making the sale, and every such employer is liable to all of the penalties provided by law for such sale, equally with the person actually making the sale.

304.06 Private Parties on Licensed Premises.

All provisions of this Ordinance shall apply equally to the licensed premises during private parties or when otherwise closed to the public.

304.07 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.

LICENSED PLACES AND OCCUPATIONS

350 TOBACCO AND ELECTRONIC DELIVERY DEVICES: RETAIL SALE

350.10 Facts and Purpose.

Because the city recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 18 violates both state and federal laws; and because studies, which the city accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of smokers begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because the CDC reports that as of November 20, 2019, there have been 2,290 cases of e-cigarette product use associated lung injury nationwide resulting in 47 deaths (widely known as “vaping” injuries and deaths); and because three of those deaths have occurred in Minnesota; and because the Surgeon General and the FDA Commissioner has labeled the recent uptick in youth use of electronic delivery devices as an “epidemic;” and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the City Council accepts the conclusions and recommendations of: the U.S. Surgeon General reports and advisory, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking—50 Years of Progress* (2014), *Preventing Tobacco Use Among Youth and Young Adults* (2012), and *Surgeon General’s Advisory on E-Cigarette Use Among Youth* (2018); the Centers for Disease Control and Prevention in their studies, *Vital Signs: Tobacco Product Use Among Middle and High School Students — United States, 2011–2018*(2019), *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997*(1998), and *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products* (available at: https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html) (2019); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. *Health Reports*, 9(4), 39-46; D’Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at starting smoking and number of cigarettes smoked. *Annals of Epidemiology*, 4(6), 455–459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. (1999). Initiation of cigarette smoking and subsequent smoking

behavior among U.S. high school students. *Preventive Medicine*, 29(5), 327–333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. *Oncogene*, 21(48), 7326–7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673–677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740–746; Minnesota Department of Health. (2018). *Data Highlights from the 2017 Minnesota Youth Tobacco Survey*. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). *The Verdict Is In: Findings from United States v. Philip Morris, The Hazards of Smoking*. University of California - San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco/>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. *American Journal of Preventive Medicine*, 48(3), 326–333, copies of which are adopted by reference.

350.20 Definitions.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term “shall” means mandatory and the term “may” means permissive. The following terms shall have the definitions given to them:

Subsection 1. Electronic Delivery Device.

“Electronic delivery device” means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. ELECTRONIC DELIVERY DEVICE includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. ELECTRONIC DELIVERY DEVICE includes any component part of a product, whether or not marketed or sold separately. ELECTRONIC DELIVERY DEVICE does not include any product that has been approved or certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

Subsection 2. Flavored Product.

“Flavored product” means any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or

smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

Subsection 3. Licensed Products.

“Licensed products” collectively refers to any tobacco, tobacco-related device, or nicotine or lobelia delivery product.

Subsection 4. Nicotine Or Lobelia Delivery Product.

“Nicotine or lobelia delivery product” means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Subsection 5. Tobacco.

“Tobacco” shall mean Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigarettes; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco does not include any product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose. For the purpose of this Tobacco Sale Ordinance, tobacco-related device does not include electronic delivery devices.

Subsection 6. Tobacco Related Devices.

“Tobacco related devices” shall mean any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. Tobacco-related device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco. For the purpose of this Tobacco Sale Ordinance, tobacco does not include electronic delivery devices.

Subsection 7. Self-Service Display.

“Self-Service Merchandising” shall mean open displays of licensed products in any manner where any person shall have access to the licensed products, without the assistance or intervention of the licensee or the licensee’s employee. The assistance or intervention shall entail the actual physical

exchange of the licensed products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subsection 8. Vending Machine.

“Vending Machine” shall mean any mechanical, electric or electronic, or other type of device which dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed products.

Subsection 9. Loosies;

“Loosies” shall mean the common term used to refer to single cigarettes, cigars, and any other licensed product that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.”

Subsection 10. Retail Establishment.

“Retail Establishment” shall mean any place of business where licensed products are available for sale to the general public. Retail establishments includes, but is not be limited to, grocery stores, tobacco products shops, gasoline service stations, convenience stores, bars, and restaurants.

Subsection 11. Moveable Place of Business.

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

Subsection 12. Sale.

A “sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

Subsection 13. Compliance Checks.

“Compliance checks” shall mean the system the city uses to investigate and ensure that those authorized to sell licensed products and electronic delivery devices are following and complying with the requirements of this ordinance. Compliance checks involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. Compliance checks may also be conducted by the city or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

350.30 License.

No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city. No license shall be issued to sell electronic delivery devices, in

accordance with Section 350.60, Sub. 1 of this Ordinance.

Subsection 1. Application.

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

Subsection 2. Action.

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

Subsection 3. Term.

All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.

Subsection 4. Revocation or Suspension.

Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

Subsection 5. Transfers.

All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.

Subsection 6. Moveable Place of Business.

No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

Subsection 7. Display.

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

Subsection 8. Renewals.

The renewal of a license issued under this section shall be handled in the same

manner as the original application. The request for a renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license.

Subsection 9. Issuance is a Privilege Not a Right. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

350.40 Fees.

No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be in an amount set from time to time in a fee schedule, adopted by resolution of the City Council.

350.50 Basis for Denial of License.

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

- A. The applicant is under the age of 21 years.
- B. The applicant has been convicted within the past five years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to licensed products or electronic delivery devices.
- C. The applicant has had a license to sell licensed products or electronic delivery devices revoked within the preceding twelve months of the date of application.
- D. The applicant fails to provide any information required on the application, or provides false or misleading information.
- E. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

350.60 Prohibited Sales.

Subsection 1. Electronic delivery devices.

No person shall sell or offer for sale any electronic delivery device.

Subsection 2. In general.

It shall be a violation of this ordinance for any person to sell or offer to sell any licensed product:

- A. By means of any type of vending machine.
- B. By means of loosies as defined.
- C. Containing opium, morphine, jimson weed, bella donna, strychnos,

cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.

- D. By any other means, to any other persons, on in any other manner or form prohibited by Federal, State, or local law, ordinance provision, or other regulation.

Subsection 3. Legal age.

No person shall sell any licensed product to any person under the age of 21.

- A. Age verification. Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
- B. No person under the age of twenty-one (21) years shall purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products using a driver's license, a Minnesota identification card, or other form of identification which is false, fictitious, altered, or counterfeited as to age or any other material fact of identification. Use of a false identification to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products is a misdemeanor.
- C. Signage. Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- D. It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in M.S.A. §340A.503, Subd. 6.
- E. Exceptions.
 - 1. Notwithstanding the above-stated provisions, individuals exempted under M.S.A. §609.685 are also exempt from this section.
 - 2. The penalties in this section do not apply to a person under the age of twenty-one (21) years who purchases or attempts to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

Subsection 4. Additional provisions.

- A. No person shall sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes

shall be sold in packages of fewer than twenty (20) cigarettes.

- B. No person shall sell or dispense tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices from a motor vehicle or other movable place of business.
- C. No person shall offer for sale tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in any open displays which are accessible to the public without the intervention of a store employee.
- D. No person shall sell, offer for sale, or otherwise distribute any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device.

350.70 Self-Service Sales.

It shall be unlawful for a licensee under this ordinance to allow the sale of licensed products by any self-service displays where the customer may have access to such items without having to request the item from the licensee or the licensee's employee and where there is not a physical exchange of the licensed product between the licensee or the licensee's employee and the customer. All licensed products shall be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted shall comply with this Section within thirty (30) days following the effective date of this ordinance.

350.80 Flavored products.

No person shall sell, offer for sale, or otherwise distribute any flavored products. This does not include any tobacco related products.

350.90 Responsibility.

All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products and electronic delivery devices on the licensed premises. The sale, offer to sell, or furnishing of any licensed product and electronic delivery device by an employee shall be considered an act of the licensee. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to any civil penalties that the city deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.

350.100 Compliance Checks and Inspections.

All licensed premises must be open to inspection by law enforcement or other authorized city officials during regular business hours. From time to time, but at least twice per year, the city will conduct compliance checks. In accordance with state law, the city will conduct at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between the ages of 18 and 20 to enter the licensed premises to attempt to purchase licensed products or any electronic delivery devices. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

350.110 Prohibited Furnishing or Procurement.

Unless otherwise provided, the following acts shall be an administrative violation of this ordinance. It is a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to illegally purchase or attempt to purchase any licensed product.

350.120 Violations.

Subsection 1. Notice.

A person violating this ordinance may be issued, either personally or by mail, a citation from the city that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.

Subsection 2. Hearings.

- A. Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.
- B. The City Administrator or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.

Subsection 3. Hearing Officer.

The City Council of the City of Wheaton shall serve as the hearing panel.

Subsection 4. Decision.

A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in subsection 5 of this section.

Subsection 5. Appeals.

Appeals of any decision made by the hearing panel shall be filed in the district court for the jurisdiction of the City of Wheaton in which the alleged violation occurred.

Subsection 6. Continued Violation.

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

Subsection 7. Costs.

If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of [\$1,000] must be paid by the person requesting the hearing.

350.130 Penalties.

Subsection 1. Licensees.

Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$200 for a first violation of this ordinance; \$500 for a second violation at the same licensed premises within a twenty four (24) month period; and \$750 for a third or subsequent violation at the same location within a twenty four (24) month period. Upon the third offense, the license shall be suspended for not less than seven days. Upon the fourth violation, the license will be revoked.

Subsection 2. Other Individuals.

Other individuals, other than persons under the age of 21, found to be in violation of this ordinance shall be charged an administrative fee of \$50.

Subsection 3. Misdemeanor.

Nothing in this Section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this ordinance by a person age 21 or older.

350.140 Exceptions and Defenses.

Subsection 1. Religious, Spiritual, or Cultural Ceremonies or Practices.

Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

Subsection 2. Reasonable Reliance.

It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

350.150 Severability and Savings Clause.

If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this ordinance.

350.160 Effective Date.

This ordinance shall take effect upon the passage and publication of this ordinance and a notice for two consecutive weeks stating that printed copies are available at the office of the city clerk.

350.170 Repealer.

The former Wheaton City Ordinance, found at number 350 of the Wheaton City Code, and relating to the sale of licensed products and electronic delivery devices is hereby repealed.



LICENSED PLACES AND OCCUPATIONS

352 Places of Entertainment

352.01 License Required.

That no person, association or corporation shall, within this city, exhibit any caravan, carnival or circus, conduct or operate any theater or show, give any street performance or exhibition of any kind, conduct or operate any place of public entertainment of any kind, either directly or indirectly, without first obtaining a license therefor in accordance with the provisions of this ordinance.

352.02 Licensing Procedures.

Any persons, association or corporation desiring a license under the provisions of this ordinance shall make application therefor to the city clerk-treasurer, who may upon the filing of a property receipt signed by the city treasurer, acknowledging payment of the required license fee as hereinafter prescribed, issue to said applicant a license, authorizing said applicant to give such exhibition or performance, or conduct or operate such public entertainment, which license shall be attested by the seal of the said city, state the time for which said license is granted, which in no case shall be no longer than the unexpired portion of the term of the council than acting.

352.03 License Fee.

The license fee in all such licenses shall be such reasonable sums as shall be fixed and determined by the City Council and certified to the clerk/treasurer upon application for the persons desiring to give such exhibition or entertainment.

352.04 Revocation of Licenses.

The City Council may in its discretion, revoke any license issued under the terms of this ordinance when the good order of the city requires and the city clerk/treasurer shall thereupon forthwith notify the licensee that such license has been revoked. In case of the revocation of any such licensee, the council may return to the licensee the unearned portion of such license fee, computing the earned portion at the short term rate.

352.05 Failure to Secure Required License.

Any person, association, or corporation who shall conduct any caravan, carnival, circus, street performance, exhibition of place of public entertainment of any kind, contrary to the terms of this ordinance shall be guilty of a misdemeanor, punishable pursuant to W.M.C. 005.05.

LICENSED PLACES AND OCCUPATIONS

353 Garbage Collectors

353.01 License Required.

That in the City of Wheaton, no person, persons, or corporations shall engage in the business of collecting or removing dead animals, offal, garbage or any other substance deleterious to health without first obtaining a license therefor in accordance with the provisions of this ordinance.

353.02 Garbage trucks.

No person, persons, or corporation shall convey, haul or transport dead animals, offal, garbage, paper, debris or any other substance deleterious to health unless they convey, haul or transport the same in a vehicle which is covered and which will adequately contain all of said material so as to prevent said material from being cast or in any other manner be placed upon the streets or other property of said city.

353.03 Licensing Procedure.

That anyone desiring a license under the provisions of this ordinance shall make application therefor to the council of said City of Wheaton, which may upon the filing of a proper receipt signed by the City Clerk-Treasurer acknowledging the payment of the license fee, at its discretion, by vote of said council, issue said license. The license fee shall be such reasonable sum as shall be fixed by the City Council.

353.04 Bond.

Before any license shall be issued, the applicant shall furnish to said council a good and sufficient bond running to said city of Wheaton conditioned that said applicant will at all times conduct said business in strict compliance with the terms of this ordinance and with all other ordinances and rules relating thereto, said bond to be approved by said council in open session, and the sureties on said bond shall be subject to the payment of any fine and costs levied and imposed by any court against the licensee for any violation thereof while said bond shall remain in force. The amount of the bond shall be for such reasonable sum as determined by the City Council.

353.05 Revocation.

Any license issued under the terms of this ordinance may be revoked or made void by the City Council after a hearing and each license issued in accordance with this ordinance shall expire one year from the date hereof.

353.06 Penalty.

Violation of any provision of this ordinance shall be a misdemeanor pursuant to W.M.C. 005.05.

LICENSED PLACES AND OCCUPATIONS

354 Regulating the Sale of Merchandise from Out-of-Town Merchants

Subdivision 1. This Section shall cover all transient peddlers, hawkers, or other similar sellers of merchandise who sell said merchandise by contacting Wheaton residents, unsolicited, door-to-door, over the telephone, through the mail, or in any other fashion.

Subdivision 2. Any transient person wishing to sell merchandise in the City of Wheaton shall first make an application to the City Administrator, and pay the application fee set out by the Wheaton City Council.

Subdivision 3. By no later than the second council meeting after the application is made, the Wheaton City Council shall make the decision whether to approve or reject the application.

Subdivision 4. If approved, the transient person shall pay to the City Administrator the sum of \$100 for each day (or part of a day) that the person is in the City of Wheaton for the purpose of selling their merchandise, or \$500 for each and every year of sale provided that the City Council approves such license at by no later than the second council meeting after the new application is submitted.

Subdivision 5. 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.

LICENSED PLACES AND OCCUPATIONS

355 Unlicensed Drug & Alcohol Counseling

355.01 Definitions.

The definitions contained in M.S.A. §148C.01, and any subsequent amendments thereto, are hereby incorporated in and made a part of this Ordinance.

355.02 Application.

The provisions of this Ordinance shall apply to any person who is not required to hold a license pursuant to M.S.A. §148C.11.

355.03 Location.

No person or entity shall engage in the practice of alcohol and drug counseling in a program which caters to two or more persons without a license in the City of Wheaton in or within 1500 feet of the following:

- a. Any residential home or site used for residential purposes.
- b. Any place of religious worship.
- c. Any school site.
- d. Any public library.
- e. Any day care or child care facility.
- f. Any public theater.
- g. Any airport.
- h. Any state or federal highway.
- i. Any public park or recreational area site under the control, operation, or management of the county or a city within the county.
- j. Any establishment licensed to sell alcoholic beverages.
- k. Any state or federal governmental building.

355.04 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.

UTILITIES

400 ELECTRIC POWER AND LIGHT FRANCHISE

400.01 Franchise to Otter Tail Power Company.

There is hereby granted to Otter Tail Power Company, a Minnesota corporation, its successors and assigns, hereinafter called the Grantee, for ten (10) years from and after the passage and approval of this Ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install and maintain an electric light and power system and transmission line, and to operate and maintain the same within and through the City and to transmit electricity to and from other towns or cities for the purpose of light, power and heat, and to erect, construct, install and maintain conduits, poles, wires, pipes and other necessary fixtures and attachments upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing and selling electricity for light, heat and power and such other purposes for which electricity may be used by the inhabitants of said City, said permission and franchise to become operative and continue under the conditions hereinafter set forth, and provided further that this franchise shall be effective for an additional ten (10) years if the Municipality does not elect to terminate said franchise within sixty (60) days prior to the commencement of the second ten-year period. 120 days prior to the commencement of the second ten year period, the grantee shall inform the City Clerk in writing of the option herein.

400.02 Standards of Construction.

Said Grantee shall use poles, wires, cross arms, equipment and devices to conform with the standards of construction adopted by the National Safety Code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets, and alleys of said City or to endanger persons or property or to hinder or to obstruct the use of said avenues, streets, and alleys or public places by the inhabitants of said City, or public in general, or to interfere with any street, sidewalk, curb, gutter or park improvements that the City may deem proper to make along the lines of said avenues streets and public places.

400.03 Encroachments

All conduits, poles, wires and pipes installed by virtue of this Ordinance shall be erected in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges, or public grounds an places of said City and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon and the erection thereof shall be subject to the reasonable supervision and direction of the City Council of the said City. Whenever practical, all poles shall be set in alleys, and poles now in position upon or along the streets whenever practicable shall be removed, and the location of all of said poles shall be designated by the Mayor of the City under the supervision of the City Council.

400.04 Location of Poles.

All poles where set in alleys shall be set at or near the boundary line thereof and where set in streets shall be located at such distances as shall be directed by the City from the property line of the abutting owner, and shall be placed so as not to interfere with the construction or

placing of any water pipes, sewers, or drains or the flow of water therefrom, which has been or may be placed by authority of said City. In the event that said Grantee shall make any unnecessary obstructions of said streets, alleys, public grounds or places not designated by the City Council, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

400.05 Blocking Streets, etc.

During the construction, maintenance or enlargement of any part of said electric light and power system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

400.06 Police Power.

The City reserves the right for itself and its agents to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature, as it may deem necessary for the best interests of the City, but the city will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

400.07 Excavations.

Whenever the said Grantee in erecting, constructing and maintaining said lines or poles, shall take up any of the pavements, sidewalks, crossings or curbs on an of the avenues, streets, and alleys, or public places in said City or shall make any excavations thereon, such excavations shall be refilled and the sidewalk, crossing or curb replaced under the direction of the City and any excavation so made shall be properly lighted at night during the construction, and in case of the failure to do so on the part of the said Grantee, then the City may do the same at the expense of said Grantee and said Grantee agrees to pay said City for the reasonable cost or value of said work. Said Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the said City caused by it, or its agents, servants, or employees in erecting, operating and maintaining the said electric system within the City and shall at all times indemnify and hold the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

400.08 Moving of Buildings.

It is further provided that in case any person shall desire to remove a building along the streets, occupied by said wires or pole lines, and it becomes necessary to have said wires temporarily removed, said Grantee shall be entitled to 48 hours notice in writing to that effect and when such notice is given, it shall be the duty of said Grantee to remove such wires and without cost to said City, but the person desiring the same removed shall deposit with said City the reasonable cost of same and after the work has been completed the Grantee shall render a bill in full for such expense and shall collect from the amount so deposited the cost of doing said work. If the expense is less than the estimated cost, the balance shall be

returned to the person who moved said building. It is further provided that the said Grantee shall not be required to make such removal except at a reasonable time of the day. No person, other than authorized agent of the Grantee, shall interfere with the property of the Grantee within the corporate limits of said City.

400.09 Removal of Trimming of Trees.

There is granted to said Grantee, it's successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets and public grounds of said City so as to remove all parts of said trees interfering with the proper erection, maintenance and operation of poles, cables, wires, masts or other fixtures, or appliances installed or to be installed in pursuant to authority hereby granted.

400.10 Assignment of Franchise.

Said Grantee shall have full right and authority to assign to any person, persons, firm or corporation all the rights that are given it by this Ordinance, provided that the assignee of such rights by accepting such assignment shall become subject to their terms and conditions of this Ordinance.

400.11 Extension of Service Lines.

The Grantee shall not be required to extend its service lines (including primaries and secondary's) to supply a customer or customers where the revenue is not commensurate with the expense involved and as a measure of this expense, extensions shall be made whenever the annual gross revenue for three years equals the cost of such extensions.

400.12 Failure of Service.

The Grantee shall use due diligence and care in furnishing electric service as herein provided but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said Grantee from liability for negligence.

400.13 Deposits

The Grantee shall have the right to require of any person to whom electric service is furnished to make a deposit to insure the payment of bills for service to be rendered. The Company shall issue a receipt for such deposit and shall return same whenever the customer shall discontinue the use of electric service, provided all bills are then paid. The Grantee may apply all or any portion of the deposit to any unpaid bills and shall thereupon mail to the customer a receipt for such amount.

400.14 Revocation of Previous Franchise.

It is further expressly and specifically provided that all permits, licenses and franchises heretofore granted by the City giving or purporting to give permission to any person, persons, or corporation to construct, install or maintain an electrical line or system in, upon or through the streets, alleys, or public grounds of the City for the purpose of furnishing light, heat and

power to the City or its inhabitants, be, and the same hereby are in all respects revoked, canceled and annulled.

400.15 Acceptance of Franchise.

This Ordinance shall take effect and be in full force from and after it's passage by the City Council it's publication or posting as required by statute. The said Grantee shall specify its acceptance of this franchise in writing, to be filed with the City Clerk and in no event shall this Ordinance be binding on said Grantee until the filing of such acceptance.

UTILITIES

403 WIND ENERGY CONVERSION SYSTEMS

403.01 General Provisions.

The Ordinances of the City of Wheaton are hereby revised and codified. Such codification is hereby adopted as the "Wheaton Municipal Code".

- 1. Purpose.** This ordinance is established to regulate the installation and operation of Wind Energy Conversion Systems (WECS) within The City of Wheaton not otherwise subject to siting and oversight by the State of Minnesota under the Minnesota Power Plant Siting Act (MS 116C.51-116C.697.)
- 2. Severability.** The provisions of this Ordinance shall be severable, and the invalidity of any paragraph, subparagraph or subdivision thereof, shall not make void any other paragraph, subparagraph or subdivision of this Ordinance.
- 3. Enforcement, Violations, Remedies and Penalties.** Enforcement of the Wind Energy Conversion System Ordinance shall be done in accordance with processes and procedures established Wheaton City Ordinances.

403.02 Definitions.

Aggregated Project: Aggregated projects are those which are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual WECS within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also included as part of the aggregated project.

Bluff: A steep bank having an "E" slope as defined and mapped in the official Soil Survey of Traverse County, Minnesota.

Commercial WECS: A WECS of equal to or greater than 100 kW in total name plate generating capacity.

Fall Zone: The area, defined as the furthest distance from the tower base, in which a tower will collapse in the event of a structural failure. This area is less than the total height of the structure.

Feeder Line: Any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the WECS.

Meteorological Tower: For the purposes of this Wind Energy Conversion System Ordinance, meteorological towers are those towers which are erected primarily to measure wind speed and directions plus other data relevant to siting WECS. Meteorological towers do not include towers and equipment used by airports, the Minnesota Department of Transportation, or other similar applications to monitor weather conditions.

Micro-WECS: Micro-WECS are WECS of 1 kW nameplate generating capacity or less and utilizing supporting towers of 40 feet or less.

Non-Commercial WECS: A WECS of less than 100 kW in total name plate generating capacity and having a total height of less than 200 feet.

Property Line: The boundary line of the area over which the entity applying for a WECS permit has legal control for the purposes of installation of a WECS. This control may be attained through fee title ownership, easement, or other appropriate contractual relationship between the project developer and landowner.

Public Conservation lands: Land owned in fee title by State or Federal agencies and managed specifically for grassland conservation purposes, including but not limited to State Wildlife Management Areas, State Parks, State Scientific and Natural Areas, federal Wildlife Refuges and Waterfowl Production Areas. For the purposes of this section public conservation lands will also include lands owned in fee title by non-profit conservation organizations.

Rotor Diameter: The diameter of the circle described by the moving rotor blades.

Substations: Any electrical facility designed to convert electricity produced by wind turbines to a voltage greater than 35,000 volts (35 KV) for interconnection with high voltage transmission lines shall be located outside of the right of way.

Total Height: The highest point, above ground level, reached by a rotor tip or any other part of the WECS.

Tower: Towers include vertical structures that support the electrical generator, rotor blades, or meteorological equipment.

Tower Height: The total height of the WECS exclusive of the rotor blades.

Transmission Line: Those electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

WECS – Wind Energy Conversion System: An electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: Power lines, transformers, substations and metrological towers that operate by converting the kinetic

energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.

Wind Turbine: A wind turbine is any piece of electrical generating equipment that convert the kinetic energy of blowing wind into electrical energy through the use of airfoils or similar devices to capture the wind.

403.03 Permit Applications.

Land Use Permits, Conditional Use Permits, and Variances shall be applied for and reviewed under the procedures established by Wheaton City Ordinance 550, except where noted below.

The application for all WECS shall include the following information:

1. The names of project applicant.
2. The name of the project owner.
3. The legal description and address of the project.
4. A description of the project including: Number, type, nameplate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale, and clearly identify the location of proposed substation and feeder lines.
5. Manufacturer's certification.
6. Documentation of land ownership or legal control of the property.

The application for Commercial WECS shall also include:

7. The latitude and longitude of individual wind turbines, and meteorological towers.
8. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other WECS within 10 rotor diameters of the proposed WECS.
9. FAA Permit Application.
10. Location of all known Communications Towers within 2 miles of the proposed WECS.
11. Decommissioning Plan.
12. Description of potential impacts on nearby WECS and wind resources on adjacent properties.
13. Engineer's Certification.

A. Aggregated Projects.

Aggregated Projects may jointly submit a single application and be reviewed under joint proceedings, including notices, hearings, reviews and as appropriate approvals. Permits will be issued and recorded separately. Joint applications will be assessed fees as one project. Aggregated projects having a combined capacity equal to or greater than the threshold for State oversight as set forth in MS Statute 116C.691 through 116C.697 shall be regulated by the State of Minnesota.

403.04 Setbacks.

Setback to:	Wind Turbine Non-Commercial and Micro-turbines	Wind Turbine Commercial	Meteorological Towers
Property with No Signed Project Lease Agreement (Non-Participating)	1.1 times the total height	1.1 times the total height	1.1 times the total height
Occupied Dwelling on Property with Signed Project Lease Agreement (Participating)	N/A	1.1 times the total height	1.1 times the total height
Road Rights-of-Way (no guide wire anchors will be allowed within the right-of way)	1.1 times the total height or 150' to the center of the abutting road, whichever is greater **	1.1 times the total height or 150' to the center of the abutting road, whichever is greater **	1.1 times the total height or 150' to the center of the abutting road, whichever is greater **
Other Rights-of-Way	1.1 times the total height	1.1 times the total height	1.1 times the total height
Public Conservation Land	N/A	600 feet	600 feet
Wetlands (Type 3, 4 & 5)	N/A	600 feet	600 feet
Other Structures	N/A	1.1 times the total height	1.1 times the total height
Existing WECS	N/A	To be considered ***	N/A

* The setback for dwellings shall be reciprocal in that no dwelling shall be constructed within 500 feet of a commercial wind turbine.

** The setback shall be measured from future rights-of-way if a planned change or expanded right-of-way is known.

*** Consideration will be based upon:

- Relative size of the existing and proposed WECS
- Alignment of the WECS relative to the predominant winds
- Topography
- Extent of wake interference impacts on existing WECS
- Property line setback of existing WECS
- Other setbacks required

403.05 Requirements and Standards.

1. Safety Design Standards.

- A. Engineering Certification – For all WECS', the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.
- B. Clearance – Rotor blades or airfoils must maintain at least 12 feet of clearance between their lowest point and the ground.
- C. Warnings – For all Commercial WECS, a sign or signs shall be posted on the tower, transformer and substation warning of high voltage. Signs with emergency contact information shall also be posted on the turbine or at another suitable point.
- D. All meteorological towers shall be marked and painted in the following manner:
 - 1) The top portion of all meteorological towers shall be painted aviation orange.
 - 2) All guyed towers shall have:
 - a. Two marker balls shall be attached on each of the outside guy wires.
 - b. A flashing red light at the top of the tower.
 - c. A seven foot safety sleeve at each anchor point.
 - d. Have a 7 foot safety sleeve at each anchor point on #1, #4, and #6; plus one sleeve located 6' outside the outside anchor, and one sleeve at the lift anchor.

2. Other Standards. Total height – Non-Commercial WECS shall have a total height of less than 200 feet.

- A. Tower Configuration:
 - 1) All wind turbines, which are part of a commercial WECS, shall be installed with a tubular, monopole type tower.
 - 2) Meteorological towers may be guyed.
- B. Color and Finish: All commercial wind turbines shall be white, grey or another non-obtrusive color. Blades may be black in order to facilitate de-icing. Finishes shall be matte or non-reflective. Exception may be made for meteorological towers, where concerns exist relative to aerial spray applicators.

- C. **Lighting:** Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations. Red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds. Red pulsating incandescent lights should be avoided. Exception may be made for meteorological towers, where concerns exist relative to aerial spray applicators.
- D. **Other Signage:** The manufacturer's or owner's company name and/or logo must be placed upon the nacelle, compartment containing the electrical generator, of the WECS.
- E. **Feeder Lines:** All communications and feeder lines, equal to or less than 34.5 kV in capacity, installed as part of a WECS shall be buried where reasonably feasible. Feeder lines installed as part of a WECS shall not be considered an essential service. This standard applies to all feeder lines subject to Wheaton City authority.
- F. **Waste Disposal:** Solid and Hazardous wastes, including but not limited to crates, packaging materials, damaged or worn out parts, as well as used oils and lubricants, shall be removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations.
- G. **Discontinuation and Decommissioning:** A WECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the City of Wheaton outlining the steps and schedule for returning the WECS to service. All WECS and accessory facilities shall be removed to four feet below ground level within 90 days of the discontinuation of use.

Each Commercial WECS shall have a Decommissioning plan outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a competent party; such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities.

3. Other Regulatory Standards.

- A. **Noise:** All WECS shall comply with Minnesota Rules 7030 governing noise.

- B. **Electrical Codes and Standards:** All WECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.
 - C. **Federal Aviation Administration:** All WECS shall comply with FAA standards and permits.
 - D. **Upon issuance of a permit,** all Commercial WECS shall notify the Minnesota Environmental Quality Board Power Plant Siting Act program staff of the project location and details on the survey form specified by the Environmental Quality Board.
4. **Interference.** The applicant shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all communication tower operators within two miles of the proposed WECS location upon application to the county for permits. No WECS shall be constructed so as to interfere with County or Minnesota Department of Transportation microwave transmissions.

5. **Avoidance and Mitigation of Damages to Public Infrastructure.**

- A. **Roads.** Applicants shall:
 - 1) Identify all county, city or township roads to be used for the purpose of transporting WECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the WECS and obtain applicable weight and size permits from the impacted road authority(ies) prior to construction.
 - 2) Conduct a pre-construction survey, in coordination with the impacted local road authority(ies) to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility.
 - 3) Be responsible for restoring or paying damages as agreed to by the applicable road authority(ies) sufficient to restore the road(s) and bridges to preconstruction conditions.
- B. **Drainage System.** The Applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the WECS.

UTILITIES

405 Water System

405.01 Users Bound by Ordinance

That the rules, regulations and water rates hereinafter named shall be considered as part of the contract with every person, company or corporation who are supplied with water through the water systems of said City of Wheaton, and every such person, company or corporation, by taking water shall be considered to express his or their consent to be bound thereby, and when any of them is violated or such other as the City Council of said City may hereafter adopt, the water shall be cut off from the building or place of such violation although two or more parties may receive water through the same pipe, and shall not be let on again except by order of the City Council and the payment of the expenses of shutting off and turning it on, and such other terms as the City Council shall determine, and a satisfactory understanding with the party or parties that no further cause of complaint shall arise, and in case of such violation, the City Council shall have the right to declare any payment for the water by persons committing such violation to be forfeited; and the same shall thereupon be forfeited.

405.02 Permits

No plumber, pipe fitter, or other person shall make any attachment to any old pipe or water fixtures in premises from which the water has been shut off without the party desiring such work to be done having first made application and obtained a reissue and permit for the same. Nor shall any person make any alterations to any pipe or water fixture attached to the waterworks distributing pipes to conduct water into adjoining premises or into stables, baths, water closets, waste basins, cisterns, tanks, fountains or for any other purpose whatever without application having first been made and a written permit obtained from the City Council for each every separate job of such modifications in the water fixtures.

405.03 Water Service Connections

All water service connections from the water mains shall be of a pipe designated as type K copper unless otherwise specified by the City Council or the Superintendent of Waters and Sewers, and all service lines shall be equipped with a bronze corporation stop at the water main and a bronze curb stop and a cast iron curb box to be located six feet from the property line of the property to which the service connection is being made. Service lines shall be placed in the ground so as to allow not less than 6 ½ feet of cover over the entire service line. All joints that are installed shall have flared copper fittings.

All water service connections from the water mains shall be of a specified design with specified fixtures, and all service connections shall be placed in the ground in a specified manner. The City shall also have the right, in its own discretion, to repair or replace a defective curb stop to enable the city to discontinue water service, and the property owner shall be charged for these costs.

The owner(s) of all houses, buildings, or properties used for human occupancy, employment, recreation or other purposes from which water will be used, which is situated within the City

and adjacent to any street, alley, or right-of-way in which there is now located, or may in the future be located, access to the public water system of the City, shall be required at the owner(s) expense to install suitable service connection to the public sewer in accordance with provision of this code, within 120 days of the date said public water is operational, provided said public water is within 100 feet of the structure generating the wastewater. All future buildings constructed on property adjacent to the public water shall be required to immediately connect to the public water. If water connections are not made pursuant to this section, an official sixty (60) day notice shall be served instructing the affected property owner to make said connection.

In the event an owner shall fail to connect to public water in compliance with a notice given under the Ordinance, the City must undertake to have said connection made and shall assess the cost thereof against the benefited property. Such assessment, when levied, shall bear interest at the rate determined by the City Council and shall be certified to the Auditor of the County of Traverse, Minnesota and shall be collected and remitted to the City in the same manner as assessments for local improvements. The rights of the City shall be in addition to any remedial or enforcement provisions of this ordinance.

No owner or occupant of property in the City of Wheaton shall construct or make use of any private water supply or well on said property, except for such purposes as may be allowed by the Wheaton City Council.

Failure to comply with this Ordinance shall allow the City to have said connection made and shall assess the cost thereof against the benefitted property, with interest, and then certified to the Traverse County Auditor and collected and remitted to the City in the same manner as assessments for local improvements.

405.04 Taps.

No service connections may be made using larger than three-quarter inch pipe from a four inch main, nor larger than one inch pipe from a six inch or larger main. All multiple taps must be at least twelve inches apart.

405.05 Providing Procedures for Payment of Utility Bills and Water Service Shut Off.

Applications for utility service shall be made on forms prescribed by the City and accounts for utility service shall be made in the name of the owner and the owner shall be liable for water, sewer, and sanitary service supplied to the owner's property whether or not the owner is occupying the property and any unpaid charges shall become a lien on the property. Utility charges shall be rendered monthly and consist of water, sewer, sanitary service, sales tax and penalty charges. In the event said charges are not paid within fifteen (15) days after the billing date, the bill will be considered delinquent and a penalty applied. The penalty shall be computed as 10% of the original bill and shall be increased the same 10% for every month the bill is outstanding. The City shall cause notice to be served in writing, to the property address of the premises involved, that if payment is not made within ten (10) days after the date on which the notice is given, the water supply to the premises will be shut off.

Said notice shall clearly inform the customer of the available opportunities to present to the city objections to the bill, and shall identify the telephone number, address and officer or employee who will handle the customer's complaint, and who has the authority to review the facts and files, and to correct any errors in the billing and to arrange for credit terms. The notice shall further state that the occupant or owner may before such date demand a hearing on the matter and in this event the supply will not be shut off until after the hearing is held. If the customer requests a hearing before the date specified on the notice, a hearing shall be held at least one (1) week after the date on which the request is made and shall be held by the City Council and if, as a result of the hearing, the city Council finds that the amount claimed to be due and owing is actually due and unpaid and that there is no legal reason why the water supply of the delinquent customer may not be shut off in accordance with this ordinance, the City may shut off the supply.

The City council shall have the right to order repairs of any water meter found in improper working order and if the City Council determines it is not feasible or practicable to repair any water meter, a new water meter shall be installed and any water meter which is replaced or newly installed, shall be installed so that the water flows through the water meter horizontally.

In the event water service is shut off due to non-payment of utility charges the owner shall, before water service is reconnected, pay the entire utility charge, which shall include the current and delinquent charges, as well as a \$50 reconnect charge and a \$100.00 deposit to be held as security for future charges.

For all new utility accounts an applicant must pay a \$100.00 deposit to be held as security for future charges.

405.06 Collection of Unpaid Charges.

In addition to the provisions of 405.05, each and every water service charge levied by and pursuant to this Ordinance is hereby made a lien upon the lot or premises served, and all such charges which 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 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 or past due water service charges.

405.07 Permit.

Persons wishing water must get a special permit from the City Council for each building, residence, business, etc. All applications for water must state fully all purposes for which it is required, and the person making the application must answer truthfully all questions put to them relating to the uses of the water. In cases of fraudulent representations or willful and unnecessary waste of water, the City Council shall have the right to shut off the supply of water. In all cases the applicant for water shall pay all costs of tapping the mains, and all expenses for corporation stop cock and box.

405.08 Fire Department.

No person except the Public Utilities Superintendent or Chief of the Fire Department shall take water from any public or private fire hydrant, fire plug, street washer, draw cock, hose pipe, or fountain, except for fire purposes or the use of the Fire Department in case of fire, nor shall in any way use or take away any water for private use, which is furnished by the waterworks, unless such person shall first pay for the privileges and receive the usual permit from the City Council so to do.

405.09 Resuming Service.

The water shall not be turned into any private service pipe except where meters are used and until the applicant shall have paid the deposit rent due and shall exhibit his receipt therefor, and plumbers are strictly prohibited from turning the water into any service pipe except upon the order or permission of the City Council.

405.10 Right of Access.

The Public Utilities Superintendent and such other persons as may be directed by the City Council shall be authorized and have free access at all reasonable hours to premises, to ascertain the location or condition of all hydrants, pipes and other fixtures attached to said works, and in case he finds that the water is wasted on account of negligence or want of repairs and if such waste is not immediately remedied, the water shall be turned off. It shall also be the duty of said officer, in case he discovers any defect in a private pipe between the city service pipe and the stop cock, to give notice in writing to be left at the premises, and if necessary repairs are not made in 24 hours thereafter, the water shall be stopped and shall not be turned on again until the repairs are computed.

405.11 Private Expenses

Persons taking water must keep their service pipes and all fixtures connected therewith in good repair and protected from frost at their own expense and must prevent all unnecessary waste, or the water will be shut off. All expenses incurred in the installation, maintenance and replacement of service lines shall be borne by the owner of the property to which service connections are made. All service lines in need of repair as determined by the Public Works Superintendent shall be either repaired or replaced immediately, the said property owner to bear the expense of repair or replacement, and in the event that the said property owner does not bear such expense, the water supply to the said property may be terminated by order of the City Council until proper repairs or replacement are made. All costs and expenses of turning water off and on shall be born by the property owner, and water service will not be granted by the city until all claims by the city against the owner of the property to be supplied, are satisfied.

405.12 Public Use of Private Service.

Hydrants, hose attachments, faucets, or any other device which the consumer may adopt for obtaining water from the service pipe shall not be located so as to be accessible to persons living in or occupying neighboring premises, or to the public when practicable, and in all cases where they are so located the consumers on whose premises such device is located shall be responsible for any violations of the rules and ordinances and shall be liable for the penalties.

405.13 Discontinue of Service.

Any person desiring to discontinue the use of water must give notice thereof in writing to the City Utility Department on or before the day to which the utility bill has been paid, or they will be charged with water to the next utility billing.

405.14 Lot Lines

No service line shall extend from the water main to the property located on more than one lot, and connections passing across lots shall not be permitted.

405.15 Multiple Dwellings.

Service pipes intended to supply two or more distinct premises or tenements, and where only one stop-cock is used, the person or persons controlling the same must pay the water rate of all parties who are thus supplied, as separate water bills will not be made.

405.16 Claims Against City.

No claims shall be made against the City of Wheaton by reason of the breaking of any pipe or service cock or for any interruption of the supply or by the reason of the breaking of the machinery or stoppage for the necessary repairs.

405.17 Financing Extensions.

The City Council shall order laid all necessary pipes to supply water whenever in the discretion of the City Council, the revenue to be derived therefrom will warrant the same, or whenever the public necessity shall require the same. Provided, there shall be money in the treasury which may be appropriated for this purpose; or in case a tax levy has been made, the pipes shall be laid, provided legal and satisfactory arrangements can be made before the money is collected.

405.18 Depth.

All mains or service pipes must be laid at least six and one half (6-1/2) feet deep. Temporary lines of pipe or pipes for summer or lawn purposes must be laid at such depth and in such manner as the City Council may direct.

405.19 Tamping

After service pipes are laid, in refilling the opening, the earth must be laid in layers of not more than twelve inches in depth and each layer thoroughly tamped or puddled, to prevent settlement, and this work, together with the replacing of sidewalks, ballast and paving, must be done promptly, so as to have the streets in as good condition as before it was disturbed, and to the satisfaction of the City Council. All excavations and trenches in connection with the installation of service connections shall be back-filled and tamped so as to restore the property to its original condition, and any permanent surface such as blacktop or concrete shall be replaced to the satisfaction of the City of Wheaton. If a depression appears within one year, the person making the excavation shall be responsible to bring surface to original condition.

405.20 Sprinkling and Watering Limitations

Section 1. The use of water for sprinkling or irrigations of lawns and/or gardens and/or trees or shrubs or for washing of motor vehicles or equipment, except at commercial car washes or businesses, during the period between April first and November first of each year until further notice, is hereby restricted as follows:

- a. Those customers whose house numbers end in an even number may water on even numbered days.
- b. Those customers whose house numbers end in an odd number may water on odd numbered days.
- c. No watering shall be permitted on the 31st day of any month.

Section 2. The right is reserved to suspend the use of water for all sprinkling or irrigations of lawns and/or gardens and/or trees or shrubs or for washing of motor vehicles or equipment, except at commercial car washes or businesses, whenever in the opinion of the City Council the public exigency may require it and after taking action as is reasonably practicable to inform the general public of the imposition of such restrictions on water usage.

Section 3. No person shall cause water to be used in violation of the provisions of this ordinance.

Section 4. Any person violating the provisions of this ordinance shall be guilty of a petty misdemeanor, punishable by the maximum fine allowed by the law for such offenses; plus the cost of prosecution.

Section 5. Failure to comply with water usage restrictions shall also be cause for the discontinuance of water service, with the charges for shutting off and turning on of the water being paid by the customer before the water service is resumed.

405.21 Rates

Rate shall be set at the annual rate setting meeting.

405.22 Payment

All water fees shall be paid to the City Clerk-Treasurer who shall receipt for the same and shall place all money received from water fees to the credit of the waterworks fund.

405.23 Penalty

Violations of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

UTILITIES

406 WATER METERS

406.01 Definition.

As used in this ordinance, the word "meter" shall include a metering or measuring device connected to and an integral part of the water system of the City for the purpose of measuring the amount of water delivered from the City water main to any private premises, buildings, structures in the City.

406.02 Purchase and Ownership of Meters.

Any person installing a meter shall purchase the meter from the city and the city shall at its own expense, keep said meter in good and efficient operating condition and will at its sole expense make all necessary repairs and adjustments in said meter except such repairs as are made necessary by willful damage or negligence of the user. Should any such meter become so damaged or out of condition that it may not be economically repaired, the City, as its sole expense, will replace such meter.

406.03 Private Ownership.

In all instances where the ownership of a meter is not transferred to the City, the cost of removal, repair or replacement of such meter will be at the expense of the owner of the premises. Nothing herein shall be construed to limit or change the power of the City Council to repair and replace privately owned water meter pursuant to W.M.C. 405.10.

406.04 Interference with Meters.

No person not authorized by the City Council shall connect, or disconnect, or take apart, or in any manner change or cause to be changed, or interfere with the action, operation or regulation of a water meter. Whoever violates this section shall be deemed guilty of a misdemeanor punishable pursuant to W.M.C. 005.05.

UTILITIES

409 SEWER SERVICE CHARGE SYSTEM

An Ordinance providing for Sewer Service Charges to recover costs associated with:

1. Operation, maintenance and replacement to ensure effective functioning of the City's Wastewater Treatment System.
2. Local capitol costs incurred in the construction of the City's Wastewater Treatment System.

ARTICLE I: Definitions

Unless the context specifically indicates otherwise, the meaning of the terms used in this ordinance shall be as hereafter designated.

Section 1: "Administration" - Those fixed costs attributable to administration of the wastewater treatment works (i.e. billing and associated bookkeeping and accounting costs).

Section 2: "Biochemical Oxygen Demand or BOD" - The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees C, expressed milligrams per liter.

Section 3: "City" - The area within the corporate boundaries of the City of Wheaton, as presently established or as amended by Ordinance or other legal actions at a future time. When used herein the term City may also refer to the City Council or it's authorized representative.

Section 4: "Commercial User" - Any place of business which discharges sanitary waste as distinct from industrial wastewater.

Section 5: "Commercial Wastewaters" - Domestic wastewater emanating from a place of business as distinct from industrial wastewater.

Section 6: "Debt Service Charge" - A charge levied on users of wastewater treatment facilities for the cost of repaying money bonded to construct said facilities.

Section 7: "Normal Domestic Strength Wastewater" - Wastewater that is primarily produced by residential users, with BOD-5 concentrations not greater than 222 mg/l and suspended solids concentrations not greater than 261 mg/l.

Section 8: "Extra Strength Waste" - Wastewater having a BOD and /or TSS greater than domestic waste as defined in Article I, Section 7 above and not otherwise classified as an incompatible waste.

Section 9: "Governmental User" - Users which are units, agencies or instrumentalities of federal, state or local government discharging Normal Domestic Strength wastewater.

Section 10: "Incompatible Waste" - Waste that either singly or by interaction with other wastes interferes with any waste treatment process, constitutes a hazard to

humans or animals, creates a public nuisance or creates any hazard in the receiving waters of the wastewater treatment works.

Section 11. Industrial Users or "Industries" are:

- a. Entitles that discharge into a publicly owned wastewater treatment works, liquid wastes resulting from the processes employed in industrial or manufacturing processes, or from the development of any natural resources. These are identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemental under one of the following divisions:

Division A: Agriculture, Forestry and Fishing

Division B: Mining

Division D: Manufacturing

Division E: Transportation, Communications, Electric, Gas and Sewers

Division I: Services

For the purpose of this definition, domestic waste shall be considered to have the following characteristics:

BOD 5 less than 222 mg/l

Suspended Solids less than 261 mg/l

- b. Any nongovernmental user of a publicly owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids, or gases in sufficient quantity either singly or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or to interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

Section 12: "Industrial Wastewater"

The liquid processing wastes from an industrial manufacturing process, trade, or business including but not limited to all Standard Industrial Classification Manual Divisions A, B, D, E and I manufacturers as distinct from domestic wastewater.

Section 13: "Institutional User"

Users other than commercial, governmental, industrial or residential users, discharging primarily Normal Domestic Strength wastewater (e.g. Non-profit organizations).

Section 14: "Operation and Maintenance"

Activities required providing for the dependable and economical functioning of the treatment works, throughout the design or useful life, whichever is longer of the treatment works, and at the level of performance for which the treatment works were constructed. Operation and Maintenance includes replacement.

Section 15: "Operation and Maintenance Costs"

Expenditures for operation and maintenance, including replacement.

Section 16: "Public Wastewater Collection System"

A system of sanitary sewers owned, maintained, operated and controlled by the City.

Section 17: “Replacement”

Obtaining and installing of equipment, accessories, or appurtenances which are necessary during the design life or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

Section 18: “Replacement Costs”

Expenditures for replacement.

Section 19: “Residential User”

A user of the treatment facilities whose premises or building is used primarily as a residence for one or more persons, including dwelling units such as detached and semi-detached housing, apartments, and mobile homes; and which discharges primarily normal domestic strength sanitary wastes.

Section 20: “Sanitary Sewer”

A sewer intended to carry only liquid and water carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm, and surface waters which are not admitted intentionally.

Section 21: “Sewer Service Charge”

The aggregate of all charges, including charges for operation, maintenance, replacement, debt service, and other sewer related charges that are billed periodically to users of the City’s wastewater treatment facilities.

Section 22: “Sewer Service Fund”

A fund into which income from Sewer Service Charges is deposited along with other income, including taxes intended to retire debt incurred through capital expenditure for wastewater treatment. Expenditure of the Sewer Service Fund will be for operation, maintenance and replacement costs; and to retire debt incurred through capital expenditure for wastewater treatment.

Section 23: “Shall” is mandatory; “May” is permissive.

Section 24: “Slug”

Any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

Section 25: “Standard Industrial Classification Manual”

Office of Management and Budget, 1972.

Section 26: “Suspended Solids (SS) or Total Suspended Solids (TSS)”

The total suspended matter that either floats on the surface or is in suspension in water, wastewater or other liquids, and is removable by laboratory filtering as prescribed in “Standard Methods for the Examination of Water and Wastewater”, latest edition, and referred to as non-filterable residue.

Section 27: “Toxic Pollutant”

The concentration of any pollutant or combination of pollutants as defined in standards issued pursuant to Section 307(a) of the Act, which upon exposure to or assimilation into any organism will cause adverse effects.

Section 28: “User Charge”

A charge levied on users of a treatment works for the user's proportionate share of the costs of operation and maintenance, including replacement.

Section 29: "Users"

Those residential, commercial, governmental, institutional and industrial establishments which are connected to the public sewer collection system.

Section 30: "Wastewater"

The spent water of a community, also referred to as sewage. From the standpoint of source it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with any ground water, surface water and storm water that may be present.

Section 31: "Wastewater Treatment Works or Treatment Works"

An arrangement of any devices, facilities, structures, equipment, or processes owned or used by the City for the purpose of the transmission, storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage or industrial wastewater, or structures necessary to recycle or reuse water including interceptor sewers, outfall sewers, collection sewers, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations, thereof; elements essential to provide a reliable recycled water supply such as standby treatment units and clear well facilities; and any works including land which is an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

ARTICLE II: Establishment of a Sewer Service Charge System

Section 1: The City of Wheaton hereby establishes a Sewer Service charge system whereby all revenue collected from users of the wastewater treatment facilities will be used to affect all expenditures incurred for annual operation, maintenance, and replacement and for debt service on capital expenditure incurred in constructing the wastewater treatment works.

Section 2: Each user shall pay its proportionate share of operation maintenance and replacement costs of the treatment works, based on the users proportionate contribution to the total wastewater loading from all users.

Section 3: Each user shall pay debt service charges to retire local capital costs as determined by the City Council.

Section 4: Sewer Service rates and charges to users of the wastewater treatment facility shall be determined and fixed in a "Sewer Service Charge System" developed according to the provisions of this Ordinance. The Sewer Service Charge System developed with the assistance of Houston Engineering, Inc. shall be adopted by resolution upon enactment of this Ordinance, shall be published in the local newspaper, and shall be effective upon publication. Subsequent changes in Sewer Service rates and charges shall be adopted by Council resolution and shall be published in the local newspaper.

Section 5: Revenues collected for Sewer Service shall be deposited in a separate fund known as "the Sewer Service Fund". Income from revenues collected will be expended to offset the cost of operation, maintenance and equipment replacement for the facility and to retire the debt for capital expenditure.

Section 6: Sewer Service Charges and the Sewer Service Fund will be administrated in accordance with the provisions of Article V of this Ordinance.

Article III: Determination of Sewer Service Charges

Section 1: Users of the City of Wheaton wastewater treatment works shall be identified as belonging to one of the following user classes:

1. Residential
2. Commercial
3. Industrial
4. Institutional
5. Governmental

The allocation of users to these categories for the purpose of assessing User Charges and Debt Service Charges shall be the responsibility of the City Clerk. Allocation of users to user classes shall be based on the substantive intent of the definitions of these classes contained herein.

Section 2: Each user shall pay operation, maintenance, and replacement costs in proportion to the user's proportionate contribution of wastewater flows and loadings to the treatment plant, with the minimum rate for loadings of BOD and TSS being the rate established for concentrations of 222 mg/1 BOD and 261 mg/1 TSS (i.e. Normal Domestic Strength Wastewater).

Those "industrial users" discharging segregated "Normal Domestic Strength Wastewater" only, can be classified as "commercial users" for the purpose of rate determination.

Section 3: The charges assessed residential users and those users of other classes discharging "normal domestic strength wastewater" shall be established proportionately according to billable wastewater volume. Billable wastewater volume shall be calculated as follows:

A. Residential Users:

Billable wastewater volume for residential users shall be calculated on the basis of metered water usage. The per month payable wastewater volume shall be equal to monthly metered water usage.

B. Non-Residential Users

The billable wastewater volume of non-residential users may be determined in the same manner as for residential users. Except that at if the City determines that there are significant seasonal variations in the metered water usage of non-residential users resulting in a proportionate increase or decrease in wastewater volume; then billable wastewater volume shall be:

1. Calculated of the basis of monthly metered water usage as recorded throughout the year, and
2. Calculated on the basis of wastewater flow meters.

The City may, at its discretion, require non-residential users to install such additional water meters or wastewater flow meters as may be necessary to determine billable wastewater volume.

Section 4: Determination of User Charges

User charges for normal domestic strength users shall be determined as follows:

- A. Calculation of unit cost for treatment of normal domestic strength wastewater:

$$U_{omr} = \frac{Comr}{T_{bwv}}$$

Where: U_{omr} = Unit cost for Operation, Maintenance & Replacement in S/Kgal.

$Comr$ = Total annual OM+R costs

T_{bwv} = Total annual billable wastewater volume in kgal.

- B. Calculation of user charge:

$$U_c = U_{omr} \times bwv$$

Where: U_c = User Charge

U_{omr} = Unit cost for operation, maintenance & replacement in S/Kgal.

bwv = Billable Wastewater Volume of a particular user in kgal.

NOTE: Provision for the recovery of local construction costs shall be included in the Sewer Rate Ordinance and accompanying Sewer Service Charge System. Federal and State regulations do not require that local construction costs be recovered proportionately, (as is the case with operation, maintenance and replacement costs) but only that the method of recovery be provided for. Consequently, the City may employ a variety, or a combination of methods to recover such costs.

The following alternatives demonstrate provision for such costs in the Sewer Rate Ordinance, and can be employed to assist in the development of a suitable Ordinance. These alternatives are offered as suggestions only; neither the EPA nor the MOCA endorse a particular approach.

Section 5: Recovery of Local Construction Costs

Local construction costs of the wastewater treatment facility will be recovered through a Debt Service Charge calculated in a manner consistent with the User Charge, as follows:

- A. Calculation of unit cost for debt service

$$Uds = \frac{c ds}{udwv}$$

Where: Uds = unit cost for debt service in S/Kgal.

Cds = cost of annual debt service

Tbwv = total annual billable wastewater volume in kgal

B. Calculation of Debt Service Charge:

$$Dc = Uds \times bwv$$

Where: Dc = Debt Service Charge

Uds = Unit cost for debt service in S/Kgal

Bmv = Billable wastewater, volume of a particular user in kgal.

Section 6: Determination of Sewer Service Charges

The Sewer Service Charge for a particular connection shall be determined as follows:

$$SSC = Uc \& Dc$$

Where: SSC = Sewer Service Charge

Uc = User Charge

Dc = Debt Service Charge

Section 7: The Sewer Service charges established in this Ordinance shall not prevent the assessment of additional charges to users who discharge wastes with concentrations greater than Normal Domestic Strength or wastes of unusual character, or contractual agreements with such users, as long as the following conditions are met:

1. The user pays operation, maintenance, and replacement costs in proportion to the user's proportionate contribution of wastewater flows and loadings to the treatment plant, and no user is charged at a rate less than that of "Normal Domestic Strength Wastewater"
2. The measurements of such wastes are conducted according to the latest edition of Standard Methods for the Examination of Wastewater and Wastewater.

A study of unit costs of collection and treatment processes attributable to Flow, BOD, TSS and other significant loadings shall be developed for determining the proportionate allocation of costs to flows and loadings for users discharging wastes of greater than normal domestic strength or wastes of unusual character.

Article IV. Sewer Service Fund

Section 1. The City of Wheaton hereby establishes a "Sewer Service Fund" as an income fund to receive all revenues generated by the Sewer Service Charge System,

and all other income dedicated to the operation, maintenance, replacement and construction of the wastewater treatment works, including taxes, special charges, fees, and assessments intended to retire construction debt.

The City also establishes the following accounts as income and expenditure accounts within the Sewer Service Fund:

1. Operation and maintenance account
2. Equipment and replacement account
3. Debt Retirement Account

Section 2. All revenue generated by the sewer service charge system, and all other income pertinent to the treatment system, including taxes and special assessments dedicated to retire construction debt, shall be held by the Clerk separate and apart from all other funds of the City. Funds received by the Sewer Service Fund shall be transferred to the “operation and maintenance account”, the equipment replacement account, and the debit retirement account, in accordance with State and Federal regulations and the provisions of this ordinance.

Section 3: Revenue generated by the Sewer Service charge system sufficient to insure adequate replacement throughout the design of useful life, whichever is longer, of the wastewater facility shall be held separate and apart in the equipment replacement account and dedicated to affecting replacement costs. Interest income generated by the equipment replacement account shall remain in the equipment replacement account.

Section 4: Revenue generated by the Sewer Service Charge System sufficient for operation and maintenance shall be held separate and apart in the operation and maintenance account.

Article V: Administration

The Sewer Service Charge System and Sewer Service Fund shall be administrated according to the following provisions:

Section 1: The City Clerk shall maintain a proper system of accounts suitable for determining the operation and maintenance, equipment replacement and debt retirement costs of the treatment works, and shall furnish the City council with a report of such costs annually in April.

The City Council shall annually determine whether or not sufficient revenue is being generated for the effective operation, maintenance, replacement and management of the treatment works, and whether sufficient revenue is being generated for debt retirement. The Council will also determine whether the user charges are distributed proportionately to each user in accordance with Article II, Section 2 of this Ordinance and Section 204(b)(2)(A) of the Federal Water Pollution Control Act, as amended.

The City shall thereafter, but not later than the end of the year, reassess, and as necessary revise the sewer service charge system then in use to insure the proportionality of the user charges and to insure the sufficiency of funds to maintain the capacity and performance to which the facilities were constructed, and to retire the construction debt.

Section 2: In accordance with Federal and State requirements each user will be notified annually in conjunction with a regular billing of that portion of the Sewer Service Charge System then in use to insure the proportionality of the user charges and to insure the sufficiency of funds to maintain the capacity and performance to which the facilities were constructed, and to retire the construction debt.

Section 3: In accordance with Federal and State requirements, the City Clerk shall be responsible for maintaining all records necessary to document compliance with the Sewer Service Charge System adopted.

Section 4: Bills rendered for Sewer Service Charges shall follow the procedures outlined in Ordinance No. 405.05 of the Wheaton Municipal Code.

Section 5: The owner of the premises, shall be liable to pay for the service to such premises, and the service is furnished to the premises by the City only upon the condition that the owner of the premises is liable therefore to the City.

Section 6: Any additional costs caused by discharges to the treatment works of toxics or other incompatible wastes, including the cost of restoring wastewater treatment services, clean up and restoration of the receiving waters and environs, and sludge disposal, shall be borne by the discharger(s) of said wastes, at no expense to the City.

Article VI. Penalties

Section 1: Each and every sewer service charge levied by and pursuant to this Ordinance is hereby made a lien upon the lot or premises served, and all such charges which 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 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 or past due water service charges.

Section 2: As an alternative to levying a lien, the City may, at its discretion, file suit in a civil action to collect such amounts as are delinquent and due against the occupant, owner, or user, of the real estate, and shall collect as well all attorney's fees incurred by the city in filing the civil action. Such attorney's fees shall be fixed by order of the court.

Section 3: In addition to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the owner or user of the real estate being serviced by the treatment works shall be liable for interest upon all unpaid balances at the rate of 18% per annum.

Article VII: Severability and Validity

Section 1: If any section or subdivisions of this ordinance shall be held invalid, the invalidity thereof shall not affect the validity of the other provisions of this ordinance, which shall continue in full force and effect.

Section 2: The sewer service charges system shall take precedence over any terms or conditions of agreements of agreements or contracts which are inconsistent with the requirements of section 204(b)(1)(A) of the Act and Federal regulation 40 CFR (Code of Federal Regulations) 35.2140 of the Environmental Protection Agency's grant regulations.

Section 3: This ordinance shall be in full force and take effect from and after it's passage and approval and publication as provided by law.

Section 4: Accepted by Wheaton City council on November 17, 1988.

UTILITIES

410 SEWER USE REGULATIONS

An ordinance regulating the use of public and private sewers and drains, private wastewater disposal, the installation and connection of building sewers, and the disposal, the installation and connection of building sewers, and the discharge of waters, and wastes into the public sewer system(s); and providing penalties for violations thereof.

Be it ordained and enacted by the Council of the City of Wheaton, Minnesota as follows:

410.01.1 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall have the meanings hereinafter designated:

- Section 1. "Act" – The Federal Water Pollution Control Act also referred to as the Clean Water Act, as amended, 33. U.S.C. 1251, et seq.
- Section 2. "ASTM" – American Society for Testing Materials.
- Section 3. "Authority" – The City of Wheaton, Minnesota or it's representative thereof.
- Section 4. "BOD 5 or biochemical Oxygen Demand" –The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure I five (5) days at 20 degrees Centigrade in terms of milligrams per liter (mg/l).
- Section 5. "Building Drain" – that part of the lowest horizontal piping of a drainage system which receives the discharge from waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the building wall.
- Section 6. "Building Sewer" – the extension from the building drain to the public sewer or other place of disposal, also referred to as a house connection or service connection.
- Section 7. "City"-the area within the corporate boundaries of the City of Wheaton as presently established or as amended by ordinance or other legal actions at a future time. The term "City" when used herein may also be used to refer to the City Council and it's authorized representative.
- Section 8. "chemical Oxygen Demand (COD)" = the quantity of oxygen utilized in the chemical oxidation of organic matter as determined by standard laboratory procedures, and as expressed in terms of milligrams per liter (mg/l).
- Section 9. "Compatible Pollutant" – Biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria, plus additional pollutants identified in the NPDES/SDS Permit if the treatment facilities are designed to treat such pollutants to a degree which complies with effluent concentration limits imposed by the permit.
- Section 10. "Control Manhole" - a structure specially constructed for the purpose of measuring flow and sampling of wastes.

- Section 11. "Easement" - an acquired legal right for the specific use of land owned by others.
- Section 12. "Fecal Coliform" - any number of organisms common to the intestinal tract of man and animals whose presence in sanitary sewage is an indicator of pollution.
- Section 13. "Floatable Oil" - Oil, fat, or grease in a physical state, such that it will separate by gravity from wastewater.
- Section 14. "Garbage" - animal and vegetable waste resulting from the handling, preparation, cooking, and serving of food.
- Section 15. "Incompatible Pollutant" - any pollutant that is not defined as a compatible pollutant (Sec. 9) including non-biodegradable dissolved solids.
- Section 16. "Industry" - any nongovernmental or nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, latest edition, which is categorized in Divisions A, B, D, E and I.
- Section 17. "Industrial Waste" - gaseous, liquid, and solid wastes resulting from industrial or manufacturing processes, trade or business, or from the development, recovery and processing of natural resources, as distinct from residential or domestic strength wastes.
- Section 18. "Infiltration" - water entering the sewage system (including building drains and pipes) from the ground through such means as defective pipes, pipe joints, connections, and manhole walls.
- Section 19. "Infiltration/Inflow (I/I)" - the total quantity of water from both infiltration and inflow.
- Section 20. "Inflow" - water other than wastewater that enters a sewer system (including building drains) from sources such as, but not limited to, roof leaders, cellar drains, yard and area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers, catch basins, surface runoff, street wash waters or drainage.
- Section 21. "Interference" - the inhibition or disruption of the City's wastewater disposal system processes or operations which causes or significantly contributes to a violation of any requirement of the city's NPDES and/or SDS Permit. The term includes of sewage sludge use or disposal by the City in accordance with the published regulations providing guidelines under Section 405 of the Act or any regulations developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or more stringent State criteria applicable to the method of disposal or use employed by the City.
- Section 22. "MPCA" - Minnesota Pollution Control Agency.
- Section 23. "National Categorical Pretreatment Standards" - federal regulations establishing pretreatment standards for introduction of pollutants in publicly-owned wastewater facilities which are determined to be not susceptible to treatment by such treatment facilities or would interfere with the operation of such treatment facilities, pursuant to Section 307(b) of the Act.
- Section 24. "National Pollutant Discharge Elimination System (NPDES) Permit" - a

permit issued by the MPCA, setting limits on pollutants that a permittee may legally discharge into navigable waters of the United States pursuant to Sections 402 and 405 of the Act.

- Section 25. "Natural Outlet" - any outlet, including storm sewers and combined sewers, which overflow into a watercourse, pond, ditch, lake or other body of surface water or ground water.
- Section 26. "Non-Contact Cooling Water" - the water discharged from any use such as air conditioning, cooling or refrigeration, or during which the only pollutant added is heat.
- Section 27. "Normal Domestic Strength Waste" - wastewater that is primarily introduced by residential users with a BOD5 concentration not greater than 222 mg/l and a suspended solids (TSS) concentration not greater than 261 mg/l.
- Section 28. "Person" - any individual, firm, company, association, society, corporation or group.
- Section 29. "pH" - the logarithm of the reciprocal of the concentration of hydrogen ions in terms of grams per liter of solution.
- Section 30. "Pretreatment" - the treatment of wastewater from industrial sources prior to the introduction of the waste effluent into a publicly-owned treatment works. (See Sec.23)
- Section 31. "Properly Shredded Garbage" - the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than ½ inch (1.27 cm) in any dimension.
- Section 32. "Sewage" - the spent water of a community. The preferred term is wastewater.
- Section 33. "Sewer" - a pipe or conduit that carries wastewater or drainage water.
- a. "collection water" - a sewer whose primary purpose is to collect wastewater's from individual point source discharges and connections.
 - b. "combined sewer" - a sewer intended to serve as a sanitary sewer and a storm sewer.
 - c. "force main" - a pipe in which wastewater is carried under pressure.
 - d. "interceptor sewer" - a sewer whose primary purpose is to transport wastewater from collection sewers to a treatment facility.
 - e. "private sewer" - a sewer which is not owned and maintained by a public authority.
 - f. "public sewer" - a sewer owned, maintained and controlled by a public authority.
 - g. "sanitary sewer" - a sewer intended to carry only liquid and water-carried water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters which are not admitted intentionally.
 - h. "storm sewer or storm drain" - a drain or sewer intended to carry storm waters, surface runoff, ground water, sub-surface water, street wash water drainage, and unpolluted water from any source.

- Section 34. “Shall” is mandatory; “May” is permissive.
- Section 35. “Significant Industrial User” - any industrial user of the wastewater treatment facility which has a discharge flow (1) in excess of 25,000 gallons per average work day, or (2) has exceeded five percent (5%) of the total flow received at the treatment facility, or (3) whose waste contains a toxic pollutant in toxic amounts pursuant to section 307(a) of the Act, or (4) whose discharge has a significant effect, either singly or in combination with other contributing industries, on the wastewater disposal system, the quality of sludge, the system’s effluent quality, or emissions generated by the treatment system.
- Section 36. “Slug” - any discharge of water or wastewater which in concentration of any given constituent, or in quantity of flow, exceeds for any period of duration longer than fifteen (15) minutes, more than five (5) times the average 24-hour concentration of flows during normal operation, and shall adversely affect the collection and/or performance of the wastewater treatment works.
- Section 37. “State Disposal System (SDS) Permit” - any permit (including any terms, conditions and requirements thereof) issued by the MPCA pursuant to Minnesota Statutes 115.07 for a disposal system as defined by Minnesota Statutes 115.01, Subdivision 8.
- Section 38. “Superintendent” - the utilities superintendent or a deputy, agent or representative thereof.
- Section 39. “Suspended Solids (SS) or Total Suspended Solids (TSS)” - the total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and is removable by laboratory filtering as prescribed in “Standard Method for the Examination of Water and Wastewater”, latest edition, and referred to as non-filterable residue.
- Section 40. “Toxic Pollutant” - the concentration of any pollutant or combination of pollutants which upon exposure to an assimilation into any organism will cause adverse effects as defined in standards issued pursuant to Section 307(a) of the Act.
- Section 41. “Unpolluted Water” - water of quality equal to or better than the effluent criteria in effect, or water that would not cause violation of receiving water quality standards, and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities. (See “non-contact cooling water”, Sec.23).
- Section 42. “User” - any person who discharges or causes or permits the discharge of wastewater into the City’s wastewater disposal system.
- Section 43. “Wastewater” - the spent water of a community and referred to as sewage. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with any ground water, surface water and storm water that may be present.
- Section 44. “Wastewater Treatment Works or Treatment Works” - an arrangement of any devices, facilities, structures, equipment, or processes owned or used by the city for the purpose of the transmission, storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage or industrial wastewater, or structures necessary to recycle or reuse water including interceptor sewers,

outfall sewers, collection sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled water supply such as standby treatment units and clear well facilities; and any works including land which is an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

Section 45. "Watercourse" - a natural or artificial channel for the passage of water, either continuously or intermittently.

Section 46. "WPCF" - the Water Pollution Control Federation.

410.02 Control by the Utilities Superintendent

Section 1. The Utilities Superintendent shall have control and general supervision of all public sewers and service connections in the city, and shall be responsible for administering the provisions of this ordinance to the end that a proper and efficient public sewer is maintained.

410.03

Section 1. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under jurisdiction, any human or animal excrement, garbage or objectionable waste.

Section 2. It shall be unlawful to discharge to any natural outlet any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance and the City's NPDES/SDS Permit.

Section 3. Except as provided hereinafter, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

Section 4. The owner(s) of all houses, buildings, or properties used for human occupancy, employment, recreation or other purposes from which wastewater is discharged, which is situated within the City and adjacent to any street, alley, or right-of-way in which there is now located, or may in the future be located, a public sanitary sewer of the City, shall be required at the owner(s) expense to install suitable service connection to the public sewer in accordance with provision of this code, within 120 days of the date said public sewer is operational, provided said public sewer is within 100 feet of the structure generating the wastewater. All future buildings constructed on property adjacent to the public sewer shall be required to immediately connect to the public sewer. If sewer connections are not made pursuant to this section, an official sixty (60) day notice shall be served instructing the affected property owner to make said connection.

Section 5. In the event an owner shall fail to connect to a public sewer in compliance with a notice given under Article II, Section 4, of the Ordinance, the City must undertake to have said connection made and shall assess the cost thereof

against the benefited property. Such assessment, when levied, shall bear interest at the rate determined by the City Council and shall be certified to the Auditor of the County of Traverse, Minnesota and shall be collected and remitted to the City in the same manner as assessments for local improvements. The rights of the City shall be in addition to any remedial or enforcement provisions of this ordinance.

410.04 Private Wastewater Disposal

- Section 1. Where a public sewer is not available under the provisions of Article III, Section 4, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this Article.
- Section 2. Prior to commencement of construction of a private wastewater disposal system, the owner(s) shall first obtain a written permit signed by the City. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary to the City.
- Section 3. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the City or its authorized representative. The City or its representative shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for the permit shall notify the City when work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of the notice.
- Section 4. The type, capacities, location and layout of a private wastewater disposal system shall comply with all requirements of 6 MCAR 4.8040, entitled, "Individual Sewage Treatment System Standards". No septic tank or cesspool shall be permitted to discharge to any natural outlet.
- Section 5. At such time as a public sewer becomes available to a property serviced by a private wastewater disposal system, a direct connection shall be made to the public sewer within 60 days in compliance with the ordinance, and within 5 days any septic tanks, cesspools, and similar private wastewater disposal systems shall be cleaned of sludge. The bottom shall be broken to permit drainage, and the tank or pit filled with suitable material.
- Section 6. The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times at no expense to the City.
- Section 7. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the MPCA or the Department of Health of the State of Minnesota.

410.05 Building Sewers and Connections

- Section 1. Any new connection(s) to the sanitary sewer system shall be prohibited unless sufficient capacity is available in all downstream facilities including, but not limited to capacity, for flow, BOD5, and Suspended Solids, as determined by the Superintendent.

- Section 2. No unauthorized person(s) shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City.
- Section 3. Applications for permits shall be made by the owner or authorized agent and the party employed to do the work, and shall state the location, name of owner, street number of the building to be connected, and how occupied. No person shall extend any private building drain beyond the limits of the building or property for which the service connection permit has been given.
- Section 4. There shall be two (2) classes of building sewer permits: a. for residential and commercial service, and b. for service to establishments producing industrial wastes. In either case, the application shall be supplemented by any plans, specifications, or any other information considered pertinent in the judgment of the City.
The industry, as a condition of permit authorization, must provide information describing it's wastewater constituents, characteristics, and type of activity.
- Section 5. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the City from any loss or damage that may be directly or indirectly occasioned by the installation of the building sewer.
- Section 6. A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway. The building sewer from the front building may be extended to the rear building and the whole considered one building sewer. The city does not and will not assume any obligation or responsibility for damage caused by or resulting from any such connection aforementioned.
- Section 7. Old buildings sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent or his representative, to meet all requirements of this ordinance.
- Section 8. The size, slopes, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling of the trench, shall all conform to the requirements of the State of Minnesota Building and Plumbing Code or other applicable rules and regulations of the City. In the absence of code provisions or in the amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No.9 shall apply.
- Section 9. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
- Section 10. No person(s) shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or indirectly to the wastewater disposal system.

- Section 11. The connection of the building sewer into the public sewer shall conform to the requirements of the State of Minnesota Building and Plumbing Code or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9. All such connections shall be made gastight and watertight, and verified by proper testing to prevent the inclusion of infiltration/inflow. Any deviation from the prescribed procedures and materials must be approved by the City prior to installation.
- Section 12. The applicant for the building sewer permit shall notify the City when the building sewer is ready for inspection and connection to the public sewer. The connection and inspection shall be made under the supervision of the superintendent or authorized representative thereof.
- Section 13. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work, shall be restored in a manner satisfactory to the City.
- Section 14. No person shall make a service connection with any public sewer unless regularly licensed under this chapter to perform such work, and no permit shall be granted to any person except such regularly licensed person.
- Section 15. Any person desiring a license to make a service connection with public sewers, shall apply in writing the City Council with satisfactory evidence that the applicant or employer is trained or skilled in the business and qualified to receive a license. All applications shall be referred to the Superintendent recommendations to the Council. If approved by the Council, such license shall be issued by the City Clerk upon filing of a bond as hereinafter provided.
- Section 16. No license shall be issued to any person until a \$10,000 bond to the city, approved by the Council, is filed with the City Clerk conditioned that the licensee will indemnify and save harmless the City from all suits, accidents, and damage that may arise by reason of any opening any street, alley, or public ground, made by the licensee or by those in the licensee's employment for any purpose whatever, and that the licensee will replace and restore the street and alley over such opening to the condition existing prior to installation adequately guard with barricades and lights and will keep and maintain the same to the satisfaction of the Superintendent, and shall conform in all respects to the rules and regulations of the council relative thereto, and pay all fines that may be imposed on the licensee by law.
- Section 17. The license fee for making service connections is \$10.00. All licenses shall expire on December 31 of the license year unless the license is suspended or revoked by the council for cause. Upon failure to apply for a license renewal prior to the expiration date thereof, the license fee for the ensuing year shall be \$15.00.
- Section 18. The Council may suspend or revoke any license issued under this article for any of the following causes:
- a. Giving false information in connection with the application for a license.
 - b. Incompetence of the licensee.

- c. Willful violation of any provisions of this article or any rule or regulation pertaining to the making of service connections.

410.06 Use of Public Services

- Section 1. No person(s) shall discharge or cause to be discharged any unpolluted water such as storm water, ground water, roof runoff, surface drainage, or non-contact cooling water to any sanitary sewer.
- Section 2. Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designed as storm sewers or to a natural outlet approved by the City and other regulatory agencies. Industrial cooling water or unpolluted process waters may be discharged to a storm sewer or natural outlet on approval of the City and upon approval and the issuance of a discharge permit by the MPCA.
- Section 3. No person(s) shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:
 - a. Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the wastewater disposal system or to the operation of the system. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.
 - b. Solid or viscous substances which will cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to, grease, garbage with particles greater than one-half (1/2) inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grindings or polishing wastes.
 - c. Any wastewater having a pH of less than 5.0 or greater than 9.5 or having no other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the wastewater disposal system.
 - d. Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to inhibit or disrupt any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the wastewater disposal system. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the Act.
- Section 4. The following described substances, materials, water, or wastes shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either sewers, the wastewater treatment works treatment

process or equipment, will not have an adverse effect on the receiving stream and/or soil, vegetation and ground water, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The Superintendent may set limitations lower than limitations established in the regulations below if, in his opinion, such more severe limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability of wastes, the Superintendent will give consideration to such factors as the quantity of subject waste in reaction to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, the City's NPDES and/or SDS permit, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewater's discharged to the sanitary sewer which shall not be violated without approval of the Superintendent are as follows:

- a. Any wastewater having a temperature greater than 150 degrees Fahrenheit (65.6 degree Celsius) or causing, individually or in combination with other wastewater, the influent at the wastewater treatment plant to have a temperature exceeding 104 degrees Fahrenheit (40 degrees Celsius) or having heat in amounts which will inhibit biological activity in the wastewater treatment works resulting in interference therein.
- b. any wastewater containing fats, wax, grease, or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit and 150 degrees Fahrenheit (0 degree Celsius and 65.6 degrees Celsius); and any wastewater containing oil and grease concentrations of mineral origin of greater than 100 mg/l, whether emulsified or not.
- c. any quantities of flow, concentrations, or both which constitute a "slug" as defined herein. (See 410.01, Section 33)
- d. any garbage not properly shredded, as defined in 410.01, Section 28. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food on the premises or when served by caterers.
- e. any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are capable of creating a public nuisance or hazard to life, or are sufficient to prevent entry into the sewers for their maintenance and repair.
- f. any wastewater with objectionable color not removed in the treatment process, such as, but not limited to dye wastes and vegetable tanning solutions.
- g. non-contact cooling water or unpolluted storm, drainage, or groundwater.
- h. wastewater containing inert suspended solids, (such as, but not limited to , Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate) in such quantities that would cause disruption with the wastewater disposal system.

- i. any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations.
- j. any waters or wastes containing the following substances to such degree that any such material received in the composite wastewater at the wastewater treatment works in excess of the limits established by the superintendent for such materials:
 - arsenic mercury
 - cadmium nickel
 - copper silver
 - cyanide total chromium
 - lead zinc
 - phenolic compounds which cannot be removed by City's wastewater treatment system.
- k. any wastewater which creates conditions at or near the wastewater disposal system which violates any statute, rule, regulation, or ordinance of any regulatory agency, or state or federal regulatory body.
- l. any waters or wastes containing BOD 5 or suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the wastewater treatment works, except as maybe permitted by specific written agreement subject to the provisions of Section 16 of this ordinance.

Section 5. If any waters or wastes are discharged or are proposed to be discharged to the public sewers which contain substances or possess the characteristics enumerated in Section 4 of this ordinance, and/or which in the judgment of the Superintendent, may have a deleterious effect upon the wastewater treatment facilities, processes, or equipment; receiving waters and/or soil, vegetation, and ground water; or which otherwise create a hazard to life or constitute a public nuisance, the city may:

- a. reject the wastes
- b. require pretreatment to an acceptable condition for discharge to the public sewers, pursuant to Section 307(b) of the Act and all addendums thereof,
- c. require control over the quantities and rates of discharge, and/or,
- d. require payment to cover the added costs of handling, treating, and disposing of wastes not covered by existing taxes or sewer service charges.

If the city permits the pretreatment or equalization of waste flows, the design, the installation and maintenance of the facilities and equipment shall be made at the owner's expense, and shall be subject to the review and approval of the city pursuant to the requirements of the MPCA.

Section 6. No user shall increase the use of process water or, in any manner, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in Sections 3 and 4 of this ordinance, or contained in the national categorical pretreatment standards or any state requirements.

Section 7. Where pretreatment or flow-equalizing facilities are provided or required

for any water or wastes, they shall be maintained continuously in satisfactory and effective operation at the expense of the owner(s).

Section 8. Grease, oil, and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in Section 4(b), any flammable wastes as specified in Section 3(a), sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of the type to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner(s) shall be responsible for the proper removal and disposal of the captured materials by appropriate means, and shall maintain a record of dates and means of disposal which are subject to review by the Superintendent. Any removal and hauling of the collecting materials not performed by the owner's personnel, must be performed by a currently licensed waste disposal firm.

Section 9. Where required by the city, the owner of an property serviced by a building sewer carrying industrial wastes shall install a suitable structure, or control manhole, with such necessary meters and other appurtenances in the building sewer to facilities observation, sampling and measurement of wastes. Such structure shall be accessible and safely located, and shall be constructed in accordance with plans approved by the City. The structure shall be installed by the owner at his expense and shall be maintained by the owner to be safe and accessible at all times.

Section 10. The owner of any property serviced by a building sewer carrying industrial wastes may, at the discretion of the city, be required to provide laboratory measurements, tests, or analysis's of waters or wastes to illustrate compliance with this ordinance and any special condition for discharge established by the city or regulatory agencies having jurisdiction over the discharge. The number, type, and frequency of sampling and laboratory analysis to be performed by the owner shall be as stipulated by the City. The industry must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with Federal, State and local standards are being met. The owner shall report the results of measurements and laboratory analysis to the City at such times and in such manner as prescribed by the city.

The owner shall bear the expense of all measurements, analysis, and reporting required by the city. At such times as deemed necessary, the city reserves the right to take measurements and samples for analysis by an independent laboratory.

Section 11. All measurements, tests, and analysis of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association. Sampling methods, location, times, duration and frequencies are to be determined on an individual basis subject to approval by the superintendent.

Section 12. Where required by the City, the owner of any property serviced by a

sanitary sewer shall provide protection from an accidental discharge of prohibited materials or other substances regulated by this ordinance. Where necessary, facilities to prevent accidental discharges of prohibited materials shall be provided and maintained at the owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the superintendent for review and approval prior to construction of the facility. Review and approval of such plans and operating procedures shall not relieve any user from the responsibility to modify the user's facility as necessary to meet the requirements of this ordinance. Users shall notify the superintendent immediately upon having a slug or accidental discharge of substances of wastewater in violation of this ordinance to enable countermeasures to be taken by the superintendent to minimize damage to the wastewater treatment works. Such notification will not relieve any user of any liability for any expense, loss or damage to the wastewater treatment system or treatment process, or for any fines imposed on the city on account thereof under any state and federal law. Employees shall insure that all employees who may cause or discover such a discharge, are advised of the emergency notification procedure.

- Section 13. No person, having charge of any building or other premises which drains into the public sewer, shall permit any substance or matter which may form a deposit or obstruction to flow or pass into the public sewer. With 10 (ten) days after receipt of written notice from the City, the owner shall install a suitable and sufficient catch basin or waste trap, or if one already exists, shall clean out, repair or alter the same, and perform such other work as the Superintendent may deem necessary. Upon the owner's refusal or neglect to install a catch basin or waste trap or to clean out, repair, or alter the same after the period of five (5) days, the Superintendent may cause such work to be completed at the expense of the owner or representative thereof.
- Section 14. Whenever any service connection becomes clogged, obstructed, broken or out of order, or detrimental to the use of the public sewer, or unfit for the purpose of drainage, the owner shall repair or cause such work to be done as the Superintendent may direct. Each day after ten (10) days that a person neglects or fails to act shall constitute a separate violation of this section, and the Superintendent may then cause the work to be done, and recover from such owner or agent the expense thereof by an action in the name of the City.
- Section 15. The owner or operator of any motor vehicle washing or servicing facility shall provide and maintain in serviceable condition at all times, a catch basin or waste trap in the building drain system to prevent grease, oil, dirt or an mineral deposit from entering the public sewer system.
- Section 16. In addition to any penalties that may be imposed for violation of any provision of this chapter, the City will assess against any person the cost of repairing or restoring sewers or associated facilities damaged as result of the discharge of prohibited wastes by such person, any may collect such assessment as an additional charge for the use of the public sewer system or in any other manner deemed appropriate by the City.
- Section 17. No statement contained in this article shall be construed as preventing any

special agreement or arrangement between the City of Wheaton and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore by the industrial concern, providing that National Categorical Pretreatment Standards and the City's NPDES and/or State Disposal System Permit limitations are not violated.

410.07 No person(s) shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure appurtenance, or equipment which is part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under the charge of a misdemeanor.

410.08 Each user of sewer service shall pay the charge(s) applicable to the type of service, and in accordance with the provisions set forth in Ordinance No.409.

410.09 Powers and Authority of Inspectors.

Section 1. The superintendent or other duly authorized employees of the City, bearing proper credentials and identification, shall be permitted to enter all properties for the purpose of inspection, observations, measurement, sampling, and testing pertinent to the discharges to the City's sewer system in accordance with the provisions of this ordinance.

Section 2. The superintendent or other duly authorized employees are authorized to obtain information concerning industrial processes which have a direct bearing on the type and source of discharge to the wastewater collection system. An industry may withhold information considered confidential however, the industry must establish that the revelation to the public of the information in question, might result in an advantage to competitors.

Section 3. While performing necessary work on private properties, the superintendent or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage or it's property by City employees and against liability claims and demands for personal injury or property damage assert against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in 410.06, Section 9 of this ordinance.

Section 4. The superintendent or other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

- 410.10 Penalties.**
- Section 1. Any person found to be violating any provision of this ordinance, shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
- Section 2. Any person who shall continue any violation beyond the time limit provided for in Section 1 of this ordinance, 410.10, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in the amount not exceeding \$100.00 for each violation. Each day in which any such violation occurs shall be deemed as a separate offense.
- Section 3. Any person violating any of the provision of this ordinance shall become liable to the City for any expense, loss, or damage occasioned by the City by reason of such violation.
- 410.11 Validity.**
- Section 1. This ordinance shall be in full force and take effect from and after it's passage and approval and publication as provided by law.
- Section 2. All other ordinances and parts of other ordinances inconsistent or in conflict with any part of this ordinance, are hereby repealed to the extent of such inconsistency or conflict.
- Section 3. Passed by the City Council of Wheaton on November 17, 1988.

UTILITIES

411 CAR WASHES

411.01 Public Garages; Wash Racks.

All public garages or other establishments in the City of Wheaton maintaining wash racks for washing automobiles which wash racks shall be connected with the public sewers of said City shall install and maintain in connection with such racks a catch basin of adequate size to be approved the City Council, calculated to prevent dirt and other sediment from being carried into the public sewers of the City of Wheaton; and such catch basin shall be frequently cleaned and as often as may be required to prevent dirt being lodged in the public sewers therefrom.

411.02 Permit; Inspection Fee.

Any person wishing to maintain a wash rack which shall come within the provisions of the foregoing section shall apply in writing to the City Council of the City of Wheaton for a permit therefor, and shall pay the cost of inspection of the catch basin to be maintained in

connection therewith, which inspection shall be made as frequently as may be required by the Council.

411.03 Penalty.

Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

SOLID WASTE

415 REFUSE COLLECTION AND DISPOSAL

415.01 Definitions.

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

Garbage means organic waste resulting from the preparation of food, and decayed and spoiled food from any source.

Recyclables include paper, plastic, tin cans, aluminum, motor oil, glass, and other metal goods, each separated or otherwise prepared so as to be acceptable to the recycling center where they are to be deposited.

Recycling center means premises used for the receipt, storage, or processing of recyclables and approved as such by the council when the premises are in the city or by the governing body of the local government unit having jurisdiction when the premises are outside the city.

Refuse means garbage and rubbish.

Rubbish means inorganic solid waste such as tin cans, glass, food wrapper, paper, ashes, sweepings, etc.

Accessible means free of snow, motor vehicles or other obstructions.

415.02 Unauthorized accumulation.

Any unauthorized accumulation of refuse on any premises is a nuisance and prohibited.

415.03 Refuse in streets, other public places.

No person shall place any refuse on or in any street, alley, or public place or upon any private property except in proper containers for collection as specified in 415.11. No person shall throw or deposit refuse in any stream or other body of water.

415.04 Scattering of refuse.

No person shall deposit any refuse anywhere within the city in such manner that it may be carried and/or deposited by the elements upon any public or private premises within the city.

415.05 Burying of refuse; composting.

No person shall bury any refuse in the city. Leaves, grass clippings, and easily biodegradable, nonpoisonous garbage may be composted on the premises where such refuse has been accumulated.

415.06 Disposal required.

Every person shall dispose of any and all refuse that may accumulate upon property that they own or occupy in a sanitary manner. Every household occupant and land owner of any residence within city limits shall use the refuse collection service provided by the city.

415.07 Municipal collection.

- (a) *City system established.* There is established a municipal system for the collection and disposal of refuse accumulated within the city. Any person may transport recyclables to a recycling center. However, no person except an authorized city employee shall collect, dispose of, or convey over any street or alley of the city any refuse accumulated in the city except as provided in section 415.05.
- (b) *Responsibility of city system.* The public works superintendent shall supervise and control the collection and disposal of refuse. In accordance with regular personnel and purchasing procedures, he shall employ necessary personnel and acquire necessary equipment to provide for the collection and disposal of refuse accumulated within the city. The City Council may adopt rules and regulations necessary to supplement the provisions of this article.

415.08 Rates and charges.

- (a) *Schedule.* The owner or occupant of any premises served by the city refuse collection system shall pay to the city a service charge assessed in accordance with the rates that the council periodically establishes by resolution.
- (b) *Billing.* The service charge shall be made to the owner or occupant of each building or housing unit served. The refuse collection charge shall be billed as a separate entry on the water or sewer bill. If the premises are not so served, the refuse collection charge shall be separately billed by the city utility department.
- (c) *Payment.* Services charges shall be payable at the same time as bills for water service and subject to the same conditions of payment. Each and every reference service charge levied by and pursuant to this Ordinance is hereby made a lien upon the lot or premises served, and all such charges which 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 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 or past due water service charges. The city administrator shall certify the assessment to the county auditor for collection in the same manner as assessments for local improvements.
- (d) *Fund.* All service charges shall be deposited in a separate fund designated as the refuse fund.

415.09 Refuse collection schedule.

The municipal collection service shall collect refuse from premises once weekly.

415.10 Collection vehicles.

Every refuse collection vehicle shall be lettered on the outside so as to identify the licensee (contractor). Every vehicle used for hauling garbage shall be covered, leak proof, durable, and of easily cleanable construction. Every vehicle used for hauling refuse shall be sufficiently airtight and so used as to prevent unreasonable quantities of dust, paper or other collected materials to escape. Every vehicle shall be kept clean to prevent nuisances, pollution or insect breeding, and shall be maintained in good repair.

415.11 Official refuse container.

(a) *Establishment.*

- (1) All residential refuse must be packaged in a bag or commercially manufactured refuse can no greater than 32 gallons in volume. Cans must be round with removable lids. No other containers will be accepted for curbside collection by the public works department.
- (2) All refuse containers must be properly tagged to assure pick up. Two types of tags are available:
 - Yellow – must be attached to bags no greater than 16 gallons in volume.

- Pink – must be attached to bags or cans no greater than 32 gallons in volume.

The charge for tags shall be periodically set by the council by resolution.

- (3) No container that is set out for curbside collection with a yellow tag shall be filled to in excess of 15 pounds total weight. No container that is set out for curbside collection with a pink tag shall be filled to in excess of 40 pounds total weight. Containers weighing greater than 15 pounds attached with a yellow tag, containers weighing greater than 40 pounds attached with a pink tag, or containers not tied at their opening shall be deemed nonconforming and subject to the provisions of subsection (b) of this section.
- (b) *Nonconforming refuse container.* The public works department shall have discretion to determine which refuse containers are in conformance to this ordinance. Any refuse containers which are not in conformance with this ordinance will not be picked up until it meets the requirements outlined in 415.11 (a).

415.12 Commercial refuse service in residential areas limited.

- (a) No private commercial hauler shall supply a container or service to a property that utilizes that container or service to a large degree for the disposal of refuse.
- (b) No private commercial hauler's refuse container shall be allowed in any city residential zone for a period exceeding 60 days, and then only for the purposes of one-time cleanup projects such as new construction. Containers are not allowed to be placed on city streets or alleys.

415.13 Dumpsters.

(a) *USES:*

- (1) Commercial – In lieu of the official refuse container, commercial businesses may purchase a dumpster from the city for refuse disposal. Dumpsters must be located at the business site and shall not be used for residential refuse.
- (2) Residential – Residents may rent a dumpster from the city for cleanup projects, and may only be rented for duration of one month unless authorized by the public works department.

(b) *PLACEMENT:*

- (1) Dumpsters must be placed upon private property. Under no circumstances can a dumpster be placed on roads, right-of-ways, or alleys.
- (2) Dumpsters must be placed on a concrete or asphalt surface and be accessible to the refuse collection vehicle. Accessibility is determined at the time of refuse pick up by the public works employees.



AMENDMENT TO ORDINANCE NO. 415.11

AN ORDINANCE DEALING WITH OFFICIAL REFUSE CONTAINERS
IN THE CITY OF WHEATON

Findings.

1. Several years ago the City of Wheaton amended its procedures in how refuse was picked up in the City of Wheaton, switching from using a bag or any commercially manufactured refuse can no larger than 32 gallons along with a yellow or pink tag to now using only a city-dispensed commercially manufactured refuse can with no more tags;
2. The existing Ordinance was not updated at the time of the change in order to accurately reflect the new procedures; and
3. The Wheaton City Council believes that it is in the best interests of the residents of the City of Wheaton to update its Ordinance to accurately reflect how refuse collection is conducted in the City of Wheaton.

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


1. That Wheaton City Ordinance 415.11 is hereby amended to read as follows:

“415.11. Official refuse container.

- (a) All residential refuse must be packaged in a commercially manufactured refuse container provided only by the City of Wheaton in either a 35 gallon, 65 gallon, or 95 gallon container. No other containers will be accepted for curbside collection by the public works department.
 - (b) In order to be eligible for pickup by the City’s public works department, the lids to the containers must be fully closed, and no refuse may be placed on top of the container.
 - (c) The containers should be put by no later than 7:00 a.m. on the day of pickup. Failure by a resident to have a container set out by this time may result in the resident’s garbage not getting picked up for that week.
2. All other existing provisions of Ordinance 415.11 are hereby repealed.

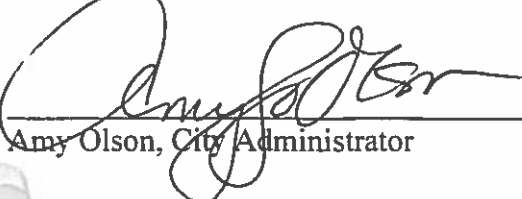
PASSED AND ADOPTED this 24th day of June, 2021.

WHEATON CITY COUNCIL



Ed Rikimoto, Vice-Mayor

ATTEST:



Amy Olson, City Administrator



HEALTH AND SANITATION

450 Inspection

450.01 Order to Clean Up Premises.

In every year, the City Council shall cause a notice to be inserted in the official city paper at the expense of the municipality ordering persons to clean thoroughly all yards and premises; and to cause all tin cans, bottles, trash, rubbish, debris and manure to be removed therefrom.

450.02 Sanitary Inspection.

Hereafter each year the City Council shall make a thorough sanitary inspection of all public and private property in the municipality. They shall transmit this report, together with any recommendations, to the City Council.

450.03 Individual Orders: Reinspection.

If, upon inspection, the above order has not been complied with as to any lot or parcel of ground, individual orders served in person or by mail requiring owners, occupants or agents of such premises to clean up the same within ten days shall be issued by the City Council and a reinspection made of such premises at the expiration of said ten-day period. Said order shall provide that, unless the condition is abated within ten days, the health officer will abate or remove, or cause to be abated or removed, at the expense of the owner, such condition, complained of and found to exist.

450.04 Removal: Assessment of Cost.

Upon failure of any owner, occupant or agent to comply with the above order, shall report the same to the City Council and upon its approval of such proposed action, the health officer shall direct the City Maintenance Supervisor to clean up the property as described and ordered. The City Maintenance Supervisor shall report the cost, of such work to the city clerk and such cost if not paid promptly shall be certified to the auditor of the county and by that officer extended upon the tax rolls and collected as taxes, and when so collected shall be paid over to the City treasurer.

450.05 Conditions Prohibited.

It shall be unlawful for the owner or occupant of any property to permit to cause to accumulate upon such property any nuisance affecting health, source of filth or cause of sickness and fail to remove the same after the notices provided above.

450.06 Periodic Inspections.

Subsequent to and independent of the annual inspection and clean-up, the health officer shall make periodic inspections of properties within the municipality and shall proceed as provided (in Sections 2, 3, and 4) to remove or abate any condition prohibited herein.

450.07 Inspection of Interiors.

The sanitary inspection authorized by this ordinance may include the interior of any public or private structure within the city of Wheaton for the purpose of determining the existence of filth, contaminated substances, vermin, pests, rats, fecal matter and any other unsanitary

condition or source of sickness and disease. However, such interior inspections shall be conducted only when the health officer has reasonable cause to believe that such conditions exist and such inspection shall be conducted only between the hours of 8:00 a.m. and 8:00 p.m. All provisions of this ordinance, including those with respect to individual orders to clean up, reinspection, public removal after notice and assessment of cost shall apply to interior conditions. It shall be unlawful for the owner or occupant of any premises to deny access to the duly constituted health officer or to otherwise interfere with said officer in the exercise of his official duties.

450.08 Penalty.

Any person, firm or corporation failing or refusing to comply with any lawful order to clean up any property as herein provided or causing or permitting the accumulation of any nuisance affecting health, source of filth, or cause of sickness upon any property in any year after it has been cleaned up under the provision hereof shall be guilty of a misdemeanor punishable pursuant to W.M.C. 005.05.

450.09 Repeal.

This ordinance is supplementary and shall not deprive the City of Wheaton of any of its powers in regard to nuisances and the abatement thereof, whether derived from common law, statute or ordinance, and the City of Wheaton may, at its option, proceed under this ordinance or any other law or ordinance for the punishment of maintaining or for the abatement of nuisances.

HEALTH AND SANITATION

455 REGULATION OF CITY DEMOLITION SITE

455.01 Location of Dumping Ground.

The following described tract of land, in the County of Traverse and State of Minnesota, is hereby set aside and established as a city demolition site.

Legal Description

The Northeast Quarter of the Southwest Quarter (NE $\frac{1}{2}$ SW $\frac{1}{4}$) except
The South Half of the Southwest Quarter of the Northeast Quarter of the
Southwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$) and except the North 10
Rods and except 163 feet x 794 feet directly East of Blocks 16, 15 and the
North half (N $\frac{1}{2}$) of 14 of F.W. Johnson's Addition, Section 17, Township 127,
Range 46 (27.03 acres)

455.02 Highly Inflammable and Explosive Materials.

Only items permitted by state guidelines will be allowed to be deposited at the demolition site.

455.03 Penalty.

Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

MORALS & CONDUCT

460 SEXUAL OFFENDERS AND SEXUAL PREDATORS

460.01 Findings and Purpose

- A. Repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, and specifically to the City of Wheaton, while incalculable, clearly exorbitant.
- B. It is the intent of this article to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residence.

460.02 Definitions

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

- A. **Designated Offender** means any person who has been convicted of a designated sexual offense, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, or has been categorized as a Level III sex offender under Minnesota Statute 244.052 or a successor statute.
- B. **Designated Sexual Offense** means a conviction, adjudication of delinquency, commitment under Minnesota Statute 253B, or admission of guilt under oath without adjudication involving any of the following offenses: 609.342; 609.343; 609.344; 609.345; 609.352; 609.365; 617.23; 617.246; 617.247; 617.293; successor statutes; or a similar offense from another state.
- C. **Permanent Residence** means a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days. An ownership interest by the person in such residence is not required.
- D. **Temporary Residence** means a place where the person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year, and which is not the person's permanent address or a place where the person routinely

abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any month, and which is not the person's permanent residence.

460.03 Sexual Offender and Sexual Predator Residence Prohibition; Penalties; Exceptions.

A. Prohibited Location of Residence. It is unlawful for any designated offender to establish a permanent residence or temporary residence:

1. Within 2,000 feet of any school, playground, licensed day care provider, or city park; or
2. Within 1,000 feet of any designated public school bus stop, place of worship which provides regular educational programs (i.e. Sunday school), or other places where children are known to congregate.

B. Measurement of Distance.

1. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to nearest outer property line of a school, licensed day care provider or city park.
2. The City Administrator shall maintain an official map showing prohibited locations as defined by this Ordinance. The City Administrator shall update the map at least annually to reflect any changes in the location of prohibited zones. The map shall not be deemed conclusive or all-encompassing since prohibited zones change from time to time including but not limited to designated public school bus stops or other places where children are known to congregate.

C. Prohibited activity. It is unlawful for any designated offender to participate in a holiday event involving children under eighteen (18) years of age, such as distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas, or wearing an Easter Bunny costume on or preceding Easter. Holiday events in which the offender is the parent or guardian of the children involved, and no non-familial children are present, are exempt from this paragraph.

D. Penalties. A person who violates this section shall be punished by a fine not exceeding \$1,000.00 or by confinement for a term not exceeding 90 days, or by both such fine and confinement. Each day a person maintains a residence in violation of this ordinance constitutes a separate violation.

E. Exceptions. A designated offender residing within a prohibited area as described herein does not commit a violation of this section if any of the following apply:

1. The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statute 243.166, 243.167, or successor statute, prior to enactment of this ordinance.
2. The person was a minor when he/she committed the offense and was not convicted as an adult.
3. The person is a minor.
4. The school or licensed day care provider within 2,000 feet of the person's permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statute 243.166 or 243.167.
5. The residence is also the primary residence of the person's spouse or minor children.
6. The residence is a property owned or leased by the Minnesota Department of Corrections.

460.04 Property Owners Prohibited From Renting Real Property to Certain Sexual Offenders and Sexual Predators; Penalties.

- A. It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to this Chapter, if such place, structure, or part thereof, trailer or other conveyance, is located within a prohibited location zone described in this ordinance.
- B. A property owner's failure to comply with provisions of this Section shall constitute a violation of this Section, and shall subject the property owner to the code enforcement provisions and procedures as provided herein.
- C. If a property owner discovers or is informed that a tenant is a designated offender after signing a lease or otherwise agreeing to let the offender reside on the property, the owner or property manager may evict the offender.

460.05 Severability.

Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part thereof, other than the part held to be invalid."

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 Dare 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 by: 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

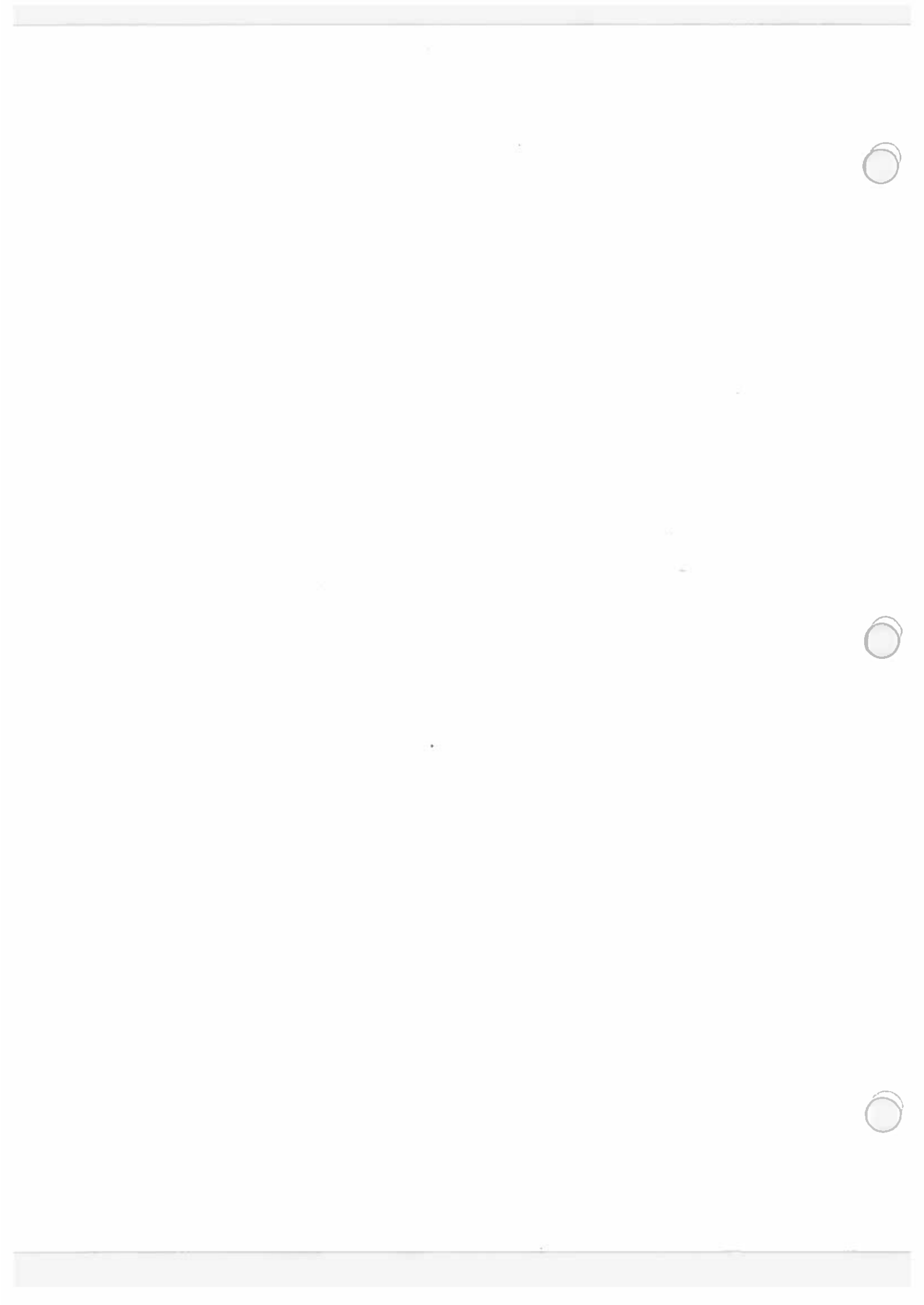
- (A) It is an affirmative defense for a juvenile to prove that:
 - (1) the juvenile was accompanied by his or her parent, guardian, or other responsible adult.
 - (2) the juvenile was engaged in a lawful employment activity or was going to or returning home from his or her place of employment, without 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.”



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 Zimmel, 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-incident 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 505.5.02.
- 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.

- 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

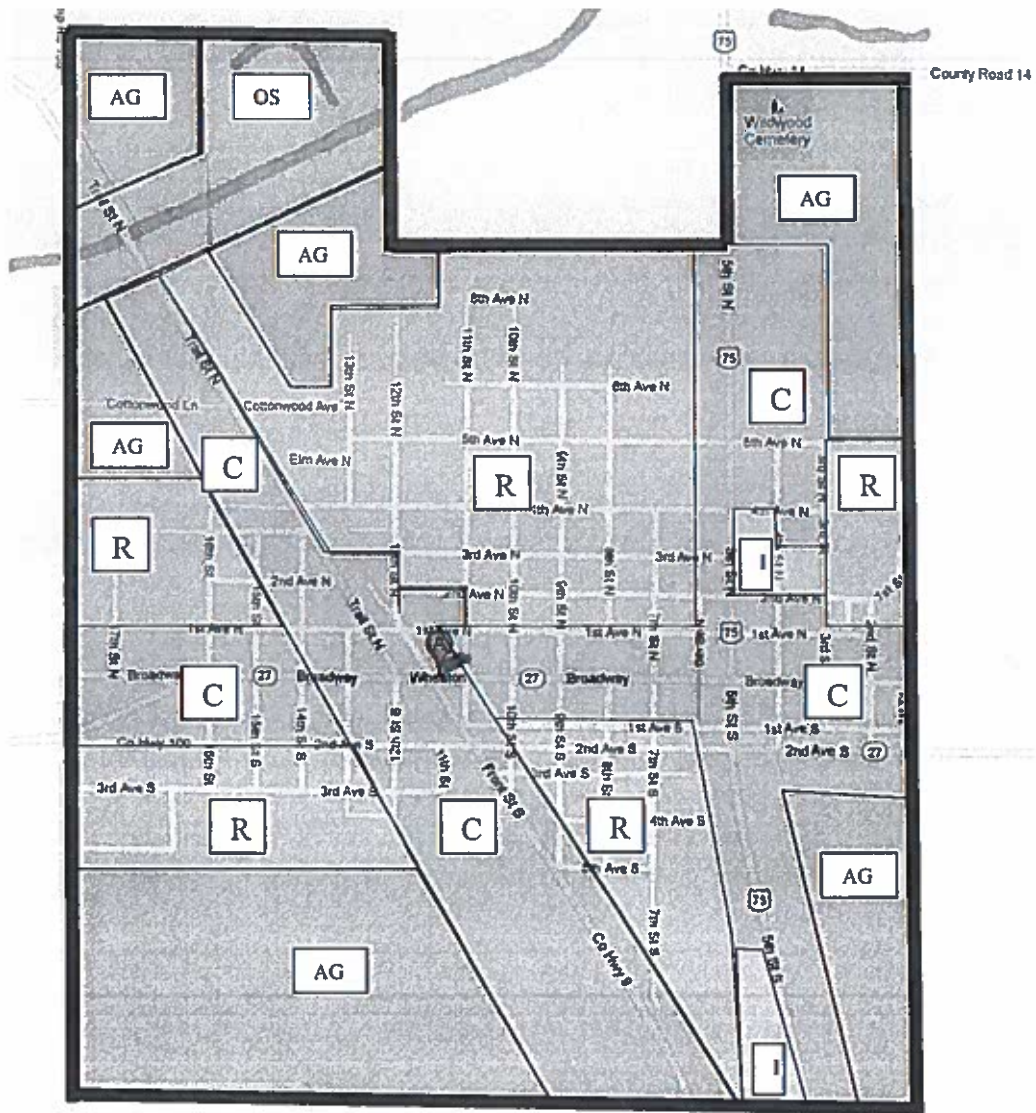
mail and shall publish a hearing notice for either a Zoning District change or Zoning Ordinance change in the legal section of the official newspaper and shall provide notice to the DNR at least 10 days ahead of the public hearing. The Planning Commission shall hold the hearing and make a timely recommendation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

ZONING MAP CITY OF WHEATON, MINNESOTA



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

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.

550.02 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.

550.05 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 is hereby enacted to read as follows:

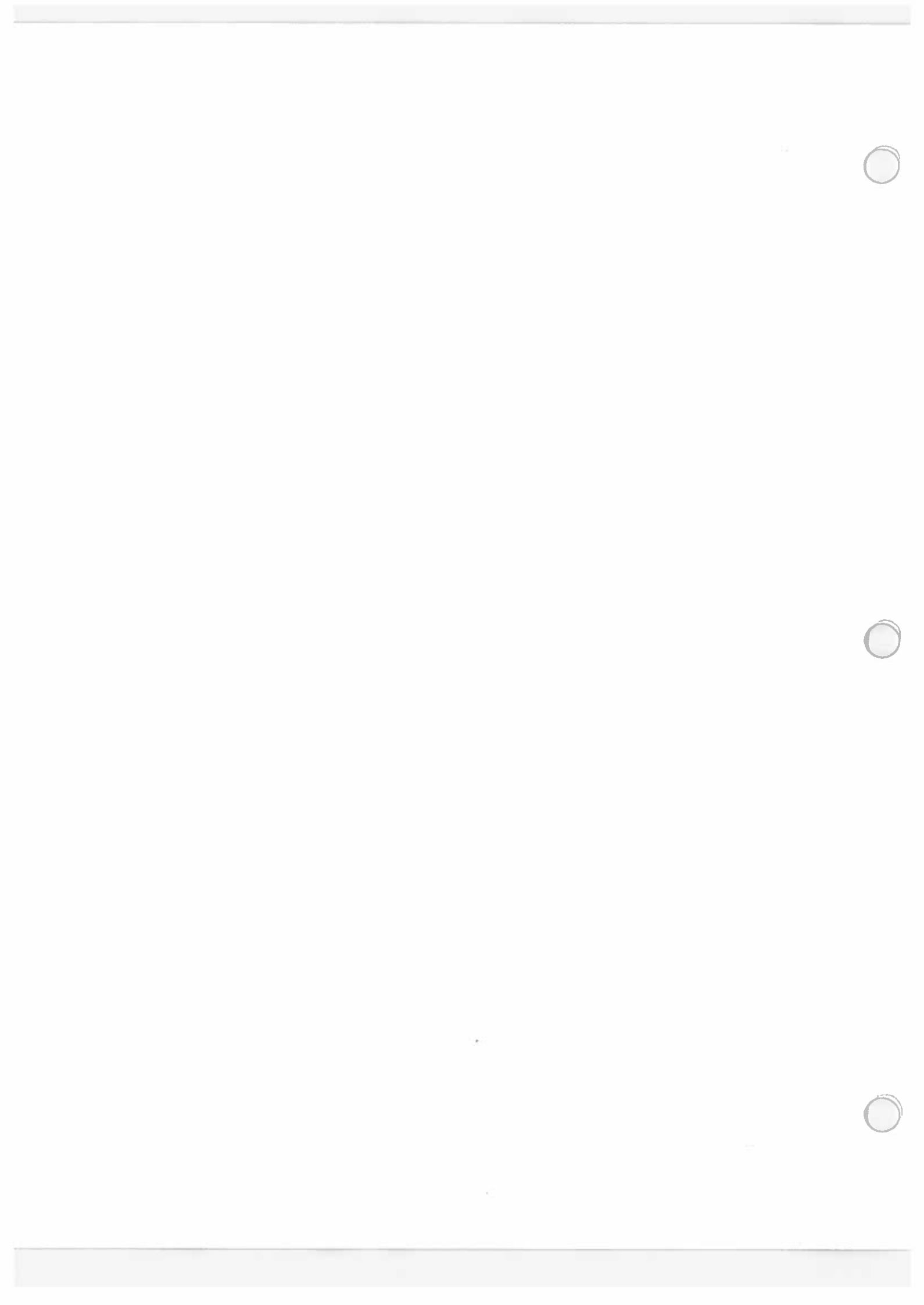
"560. RESIDENTIAL RENTAL PROPERTY REGISTRATION AND LICENSING.

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 than 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 Harborage 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.



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.

MUNICIPAL HOSPITAL

600.09 Repealing All Provisions of Existing Chapter 600.

Section 1. All of Chapter 600 of the City of Wheaton Municipal Code, consisting of Sections 600.01 through 600.08, be and hereby is repealed as of the Effective Date defined in Section 3 of this Ordinance.

Section 2. The Hospital Board created by Section 600.02, be and hereby is dissolved as of the Effective Date.

Section 3. This Ordinance shall be published and take effect from and after June 30th, 2011, which shall be the date the City of Wheaton transfers the assets and operations of the municipal hospital, also known as Wheaton Community Hospital & Medical Center, to MeritCare Wheaton Medical Center, a Minnesota nonprofit corporation.

NUISANCES

650 WEEDS, GRASS, BRUSH, ETC.

650.01 Unlawful Conditions.

It shall be unlawful for any owner, lessee, or occupant, having control of any occupied or unoccupied lot or land or any part thereof in the City of Wheaton to permit or maintain on any such lot or land, or on or along the sidewalk, street, or alley adjacent to the same, any growth of weeds, grass rush, or other rank vegetation to a greater height of 4 inches on the average, or any accumulation of dead weeds, grass, or brush. It shall also be unlawful for any such person or persons to cause, suffer, or allow poison ivy, ragweed, or other poisonous plants, or plants detrimental to health, to grow on any such lot or land in such manner that any part of such ivy, ragweed, or other poisonous or harmful weeds shall extend upon, overhang, or border any public place or allow to seed, pollen, or other poisonous particles or emanations therefrom to be carried through the air.

650.02 Duty of Landowner.

It shall be the duty of any owner, lessee or occupant of any lot or land to cut and remove or cause to be cut and removed all such weeds, grass, brush, or other rank, poisonous or harmful vegetation as often as may be necessary to comply with the provisions of Section One.

650.03 Control by City.

If the provisions of the foregoing sections are not complied with, the City Council shall direct the city clerk to serve written notice upon the owner, lessee or occupant or any person having the care or control of any such lot or land to comply with the provisions of this ordinance. If the person upon whom the notice is served fails, neglects or refuses to cut and remove and to cause to be cut and removed such weeds, grass, brush or other vegetation within five days after service of such notice, exclusive of the day of service, or if no person can be found in the City of Wheaton who either is or claims to represent such owner, the City Council shall direct the city maintenance workers to cause such weeds, grass, brush and other vegetation on such lot or land to be cut and removed and the flat fee charges by the City Clerk-Treasurer to the County Auditor and shall thereupon become and be a lien upon the property on which such weeds, grass, brush and other vegetation were located and shall be added to and become and form part of the taxes next to be assessed and levied upon such lot or land, and such charge shall be collected in the same manner as other real estate taxes.

650.04 Penalty.

Any person who shall neglect to cut and remove weeds, grass, brush or other vegetation as directed in this ordinance, or who shall fail, neglect or refuse to comply with the provisions of any notice herein provided or who shall violate any of the provisions of this ordinance or who shall resist or obstruct the City Council or employees of the City of Wheaton in the cutting and removal of weeds, grass, brush and other vegetation, shall, upon conviction thereof, be guilty of a misdemeanor, punishable pursuant to W.M.C. 005.05.

650.05 Definitions.

The word "person" as used in this ordinance shall mean and include one or more person of either sex, natural persons, corporations, partnerships, associations, joint stock companies, societies and all other entities of any kind capable of being sued. The word "weed" as used in this ordinance shall be construed to mean and include not only such noxious weeds as have been designated by the commissioner of agriculture pursuant to Minnesota Noxious Weed Law 18.171, but also such useless and troublesome plants as are commonly known as weeds to the general public.

650.06 Prevention and Control of Shade Tree Diseases

All ordinances inconsistent herein or parts thereof inconsistent herewith are appealed upon passage and publication of this ordinance.

Subdivision 1. The City has determined that the health of the shade trees in the City of Wheaton is threatened by fatal diseases known as Dutch elm disease and oak wilt. It has further been determined that the loss of the shade trees growing upon public and private property would substantially depreciate the value of the property and impair the safety, good order, general welfare and convenience of the public. It is declared to the intention of the City to control and prevent the spread of these diseases and this Section is intended for that purpose.

Subdivision 2. Shade tree disease program.

It is the intention of the City to conduct a program of shade tree disease control pursuant to authority granted by Minnesota Statutes, section 18.023. This program is directed specifically at the control and elimination within the designated control district of Dutch Elm disease fungus and elm bark beetles, and of oak wilt fungus, and is undertaken at the recommendation of the Commissioner of Agriculture. The City Tree Inspector shall act as coordinator between the Commissioner of Agriculture and the City in the conduct of this program. The designated control district includes the area bonded by the City limits.

Subdivision 3. Nuisance Declared.

The following things are public nuisances whenever they are found within the designated control district.

- A. Any living or standing elm tree or part thereof infected to any degree with Dutch elm disease fungus, *Ceratocystis ulmi*, of which harbors any of the elm bark beetles, *Scolytus multistriatus* or *Hylorgopinus refipes*.
- B. Any dead elm tree or part thereof, including logs, branches, stumps, firewood, or other elm material for which the bark has not been removed and burned except as herein provided. It shall not be considered a public nuisance to store firewood out of doors from September 15 to April 15 by permit issued by the City tree inspector only.
- C. Any living or standing oak tree or part thereof infected by any degree with oak wilt, *Ceratocystis Fagacearum*.

Subdivision 4. Abatement.

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

Subdivision 5. Inspection and investigation

- A. The certified Tree Inspector, his agents or employees, shall inspect all premises and places within the designated control district as often as practicable to determine whether any conditions described herein exist thereon. They shall investigate and report incidents of infestation by Dutch elm disease, elm bark beetles, or oak wilt fungus to the Council.
- B. The certified tree inspector, his agents or employees may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to them hereunder, after providing the owner, lessee, occupant, or person in control of the property with prior notice.
- C. The Certified Tree Inspector, his agents or employees after on-site inspection and investigation have revealed conditions indicating Dutch elm disease infestation or oak wilt infestation, shall notify the owner, lessee, occupant, or person in control of the property inspected by registered or certified mail of the existence of these conditions and of the tree or wood affected. Such notice shall be mailed within the five (5) days of the discovery of said condition. Such notice shall advise owner, lessee, occupant or person in control of the property inspected that the City will proceed with abatement of the nuisance immediately or within ten (10) days after receipt of the notice unless objection is made by said owner, lessee, occupant, or person in control of the property in question within such period. If objection is so made, or if the Certified Tree Inspector, his agents or employees, determine that it is otherwise warranted, a sample of the trees or wood in question shall be taken and sent to the Commissioner of Agriculture (Bureau of Plant Industry), State of Minnesota, for analysis, or take such other steps for diagnosis as may be recommended by the Commissioner of Agriculture, within five (5) days of receipt of such diagnosis, the owner, lessee, occupant, or person in control of the property inspected shall be notified by registered or certified mail of the results of the diagnosis, and that abatement of the nuisance will proceed immediately or within ten (10) days after receipt of such results according to the provisions of the initial notice after the inspection.

Subdivision 6. Abatement of Shade Tree Nuisance

In abating the nuisances defined herein, the Certified Tree Inspector, his agents or employees, shall cause the infected tree or wood to be removed and burned or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of Dutch Elm disease fungus, elm bark beetles, and oak wilt fungus. Such abatement procedures shall be carried out in accordance with the current technical and expert methods and plans as may be designed

by the Commissioner of Agriculture of the State of Minnesota. The City shall establish specifications for removal and disposal methods consistent therewith.

Subdivision 7. Abatement of Shade Tree Disease Nuisance or Private Property

Whenever the certified tree inspector, his agents or employees finds with reasonable certainty that the infestation defined in subdivision three (3) exists in trees or wood located on private property outside any public way in the designated control district, they shall notify by registered or certified mail, the owner, lessee, occupant, or person in control of such property on which the nuisance is found, of the infestation and direct the infestation shall be removed and burned, or otherwise effectively treated in an approved manner by such owner, lessee, occupant or person in control within ten (10) days after the receipt of such notice. The notice shall also state that if such nuisance shall not be abated by the owner, lessee, occupant or person in control within the time provided the owner, lessee, occupant or person in control may be charged in violation of this section for maintaining a nuisance in that city by and through its council may abate the nuisance and assess the costs against said property. If the owner, lessee, occupant, or person in control of any private premises upon which such a tree or wood is situated fails to have such tree or wood removed and burned or otherwise effectively treated immediately or within ten (10) days after receipt of notification by mail as prescribed herein the Certified Tree Inspector, his agents or employees shall proceed to have such tree or wood removed and burned or otherwise effectively treated, and any expense incurred by the City in so doing shall be a charge and lien upon the said property and shall be collected as a special assessment in the same manner as other specified assessments.

Subdivision 8. Collection of Assessment.

The amount of the expense for such abatement, and not reimbursed by the owner on or before September 1st of each year, shall be reported by the Certified Tree Inspector his agents or employees to the Council, and the Council shall assess and levy and cause to be collected the amount of such expense as a special assessment upon and against said premises and property upon which said nuisance existed in like manner as such other special assessments payable in one sum.

Subdivision 9. Interference Prohibited.

It is unlawful for any person to prevent or interfere with the certified tree inspector, his agents or employees while they are engaged in the performance of duties imposed by this Section.

Subdivision 10. Certified Tree Inspector.

The City Council may designate one or more persons who are certified by the Commissioner of Agriculture of the State of Minnesota as Certified Tree Inspector for the City.

Section 2. Violation of this ordinance is a misdemeanor.

NUISANCES

651 OBSTRUCTING STREETS

651.01 Permit for Certain Activities.

That no person shall encumber or obstruct any street, sidewalk, alley or other public place without first getting permission from the city clerk's office.

651.02 Dumping in Streets Forbidden.

That no person shall throw or deposit, or permit to be deposited or thrown, any snow, grass clippings, leaves, rubbish of any kind, or landscaping material, on or into any street, sidewalk, alley, or public ground of the city.

651.03 Removal of Sand, Gravel, Etc.

No person shall dig or carry away or consent that the same shall be done, any earth, sand, or gravel from any street, alley or public grounds of the city, unless by instruction of the public works supervisor.

651.04 Moving Buildings.

No person shall remove or cause to be removed, any building through any street, without the permission of the City Council.

651.05 Ditches and Bridges.

No person shall make any ditch, drain, or bridge across any street, alley or public ground in said city, so as to injure the same or obstruct its passage.

651.06 Building.

No person shall build or place any building, in whole or in part, upon any street, alley, sidewalk, or other public place within said city.

651.07 Horses.

No person shall at any time fasten any horse or horses, in such a manner that the horse, vehicle, reins or lines shall be an obstacle to the free use of the sidewalk or crossing.

651.08 Awnings and Signs.

No person shall build, place or suffer to remain any awnings, sign or other thing whatever, over or above any sidewalk or street in the village, unless the bottom of the same shall be at least 8 feet above such sidewalk, and 15 feet above such street, and fastened in a perfectly secure manner.

651.09 Riding or Skating on Sidewalks.

No person or persons shall ride or drive any horse, mule or other animal upon or across any sidewalk, or ride any bicycle or vehicle, or skate with either ice, or roller skates, or rollerblades, upon any sidewalk in the city of Wheaton and said sidewalks shall not be used by any person whatever for other than pedestrian purposes, except that roller skating, roller blading, and bicycle riding shall be permitted on sidewalks within the City except on the

sidewalks of Broadway from 13th Street to 9th Street, and except on the sidewalks of 10th Street and 11th Street between First Ave. No. and First Ave. So.

651.10 Roller-skating.

No roller-skating or rollerblading shall be permitted on State Highways #75 or Highway #27 within the city limits.

651.12 Penalty.

Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

NUISANCES

652 OVERHANGING TREES

652.01 Right of Way.

All trees in the City of Wheaton standing in the City right of ways or the branches of which overhang into the streets shall be trimmed so that no branches, or part thereof, shall hang in the right of way nearer than eight feet above the ground or 14 feet above the improved street or alley.

652.02 Complaints.

Upon any complaint being made to the Public Works Supervisor, any violation of section 1 of this ordinance, he shall visit the premises on which it is claimed such trees are untrimmed and if he finds said complaint well founded he shall cause said trees to be trimmed in accordance with said Section 1 and report the cost of the labor performed in connection therewith to the City Council and the City Council shall cause the same to be included in the taxes against the lot or lots on which said trees are standing or if standing in the street, shall cause the same to be included in the taxes against the lot fronting on the side of the street where said trees stand.

NUISANCES

653 INTERFERENCE WITH RADIO AND TV RECEPTION

- 653.01** It shall be unlawful to operate in the City of Wheaton, any radio or television equipment for broadcasting or receiving in such manner as to cause electrostatic or electro-magnetic waves to radiate from its antenna in such a manner as to result in interference with radio or television reception.
- 653.02** It shall be unlawful to operate within said City any vibrating battery charger, or any other apparatus, or equipment, excluding x-ray machines, in such manner as to cause preventable electrostatic or electromagnetic waves to be radiated therefrom in such manner as to interfere with radio or television reception.
- 653.03** It shall be unlawful to use any violet ray machine, x-ray machine, electric vibrator or any other device, apparatus, instrument or machine causing an electric interference that cannot be prevented by radio or television receiving sets, between the hours of 6 p.m. and 12 o'clock midnight except when it may be necessary in making x-ray pictures and examinations in emergency cases.
- 653.04** It shall be the duty of the City Police of said city to enforce the provisions of this ordinance and for that purpose he shall have the authority to enter upon the premises of and inspect all equipment in said city referred to in the three previous sections of this ordinance.
- 653.05** The Mayor of the City is hereby empowered to from time to time to employ at the expense of the City, a competent person to investigate causes of interference with radio and television reception within the City.
- 653.06** Penalty: Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

NUISANCES

655 MISCELLANEOUS NUISANCES

655.01 If any person or persons within the limits of the City of Wheaton shall permit or suffer on his, her or their premises or on premises of which he, she or they may be the occupant or occupants, any nuisance either by exercising any unwholesome or offensive trade, calling or business or by having, or suffering or permitting any building, outhouse, sewer, sink or any putrid or any unsound beef, pork, fish, hides or any skins, or any putrid carcass or any other unwholesome substance or thing whatever, to be or remain on premises of which he, she, or they shall be owner or owners, occupant or occupants until by offensive or ill stench or otherwise, they or any of them shall become offensive, hurtful or dangerous to the neighborhood, it shall be the duty of the City Clerk to give notice to such person, or persons, to remove such nuisance forthwith and if the owner or owners, such occupant or occupants, of premises on which any nuisance shall be situated, shall neglect or refuse to remove the same for the space of twenty four hours after such notice shall have been given, he, she or they, on conviction thereof shall be guilty of a misdemeanor punishable pursuant to W.M.C. 005.05.

655.02 If any person or persons shall, after notice as aforesaid, permit any such nuisance to remain which shall be manifestly dangerous or improper, it shall be lawful for the city police to remove and abate such nuisance, either by draining the premises or by filling them up forthwith, under the direction of the City Council, the person or persons permitting the same to remain as aforesaid, shall on conviction thereof be guilty of a misdemeanor or punishable pursuant to W.M.C. 005.05, and shall be liable to pay the cost of removal of said nuisance.

PROVIDED: That the City Council may, at the time of the abatement of any such nuisance, or at any time within thirty days thereafter, direct an assessment to be made on the lot or lots from which such nuisance shall be removed, sufficient to pay all the expenses of removing the same which said assessment shall be inserted in the tax roll and be levied and collected and it shall be a bar to the recovery of the same by any proceedings before the district court, but shall not prevent the recovery of any fines or costs under this chapter, to which any person or persons may have become liable for creating such nuisance or suffering the same to remain after notice.

655.03 It shall be the duty of the police department to report to the City Council the existence of any nuisance whatever in said city, and to perform such other acts relative to the same, according to the general or special regulation prescribed relative thereto, and the Chief of Police is hereby required to notify the city attorney of any violation of this chapter.

655.04 Section 1: Definitions: For the purpose of this Ordinance the following terms shall have the following meaning as defined below:

SUBSECTION A: “junk vehicle” means any vehicle which is in an inoperable condition, partially dismantled, serves as a source of repair or replacement parts, or is used for the sale of parts thereof.

SUBSECTION B: “unlicensed vehicle” means any motor vehicle including snow mobiles not having attached in the manner prescribed by law a currently valid license as issued by any State, province³ or nation.

SUBSECTION C: “public nuisance” means any act or omission which endangers the safety, health, morals, comfort or repose of persons within the City.

Section 2: Parking or storage of junk vehicles, unlicensed vehicles prohibited.

No person shall park or store or allow to be parked or stored any junk vehicle, any unlicensed vehicle, any household furnishings or appliances or items of a similar nature at any place in the City unless the aforementioned items are (a) within the confines of a lawfully erected building, or (b) on the property of a business which operates primarily to repair motor vehicles, for a period of time not exceeding six (6) months.”

Section 3: Public nuisance declared.

The parking or storage of any item in violation of Section 2 above shall constitute a public nuisance and shall be abated within thirty (30) days after written notice to abate the same has been given by the city Clerk or any authorized person or representative of the City of Wheaton Police Department.

Section 4: Removal by City assessment.

Items parked or stored in violation of these Ordinances and not abated within the time period prescribed may be removed by the City. The cost of removal by the City shall be calculated and shall be certified to the County Auditor who shall levy said costs as a special assessment against the property from which removed.

Section 5: Penalty.

Any person interfering with any City employee in the performance of his duties under this ordinance shall be guilty of a misdemeanor and any person violating any provision of these Sections shall be guilty of a misdemeanor.

AMENDMENT TO ORDINANCE NO. 655

AN ORDINANCE DEALING WITH PUBLIC NUISANCES IN THE CITY OF WHEATON

Findings.

1. There have been several complaints regarding activities by residents of the City of Wheaton which constitute a public nuisance.
2. The existing Ordinance does not contain a provision which effectively deals with these public nuisances.
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 in order to better be able to deal with public nuisances within the City of Wheaton.

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

1. That Wheaton City Ordinance 655 is hereby amended to add the following provisions:

"655.05 Any residential home that has had its water and/or electricity shut off for longer than seven (7) days is hereby declared to be a public nuisance and deemed unliveable, as said condition constitutes a health hazard to anyone residing in or visiting said home. Any and all residents must immediately move out until water and/or electricity has been re-established. If all residents have failed to move out after receiving written notice from the City, the City shall proceed in accordance with the procedures contained in Ordinance No. 570.03 - 570.04 and seek a judicial order evicting the residents from said home."

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

WHEATON CITY COUNCIL

Leonard Zimmel, Mayor

ATTEST:

Amy Olson, City Administrator

Motion:

Seconded:

Published:

Passed:



656 GARAGE SALES

656.01 **Definition.**

A "garage sale" is a sale of household or personal articles (including, but not limited to, furniture, tools, clothing, household appliances, toys, books, sports equipment) held at (1) the primary residence of the seller of the articles offered for sale, (2) in the case of a multifamily sale, at the primary residence of one of the individuals owning the articles offered for sale, or (3) property owned, rented, or leased by a charitable or political organization, and owned by the seller. The term "garage sale" includes, but is not limited to, rummage sales, yard sales, and moving sales. The term "garage sale" does not include swap shops.

656.02 **Restrictions and Prohibitions**

Garage sales shall comply with the following conditions:

1. Any garage sale shall be conducted solely within the boundaries of the property owned or occupied by the occupant who is conducting the sale.
2. There shall be no more than three garage sales conducted at any one premises during any period of 12 calendar months.
3. No garage sale shall be conducted during any part of more than four consecutive days, including setup.
4. No garage sale may be conducted before 7:00 a.m. or after 8:00 p.m.
5. Any related signage shall be limited to the premises and to other residential property, provided permission from the property owner is obtained, and shall be removed at the termination of the sale. Signs shall be limited to four square feet.
6. Items for sale shall be removed from the yard within 24 hours of the conclusion of the sale.
7. Swap shops are not deemed garage sales and are expressly prohibited.

656.03 **Exceptions**

This chapter shall not apply to any sale under court order, nor to any bona fide auction sale, nor to a sale of farm or garden products by the person producing same.

656.04 **Penalty**

It is unlawful for any person to conduct a garage sale in violation of any of the

provisions of this chapter. A violation of this chapter is a misdemeanor.”

Lodging Tax

700.01 Definitions.

As used in this Chapter, the following words and terms shall have the meaning as stated:

1. **“Gross Receipts”** means the total amount received, in money or otherwise, for lodging as measured by the rate for the lodging.
2. **“Hotel, Motel and Tourism Court”** means every building or structure or enclosure, or any part thereof, kept, used as, maintained as, or advertised as, or held out to the public to be an enclosure where sleeping accommodations are furnished to the public and furnishing accommodations for periods of less than one week.
3. **“Lodger”** means the person obtaining lodging from an operator.
4. **“Lodging”** means the furnishing for a consideration of lodging by a hotel, motel, rooming house, tourist court, resort, bed and breakfast, private campground except where lodging shall be for a continuous period of thirty (30) days or more to the same lodger. The furnishing of rooms owned by religious, educational or nonprofit organizations for self-sponsored activities shall not constitute “lodging” for purposes of this article.
5. **“Lodging Tax”** means a tax imposed by the City of two and one-eighth percent (2.125%) of the gross receipts from the furnishing for consideration of lodging.
6. **“Municipal Campground”** means property owned by the City used to provide temporary lodging for the public while fishing, hunting, vacationing, or touring in tents, campers, or other portable shelters owned by such members of the public.
7. **“Operator”** means the person who is the proprietor of the lodging facility, whether in the capacity of owner, lessee, sub lessee, licensee or any other capacity.
8. **“Person”** means any person, persons, firm, corporation, partnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms PERSON or WHOEVER as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers and agents thereof.
9. **“Resort”** means any building, structure, or enclosure or any part thereof, located on, or on property neighboring any lake, stream, or skiing or hunting area for purposes of providing convenient access thereto, kept, used, maintained or advertised as, or held out to the public to be an enclosure where sleeping accommodations are furnished to the public, and primarily to those seeking recreation, for periods of one day, one week, or longer, and having for rent five (5) or more cottages, rooms or enclosures.

700.02 Imposition of Lodging Tax.

Pursuant to M.S.A. § 469.190, there is hereby imposed a lodging tax on the gross receipts from the furnishing for consideration of lodging within the City of Wheaton. The lodging tax shall be at the rate of two-and-one-eighth-percent (2.125%) of the gross receipts from the furnishing for consideration of lodging. In no case shall the lodging tax imposed by this section upon an operator exceed the amount of lodging tax that the operator is authorized and required by this article to collect from the lodger.

700.03 Exceptions and Exemptions.

Subd. 1. Exceptions

- A. The lodging tax shall not apply to the furnishing for consideration of lodging for a continuous period of thirty (30) days or more to the same lodger.
- B. The lodging tax shall not apply with regard to a municipal or County campground, whether now owned or hereafter acquired by the City.

Subd. 2. Exemptions. An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the City to tax. No exemption shall be granted except upon a claim made at the time the rent is collected. Such claim shall be made in writing and under penalty of perjury on forms provided by the City. All such claims shall be forwarded to the City when the returns and collections are submitted as required by this article.

700.04 Advertising No Lodging Tax.

It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the lodging tax or any party thereof will be assumed or absorbed by the operator, or that it will not be added to the rent or that, if added, it or any part thereof will be refunded.

700.05 Collections.

Each operator shall collect the lodging tax imposed by this article at the time the rent is paid. The lodging tax collected shall be deemed to be held in trust by the operator for the City. The amount of lodging tax shall be separately stated from the rent charged for the lodging and those persons paying the lodging tax shall receive a receipt of payment from the operator.

700.06 Payment and Returns.

Subd. 1. Collected Tax. Every person who collects lodging tax shall pay the lodging tax collected to the City quarterly on or before the 20th of the month following the quarter in which the lodging tax is collected. At the time of payment, such person shall submit a return upon such forms and containing such information as

the City Administrator may require. At the minimum, the return shall contain the following information:

- A. The total amount of consideration collected for lodging during the period covered by the return;
- B. The total amount of exceptions/exemptions;
- C. The amount of lodging tax required to be collected and due for the period;
- D. The signature of the person filing the return or that of his/her agent duly authorized in writing;
- E. The period covered by the return;
- F. The amount of uncollectible consideration charged subject to the lodging tax.

Subd. 2. Uncollectible Tax. The operator may offset against the lodging taxes payable with respect to any reporting period, the amount of lodging tax that became uncollectible during such reporting period, but only in proportion to the portion of such consideration which became uncollectible.

700.07 Processing Returns.

The City Administrator shall, after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The lodging tax computed on the basis of such examination shall be the lodging tax due. If the lodging tax due is found to be greater than paid, such excess shall be paid to the City within ten (10) days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the lodging tax paid is greater than the lodging tax found to be due, the excess shall be refunded to the person who paid the lodging tax to the City within ten (10) days after determination of such refund.

700.08 Failure to File Return.

The City Administrator shall notify any operator of a facility who fails to file a return or who files an incorrect, false or fraudulent return of such fact. Such operator shall file such return or corrected return within five (5) days of the receipt of such written notice and pay any lodging tax due thereon. If such persons shall fail to file such return or corrected return, the City Administrator shall make a return or corrected return for such person from such knowledge and information as the City Administrator can obtain, and assess the lodging tax due on the basis thereof, which said lodging tax shall be paid within five (5) days of the receipt of written notice and demand for such payment. Any such return or assessment made by the City Administrator shall be prima facie correct and valid, and such person shall have

the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

700.09 PENALTIES

Subd. 1. Calculated Penalty. The following penalties shall apply in the given situations:

- A. Failure to file a return or pay lodging tax to the City within thirty (30) days of the due date: a penalty of ten percent (10%) of the unpaid lodging tax.
- B. Failure to file a return or pay lodging tax imposed by the City by more than thirty (30) days but less than sixty (60) days of the due date: a penalty of fifteen percent (15%) of the unpaid lodging tax.
- C. Failure to file a return or pay lodging tax imposed by the City by more than sixty (60) days but less than ninety (90) days of the due date: a penalty of twenty percent (20%) of the unpaid lodging tax.
- D. Failure to file a return or pay lodging tax imposed by the City by more than ninety (90) days of the due date: a penalty of twenty-five percent (25%) of the unpaid lodging tax.

Subd. 2. Minimum Penalty. If the penalty as computed does not exceed Ten Dollars (\$10.00), a minimum penalty of Ten Dollars (\$10.00) shall be assessed. The penalty shall be collected in the same manner as the lodging tax.

700.10 Interest.

The amount of lodging tax not timely paid, together with any penalty, shall bear interest at the rate of eight percent (8%) per annum from the time such lodging tax should have been paid until paid. Any interest and penalty shall be added to the lodging tax and be collected as part thereof.

700.11 Application of Payments.

All payments shall be credited first to penalties, next to interest and then to the lodging tax due.

700.12 Enforcement.

If any portion of the lodging tax imposed by the City, including penalties thereon, is not paid within thirty (30) days after it is required to be paid, the City Attorney may institute legal action as may be necessary to recover the amount due plus interest penalties, the costs and disbursement of any action.

700.13 Administrator of Lodging Tax.

The City Administrator shall administer and enforce the assessment and collection of the lodging taxes imposed by the City. The City Administrator shall prepare blank forms for the

returns and other documents required by this ordinance and shall make them available to members of the public.

700.14 Examination of Records.

The City Administrator may examine the books, papers, and records of any operator of a facility subject to the lodging tax imposed by the City in order to verify the accuracy of any return made, or if no return was made, to ascertain the lodging tax imposed by the City through this ordinance. Every such operator is directed and required to give the City Administrator the means, facilities and opportunity for such examination and investigations as are hereby authorized.

700.15 Appeals.

Any operator aggrieved by any notice, order or determination made by the City Administrator under this ordinance may file with the City Administrator a petition for review of such notice, order or determination by the City Council. The petition shall contain the name of the Petitioner, the Petitioner's address, the location of the lodging facility, the order, notice or determination subject to the review and the basis for the request for review. Upon receipt of the petition, the City Administrator will place the matter on the City Council agenda for a hearing as soon as practical. The City Administrator shall give the Petitioner at least five (5) days prior written notice of the date, time and place of such hearing. At the hearing, the Petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn. The City Council shall make written findings of fact and conclusions based upon this ordinance and the evidence presented. The City Council may modify, reverse or affirm the notice, or order or determination that is subject to the review. All requests for review must be made within one (1) year of the date of notice, order or determination.

700.16 Use of Proceeds. Ninety-five (95) percent of the gross proceeds obtained from the collection of lodging taxes shall be used by the City to fund a local convention or tourism bureau for the purpose of marketing and promoting the City as a tourist or convention center.

700.17. Wheaton Area Tourism Board.

Subd. 1. Appointment of Members. The Wheaton Area Tourism Board is hereby established for the purpose of advising and assisting the City Council on the promotion of the Wheaton area as a tourist destination and/or convention site and in the allocation and utilization of the lodging tax proceeds collected within the City to further that purpose. The Board shall consist of seven persons; the Economic Development Authority Director, two persons appointed for a term of one year, two persons appointed for a term of two years, and two persons appointed for a term of three years. Thereafter each appointment or reappointment shall be for three years. When making the appointments, priority shall be given to recommendations of the Economic Development Authority Board. The Council may, at their discretion, ensure that there is representation on the board of a person or persons engaged in the business of providing lodging in the Wheaton area.

Subd. 2. Meetings, Administrative Rules and Matters. The Wheaton Area Tourism Board shall meet a minimum of once every four months, and the members shall determine the place of the meetings and shall adopt its own rules and regulations governing such meetings, subject to the provisions of this ordinance.

Subd. 3. Recommendations to Council. The Wheaton Area Tourism Board shall make recommendations to the Council on the promotion of the Wheaton area as a tourist destination and/or convention site and for the allocation and utilization of the lodging tax proceeds.

CITY COUNCIL

800 RULES OF PROCEDURE: DUTIES OF CITY OFFICIALS & EMPLOYEES

800.01 Meetings.

The regular meetings of the city Council shall be held on the second Thursday and the fourth Thursday of each month at 5:00 p.m. The meeting to be canceled or rescheduled if any given Thursday falls on a legal holiday. The mayor may call special sessions when he deems it necessary to convene the council, appropriate notice to be given.

800.02 Rules.

The City Council shall conduct all of its meetings pursuant to the procedures laid out in Robert's Rules of Order, as updated.

800.03 Record of Orders.

It shall be the duty of the City Clerk-Treasurer to keep a record of all financial transactions including all outstanding unpaid claims at the time of the passage hereof, in the order in which they shall be presented, recording the name of the payee and the person presenting the same, the date of issue and date of presentation for what issued and amount thereof.

800.04 Payment of Claims.

No city claim shall hereafter be paid until it shall have been presented and these only in the order of presentation except as hereinafter otherwise provided: payroll, postage, contractual obligations, taxes, and other expenses under \$100.00.

800.05 Notice of Payment.

It shall be the duty of the City Clerk-Treasurer once per month, or as often as the City Council shall direct, to give notice of what orders can be then paid.

800.06 Clerk-Treasurer.

Pursuant to the authority granted by Minnesota Statutes, Section 412.02 Subdivision 3, the office of clerk and treasurer in the City of Wheaton, Traverse County, Minnesota are hereby combined in the office of clerk-treasurer.

800.065 Clerk-Administrator-Treasurer.

Section 1. Duties.

- (A) (1) The Office of Clerk-Treasurer shall be hereafter known as the Clerk-Administrator-Treasurer. The duties of the Clerk-Administrator-Treasurer shall include those of the Clerk and of the Treasurer. The Clerk-Administrator-Treasurer shall perform all statutory duties of the Clerk and of the Treasurer and shall give the required notice of each regular and special election, record the proceedings thereof, notify officials of their elections or appointments to office, certify to the County Auditor all appointments and the results of all municipal elections.

(2) The Clerk-Administrator-Treasurer shall keep:

(a) A minute book, noting therein all proceedings of the Council;

(b) An ordinance book, in which he or she shall record, at length, all ordinances passed by the Council;

(c) An account book, in which he or she shall enter all money transactions of the municipality, including the dates and amounts of all receipts and the person from whom the money was received and all orders drawn upon the Treasurer with their payee and object; and

(d) Ordinances, resolutions and claims considered by the Council need not be given in full in the minutes book if they appear in other permanent records of the Clerk -Treasurer-Administrator and can be accurately identified from the description given in the minutes.

(3) (a) The Clerk-Administrator-Treasurer shall act as the Clerk and Bookkeeper of the municipality, shall be the custodian of its seal and records, shall sign its official papers, shall post public notices, ordinances and resolutions as may be required and shall perform such other appropriate duties as may be imposed upon him or her by the Council.

(b) For certified copies and for filing and entering, when required, papers not relating to municipal business, he or she shall receive the fees allowed by law to city clerks; but the Council may require the Clerk-Administrator- Treasurer to pay the fees to the general fund.

(B) In addition to all of the foregoing, the Clerk-Administrator-Treasurer shall:

(1) Direct the administration as provided by Council action, state and federal statutes and coordinate, with the Council, in administering municipal affairs;

(2) Prepare reports and summaries relating to contemplated municipal projects and or improvements and submit them with recommendations as may be required to the Council for study and subsequent action;

(3) Prepare an annual fiscal budget and capital improvements plat for submission to the Council and maintain financial guidelines for the municipality within the scope of the approved budget and capital program;

- (4) Prepare an annual financial statement and perform other duties as required in M.S.A. §412.141, as it may be amended from time to time;
- (5) Submit quarterly reports to the Council of the financial condition of the municipal accounts;
- (6) Manage and invest City funds in accordance with guidelines set by the Council and sound financial practices;
- (7) Generate, maintain, and safeguard all financial records, including General Ledger, Accounts Payable, Cash Receipts, Payroll, Utility Billing, Budget, and Fixed Assets;
- (8) Develop, monitor, and control annual City operating budget, and recommend budgets for consideration by Council;
- (9) Oversee the preparation of information for bond ratings, bond issues, bond offering statements, and continuing disclosure statements;
- (10) Prepare for and oversee preparation of grant and/or loan applications; administer grant and/or loan money that is received; and prepare related reports;
- (11) Attend and participate in all Council meetings and attend, at his or her discretion or by invitation, other committee and commission meetings;
- (12) Coordinate municipal programs and activities as authorized by the Council;
- (13) Oversee the administrative portion of all improvement projects; review plans and specifications, advertisement for bid notices, contracts, pay requests, change orders, etc.; return bid bonds; and prepare assessment hearing notices and rolls, correspondence, certifications, resolutions, etc.;
- (14) Review and recommend the approval of land use permits, variance requests, conditional use permits, and other matters similarly related, and then issue licenses and permits following Council approval;
- (15) Supervise the conduct of local elections in accordance with the prescribed laws and regulations;
- (16) Supervise the activities of all city department heads and staff in the administration of city policy, including interviewing; training; planning, assigning, and directing work; evaluating the performance of city employees, with authority to reward, discipline, suspend, transfer, adjusting grievances, addressing complaints, and resolving problems, as well as effectively

recommend the hiring, promoting, demoting, and discharge of city employees;

- (17) Work in cooperation with the Council's appointed attorney and engineer;
 - (18) Coordinate and oversee the work of consultants hired by the Council;
 - (19) Prepare news releases, develop and discuss public relations material with all concerned, as required, and maintain good public relations with the general public;
 - (20) Provide public records and information to citizens, civic groups, and other agencies as requested;
 - (21) Respond to questions and complaints from the public;
 - (22) Consult with appointed officials and with other public or private agencies as may be required;
 - (23) Be fully informed regarding federal, state and county programs which affect the municipality; and
 - (24) Perform all duties required of him or her by ordinances or resolutions adopted by the Council.
- (C) The Clerk-Administrator- Treasurer shall have:
- (1) Considerable knowledge of municipal government operations, proper procedures, public relations, finances, purchasing and all administrative requirements for proper municipal operation;
 - (2) Knowledge of or ability to acquire full knowledge of all laws affecting the municipality;
 - (3) Ability to provide harmonious relations with municipal employees and general public; and
 - (4) Ability to plan development, to collect material and analyze for reporting and to conduct and implement studies of procedures, operations and organizations.
- (D) The Clerk-Administrator-Treasurer shall have a Bachelor's Degree (B.A.) in Public Administration, finance, accounting or related field, and three to five years related experience and/or training; or equivalent combination of education and experience.
- (E) The Clerk-Administrator- Treasurer is appointed by a majority of the Council for an

indefinite term, with removal only by a majority of the Council.

Section 2. That all references in the Code of Ordinance for the City of Wheaton to “clerk”, “treasurer”, or “clerk-treasure” are hereby modified to read “Clerk-Administrator-Treasurer”.

800.07 Audit.

There shall be an annual audit of the city’s financial affairs by the examiner or a public accountant in accordance with minimum auditing procedures prescribed by the public examiner.

CITY COUNCIL

801 CRIMINAL HISTORY BACKGROUND SEARCH FOR APPLICANTS FOR EMPLOYMENT WITH THE CITY OF WHEATON

801.01 Investigation.

The Wheaton Police Department is hereby required, as the exclusive entity within the City, to do a criminal history background investigation on all applicants for regular part-time or full-time employees of the City of Wheaton and other positions that work with children or vulnerable adults, unless the city's hiring authority concludes that a background investigation is not needed.

801.02 Access.

In conducting the criminal history background investigation in order to screen employment applicants, the Wheaton Police Department is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehension's Computerized Criminal History information system in accordance with BCA policy. Any data that is accessed and acquired shall be maintained at the Wheaton Police Department under the care and custody of the chief law enforcement official, or their designee. A summary of the results of the Computerized Criminal History data may be released by the Police Department to the hiring authority, including the City Council, the City Administrator, the City Attorney, or other city staff involved in the hiring process.

801.03 Authorization.

Before the investigation is underwritten, the applicant **must** give written authorization to the Wheaton Police Department to undertake the investigation. The written consent must fully comply with the provisions of Minnesota Statutes Chapter 13 regarding the collection, maintenance, and use of the information.

801.04 Use of Information. Except for the positions set for in M.S.A. §364.09, the City will not reject an applicant for employment on the basis of the applicant's prior conviction, unless the crime is directly related to the position of employment sought and the conviction is for a felony, gross misdemeanor, or misdemeanor level offense with a jail sentence. If the City rejects the applicant's request for employment on this basis, the City shall notify the applicant in writing of the following:

- A. The grounds and reasons for the denial;
- B. The applicant complaint and grievance procedure set forth in M.S.A. §364.06;
- C. The earliest date the applicant may re-apply for employment; and
- D. That all competent evidence of rehabilitation will be considered upon reapplication.

ORDINANCE NO. 802

AN ORDINANCE DEALING WITH CRIMINAL HISTORY BACKGROUND SEARCH FOR APPLICANTS FOR LICENSING WITH THE CITY OF WHEATON

Purpose.

The purpose and intent of this section is to establish regulations that will allow law enforcement access to Minnesota's Computerized Criminal History information for specified non-criminal purposes of licensing background checks.

THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS:

1. That Ordinance No. 802 of the Code of Ordinance for the City of Wheaton is hereby enacted to read as follows:

Section 1. **Investigation.** The Wheaton Police Department is hereby required, as the exclusive entity within the City, to do a criminal history background investigation on all applicants for all licenses issued within the City, unless the city's hiring authority concludes that a background investigation is not needed.

Section 2. **Access.** In conducting the criminal history background investigation in order to screen license applicants, the Wheaton Police Department is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehensions Computerized Criminal History information system in accordance with BCA policy. Any data that is accessed and acquired shall be maintained at the Police Department under the care and custody of the chief law enforcement official or his or her designee. A summary of the results of the Computerized Criminal History data may be released by the Police Department to the licensing authority, including the City Council, the City Administrator, or other city staff involved the license approval process.

Section 3. **Authorization.** Before the investigation is underwritten, the applicant must give written authorization to the Wheaton Police Department to undertake the investigation. The written consent must fully comply with the provisions of Minnesota Statutes Chapter 13 regarding the collection, maintenance, and use of the information.

Section 4. **Use of Information.** Except for the positions set for in M.S.A. §364.09, the City will not reject an applicant for a license on the basis of the applicant's prior conviction, unless the crime is directly related to the position of employment sought and the conviction is for a felony, gross misdemeanor, or misdemeanor level offense with a jail sentence. If the City rejects the applicant's request for employment on this basis, the City shall notify the applicant in writing of the following:

- 6 The grounds and reasons for the denial;
- 7 The applicant complaint and grievance procedure set forth in M.S.A. §364.06;
- 8 The earliest date the applicant may re-apply for employment; and
- 9 That all competent evidence of rehabilitation will be considered upon re-application.

CITY COUNCIL

805 ESTABLISHMENT, MAINTENANCE, AND SUPERVISION OF A PUBLIC LIBRARY

- Section 1: There is hereby established a public library in the City of Wheaton.
- Section 2: The public library shall be under the jurisdiction of a board of five Directors known as “the library board of the City of Wheaton”. The general statutes of Minnesota applying to public libraries and reading rooms shall govern the appointment of the board of members, their tenure in office, and their powers and duties. The Board shall appear before the City Council of Wheaton at the last regular meeting prior to October 1 of each calendar year with the library board’s financial books and financial statement, for examination by the City Council and audit, if the City Council deems necessary.
- Section 3. For the purpose of maintaining such library, the City Council annually shall levy a tax upon the taxable property in the city. The proceeds of such tax, together with all other moneys received, for such library, shall be paid into the city treasury and credited to a special fund to be known as “the library fund.”
- Section 4. It shall be unlawful for any person willfully to commit any injury to any property of the public library or willfully to damage or mutilate any book or periodical belonging to the library or willfully to fail to return any book or periodical belonging to the library after the expiration of the time for which such book or periodical may be kept according to the rules and regulations duly adopted by the board of the public library.
- Section 5. Any person violating any provision of Section 4 shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$700 or in default thereof to imprisonment for a period not exceeding 90 days, plus the costs of prosecution in any case.

CITY COUNCIL

810 ORGANIZATION OF PARK AND RECREATION ADVISORY BOARD

BE IT RESOLVED that it is the purpose of the Council of the City of Wheaton to provide a high quality of life for the residents of Wheaton by protecting the natural resources, safeguarding of any historic sites and developing and maintaining park and recreational facilities for public enjoyment.

For said purpose, there is hereby created and established in and for the City of Wheaton a board to be known and designated as the Parks and Recreation Advisory Board.

Be It FURTHER RESOLVED that the Parks and Recreation Advisory board shall advise and assist the City Council in matters relating to all park and recreation programs in which the city is involved, all playgrounds, playfields, parks, swimming pool, and other recreational facilities in which the city is involved.

Section 1. **Appointment.**

Said advisory board shall consist of seven members selected by the City Council. One of the members shall be a City Council Person selected by the mayor.

Section 2. **Terms.**

An appointed member shall continue to serve until his or her successor is appointed.

Section 3. **Vacancies and Compensation.**

Any vacancy in the appointive membership shall be filled by selection of the City Council and such appointee shall serve for the unexpired term so filled. Board members shall receive no compensation for their services unless specifically approved by the City Council.

Section 4. **Officers and By-Laws.**

The Board shall organize itself and elect one of its members as Chairman. The chairman shall be responsible for calling and presiding at all meetings. The Board shall also elect one of its members as Vice-Chairman, who shall perform the duties of the Chairman in the absence of or incapacity of the Chairman. The Board shall also elect one of its members as Secretary who shall record the proceedings of the Board. A copy of these proceedings shall be delivered to the City Clerk/Treasurer for presentation to the City Council at their regular meeting. The Board shall also adopt its own by-laws for the conduct of its business

Section 5.

Meetings.

Meetings of the Advisory Board shall be held at such times and places as may be prescribed in the by-laws of the Advisory Board or as may be fixed by the Chair, consistent with such rules; provided, however, that at least one meeting shall be held every other month during the year.

Section 6.

Limitation of Powers.

The Board shall have no power to incur debt over \$1,000 for which the city or any department thereof shall be liable and it shall have no power or authority to make any improvement, alterations or changes in any of the parks or city facilities without the consent of the City Council.

Section 7.

Duties.

The duties of the Advisory Board shall be as set forth in the subdivision which follow:

Subdivision 1. To study and determine the parks and recreational needs of the City, and to make recommendations to the City Council, including general and specific matters of policies and of recreational programs in furtherance of said needs of the community.

Subdivision 2. To propose to the City council rules and regulations for the use of any parks, recreational or leisure facilities. Review all requests for the special use of such facilities and make recommendations to the City Council regarding such requests.

Subdivision 3. To be involved in preparing long range plans for any parks, recreational or leisure facilities. Review all requests for the special use of such facilities and make recommendations to the City Council regarding such changes.

Subdivision 4. To be responsible for advising and supporting sound cooperation and coordination with other governmental agencies, civic or community groups in the advancement of sound recreation and park programming.

Subdivision 5. To recommend acceptance of gifts for public recreational and park purposes.

Subdivision 6. To submit a detailed budget to the City Clerk/Treasurer no later than August 1 of each year, outlining and describing sources of revenues and expenditures of the parks and recreation programs and facilities for upcoming calendar year.

Subdivision 7. To complete an Annual Report by January 31 of each year for the City Council detailing recreation activities and park development or improvements.

Subdivision 8. To submit recommendations for capital improvement to the City Council for inclusion in the city's total budget.

Subdivision 9. To recommend policies and procedures to the City Council to develop an increased public awareness of parks and recreation programs.

Subdivision 10. To conduct studies and investigations as specifically directed or delegated by the City Council. To represent the City Council at appropriate meetings, hearings and other events when so directed.