

# GENERAL CODE PROVISIONS

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# CHAPTER 1

## CODE OF ORDINANCES

1.01 Title	1.08 Amendments
1.02 Definitions	1.09 Catchlines and Notes
1.03 City Powers	1.10 Altering Code
1.04 Indemnity	1.11 Severability
1.05 Personal Injuries	1.12 Warrants
1.06 Rules of Construction	1.13 General Standards for Action
1.07 Extension of Authority	1.14 Penalties

**1.01 TITLE.** This code of ordinances shall be known and may be cited as the Code of Ordinances of the City of Windsor Heights, Iowa.

**1.02 DEFINITIONS.** Where words and phrases used in this Code of Ordinances are defined in the *Code of Iowa*, such definitions apply to their use in this Code of Ordinances unless such construction would be inconsistent with the manifest intent of the Council or repugnant to the context of the provision. Other words and phrases used herein have the following meanings, unless specifically defined otherwise in another portion of this Code of Ordinances or unless such construction would be inconsistent with the manifest intent of the Council or repugnant to the context of the provision:

1. “Alley” means a public right-of-way, other than a street, affording secondary means of access to abutting property.
2. “City” means the City of Windsor Heights, Iowa.
3. “Clerk” means the city clerk of Windsor Heights, Iowa.
4. “Code” means the specific chapter of this Code of Ordinances in which a specific subject is covered and bears a descriptive title word (such as the Building Code and/or a standard code adopted by reference).
5. “Code of Ordinances” means the Code of Ordinances of the City of Windsor Heights, Iowa.
6. “Council” means the city council of Windsor Heights, Iowa.
7. “County” means Polk County, Iowa.
8. “May” confers a power.
9. “Measure” means an ordinance, amendment, resolution, or motion.
10. “Must” states a requirement.
11. “Occupant” or “tenant,” applied to a building or land, includes any person who occupies the whole or a part of such building or land, whether alone or with others.
12. “Ordinances” means the ordinances of the City of Windsor Heights, Iowa, as embodied in this Code of Ordinances, ordinances not repealed by the ordinance adopting this Code of Ordinances, and those enacted hereafter.
13. “Person” means an individual, firm, partnership, domestic or foreign corporation, company, association or joint stock association, trust or other legal entity,

and includes a trustee, receiver, assignee, or similar representative thereof, but does not include a governmental body.

14. “Public way” includes any street, alley, boulevard, parkway, highway, sidewalk, or other public thoroughfare.

15. “Shall” imposes a duty.

16. “Sidewalk” means that surfaced portion of the street between the edge of the traveled way, surfacing, or curb line and the adjacent property line, intended for the use of pedestrians.

17. “State” means the State of Iowa.

18. “Statutes” or “laws” means the latest edition of the *Code of Iowa*, as amended.

19. “Street” or “highway” means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

Words that are not defined in this Code of Ordinances or by the *Code of Iowa* have their ordinary meaning unless such construction would be inconsistent with the manifest intent of the Council, or repugnant to the context of the provision.

**1.03 CITY POWERS.** The City may, except as expressly limited by the Iowa Constitution, and if not inconsistent with the laws of the Iowa General Assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the City and of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents, and each and every provision of this Code of Ordinances shall be deemed to be in the exercise of the foregoing powers and the performance of the foregoing functions.

*(Code of Iowa, Sec. 364.1)*

**1.04 INDEMNITY.** The applicant for any permit or license under this Code of Ordinances, by making such application, assumes and agrees to pay for any injury to or death of any person or persons whomsoever, and any loss of or damage to property whatsoever, including all costs and expenses incident thereto, however arising from or related to, directly, indirectly or remotely, the issuance of the permit or license, or the doing of anything thereunder, or the failure of such applicant, or the agents, employees or servants of such applicant, to abide by or comply with any of the provisions of this Code of Ordinances or the terms and conditions of such permit or license, and such applicant, by making such application, forever agrees to indemnify the City and its officers, agents and employees, and agrees to save them harmless from any and all claims, demands, lawsuits or liability whatsoever for any loss, damage, injury or death, including all costs and expenses incident thereto, by reason of the foregoing. The provisions of this section shall be deemed to be a part of any permit or license issued under this Code of Ordinances or any other ordinance of the City whether expressly recited therein or not.

**1.05 PERSONAL INJURIES.** When action is brought against the City for personal injuries alleged to have been caused by its negligence, the City may notify in writing any person by whose negligence it claims the injury was caused. The notice shall state the pendency of the action, the name of the plaintiff, the name and location of the court where the action is pending, a brief statement of the alleged facts from which the cause arose, that the City believes that the person notified is liable to it for any judgment rendered against the City, and asking the person to appear and defend. A judgment obtained in the suit is conclusive in any action by the City



against any person so notified, as to the existence of the defect or other cause of the injury or damage, as to the liability of the City to the plaintiff in the first named action, and as to the amount of the damage or injury. The City may maintain an action against the person notified to recover the amount of the judgment together with all the expenses incurred by the City in the suit.

*(Code of Iowa, Sec. 364.14)*

**1.06 RULES OF CONSTRUCTION.** In the construction of this Code of Ordinances, the rules of statutory construction as set forth in Chapter 4 of the *Code of Iowa* shall be utilized to ascertain the intent of the Council with the understanding that the term “statute” as used therein will be deemed to be synonymous with the term “ordinance” when applied to this Code of Ordinances.

**1.07 EXTENSION OF AUTHORITY.** Whenever an officer or employee is required or authorized to do an act by a provision of this Code of Ordinances, the provision shall be construed as authorizing performance by a regular assistant, subordinate or a duly authorized designee of said officer or employee.

**1.08 AMENDMENTS.** All ordinances which amend, repeal or in any manner affect this Code of Ordinances shall include proper reference to chapter, section, subsection, or paragraph to maintain an orderly codification of ordinances of the City.

*(Code of Iowa, Sec. 380.2)*

**1.09 CATCHLINES AND NOTES.** The catchlines of the several sections of the Code of Ordinances, titles, headings (chapter, section and subsection), editor’s notes, cross references and State law references, unless set out in the body of the section itself, contained in the Code of Ordinances, do not constitute any part of the law, and are intended merely to indicate, explain, supplement or clarify the contents of a section.

**1.10 ALTERING CODE.** It is unlawful for any unauthorized person to change or amend by additions or deletions, any part or portion of the Code of Ordinances, or to insert or delete pages, or portions thereof, or to alter or tamper with the Code of Ordinances in any manner whatsoever which will cause the law of the City to be misrepresented thereby.

**1.11 SEVERABILITY.** If any section, provision, or part of the Code of Ordinances is adjudged invalid or unconstitutional, such adjudication will not affect the validity of the Code of Ordinances as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**1.12 WARRANTS.** If consent to enter upon or inspect any building, structure or property pursuant to a municipal ordinance is withheld by any person having the lawful right to exclude, the City officer or employee having the duty to enter upon or conduct the inspection may apply to the Iowa District Court in and for the County, pursuant to Section 808.14 of the *Code of Iowa*, for an administrative search warrant. No owner, operator or occupant or any other person having charge, care, or control of any dwelling unit, rooming unit, structure, building, or premises shall fail or neglect, after presentation of a search warrant, to permit entry therein by the municipal officer or employee.

**1.13 GENERAL STANDARDS FOR ACTION.** Whenever this Code of Ordinances grants any discretionary power to the Council or any commission, board or officer or employee of the City and does not specify standards to govern the exercise of the power, the power shall

be exercised in light of the following standard: The discretionary power to grant, deny, or revoke any matter shall be considered in light of the facts and circumstances then existing and as may be reasonably foreseeable, and due consideration shall be given to the impact upon the public health, safety and welfare, and the decision shall be that of a reasonably prudent person under similar circumstances in the exercise of the police power.

**1.14 PENALTIES.** A violation of the Windsor Heights Code of Ordinances constitutes a simple misdemeanor. If the punishment for a violation of a statute of the State of Iowa which has been incorporated by reference into Windsor Heights Code of Ordinances, or is the same as an ordinance of the Windsor Heights Code of Ordinances, and punishment for violation of such statute is different from that provided under the Windsor Heights Code of Ordinances for a simple misdemeanor, the punishment set out in the Code of Iowa shall prevail. Anyone violating any other provision of the Windsor Heights Code of Ordinances shall be guilty of a simple misdemeanor, and upon conviction, shall be subject to a fine of not more than six hundred twenty five dollars (\$625.00) and/or imprisonment not to exceed thirty (30) days. The penalties for and what may constitute a Municipal Infraction are designated and defined in Chapter 4 of this Code of Ordinances

*(Code of Iowa, Sec. 364.3[2] and 903.1[1a])*

*1. (Ord. 16-05 – Aug. 16 Supp.)*

[The next page is 9]

## CHAPTER 2

# CHARTER

2.01 Title  
2.02 Form of Government  
2.03 Powers and Duties of City Officers

2.04 Number and Term of Council  
2.05 Term of Mayor  
2.06 Copies on File

**2.01 TITLE.** This chapter may be cited as the charter of the City of Windsor Heights, Iowa.<sup>†</sup>

**2.02 FORM OF GOVERNMENT.** The form of government of the City is the Mayor-Council form of government.

*(Code of Iowa, Sec. 372.4)*

**2.03 POWERS AND DUTIES OF CITY OFFICERS.** The Council and Mayor and other City officers have such powers and shall perform such duties as are authorized or required by State law and by the ordinances, resolutions, rules, and regulations of the City.

**2.04 NUMBER AND TERM OF COUNCIL.** The Council consists of five Council Members elected at large for overlapping terms of four years.

*(Code of Iowa, Sec. 376.2)*

**2.05 TERM OF MAYOR.** The Mayor is elected for a term of four years.

*(Code of Iowa, Sec. 376.2)*

**2.06 COPIES ON FILE.** The Clerk shall keep an official copy of the charter on file with the official records of the Clerk and the Secretary of State, and shall keep copies of the charter available at the Clerk's office for public inspection.

*(Code of Iowa, Sec. 372.1)*

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<sup>†</sup> **EDITOR'S NOTE:** Ordinance No. 75-6, adopting a charter for the City was passed and approved by the Council on September 15, 1975, and was published on September 16, 1975.

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## CHAPTER 3

# BOUNDARIES

### 3.01 Corporate Limits

### 3.02 Voting Precincts

**3.01 CORPORATE LIMITS.** The corporate boundaries of the City are described and confirmed as follows:

#### CITY OF WINDSOR HEIGHTS, IOWA CORPORATE BOUNDARY

*[A] Commencing at the intersection of the centerline of Center Street and the centerline of 63<sup>rd</sup> Street (which point is the center of Sec. 2, T. 78N, R. 25W); thence northerly along the centerline of 63<sup>rd</sup> Street (which line is the east line of the NW<sup>1</sup>/<sub>4</sub> of Sec. 2, T. 78N, R. 25W) a distance of 3,150 feet, more or less, to the centerline of University Avenue (which point is the NE corner of the NW<sup>1</sup>/<sub>4</sub> of Sec. 2, T. 78N, R. 25W); thence westerly along the centerline of University Avenue (which line is the south line of the SE<sup>1</sup>/<sub>4</sub> of Sec. 36, T. 79N, R. 25W) a distance of 15 feet, more or less, to the centerline of 63<sup>rd</sup> Street (which point is 989.8 feet, more or less, east of the SW corner of the SE<sup>1</sup>/<sub>4</sub> of Sec. 36, T. 79N, R. 25W); thence northerly along the centerline of 63<sup>rd</sup> Street a distance of 2,620 feet, more or less, to an extension to the east of the centerline of College Avenue (which point is 992 feet, more or less, east of the center of Sec. 36, T. 79N, R. 25W); thence east along an extension to the east of the centerline of College Avenue (which line is the south line of the NE<sup>1</sup>/<sub>4</sub> of Sec. 36, T. 79 N, R. 25 W) a distance of 8 feet, more or less, to the centerline of 63<sup>rd</sup> Street (which point is 1,000 feet east of the center of Sec. 36, T. 79N, R. 25W); thence northerly along the centerline of 63<sup>rd</sup> Street a distance of 2,260 feet, more or less, to the south right-of-way line of Hickman Road (which point is 33 feet east of the NE corner of Lot 1, SUBURBAN FARMS, an Official Plat, and 33 feet south of the north line of the NE<sup>1</sup>/<sub>4</sub> of Sec. 36, T. 79N, R. 25W)[B] (the line between[A] and[B] being the common corporate boundary line between the City of Windsor Heights and the City of Des Moines); thence westerly along the south right-of-way line of Hickman Road (the location of which line was established pursuant to a Joint Public Improvement Agreement dated May 1, 1969, between the Iowa State Highway Commission and the City of Windsor Heights, Iowa, identified as No. 68-P-175 in connection with Polk County Project No. U-6-4(4)-40-77, which agreement is recorded in the office of the Polk County Recorder in Book 4027, commencing at Page 601, as amended by Amendment to Joint Public Improvement Agreement dated June 16, 1975, between the same parties regarding the same project, which amendment is recorded in the office of the Polk County Recorder in Book 4530, commencing at Page 663) in the NE<sup>1</sup>/<sub>4</sub> of Sec. 36, T. 79N, R. 25W, the NW<sup>1</sup>/<sub>4</sub> of Sec. 36, T. 79N, R. 25W and the NE<sup>1</sup>/<sub>4</sub> of Sec. 35, T. 79N, R. 25W a distance of 6,216.9 feet, more or less, to the NW corner of Lot 18, PLAZA HILLS PLAT 5, an Official Plat (which point is 74.1 feet south of the NW corner of the NE<sup>1</sup>/<sub>4</sub> of Sec. 35, T. 79N, R. 25W)[C]; thence southerly along the west lines of PLAZA HILLS PLAT 5 and PLAZA HILLS PLAT 6, an Official Plat (which line is the west line of the NE<sup>1</sup>/<sub>4</sub> of Sec. 35, T. 79N, R. 25W)*

a distance of 2,353.9 feet, more or less, to the northwest corner of Lot 135, PLAZA HILLS PLAT 5; thence easterly along the north lines of Lots 135 and 136, PLAZA HILLS PLAT 5, a distance of 342 feet, more or less, to the west right-of-way line of College Drive (which point is the northeast corner of Lot 136, PLAZA HILLS PLAT 5); thence southerly along the west right-of-way line of College Drive (which line is the east line of Lot 136, PLAZA HILLS PLAT 5) a distance of 254 feet, more or less, to the north right-of-way line of Harbach Boulevard (which point is the southeast corner of Lot 136, PLAZA HILLS PLAT 5); thence easterly along an easterly extension of the north right-of-way line of Harbach Boulevard a distance of 50 feet, more or less, to a point on the east right-of-way line of College Drive (which point is on the west line of Lot 61, PLAZA HILLS PLAT 5); thence southerly along the east right-of-way line of College Drive (which line is the west line of Lot 61, PLAZA HILLS PLAT 5) a distance of 33 feet, more or less, to the southwest corner of Lot 61, PLAZA HILLS PLAT 5 (which point is on the south line of the NE $\frac{1}{4}$  of Sec. 35, T. 79N, R. 25W); thence easterly along the south lines of PLAZA HILLS PLAT 5 and PLAZA HILLS PLAT 4, an Official Plat (which line is on the south line of the NE $\frac{1}{4}$  of Sec. 35, T. 79N, R. 25W) a distance of 1,577.5 feet, more or less, to the northwest corner of PROGRESSO PLAT 10, an Official Plat; thence southerly along the west lines of PLAT 10 and MOTT PLACE, an Official Plat, a distance of 2,410.5 feet, more or less, to the southwest corner of Lot 25, MOTT PLACE; thence easterly along the south line of Lot 25, MOTT PLACE, a distance of 95 feet, more or less, to the northwest corner of Lot 27, MOTT PLACE; thence southerly along the west line of Lot 27, MOTT PLACE, a distance of 208 feet, more or less, to the north right-of-way line of University Avenue (which point is the southwest corner of Lot 27, MOTT PLACE); thence easterly along the north right-of-way line of University Avenue (which line is the south line of Lot 27, MOTT PLACE) a distance of 8.5 feet, thence south 0° 00' east a distance of 80.0 feet to the south right-of-way line of University Avenue; thence south 90° 0' east along the south right-of-way line of University Avenue; (which line is 40 feet south of and parallel to the north line of Sec. 3, T. 78N, R. 25W) a distance of 146.6 feet, to a point 40 feet south of and 21.9 feet east of the NW corner of the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 3, T. 79N, R. 25W[D]; thence south 0° 00' east a distance of 10 feet; thence north 90° 00' east a distance of 22 feet; thence south 2° 18' east, 40 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, a distance of 117.5 feet; thence southerly 40.0 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, along a curve concave westerly with a radius of 1,100.57 feet and an internal angle of 10° 15'; with said curve tangent to the preceding and following courses, a distance of 196.89 feet; thence south 7° 57' west, 40 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, a distance of 386 feet; thence south 6° 32' west, 40 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, a distance of 220 feet; thence north 83° 28' west, perpendicular to the centerline of 73<sup>rd</sup> Street, a distance of 28 feet; thence south 6° 32' west, 40 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, a distance of 300 feet, more or less, to the northeasterly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; (the line between[C] and[E] being the common corporate boundary line between the City of Windsor Heights and the City of Clive) (the line between[D] and[E] being the line which was established pursuant to an Intergovernmental Corporation Boundary Agreement dated March 18, 1971, between the City of Windsor Heights and the City of Clive, which agreement is

*recorded in the office of the Polk County Recorder in Book 4198, commencing at Page 413, and which agreement was legalized by Acts 1971 (64 G.A., 1<sup>st</sup> Sess.) ch. 284); thence south 6° 32' west, 40 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, a distance of 150 feet, more or less, to the southwesterly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; thence southerly and easterly along the west and south right-of-way lines of 73<sup>rd</sup> Street (formerly Rancho Grande Boulevard) a distance of 293 feet, more or less, to the northwest corner of RANCHO GRANDE, an Official Plat; thence southerly along the west line of RANCHO GRANDE (which line is the west line of the SE<sup>1</sup>/<sub>4</sub> of the NE<sup>1</sup>/<sub>4</sub> of Sec. 3, T. 78N, R. 25W) a distance of 1,003.7 feet, more or less, to a point which is 415.5 feet north of the southwest corner of RANCHO GRANDE[F]; thence southeasterly a distance of 55 feet, more or less, to a point on the west line of Lot 13, RANCHO GRANDE, which point is 48 feet north of the southwest corner of Lot 13, RANCHO GRANDE; thence southeasterly a distance of 180 feet, more or less, to the southeast corner of Lot 15, RANCHO GRANDE; thence southeasterly a distance of 320 feet, more or less, to the northeast corner of Lot 25, RANCHO GRANDE; thence southeasterly a distance of 65 feet, more or less, to the northwest corner of Lot 26, RANCHO GRANDE; thence southeasterly to a point on the south line of Lot 29, RANCHO GRANDE, which point is 20 feet east of the southwest corner of Lot 29, RANCHO GRANDE[G] (the line between[F] and[G] being the line which is the south right-of-way line of Interstate Highway 235); thence east along the south line of RANCHO GRANDE, and an extension thereof to the east, a distance of 614.4 feet, more or less, to the centerline of Eighth Street (which point is 33 feet east of the southeast corner of RANCHO GRANDE); thence northerly along the centerline of Eighth Street (which is the east line of Sec. 3, T. 78N, R. 25W) a distance of 99.7 feet to the centerline of Center Street (which point is the southwest corner of the NW<sup>1</sup>/<sub>4</sub> of Sec. 2, T. 78N, R. 25W); thence easterly along the centerline of Center Street (which line is the south line of the NW<sup>1</sup>/<sub>4</sub> of Sec. 2, T. 78N, R. 25W) a distance of 977.5 feet to the east line of Lot 44, JANET'S WOODS, an Official Plat[H] (the line between[E] and[H] being the common corporate boundary line between the City of Windsor Heights and the City of West Des Moines); thence easterly along the centerline of Center Street (which line is the south line of the NW<sup>1</sup>/<sub>4</sub> of Sec. 2, T. 78N, R. 25W) a distance of 1,662.5 feet, more or less, to the point of beginning (the line between[H] and[A] being the common corporate boundary line between the City of Windsor Heights and the City of Des Moines).*

Said boundaries may also be described as follows:

**CITY OF WINDSOR HEIGHTS, IOWA  
CORPORATE BOUNDARY**

*Commencing at the intersection of the centerline of Center Street and the centerline of 63<sup>rd</sup> Street; thence northerly along the centerline of 63<sup>rd</sup> Street a distance of 3,150 feet, more or less, to the centerline of University Avenue; thence westerly along the centerline of University Avenue a distance of 15 feet, more or less, to the centerline of 63<sup>rd</sup> Street; thence northerly along the centerline of 63<sup>rd</sup> Street a distance of 2,620 feet, more or less, to an extension to the east of the centerline of College Avenue; thence east along an extension to the east of the centerline of College Avenue a distance of 8 feet, more or less, to*

*the centerline of 63<sup>rd</sup> Street; thence northerly along the centerline of 63<sup>rd</sup> Street a distance of 2,260 feet, more or less, to the south right-of-way line of Hickman Road; thence westerly along the south right-of-way line of Hickman Road in the NE<sup>1</sup>/<sub>4</sub> of Sec. 36, T. 79N, R. 25W, the NW<sup>1</sup>/<sub>4</sub> of Sec. 36, T. 79N, R. 25W and the NE<sup>1</sup>/<sub>4</sub> of Sec. 35, T. 79N, R. 25W a distance of 6,216.9 feet, more or less, to the NW corner of Lot 18, PLAZA HILLS PLAT 5, an Official Plat; thence southerly along the west lines of PLAZA HILLS PLAT 5 and PLAZA HILLS PLAT 6, an Official Plat a distance of 2,353.9 feet, more or less, to the northwest corner of Lot 135, PLAZA HILLS PLAT 5; thence easterly along the north lines of Lots 135 and 136, PLAZA HILLS PLAT 5, a distance of 342 feet, more or less, to the west right-of-way line of College Drive; thence southerly along the west right-of-way line of College Drive a distance of 254 feet, more or less, to the north right-of-way line of Harbach Boulevard; thence easterly along an easterly extension of the north right-of-way line of Harbach Boulevard a distance of 50 feet, more or less, to a point on the east right-of-way line of College Drive; thence southerly along the east right-of-way line of College Drive a distance of 33 feet, more or less, to the southwest corner of Lot 61, PLAZA HILLS PLAT 5; thence easterly along the south lines of PLAZA HILLS PLAT 5 and PLAZA HILLS PLAT 4, an Official Plat a distance of 1,577.5 feet, more or less, to the northwest corner of PROGRESSO PLAT 10, an Official Plat; thence southerly along the west lines of PROGRESSO PLAT 10 and MOTT PLACE, an Official Plat, a distance of 2,410.5 feet, more or less, to the southwest corner of Lot 25, MOTT PLACE; thence easterly along the south line of Lot 25, MOTT PLACE, a distance of 95 feet, more or less, to the northwest corner of Lot 27, MOTT PLACE; thence southerly along the west line of Lot 27, MOTT PLACE, a distance of 208 feet, more or less, to the north right-of-way line of University Avenue; thence easterly along the north right-of-way line of University Avenue a distance of 8.5 feet; thence south 00° 00' east a distance of 80.0 feet to the south right-of-way line of University Avenue; thence south 90° 00' east along the south right-of-way line of University Avenue a distance of 146.6 feet, to a point 40 feet south of and 21.9 feet east of the NW corner of the NE<sup>1</sup>/<sub>4</sub> of the NE<sup>1</sup>/<sub>4</sub> of Sec. 3, T. 78N, R. 25W; thence south 0° 00' east a distance of 10 feet; thence north 90° 00' east a distance of 22 feet; thence south 2° 18' east, 40 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, a distance of 117.5 feet; thence southerly, 40.0 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, along a curve concave westerly with a radius of 1,100.57 feet and an internal angle of 10° 15', with said curve tangent to the preceding and following courses, a distance of 196.89 feet; thence south 7° 57' west, 40 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, a distance of 386 feet; thence south 6° 32' west, 40 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, a distance of 220 feet; thence north 83° 28' west, perpendicular to the centerline of 73<sup>rd</sup> Street, a distance of 28 feet; thence south 6° 32' west, 40 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, a distance of 300 feet, more or less, to the northeasterly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; thence south 6° 32' west, 40 feet west of and parallel to the centerline of 73<sup>rd</sup> Street, a distance of 150 feet, more or less, to the southwesterly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; thence southerly and easterly along the west and south right-of-way lines of 73<sup>rd</sup> Street a distance of 293 feet, more or less, to the northwest corner of RANCHO GRANDE, an Official Plat; thence southerly along the west line of RANCHO*



*GRANDE a distance of 1,003.7 feet, more or less, to a point which is 415.5 feet north of the southwest corner of RANCHO GRANDE; thence southeasterly a distance of 55 feet, more or less, to a point on the west line of Lot 13, RANCHO GRANDE, which point is 48 feet north of the southwest corner of Lot 13, RANCHO GRANDE; thence southeasterly a distance of 180 feet, more or less, to the southeast corner of Lot 15, RANCHO GRANDE; thence southeasterly a distance of 320 feet, more or less, to the northeast corner of Lot 25, RANCHO GRANDE; thence southeasterly a distance of 65 feet, more or less, to the northwest corner of Lot 26, RANCHO GRANDE; thence southeasterly to a point on the south line of Lot 29, RANCHO GRANDE, which point is 20 feet east of the southwest corner of Lot 29, RANCHO GRANDE; thence east along the south line of RANCHO GRANDE, and an extension thereof to the east, a distance of 614.4 feet, more or less, to the centerline of Eighth Street; thence northerly along the centerline of Eighth Street a distance of 99.7 feet to the centerline of Center Street; thence easterly along the centerline of Center Street a distance of 977.5 feet to the east line of Lot 44, JANET'S WOODS, an Official Plat; thence easterly along the centerline of Center Street a distance of 1,662.5 feet, more or less, to the point of beginning.*

**3.02 VOTING PRECINCTS.** There are three election precincts, known as Windsor Heights 1, Windsor Heights 2, and Windsor Heights 3, within the corporate limits of the City for all purposes under the laws of the United States and the State of Iowa.

1. Boundaries – Windsor Heights 1. The boundaries of the voting precinct known as Windsor Heights 1 are as follows:

*Commencing at the intersection of the centerline of 70<sup>th</sup> Street and the south right-of-way line of Hickman Road; thence east along the south right-of-way line of Hickman Road to the centerline of 63<sup>rd</sup> Street; thence south along the centerline of 63<sup>rd</sup> Street to the centerline of Colby Avenue; thence west along the centerline of Colby Avenue to the centerline of 70<sup>th</sup> Street; thence north along the centerline of 70<sup>th</sup> Street to the point of beginning.*

2. Boundaries – Windsor Heights 2. The boundaries of the voting precinct known as Windsor Heights 2 are as follows:

*Commencing at the intersection of the west corporate boundary line and the south right-of-way line of Hickman Road; thence east along the south right-of-way line of Hickman Road to the centerline of 70<sup>th</sup> Street; thence south along the centerline of 70<sup>th</sup> Street to the centerline of Colby Avenue; thence west along the centerline of Colby Avenue to the centerline of 73<sup>rd</sup> Street; thence south along the centerline of 73<sup>rd</sup> Street to the centerline of University Avenue to the west corporate boundary line; thence north along the west corporate boundary line to the point of beginning.*

3. Boundaries – Windsor Heights 3. The boundaries of the voting precinct known as Windsor Heights 3 are as follows:

*Commencing at the intersection of the centerline of 73<sup>rd</sup> Street and the centerline of Colby Avenue; thence east along the centerline of Colby Avenue to the centerline of 63<sup>rd</sup> Street; thence south along the centerline of 63<sup>rd</sup> Street to the centerline of Center Street; thence west along the*

*centerline of Center Street to the south corporate boundary line to the west corporate boundary line; thence north along the west corporate boundary line to the centerline of University Avenue; thence east along the centerline of University Avenue to the centerline of 73<sup>rd</sup> Street; thence north along the centerline of 73<sup>rd</sup> Street to the point of beginning.*

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## CHAPTER 4

# MUNICIPAL INFRACTIONS

4.01 Municipal Infraction  
4.02 Environmental Violation  
4.03 Penalties  
4.04 Civil Citations

4.05 Alternative Relief  
4.06 Alternative Penalties  
4.07 Failure to Pay a Civil Citation  
4.08 Habitual Offenders

**4.01 MUNICIPAL INFRACTION.** A violation of this Code of Ordinances or any ordinance or code herein adopted by reference or the omission or failure to perform any act or duty required by the same, with the exception of those provisions specifically provided under State law as a felony, an aggravated misdemeanor, or a serious misdemeanor, or a simple misdemeanor under Chapters 687 through 747 of the *Code of Iowa*, is a municipal infraction punishable by civil penalty as provided herein.<sup>†</sup>

*(Code of Iowa, Sec. 364.22[3])*

**4.02 ENVIRONMENTAL VIOLATION.** A municipal infraction which is a violation of Chapter 455B of the *Code of Iowa* or of a standard established by the City in consultation with the Department of Natural Resources, or both, may be classified as an environmental violation. However, the provisions of this section shall not be applicable until the City has offered to participate in informal negotiations regarding the violation or to the following specific violations:

*(Code of Iowa, Sec. 364.22[1])*

1. A violation arising from noncompliance with a pretreatment standard or requirement referred to in 40 C.F.R. §403.8.
2. The discharge of airborne residue from grain, created by the handling, drying, or storing of grain, by a person not engaged in the industrial production or manufacturing of grain products.
3. The discharge of airborne residue from grain, created by the handling, drying, or storing of grain, by a person engaged in such industrial production or manufacturing if such discharge occurs from September 15 to January 15.

**4.03 PENALTIES.** A municipal infraction is punishable by the following civil penalties:

*(Code of Iowa, Sec. 364.22[1])*

1. Standard Civil Penalties.
  - A. First offense – not to exceed \$750.00
  - B. Each repeat offense – not to exceed \$1,000.00

Each day that a violation occurs or is permitted to exist constitutes a repeat offense.

2. Special Civil Penalties.
  - A. A municipal infraction arising from noncompliance with a pretreatment standard or requirement, referred to in 40 C.F.R. §403.8, by an

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<sup>†</sup> **EDITOR'S NOTE:** For criminal penalty for violations of this Code of Ordinances, see Section 1.14.

industrial user is punishable by a penalty of not more than \$1,000.00 for each day a violation exists or continues.

B. A municipal infraction classified as an environmental violation is punishable by a penalty of not more than \$1,000.00 for each occurrence. However, an environmental violation is not subject to such penalty if all of the following conditions are satisfied:

- (1) The violation results solely from conducting an initial startup, cleaning, repairing, performing scheduled maintenance, testing, or conducting a shutdown of either equipment causing the violation or the equipment designed to reduce or eliminate the violation.
- (2) The City is notified of the violation within twenty-four (24) hours from the time that the violation begins.
- (3) The violation does not continue in existence for more than eight (8) hours.

**4.04 CIVIL CITATIONS.** Any officer authorized by the City to enforce this Code of Ordinances may issue a civil citation to a person who commits a municipal infraction. A copy of the citation may be served by personal service as provided in Rule of Civil Procedure 1.305, by certified mail addressed to the defendant at defendant's last known mailing address, return receipt requested, or by publication in the manner as provided in Rule of Civil Procedure 1.310 and subject to the conditions of Rule of Civil Procedure 1.311. A copy of the citation shall be retained by the issuing officer, and the original citation shall be sent to the Clerk of the District Court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

*(Code of Iowa, Sec. 364.22[4])*

1. The name and address of the defendant.
2. The name or description of the infraction attested to by the officer issuing the citation.
3. The location and time of the infraction.
4. The amount of civil penalty to be assessed or the alternative relief sought, or both.
5. The manner, location, and time in which the penalty may be paid.
6. The time and place of court appearance.
7. The penalty for failure to appear in court.
8. The legal description of the affected real property, if applicable.

If the citation affects real property and charges a violation relating to the condition of the property, including a building code violation, a local housing regulation violation, a housing code violation, or a public health or safety violation, after filing the citation with the Clerk of the District Court, the City shall also file the citation in the office of the County Treasurer.

**4.05 ALTERNATIVE RELIEF.** Seeking a civil penalty as authorized in this chapter does not preclude the City from seeking alternative relief from the court in the same action. Such alternative relief may include, but is not limited to, an order for abatement or injunctive relief.

*(Code of Iowa, Sec. 364.22[8])*

**4.06 ALTERNATIVE PENALTIES.** This chapter does not preclude a peace officer from issuing a criminal citation for a violation of this Code of Ordinances or regulation if criminal penalties are also provided for the violation. Nor does it preclude or limit the authority of the City to enforce the provisions of this Code of Ordinances by criminal sanctions or other lawful means.

*(Code of Iowa, Sec. 364.22[11])*

**4.07 FAILURE TO PAY A CIVIL CITATION.** (Repealed by Ordinance No. 18-15 – Nov. 18 Supp.)

**4.08 HABITUAL OFFENDERS.** “Habitual offender” means any person that on at least three (3) occasions within a 12-month period has: (i) received a citation, either civil or criminal, of a violation of this Code of Ordinances; or (ii) has had abatement action initiated against any property the habitual offender owns. It shall be a separate citable offense to be a habitual offender of this Code. A habitual offender administrative fee of thirty-five dollars (\$35.00) may be assessed for each citation above three (3) issued to the same violator within any 12-month period, which fee shall be in addition to any fine otherwise due pursuant to this Code.

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# CHAPTER 5

## OPERATING PROCEDURES

5.01 Oaths	5.08 Conflict of Interest
5.02 Bonds	5.09 Resignations
5.03 Powers and Duties	5.10 Removal of Appointed Officers and Employees
5.04 General Responsibility of Appointed Officers	5.11 Vacancies
5.05 Books and Records	5.12 Gifts
5.06 Transfer to Successor	5.13 Duty to Defend
5.07 Meetings	

**5.01 OATHS.** The oath of office shall be required and administered in accordance with the following:

1. **Qualify for Office.** Each elected or appointed officer shall qualify for office by taking the prescribed oath and by giving, when required, a bond. The oath shall be taken, and bond provided, after such officer is certified as elected but not later than noon of the first day that is not a Sunday or a legal holiday in January of the first year of the term for which the officer was elected.

*(Code of Iowa, Sec. 63.1)*

2. **Prescribed Oath.** The prescribed oath is: “I, (name), do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all duties of the office of (name of office) in Windsor Heights as now or hereafter required by law.”

*(Code of Iowa, Sec. 63.10)*

3. **Officers Empowered to Administer Oaths.** The following are empowered to administer oaths and to take affirmations in any matter pertaining to the business of their respective offices:

- A. Mayor
- B. City Clerk
- C. Members of all boards, commissions, or bodies created by law.

*(Code of Iowa, Sec. 63A.2)*

**5.02 BONDS.** Surety bonds are provided in accordance with the following:

1. **Required.** The Council shall provide by resolution for a surety bond or blanket position bond running to the City and covering the Mayor, Clerk, Treasurer, and such other officers and employees as may be necessary and advisable.

*(Code of Iowa, Sec. 64.13)*

2. **Bonds Approved.** Bonds shall be approved by the Council.

*(Code of Iowa, Sec. 64.19)*

3. **Bonds Filed.** All bonds, after approval and proper record, shall be filed with the Clerk.

*(Code of Iowa, Sec. 64.23[6])*

4. Record. The Clerk shall keep a book, to be known as the “Record of Official Bonds” in which shall be recorded the official bonds of all City officers, elective or appointive.

*(Code of Iowa, Sec. 64.24[3])*

**5.03 POWERS AND DUTIES.** Each municipal officer shall exercise the powers and perform the duties prescribed by law and this Code of Ordinances, or as otherwise directed by the Council unless contrary to State law or City charter.

*(Code of Iowa, Sec. 372.13[4])*

**5.04 GENERAL RESPONSIBILITY OF APPOINTED OFFICERS.** The responsibility of appointed officers is as follows:

1. Council. The Mayor Pro Tem, City Administrator, City Attorney, and City Engineer shall be directly responsible to the Council.
2. City Administrator. All other appointed officers shall be directly responsible to the City Administrator.
3. Appointed Officers. All appointed officers shall be directly responsible for employees of the City under their direct control and supervision.

**5.05 BOOKS AND RECORDS.** All books and records required to be kept by law or ordinance shall be open to examination by the public upon request, unless some other provisions of law expressly limit such right or require such records to be kept confidential. Access to public records which are combined with data processing software shall be in accordance with policies and procedures established by the City.

*(Code of Iowa, Sec. 22.2 & 22.3A)*

**5.06 TRANSFER TO SUCCESSOR.** Each officer shall transfer to his or her successor in office all books, papers, records, documents and property in the officer’s custody and appertaining to that office.

*(Code of Iowa, Sec. 372.13[4])*

**5.07 MEETINGS.** All meetings of the Council, any board or commission, or any multi-membered body formally and directly created by any of the foregoing bodies shall be held in accordance with the following:

1. Notice of Meetings. Reasonable notice, as defined by State law, of the time, date, and place of each meeting and its tentative agenda shall be given.
- (Code of Iowa, Sec. 21.4)*
2. Meetings Open. All meetings shall be held in open session unless closed sessions are held as expressly permitted by State law.
- (Code of Iowa, Sec. 21.3)*
3. Minutes. Minutes shall be kept of all meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

*(Code of Iowa, Sec. 21.3)*



4. Closed Session. A closed session may be held only by affirmative vote of either two-thirds of the body or all of the members present at the meeting and in accordance with Chapter 21 of the *Code of Iowa*.

*(Code of Iowa, Sec. 21.5)*

5. Cameras and Recorders. The public may use cameras or recording devices at any open session.

*(Code of Iowa, Sec. 21.7)*

6. Electronic Meetings. A meeting may be conducted by electronic means only in circumstances where such a meeting in person is impossible or impractical and then only in compliance with the provisions of Chapter 21 of the *Code of Iowa*.

*(Code of Iowa, Sec. 21.8)*

**5.08 CONFLICT OF INTEREST.** A City officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the City, unless expressly permitted by law. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

*(Code of Iowa, Sec. 362.5)*

1. Compensation of Officers. The payment of lawful compensation of a City officer or employee holding more than one City office or position, the holding of which is not incompatible with another public office or is not prohibited by law.

*(Code of Iowa, Sec. 362.5[3a])*

2. Investment of Funds. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.

*(Code of Iowa, Sec. 362.5[3b])*

3. City Treasurer. An employee of a bank or trust company, who serves as Treasurer of the City.

*(Code of Iowa, Sec. 362.5[3c])*

4. Stock Interests. Contracts in which a City officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 8 of this section, or both, if the contracts are made by competitive bid in writing, publicly invited and opened, or if the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract. The competitive bid qualification of this subsection does not apply to a contract for professional services not customarily awarded by competitive bid.

*(Code of Iowa, Sec. 362.5[3e])*

5. Newspaper. The designation of an official newspaper.

*(Code of Iowa, Sec. 362.5[3f])*

6. Existing Contracts. A contract in which a City officer or employee has an interest if the contract was made before the time the officer or employee was elected or appointed, but the contract may not be renewed.

*(Code of Iowa, Sec. 362.5[3g])*

7. Volunteers. Contracts with volunteer firefighters or civil defense volunteers.

*(Code of Iowa, Sec. 362.5[3h])*

8. Corporations. A contract with a corporation in which a City officer or employee has an interest by reason of stock holdings when less than five percent (5%)

of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of such officer or employee.

*(Code of Iowa, Sec. 362.5[3i])*

9. **Contracts.** Contracts made by the City upon competitive bid in writing, publicly invited and opened.

*(Code of Iowa, Sec. 362.5[3d])*

10. **Cumulative Purchases.** Contracts not otherwise permitted by this section, for the purchase of goods or services that benefit a City officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of fifteen hundred dollars (\$1,500.00) in a fiscal year.

*(Code of Iowa, Sec. 362.5[3j])*

11. **Franchise Agreements.** Franchise agreements between the City and a utility and contracts entered into by the City for the provision of essential City utility services.

*(Code of Iowa, Sec. 362.5[3l])*

12. **Third Party Contracts.** A contract that is a bond, note or other obligation of the City and the contract is not acquired directly from the City but is acquired in a transaction with a third party who may or may not be the original underwriter, purchaser, or obligee of the contract.

*(Code of Iowa, Sec. 362.5[3m])*

**5.09 RESIGNATIONS.** An elected officer who wishes to resign may do so by submitting the resignation in writing to the Clerk so that it shall be properly recorded and considered. A person who resigns from an elective office during the term for which that person is elected is not eligible for appointment to any City office if the office has been created or the compensation of the office has been increased during the term for which that member is elected. A person who resigns from an elective office is not eligible for appointment to the same office during the time for which the person was elected if, during that time, the compensation of the office has been increased.

*(Code of Iowa, Sec. 372.13[9])*

**5.10 REMOVAL OF APPOINTED OFFICERS AND EMPLOYEES.** Except as otherwise provided by State or City law, all persons appointed to City office or employment may be removed by the officer or body making the appointment, but every such removal shall be by written order. The order shall give the reasons, be filed in the office of the Clerk, and a copy shall be sent by certified mail to the person removed, who, upon request filed with the Clerk within thirty (30) days after the date of mailing the copy, shall be granted a public hearing before the Council on all issues connected with the removal. The hearing shall be held within 30 days after the date the request is filed, unless the person removed requests a later date.

*(Code of Iowa, Sec. 372.15)*

**5.11 VACANCIES.** A vacancy in an elective City office during a term of office shall be filled in accordance with Section 372.13[2] of the *Code of Iowa*.

**5.12 GIFTS.** Except as otherwise provided in Chapter 68B of the *Code of Iowa*, a public official, public employee or candidate, or that person's immediate family member, shall not, directly or indirectly, accept or receive any gift or series of gifts from a "restricted donor" as defined in Chapter 68B and a restricted donor shall not, directly or indirectly, individually or

jointly with one or more other restricted donors, offer or make a gift or a series of gifts to a public official, public employee or candidate.

*(Code of Iowa, Sec. 68B.22)*

**5.13 DUTY TO DEFEND.** The City shall defend any of its officers, employees and agents, whether elected or appointed, and shall save harmless and indemnify the officers and employees against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties. However, the duty to save harmless and indemnify does not apply to awards of punitive damages. The duty to save harmless and indemnify does not apply and the City is entitled to restitution by an officer or employee if, in an action commenced by the City against the officer or employee, it is determined that the conduct of the officer or employee upon which the tort claim or demand was based constituted a willful and wanton act or omission. The duty to defend, save harmless, and indemnify shall apply whether or not the City is a party to the action and shall include but not be limited in cases arising under Title 42 of the United States Code. In the event the officer or employee fails to cooperate in the defense against the claim or demand, the City shall have a right of indemnification against that officer or employee.

*(Code of Iowa, Sec. 670.8)*

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**CHAPTER 6**  
**CITY ELECTIONS**

**6.01 Nominating Method to be Used**  
**6.02 Nominations by Petition**  
**6.03 Adding Name by Petition**

**6.04 Preparation of Petition and Affidavit**  
**6.05 Filing, Presumption, Withdrawals, Objections**  
**6.06 Persons Elected**

**6.01 NOMINATING METHOD TO BE USED.** All candidates for elective municipal offices shall be nominated under the provisions of Chapter 45 of the *Code of Iowa*.

*(Code of Iowa, Sec. 376.3)*

**6.02 NOMINATIONS BY PETITION.** Nominations for elective municipal offices of the City may be made by nomination paper or papers signed by not less than twenty-five (25) eligible electors, residents of the City.

*(Code of Iowa, Sec. 45.1)*

**6.03 ADDING NAME BY PETITION.** The name of the candidate placed upon the ballot by any other method than by petition shall not be added by petition for the same office.

*(Code of Iowa, Sec. 45.2)*

**6.04 PREPARATION OF PETITION AND AFFIDAVIT.** Nomination papers shall include a petition and an affidavit of candidacy. The petition and affidavit shall be substantially in the form prescribed by the State Commissioner of Elections, shall include information required by *Code of Iowa*, and shall be signed in accordance with *Code of Iowa*.

*(Code of Iowa, Sec. 45.3, 45.5 & 45.6)*

**6.05 FILING, PRESUMPTION, WITHDRAWALS, OBJECTIONS.** The time and place of filing nomination petitions, the presumption of validity thereof, the right of a candidate so nominated to withdraw and the effect of such withdrawal, and the right to object to the legal sufficiency of such petitions, or to the eligibility of the candidate, shall be governed by the appropriate provisions of Chapter 44 of the *Code of Iowa*.

*(Code of Iowa, Sec. 45.4)*

**6.06 PERSONS ELECTED.** The candidates who receive the greatest number of votes for each office on the ballot are elected, to the extent necessary to fill the positions open.

*(Code of Iowa, Sec. 376.8[3])*

*(Ch. 6 – Ord. 16-06 – Aug. 16 Supp.)*

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## CHAPTER 7

# FISCAL MANAGEMENT

7.01 Purpose

7.02 Finance Officer

7.03 Cash Control

7.04 Fund Control

7.05 Operating Budget Preparation

7.06 Budget Amendments

7.07 Accounting

7.08 Financial Reports

7.09 Purchasing Procedures

**7.01 PURPOSE.** The purpose of this chapter is to establish policies and provide for rules and regulations governing the management of the financial affairs of the City.

**7.02 FINANCE OFFICER.** The City Finance Director/Treasurer is the finance and accounting officer of the City and is responsible for the administration of the provisions of this chapter.

**7.03 CASH CONTROL.** To assure the proper accounting and safe custody of moneys, the following shall apply:

1. Deposit of Funds. All moneys or fees collected for any purpose by any City officer shall be deposited through the office of the Finance Director. If any said fees are due to an officer, they shall be paid to the officer by check drawn by the Finance Director and approved by the Council only upon such officer's making adequate reports relating thereto as required by law, ordinance, or Council directive.

2. Deposits and Investments. All moneys belonging to the City shall be promptly deposited in depositories selected by the Council in amounts not exceeding the authorized depository limitation established by the Council or invested in accordance with the City's written investment policy and State law, including joint investments as authorized by Section 384.21 of the *Code of Iowa*.

*(Code of Iowa, Sec. 384.21, 12B.10, 12C.1)*

3. Petty Cash Fund. The Finance Director shall be custodian of a petty cash fund for the payment of small claims for minor purchases, collect-on-delivery transportation charges, and small fees customarily paid at the time of rendering a service, for which payments the Finance Director shall obtain some form of receipt or bill acknowledged as paid by the vendor or agent. At such time as the petty cash fund is approaching depletion, the Finance Director shall draw a check for replenishment in the amount of the accumulated expenditures and said check and supporting detail shall be submitted to the Council as a claim in the usual manner for claims and charged to the proper funds and accounts. It shall not be used for salary payments or other personal services or personal expenses.

**7.04 FUND CONTROL.** There shall be established and maintained separate and distinct funds in accordance with the following:

1. Revenues. All moneys received by the City shall be credited to the proper fund as required by law, ordinance, or resolution.

2. Expenditures. No disbursement shall be made from a fund unless such disbursement is authorized by law, ordinance, or resolution, was properly budgeted, and supported by a claim approved by the Council.

3. Debt Service Fund. Except where specifically prohibited by State law, moneys may be transferred from any other City fund to the Debt Service Fund to meet payments of principal and interest. Such transfers must be authorized by the original budget or a budget amendment.

*(IAC, 545-2.5[384,388] Sec. 2.5[3])*

4. Capital Improvements Reserve Fund. Except where specifically prohibited by State law, moneys may be transferred from any City fund to the Capital Improvements Reserve Fund. Such transfers must be authorized by the original budget or a budget amendment.

*(IAC, 545-2.5[384,388] Sec. 2.5[4])*

5. Utility and Enterprise Funds. A surplus in a Utility or Enterprise Fund may be transferred to any other City fund, except the Road Use Tax Fund, by resolution of the Council. A surplus may exist only after all required transfers have been made to any restricted accounts in accordance with the terms and provisions of any revenue bonds or loan agreements relating to the Utility or Enterprise Fund. A surplus is defined as the cash balance in the operating account or the unrestricted retained earnings calculated in accordance with generally accepted accounting principles in excess of:

A. The amount of the expense of disbursements for operating and maintaining the utility or enterprise for the preceding three months, and

B. The amount necessary to make all required transfers to restricted accounts for the succeeding three months.

*(IAC, 545-2.5[384,388], Sec. 2.5[5])*

6. Balancing of Funds. Fund accounts shall be reconciled at the close of each month and a report thereof submitted to the Council.

**7.05 OPERATING BUDGET PREPARATION.** The annual operating budget of the City shall be prepared in accordance with the following:

1. Proposal Prepared. The Finance Director is responsible for preparation of the annual budget detail, for review by the City Administrator, Mayor, and Council and adoption by the Council in accordance with directives of the Mayor and Council.

2. Boards and Commissions. All boards, commissions, and other administrative agencies of the City that are authorized to prepare and administer budgets must submit their budget proposals to the Finance Director for inclusion in the proposed city budget at such time and in such form as required by the Council.

3. Submission to Council. The Finance Director shall submit the completed budget proposal to the Council no later than February 15 of each year.

4. Council Review. The Council shall review the proposed budget and may make any adjustments in the budget which it deems appropriate before accepting such proposal for publication, hearing, and final adoption.

5. Notice of Hearing. Upon adopting a proposed budget, the Council shall set a date for public hearing thereon to be held before March 15 and cause notice of such hearing and a summary of the proposed budget to be published not less than ten (10) or



more than twenty (20) days before the date established for the hearing. Proof of such publication must be filed with the County Auditor.

*(Code of Iowa, Sec. 384.16[3])*

6. Copies of Budget on File. Not less than twenty (20) days before the date that the budget must be certified to the County Auditor and not less than ten (10) days before the public hearing, the Finance Director shall make available a sufficient number of copies of the detailed budget to meet the requests of taxpayers and organizations and have them available for distribution at the offices of the Mayor and City Clerk and have a copy posted at one of the places designated for the posting of notices.

*(Code of Iowa, Sec. 384.16[2])*

7. Adoption and Certification. After the hearing, the Council shall adopt, by resolution, a budget for at least the next fiscal year and the Finance Director shall certify the necessary tax levy for the next fiscal year to the County Auditor and the County Board of Supervisors. The tax levy certified may be less than, but not more than, the amount estimated in the proposed budget. Two copies each of the detailed budget as adopted and of the tax certificate must be transmitted to the County Auditor.

*(Code of Iowa, Sec. 384.16[5])*

**7.06 BUDGET AMENDMENTS.** A City budget finally adopted for the following fiscal year becomes effective July 1 and constitutes the City appropriation for each program and purpose specified therein until amended as provided by this section.

*(Code of Iowa, Sec. 384.18)*

1. Program Increase. Any increase in the amount appropriated to a program must be prepared, adopted, and subject to protest in the same manner as the original budget.

*(IAC, 545-2.2[384, 388])*

2. Program Transfer. Any transfer of appropriation from one program to another must be prepared, adopted, and subject to protest in the same manner as the original budget.

*(IAC, 545-2.3[384, 388])*

3. Activity Transfers. Any transfer of appropriation from one activity to another activity within a program must be approved by resolution of the Council.

*(IAC, 545-2.4[384, 388])*

4. Administrative Transfers. The Finance Director shall have the authority to adjust, by transfer or otherwise, the appropriations allocated within a specific activity without prior Council approval.

*(IAC, 545-2.4[384, 388])*

**7.07 ACCOUNTING.** The accounting records of the City shall consist of not less than the following:

1. Books of Original Entry. There shall be established and maintained books of original entry to provide a chronological record of cash received and disbursed.

2. General Ledger. There shall be established and maintained a general ledger controlling all cash transactions, budgetary accounts and for recording unappropriated surpluses.

3. Checks. Checks shall be prenumbered and, following Council approval, signed in accordance with the following, except as provided by subsection 5 hereof.

- A. Payroll checks shall be signed by the Finance Director and the Mayor, the Mayor Pro Tem or City Administrator. Each check must be signed by any combination of the aforementioned that included one elected and one appointed official. Checks may be electronic in nature.
  - B. Other checks shall be signed by the Finance Director and Mayor or Mayor Pro Tem. Checks may be electronic in nature.
4. Budget Accounts. There shall be established such individual accounts to record receipts by source and expenditures by program and activity as will provide adequate information and control for budgeting purposes as planned and approved by the Council. Each individual account shall be maintained within its proper fund and so kept that receipts can be immediately and directly compared with revenue estimates and expenditures can be related to the authorizing appropriation. No expenditure shall be posted except to the appropriation for the function and purpose for which the expense was incurred.
5. Immediate Payment Authorized. The Council may by resolution authorize the Finance Director to issue checks for immediate payment of amounts due, which if not paid promptly would result in loss of discount, penalty for late payment or additional interest cost. Any such payments made shall be reported to the Council for review and approval with and in the same manner as other claims at the next meeting following such payment. The resolution authorizing immediate payment shall specify the type of payment so authorized and may include but is not limited to payment of utility bills, contractual obligations, payroll and bond principal and interest.
6. Utilities. The Finance Director shall perform and be responsible for accounting functions of the municipally owned utilities.

**7.08 FINANCIAL REPORTS.** The Finance Director shall prepare and file the following financial reports:

- 1. Monthly Reports. There shall be submitted to the Council each month a report showing the activity and status of each fund, program, sub-program, and activity for the preceding month.
- 2. Annual Report. Not later than December 1 of each year there shall be published an annual report containing a summary for the preceding fiscal year of all collections and receipts, all accounts due the City, and all expenditures, the current public debt of the City, and the legal debt limit of the City for the current fiscal year. A copy of the annual report must be filed with the Auditor of State not later than December 1 of each year.

*(Code of Iowa, Sec. 384.22)*

**7.09 PURCHASING PROCEDURES.**

- 1. Competitive Bids. The City will observe State of Iowa bidding requirements as outlined in the *Code of Iowa*.
- 2. Contracts. Contracts exceeding \$5,000.00 will be presented to the City Council for consideration.
- 3. Change Orders under \$10,000. The Finance Director may authorize a change order for an additional unit of material, equipment, or service under \$10,000.00 to an existing or recent purchase order previously approved by Council, if the circumstances requiring the change order were unforeseen or unanticipated, and the Finance Director

certifies that the low compliant bidder agrees to hold the same price per unit open to allow the City to make the additional purchase, and the change order is limited to 10% of the original contract price.

4. Annual Purchase Agreements. The Finance Director is hereby expressly authorized to enter into annual purchase agreements for the purchase of materials, equipment, supplies, or services that are consistently needed by City departments, that because of the type of materials, equipment, supplies, or services or unknown required quantity of the materials, equipment, supplies, or services a purchase agreement for a fixed amount is not reasonable or cost efficient. Such annual purchase agreements shall state that the Finance Director may purchase necessary materials, equipment, supplies, or services with the successful bidder for that particular material, equipment, supplies, or services at the determined price as needed by the City. Such annual purchase agreements shall, as much as possible, be negotiated or rebid annually.

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**CHAPTER 8**  
**URBAN RENEWAL**

<b>EDITOR'S NOTE</b>		
The following ordinances, not codified herein and specifically saved from repeal, have been adopted establishing Urban Renewal Areas in the City and remain in full force and effect.		
<b>ORDINANCE NO.</b>	<b>ADOPTED</b>	<b>NAME OF AREA</b>
16-10	November 7, 2016	Second Amended and Restated Urban Renewal Area

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# CHAPTER 9

## HOTEL-MOTEL TAX

9.01 Definitions  
9.02 Tax Imposed

9.03 Tax Exemption  
9.04 Collection and Use

**9.01 DEFINITIONS.** Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms have, for the purpose of this chapter, the following meanings:

1. “Extended stay hotel or motel” means any structure consisting of one or more buildings, with more than five specific dwelling units with provisions for living, eating, contain kitchen facilities for food preparation including, but not limited to, refrigerators, stoves, and ovens, sanitation, separate bathroom and kitchen sink, and sleeping in each unit, that is specifically constructed, kept, used, maintained, advertised, and held out to the public to be a place where temporary residence is offered for pay to persons, for a minimum stay of more than thirty days and a maximum stay of ten months within the dwelling units at the structure, that is approved pursuant to a valid certificate of occupancy issued by the building official having jurisdiction as having all of the required dwelling unit features, and for which such valid certificate of occupancy indicates the specific rooms within the structure that can be used as dwelling units, and that is approved by the Fire Marshal for extended stay temporary residence purposes. Each room shall be a minimum of 275 square feet in area, exclusive of bathroom, closet, or balcony space. Weekly services for each dwelling unit of linen change, towel change, soap change, general cleanup, and a registration lobby staffed on a 12-hour daily basis and 24-hour daily registration and emergency phone number are provided by the management. Each extended stay dwelling unit and facilities are subject to the City’s rental inspection outlined in Chapter 156 of this Code of Ordinances (Rental Housing Code). For the purposes of parking requirements, extended stay hotel or motels will have to meet the Multi-Family Residential parking requirements.
2. “Hotel” means one or more buildings containing 20 or more guest rooms, with such rooms being designed or intended to be used, or which are used as temporary or overnight accommodations for guests in which daily services of linen change, central telephone switchboard, towel change, soap change, general cleanup, and a registration lobby staffed on a 24-hour daily basis are provided by the management. Each room shall be a minimum of 250 square feet in area, exclusive of bathroom, closet, or balcony space. No room may be used by the same person or persons for a period exceeding 30 days per year. Access to all rooms shall be provided through one or more common entrances. Accessory uses are encouraged and permitted accessory uses include restaurants, cocktail lounges, banquet halls, ballrooms, or meeting rooms.
3. “Lodging” means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, extended stay hotel or motel, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. Lodging does not include rooms that are not used for sleeping accommodations.

4. “Motel” means a building or group of buildings containing dwelling units, intended to be used or which are used as temporary or overnight accommodations for guests, in which daily services of linen change, central telephone switchboard, towel change, soap change, general cleanup, and a registration lobby staffed on a 12-hour daily basis and 24-hour daily registration and emergency phone number are provided by the management. Each room shall be a minimum of 250 square feet in area, exclusive of bathroom, closet, or balcony space. No room may be used by the same person or persons for a period exceeding 30 days per year. Each living or sleeping unit shall have an individual entrance from outside the building. Living or sleeping units may be equipped with cooking facilities. Parking close to the entrance of each living or sleeping unit should be made available.

5. “Renting” or “rent” means a transfer of possession or control of lodging for a fixed or indeterminate term for consideration and includes any kind of direct or indirect charge for such lodging or its use.

6. “Sales price” means the consideration for renting of lodging and means the same as the term is defined in Section 423.1 of the *Code of Iowa*.

All other words and phrases used in this chapter have the meaning provided by this Code of Ordinances or, if unavailable, by Section 423.1 of the *Code of Iowa*.

**9.02 TAX IMPOSED.** There is hereby imposed a seven percent (7%) local hotel and motel tax upon the sales price from the renting of lodging within the City.

**9.03 TAX EXEMPTION.** There is exempted from the provisions of this chapter and from the computation of any amount of tax imposed by Section 9.02 all of the following:

1. The sales price from the renting of lodging which is rented by the same person for a period of more than 31 consecutive days.
2. The sales price of lodging furnished to the guests of a religious institution if the property is exempt under Section 427.1, subsection 8, of the *Code of Iowa*, and the purpose of renting is to provide a place for a religious retreat or function and not a place for transient guests generally.
3. The sales price from the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the City.
4. Pursuant to Section 427.1 of the *Code of Iowa*, the sales price of lodging furnished to the guests of eligible religious institution if the purpose of renting is to provide a place for a religious retreat or function and not a place for transient guest generally.

**9.04 COLLECTION AND USE.** The tax imposed in this chapter shall be remitted by the person or company liable for same to the State Director of Revenue in the manner required by State law, and the proceeds of such tax shall be used for the purposes stated in Section 423A.7(4) of the *Code of Iowa*, to-wit:

4. The revenue derived from any hotel and motel tax authorized by Section 423A.4 shall be used as follows:

- a. Each county or city which levies the tax shall spend at least fifty percent of the revenues derived therefrom for the acquisition of sites for, or constructing, improving, enlarging, equipping, repairing, operating, or maintaining of recreation, convention, cultural, or



entertainment facilities including but not limited to memorial buildings, halls and monuments, civic center convention buildings, auditoriums, coliseums, and parking areas or facilities located at those recreation, convention, cultural, or entertainment facilities or the payment of principal and interest, when due, on bonds or other evidence of indebtedness issued by the county or city for those recreation, convention, cultural, or entertainment facilities; or for the promotion and encouragement of tourist and convention business in the city or county and surrounding areas.

b. The remaining revenues may be spent by the city or county which levies the tax for any city or county operations authorized by law as a proper purpose for the expenditure within statutory limitations of city or county revenues derived from ad valorem taxes.

c. Any city or county which levies and collects the local hotel and motel tax authorized by Section 423A.4 may pledge irrevocably an amount of the revenues derived therefrom for each of the years the bonds remain outstanding to the payment of bonds which the city or county may issue for one or more of the purposes set forth in paragraph a. Any revenue pledged to the payment of such bonds may be credited to the spending requirement of paragraph a.

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## CHAPTER 10

# DEFERRED COMPENSATION FOR CITY EMPLOYEES

10.01 Definitions

10.02 Designation of Companies

10.03 Purchase of Deferred Compensation Contract

10.04 Administration

10.05 Designation of Beneficiary

10.06 Deferral of Compensation

10.07 Payment of Benefits

10.08 Borrowing from Account

**10.01 DEFINITIONS.** For the purposes of this chapter, the following terms have the meanings ascribed herein:

1. “Employee” means any person employed by the City on a non-temporary basis and who is required to work a minimum of thirty (30) hours per week. The term includes the City Administrator, Chief of Police, and Fire Chief, but does not include any elected or appointed officials.
2. “Beneficiary” means any person designated by an employee to receive a retirement, death, or other benefit under the provisions of a deferred compensation contract.
3. “Compensation” means all wages or salaries to be paid by the City to an employee.
4. “Contracting company” means each insurance company designated by the Council from which an employee may purchase an individual deferred compensation contract.
5. “Deferred compensation” means that portion of an employee’s includible compensation which a participant has elected to defer in accordance with Section 457 of the Internal Revenue Code.
6. “Participation agreement” means the agreement or agreements by which the City and the employee agree that a portion of the employee’s compensation will be deferred.
7. “Separation of service” means the termination of an employee’s service with the City on account of death, retirement, or separation from service for causes other than death or retirement.
8. “Unforeseeable emergency” means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant’s dependent, loss of the participant’s property due to casualty or other extraordinary and unforeseeable circumstances arising as a result of events beyond the participant’s control, as determined by the City Administrator.

**10.02 DESIGNATION OF COMPANIES.** The Council shall by resolution designate one or more companies from which an employee may choose to acquire an individual deferred payment contract. Only a company authorized to do business in the State shall be eligible for designation hereunder.

**10.03 PURCHASE OF DEFERRED COMPENSATION CONTRACT.** At the request of an employee, the Council shall enter into a contractual agreement with a company designated

by the Council acquiring an individual deferred corporation contract. Each request for participation made by an employee shall be on a form approved by the City Administrator. The employee and the City shall thereafter execute a participation agreement setting forth the company designated by the employee and the amount of compensation to be deferred each pay period.

**10.04 ADMINISTRATION.** The City Administrator shall administer the deferred compensation program with advice from the City Attorney. The City Administrator shall adopt such forms and agreements as are necessary to facilitate the administration of this program. The City Administrator shall be empowered to sign each deferred compensation contract as the City's authorized representative.

**10.05 DESIGNATION OF BENEFICIARY.** Each employee participating in the deferred compensation program shall designate one or more persons to receive any retirement, death, or other benefit paid under the provisions of the program. Such designation must be on a form approved by the City Administrator and signed by the employee. If a participant dies without designating one or more beneficiaries, all payments shall be made to the properly appointed fiduciary of the employee's probate estate.

**10.06 DEFERRAL OF COMPENSATION.** The City shall withhold each employee's deferred compensation from each pay period and remit that sum once each month to the company designated by the employee. The minimum amount which may be withheld during each pay period is \$12.50.

**10.07 PAYMENT OF BENEFITS.** Any payment of benefits to an employee or former employee shall be made in accordance with the terms and conditions of the contract entered into between the City and the company issuing the contract. Payments may be made following separation of service in accordance with the terms of the deferred compensation contract and federal law.

**10.08 BORROWING FROM ACCOUNT.** Participating employees may borrow money from their deferred compensation accounts by submitting loan requests directly to the contracting company.

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## CHAPTER 11

# URBAN REVITALIZATION

### 11.01 Purpose

### 11.02 2018 Windsor Heights Urban Revitalization Area

### 11.03 Designation of Revitalization Area

**11.01 PURPOSE.** The purpose of this chapter is to designate an area of the City as a revitalization area upon the completion of procedures specified in the *Code of Iowa*, Chapter 404.

**11.02 2018 WINDSOR HEIGHTS URBAN REVITALIZATION AREA.** The City Council of the City of Windsor Heights, Iowa (the “City”) has by resolution determined, with respect to an area within the City, and known as the 2018 Windsor Heights Urban Revitalization Area, that:

1. The 2018 Windsor Heights Urban Revitalization Area is an area which is appropriate as an economic development area as defined in Section 403.17 of the *Code of Iowa*.
2. The 2018 Windsor Heights Urban Revitalization Area is an area which is appropriate for public improvements related to housing and residential development or construction of housing and residential development, including single, family and multifamily housing.
3. The economic development and promotion of housing and residential development in the 2018 Windsor Heights Urban Revitalization Area is necessary in the interest of the public welfare of the residents of the City and the 2018 Windsor Heights Urban Revitalization Area substantially meets the criteria set forth in Section 404.1 of the Act.

**11.03 DESIGNATION OF REVITALIZATION AREA.** In accordance with the *Code of Iowa* and in consideration of the recitations set out in the preamble hereof, such property lying within the City and being described as follows:

*All real property situated within the incorporated municipal limits of the City of Windsor Heights, Polk County, State of Iowa as of November 1, 2018.*

is hereby designated as the 2018 Windsor Heights Urban Revitalization Area.



(Ch. 11 – Ord. 19-01 – Mar. 19 Supp.)

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## CHAPTER 15

### MAYOR

15.01 Term of Office  
15.02 Powers and Duties  
15.03 Appointments

15.04 Compensation  
15.05 Voting

**15.01 TERM OF OFFICE.** The Mayor is elected for a term of four years.  
*(Code of Iowa, Sec. 376.2)*

**15.02 POWERS AND DUTIES.** The powers and duties of the Mayor are as follows:

1. Chief Executive Officer. Act as the chief executive officer of the City and have the powers and duties provided in this Code of Ordinances and by law except to the extent that any of such powers or duties are specifically delegated to another officer of the City by ordinance or resolution.

*(Code of Iowa, Sec. 372.14[1])*

2. Proclamation of Emergency. Have authority to take command of the police and govern the City by proclamation, upon making a determination that a time of emergency or public danger exists. Within the City limits, the Mayor has all the powers conferred upon the Sheriff to suppress disorders.

*(Code of Iowa, Sec. 372.14[2])*

3. Special Meetings. Call special meetings of the Council when the Mayor deems such meetings necessary to the interests of the City.

*(Code of Iowa, Sec. 372.14[1])*

4. Mayor's Veto. Sign, veto, or take no action on an ordinance, amendment, or resolution passed by the Council. The Mayor may veto an ordinance, amendment, or resolution within fourteen days after passage. The Mayor shall explain the reasons for the veto in a written message to the Council at the time of the veto.

*(Code of Iowa, Sec. 380.5 & 380.6[2])*

5. Reports to Council. Make such oral or written reports to the Council as required. These reports shall concern municipal affairs generally, the municipal departments, and recommendations suitable for Council action.

6. Negotiations. Represent the City in all negotiations properly entered into in accordance with law or ordinance. The Mayor shall not represent the City where this duty is specifically delegated to another officer by law, ordinance, or Council direction.

7. Contracts. Whenever authorized by the Council, sign contracts on behalf of the City.

8. Professional Services. Upon order of the Council, secure for the City such specialized and professional services not already available to the City. In executing the order of the Council, the Mayor shall act in accordance with the Code of Ordinances and the laws of the State.

9. Licenses and Permits. Sign all licenses and permits which have been granted by the Council, except those designated by law or ordinance to be issued by another municipal officer.

10. Nuisances. Issue written order for removal, at public expense, any nuisance for which no person can be found responsible and liable.

11. Absentee Officer. Make appropriate provision that duties of any absentee officer be carried on during such absence.

**15.03 APPOINTMENTS.** The Mayor shall appoint and/or remove the following officials:  
*(Code of Iowa, Sec. 372.4)*

1. Mayor Pro Tem
2. Chief of Police, subject to approval of the Council.

**15.04 COMPENSATION.** Beginning with calendar year 2008, the annual salary of the Mayor is \$7,000.00. Each calendar year the Mayor's compensation amount is increased by a percentage equal to the increase in the Consumer Price Index (CPI) for the calendar year immediately preceding the increase in compensation, rounded to the closest \$100.00. If there is no increase in the CPI in a given year, the Mayor's compensation remains the same in the subsequent year.

**15.05 VOTING.** The Mayor is not a member of the Council and shall not vote as a member of the Council.

*(Code of Iowa, Sec. 372.4)*

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## CHAPTER 16

### MAYOR PRO TEM

16.01 Vice President of Council  
16.02 Powers and Duties

16.03 Voting Rights  
16.04 Compensation

**16.01 VICE PRESIDENT OF COUNCIL.** The Mayor shall appoint a member of the Council as Mayor Pro Tem, who shall serve as vice president of the Council.

*(Code of Iowa, Sec. 372.14[3])*

**16.02 POWERS AND DUTIES.** Except for the limitations otherwise provided herein, the Mayor Pro Tem shall perform the duties of the Mayor in cases of absence or inability of the Mayor to perform such duties. In the exercise of the duties of the office the Mayor Pro Tem shall not have power to appoint, employ, or discharge from employment officers or employees that the Mayor has the power to appoint, employ, or discharge without the approval of the Council.

*(Code of Iowa, Sec. 372.14[3])*

**16.03 VOTING RIGHTS.** The Mayor Pro Tem shall have the right to vote as a member of the Council.

*(Code of Iowa, Sec. 372.14[3])*

**16.04 COMPENSATION.** If the Mayor Pro Tem performs the duties of the Mayor during the Mayor's absence or disability for a continuous period of fifteen (15) days or more, the Mayor Pro Tem may be paid for that period the compensation as determined by the Council, based upon the Mayor Pro Tem's performance of the Mayor's duties and upon the compensation of the Mayor.

*(Code of Iowa, Sec. 372.13[8])*

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## CHAPTER 17

### CITY COUNCIL

17.01 Number and Term of Council  
17.02 Powers and Duties  
17.03 Exercise of Power  
17.04 Council Meetings

17.05 Appointments  
17.06 Compensation  
17.07 Expectations

**17.01 NUMBER AND TERM OF COUNCIL.** The Council consists of five Council members elected at large for overlapping terms of four years.

*(Code of Iowa, Sec. 372.4 & 376.2)*

**17.02 POWERS AND DUTIES.** The powers and duties of the Council include, but are not limited to the following:

1. General. All powers of the City are vested in the Council except as otherwise provided by law or ordinance.

*(Code of Iowa, Sec. 364.2[1])*

2. Wards. By ordinance, the Council may divide the City into wards based upon population, change the boundaries of wards, eliminate wards, or create new wards.

*(Code of Iowa, Sec. 372.13[7])*

3. Fiscal Authority. The Council shall apportion and appropriate all funds, and audit and allow all bills, accounts, payrolls and claims, and order payment thereof. It shall make all assessments for the cost of street improvements, sidewalks, sewers and other work, improvement, or repairs which may be specially assessed.

*(Code of Iowa, Sec. 364.2[1], 384.16 & 384.38[1])*

4. Public Improvements. The Council shall make all orders for the construction of any improvements, bridges, or buildings.

*(Code of Iowa, Sec. 364.2[1])*

5. Contracts. The Council shall make or authorize the making of all contracts. No contract shall bind or be obligatory upon the City unless approved by the Council.

*(Code of Iowa, Sec. 26.10)*

6. Employees. The Council shall authorize, by resolution, the number, duties, term of office and compensation of employees or officers not otherwise provided for by State law or the Code of Ordinances.

*(Code of Iowa, Sec. 372.13[4])*

7. Setting Compensation for Elected Officers. By ordinance, the Council shall prescribe the compensation of the Mayor, Council members, and other elected City officers, but a change in the compensation of the Mayor does not become effective during the term in which the change is adopted, and the Council shall not adopt such an ordinance changing the compensation of any elected officer during the months of November and December in the year of a regular City election. A change in the compensation of Council members becomes effective for all Council members at the beginning of the term of the Council members elected at the election next following the change in compensation.

*(Code of Iowa, Sec. 372.13[8])*

**17.03 EXERCISE OF POWER.** The Council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance in the following manner:

*(Code of Iowa, Sec. 364.3[1])*

1. Action by Council. Passage of an ordinance, amendment, or resolution requires a majority vote of all of the members of the Council. Passage of a motion requires a majority vote of a quorum of the Council. A resolution must be passed to spend public funds in excess of one hundred thousand dollars (\$100,000.00) on a public improvement project, or to accept public improvements and facilities upon their completion. Each Council member's vote on a measure must be recorded. A measure which fails to receive sufficient votes for passage shall be considered defeated.

*(Code of Iowa, Sec. 380.4)*

2. Overriding Mayor's Veto. Within thirty (30) days after the Mayor's veto, the Council may pass the measure again by a vote of not less than two-thirds of all of the members of the Council.

*(Code of Iowa, Sec. 380.6[2])*

3. Measures Become Effective. Measures passed by the Council become effective in one of the following ways:

A. An ordinance or amendment signed by the Mayor becomes effective when the ordinance or a summary of the ordinance is published, unless a subsequent effective date is provided within the ordinance or amendment.

*(Code of Iowa, Sec. 380.6[1a])*

B. A resolution signed by the Mayor becomes effective immediately upon signing.

*(Code of Iowa, Sec. 380.6[1b])*

C. A motion becomes effective immediately upon passage of the motion by the Council.

*(Code of Iowa, Sec. 380.6[1c])*

D. If the Mayor vetoes an ordinance, amendment or resolution and the Council repasses the measure after the Mayor's veto, a resolution becomes effective immediately upon repassage, and an ordinance or amendment becomes a law when the ordinance or a summary of the ordinance is published, unless a subsequent effective date is provided within the ordinance or amendment.

*(Code of Iowa, Sec. 380.6[2])*

E. If the Mayor takes no action on an ordinance, amendment or resolution, a resolution becomes effective fourteen (14) days after the date of passage, and an ordinance or amendment becomes law when the ordinance or a summary of the ordinance is published, but not sooner than 14 days after the date of passage, unless a subsequent effective date is provided within the ordinance or amendment.

*(Code of Iowa, Sec. 380.6[3])*

"All of the members of the Council" refers to all of the seats of the Council including a vacant seat and a seat where the member is absent, but does not include a seat where the Council member declines to vote by reason of a conflict of interest.

*(Code of Iowa, Sec. 380.1[a])*

**17.04 COUNCIL MEETINGS.** Procedures for giving notice of meetings of the Council and other provisions regarding the conduct of Council meetings are contained in Section 5.06 of this Code of Ordinances. Meetings of the Council shall be as follows:

1. Regular Meetings. The time and place of the regular meetings of the Council shall be fixed by resolution of the Council.

2. Special Meetings. Special meetings shall be held upon call of the Mayor or upon the written request of a majority of the members of the Council submitted to the Clerk. Notice of a special meeting shall specify the date, time, place, and subject of the meeting and such notice shall be given personally or left at the usual place of residence of each member of the Council. A record of the service of notice shall be maintained by the Clerk.

*(Code of Iowa, Sec. 372.13[5])*

3. Quorum. A majority of all Council members is a quorum.

*(Code of Iowa, Sec. 372.13[1])*

4. Rules of Procedure. The Council shall determine its own rules and maintain records of its proceedings.

*(Code of Iowa, Sec. 372.13[5])*

5. Compelling Attendance. Any three members of the Council can compel the attendance of the absent members at any regular, adjourned, or duly called meeting, by serving a written notice upon the absent members to attend at once.

6. Rules of Conduct. The following rules are hereby adopted for the conduct of those attending regular and special meetings of the City Council in the Council Chamber in the City Hall:

*(Code of Iowa, Sec. 21.7)*

A. No person shall be permitted to stand in the Council Chamber during Council sessions between the audience seats and the Council members except the persons addressing the Council, who shall do so from the speaker's stand, and except City officials and employees on City business.

B. No person shall enter the raised area at the east and west ends of the Council table except upon invitation of the Council or a member thereof, and except City officials and employees on City business.

C. Any person desiring to address the Council may do so when recognized by the presiding officer, but the Council reserves the right to limit the speaker's time and the order in which the speakers may address the Council.

D. No person shall be interrupted while addressing the Council except by a member of the Council.

E. No member of the public shall be permitted to sit or lean upon the Council table during sessions of the Council.

F. No person shall use unreasonably loud or abusive language or any other language in the Council Chamber which disrupts or is intended to disrupt the peace, quiet, and good order of a Council meeting.

G. Those having business before the Council shall have the right to speak to items as they appear on the Council agenda, subject to the foregoing constraints; those wishing to address matters not on the Council agenda must

wait until the agenda is completed and until recognized to speak by the presiding officer.

H. Any person violating any of the foregoing rules shall be guilty of a disorderly conduct and disturbing a public assembly and upon conviction shall pay a fine of not less than twenty-five dollars (\$25.00) or more than fifty dollars (\$50.00).

I. The Chief of Police shall enforce the provisions of this section and upon request shall provide sufficient officers therefor.

**17.05 APPOINTMENTS.** The Council shall appoint the following officials and prescribe their powers, duties, compensation, and term of office:

1. City Administrator/Clerk
2. City Attorney
3. City Treasurer
4. Planning and Zoning Commission
5. Zoning Board of Adjustment

**17.06 COMPENSATION.** Beginning with calendar year 2008, each member of the Council is paid as compensation the sum of \$51.00 for each meeting of the Council which he or she attends, plus the sum of \$584.00 for each calendar quarter. Each calendar year, the compensation amount is increased by a percentage equal to the increase in the Consumer Price Index (CPI) for the calendar year immediately preceding the increase in compensation. Meeting pay is rounded up to the closest one dollar (\$1.00). Quarterly pay is rounded to the closest ten dollars (\$10.00). If there is no increase in the CPI in a given year, then the Council compensation shall remain the same in the subsequent year.

*(Code of Iowa, Sec. 372.13[8])*

**17.07 EXPECTATIONS.** A Council member is expected to be dedicated to the concepts of effective and democratic local government by responsible elected officials. Additionally, the following ethical expectations are set forth. A Council member will:

1. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant;
2. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the other officials and of the general public;
3. Recognize that the chief function of local government at all times is to serve the best interests and greater good of all people;
4. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service;
5. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern decisions, pertaining to appointments and pay adjustments;

6. Keep confidential all employee records and any other information that is not yet available to the general public;
7. Seek no personal favor and seek no favors for those with whom the Council member has a personal relationship.

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## CHAPTER 18

# CITY CLERK

18.01 Appointment and Compensation	18.08 Records
18.02 Powers and Duties: General	18.09 Attendance at Meetings
18.03 Publication of Minutes	18.10 Issue Licenses and Permits
18.04 Recording Measures	18.11 Notify Appointees
18.05 Publication	18.12 Elections
18.06 Authentication	18.13 City Seal
18.07 Certify Measures	18.14 Additional Duties

**18.01 APPOINTMENT AND COMPENSATION.** The City Council shall appoint by majority vote, upon recommendation by the City Administrator, a City Clerk pursuant to a term as shall be established by resolution by the Council and has the duties, powers, and functions prescribed in this chapter, by State law, and other ordinances of the City. The Council shall specify by resolution the compensation to be paid for such services.

*(Code of Iowa, Sec. 372.13[3])*

**18.02 POWERS AND DUTIES: GENERAL.** The Clerk or, in the Clerk's absence or inability to act, the Deputy Clerk has the powers and duties as provided in this chapter, this Code of Ordinances, and the law.

**18.03 PUBLICATION OF MINUTES.** Within fifteen (15) days following a regular or special meeting, the Clerk shall cause the minutes of the proceedings thereof to be published. Such publication shall include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claims.

*(Code of Iowa, Sec. 372.13[6])*

**18.04 RECORDING MEASURES.** The Clerk shall promptly record each measure considered by the Council and record a statement with the measure, where applicable, indicating whether the Mayor signed, vetoed or took no action on the measure, and whether the measure was repassed after the Mayor's veto.

*(Code of Iowa, Sec. 380.7[1 & 2])*

**18.05 PUBLICATION.** The Clerk shall cause to be published all ordinances, enactments, proceedings, and official notices requiring publication as follows:

1. Time. If notice of an election, hearing, or other official action is required by this Code of Ordinances or law, the notice must be published as provided in the *Code of Iowa*.

*(Code of Iowa, Sec. 362.3[1])*

2. Manner of Publication. A publication required by this Code of Ordinances or law must be in a newspaper circulated in the City, except that ordinances and amendments may be published by posting in the following places:

- A. Windsor Heights City Hall  
1133 66<sup>th</sup> Street  
Windsor Heights, Iowa

- B. Bankers Trust  
70<sup>th</sup> & University Avenue  
Windsor Heights, Iowa
- C. Hy-Vee Food Store  
7101 University Avenue  
Windsor Heights, Iowa

The Clerk is hereby directed to post promptly such ordinances and amendments, and to leave them so posted for not less than ten (10) days after the first date of posting. Unauthorized removal of the posted ordinance or amendment prior to the completion of the ten days shall not affect the validity of said ordinance or amendment. The Clerk shall note the first date of such posting on the official copy of the ordinance and in the official ordinance book immediately following the ordinance.

*(Code of Iowa, Sec. 362.3[2])*

**18.06 AUTHENTICATION.** The Clerk shall authenticate all measures except motions with the Clerk's signature, certifying the time and manner of publication when required.

*(Code of Iowa, Sec. 380.7[4])*

**18.07 CERTIFY MEASURES.** The Clerk shall certify all measures establishing any zoning district, building lines, or fire limits and a plat showing the district, lines, or limits to the recorder of the County containing the affected parts of the City. The Clerk shall also record all 28E Agreements and file such agreement with the Secretary of State.

*(Code of Iowa, Sec. 380.11)*

**18.08 RECORDS.** The Clerk shall maintain the specified City records in the following manner:

1. Ordinances and Codes. Maintain copies of all effective City ordinances and codes for public use.

*(Code of Iowa, Sec. 380.7[5])*

2. Custody. Have custody and be responsible for the safekeeping of all writings or documents in which the City is a party in interest unless otherwise specifically directed by law or ordinance.

*(Code of Iowa, Sec. 372.13[4])*

3. Maintenance. Maintain all City records and documents, or accurate reproductions, for at least five (5) years except that ordinances, resolutions, Council proceedings, records and documents, or accurate reproductions, relating to the issuance, cancellation, transfer, redemption or replacement of public bonds or obligations shall be kept for at least eleven (11) years following the final maturity of the bonds or obligations. Ordinances, resolutions, Council proceedings, records and documents, or accurate reproductions, relating to real property transactions shall be maintained permanently.

*(Code of Iowa, Sec. 372.13[3 & 5])*

4. Provide Copy. Furnish upon request to any municipal officer a copy of any record, paper or public document under the Clerk's control when it may be necessary to such officer in the discharge of such officer's duty; furnish a copy to any citizen when requested upon payment of the fee set by Council resolution; under the direction of the Mayor or other authorized officer, affix the seal of the City to those public

documents or instruments which by ordinance and Code of Ordinances are required to be attested by the affixing of the seal.

*(Code of Iowa, Sec. 372.13[4 & 5] and 380.7[5])*

5. Filing of Communications. Keep and file all communications and petitions directed to the Council or to the City generally. The Clerk shall endorse thereon the action of the Council taken upon matters considered in such communications and petitions.

*(Code of Iowa, Sec. 372.13[4])*

**18.09 ATTENDANCE AT MEETINGS.** The Clerk shall attend all regular and special Council meetings, and at the direction of the Council, the Clerk shall attend meetings of committees, boards, and commissions. The Clerk shall record and preserve a correct record of the proceedings of such meetings.

*(Code of Iowa, Sec. 372.13[4])*

**18.10 ISSUE LICENSES AND PERMITS.** The Clerk shall issue or revoke licenses and permits when authorized by this Code of Ordinances, and keep a record of licenses and permits issued which shall show date of issuance, license or permit number, official receipt number, name of person to whom issued, term of license or permit and purpose for which issued.

*(Code of Iowa, Sec. 372.13[4])*

**18.11 NOTIFY APPOINTEES.** The Clerk shall inform all persons appointed by the Mayor or Council to offices in the City government of their positions and the time at which they shall assume the duties of their offices.

*(Code of Iowa, Sec. 372.13[4])*

**18.12 ELECTIONS.** The Clerk shall perform the duties relating to elections in accordance with Chapter 376 of the *Code of Iowa*.

**18.13 CITY SEAL.** The City seal is in the custody of the Clerk and shall be attached by the Clerk to all transcripts, orders, and certificates which it may be necessary or proper to authenticate. The City seal is circular in form, in the center of which are the words "WINDSOR HEIGHTS, IOWA," and around the margin of which are the words "CITY SEAL."

**18.14 ADDITIONAL DUTIES.** The Clerk shall perform other duties as specified by the Council by resolution, ordinance of motion, or by the City Administrator. The work performance of the Clerk shall be supervised and evaluated by the City Administrator.

*(Ch. 18 – Ord. 17-08 – Dec. 17 Supp.)*

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## CHAPTER 19

# FINANCE DIRECTOR/TREASURER

19.01 Appointment  
19.02 Compensation

19.03 Duties of Treasurer

**19.01 APPOINTMENT.** The City Clerk is the Finance Director/Treasurer and performs all functions required by the position of Finance Director/Treasurer.

**19.02 COMPENSATION.** The City Clerk receives no additional compensation for performing the duties of Finance Director/Treasurer.

**19.03 DUTIES OF TREASURER.** The duties of the Treasurer are as follows:  
(*Code of Iowa, Sec. 372.13[4]*)

1. Custody of Funds. Be responsible for the safe custody of all funds of the City in the manner provided by law and Council direction.
2. Record of Fund. Keep the record of each fund separate.
3. Record Receipts. Keep an accurate record of all money or securities received by the Treasurer on behalf of the City and specify the date, from whom, and for what purpose received.
4. Record Disbursements. Keep an accurate account of all disbursements, money, or property, specifying date, to whom, and from what fund paid.
5. Special Assessments. Keep a separate account of all money received by the Treasurer from special assessments.
6. Deposit Funds. Upon receipt of moneys to be held in the Treasurer's custody and belonging to the City, deposit the same in depositories selected by the Council, in amounts not exceeding monetary limits authorized by the Council.
7. Reconciliation. Reconcile depository statements with the Treasurer's books and certify monthly to the Council the balance of cash and investments of each fund and amounts received and disbursed.
8. Debt Service. Keep a register of all bonds outstanding and record all payments of interest and principal.
9. Depository Declaration. Determine the anticipated level of bank deposits for making the depository declaration to the State Treasurer as required by Chapter 453 of the *Code of Iowa*, and make such filings and comply with such rules as required by Chapters 452A, 452B and 453 of the *Code of Iowa*.
10. Other Duties. Perform such other duties as specified by the Council by resolution or ordinance.

11. (*Ch. 19 – Ord. 18-05 – Apr. 18 Supp.*)

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## CHAPTER 20

### CITY ATTORNEY

20.01 Appointment and Compensation  
20.02 Attorney for City  
20.03 Power of Attorney  
20.04 Ordinance Preparation

20.05 Review and Comment  
20.06 Provide Legal Opinion  
20.07 Attendance at Council Meetings  
20.08 Prepare Documents

**20.01 APPOINTMENT AND COMPENSATION.** The Council shall appoint by majority vote a City Attorney to serve for an indefinite term. The City Attorney shall receive such compensation as established by resolution of the Council.

**20.02 ATTORNEY FOR CITY.** The City Attorney shall act as attorney for the City in all matters affecting the City's interest and appear on behalf of the City before any court, tribunal, commission, or board. The City Attorney may obtain assistance from an assistant city attorney, subject to approval by the Council.

*(Code of Iowa, Sec. 372.13[4])*

**20.03 POWER OF ATTORNEY.** The City Attorney shall sign the name of the City to all appeal bonds and to all other bonds or papers of any kind that may be essential to the prosecution of any cause in court, and when so signed the City shall be bound upon the same.

*(Code of Iowa, Sec. 372.13[4])*

**20.04 ORDINANCE PREPARATION.** The City Attorney shall prepare those ordinances which the Council may desire and direct to be prepared and report to the Council upon all such ordinances before their final passage by the Council and publication.

*(Code of Iowa, Sec. 372.13[4])*

**20.05 REVIEW AND COMMENT.** The City Attorney shall, upon request, make a report to the Council giving an opinion on all contracts, documents, resolutions, or ordinances submitted to or coming under the City Attorney's notice.

*(Code of Iowa, Sec. 372.13[4])*

**20.06 PROVIDE LEGAL OPINION.** The City Attorney shall give advice or a written legal opinion on City contracts and all questions of law relating to City matters submitted by the Mayor, Council as a whole, or the City Administrator.

*(Code of Iowa, Sec. 372.13[4])*

**20.07 ATTENDANCE AT COUNCIL MEETINGS.** The City Attorney shall attend one regular meeting of the Council each month, when it is requested that he or she be present, and shall attend those special meetings of the Council at which he or she is requested to be present. The City Attorney shall also attend those meetings of City boards and commissions at which he or she is requested to be present.

*(Code of Iowa, Sec. 372.13[4])*

**20.08 PREPARE DOCUMENTS.** The City Attorney shall prepare those contracts, forms, and other legal documents and writings which may be required for the use of the City. The City Attorney shall examine and render an opinion upon the legality and form of and recommended

alterations for any legal document which binds or obligates the City prior to the time that such documents become binding or obligatory upon the City.

*(Code of Iowa, Sec. 372.13[4])*



# CHAPTER 21

## CITY ADMINISTRATOR

21.01 Appointment and Compensation  
21.02 Term  
21.03 Chief Administrative Officer

21.04 Combined Offices  
21.05 Powers and Duties

**21.01 APPOINTMENT AND COMPENSATION.** The City Administrator shall be appointed by majority vote of the Council and receive such compensation as shall be established by resolution.

*(Code of Iowa, Sec. 372.13[4])*

**21.02 TERM.** The City Administrator shall serve pursuant to a term as shall be established by resolution of the Council.

*(Code of Iowa, Sec. 372.13[4])*

**21.03 CHIEF ADMINISTRATIVE OFFICER.** The City Administrator shall be the chief administrative officer of the City.

**21.04 COMBINED OFFICES.** The Council may, by resolution passed by a majority of the entire Council, combine the office of City Administrator with the offices of City Clerk, Building Official, and/or Zoning Administrator, and so long as the duties of any of those offices are performed by the City Administrator, there shall be no appointment to those offices.

**21.05 POWERS AND DUTIES.** The City Administrator shall have the following powers and duties:

1. Administration. Supervise and direct the administration of the City government.
2. Supervise Officers. Supervise and direct the official conduct of all appointed officers of the City except the Mayor Pro Tem and City Attorney.
3. Personnel. Appoint, promote, reassign, reclassify, discipline, demote, and discharge all employees in compliance with law and ordinance.
4. Compensation of Employees. Fix the compensation of all employees appointed by him or her, subject to the approval of the Council.
5. Investigation. Investigate, summarily and without notice, the conduct and affairs of any department, agency, officer, or employee of the City.
6. Law Enforcement. Supervise the enforcement and execution of all laws and ordinances within the City.
7. Contracts. Supervise the performance of all contracts for work to be done for the City.
8. Purchasing. Supervise the purchase and receipt of all materials, services, and supplies for and on behalf of the City.
9. Public Works. Supervise the construction, improvement, repair, maintenance, and management of all City property, capital improvements, and undertakings of the

City, including the making and preservation of all surveys, maps, plans, drawings, specifications, and estimates for capital improvements.

10. Attend Meetings. Attend all meetings of the Council and City administrative agencies.
11. Recommendations. Recommend to the Council any measures as are necessary or expedient for the good government and general welfare of the City.
12. Cooperation. Cooperate with any administrative agency of the City.
13. Accounting. Supervise the City Treasurer/Finance Officer and ensure that the business affairs of the City are conducted by modern and efficient accounting methods and cause accurate records to be kept.
14. Budget. Prepare and submit to the Council annually the required budgets.
15. Financial Reports. Submit a written, itemized financial report to the Council not later than the fifteenth day of each month, showing receipts, disbursements, and investments for the preceding month.
16. Licenses. Provide for the issuance, suspension, and revocation of all licenses and permits authorized or required by law or ordinance.
17. Oaths. Administer oaths.
18. Powers Assumed. Assume the powers and duties of the City Clerk and Zoning Administrator.
19. Other. Exercise such other powers and perform such other duties as may be directed by the Council.

## CHAPTER 22

# PUBLIC WORKS DIRECTOR

22.01 Public Works Director Appointed  
22.02 Duties of Public Works Director

22.03 Water Service  
22.04 Removal of Trees

**22.01 PUBLIC WORKS DIRECTOR APPOINTED.** The Public Works Director shall be appointed and/or discharged by the City Administrator, with approval of the Council. Discharge becomes effective upon Council approval.

*(Code of Iowa, Sec. 372.13[4])*

**22.02 DUTIES OF PUBLIC WORKS DIRECTOR.** The Public Works Director shall be responsible for the direction and control of all operations and affairs of the Public Works Department and shall be vested with all powers and duties for managing public works in the City, including maintenance of public property in the City. The Director's responsibilities include but are not limited to the following:

1. Supervise the installation of water service pipes and their connection to the water main and enforce regulations pertaining to water services.
2. Inspect sidewalks and driveways.
3. Supervise the upkeep and repair of streets, their markings, and traffic signs.
4. Maintain the City's property, park facilities, sewer system, and water system.
5. Perform such other duties as may be directed by the City Administrator.

**22.03 WATER SERVICE.** This chapter applies to all replacements of existing water service pipes as well as to new pipes. The Public Works Director shall make such rules, not in conflict with the provisions of this chapter, as may be needed for the detailed operation of the water system, subject to the approval of the Council. In the event of an emergency, the Director may make temporary rules for the protection of the system until due consideration by the Council may be had.

*(Code of Iowa, Sec. 372.13[4])*

**22.04 REMOVAL OF TREES.** The Public Works Director shall remove, on the order of the Council, any tree on the streets of the City which interferes with the making of improvements or with travel thereon. The Director shall, additionally, remove any trees on the street, not on private property, which have become diseased, or which constitute a danger to the public, or which may otherwise be declared a nuisance.

*(Code of Iowa, Sec. 364.12[2c] & 372.13[4])*

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## CHAPTER 23

# PLANNING AND ZONING COMMISSION

23.01 Planning and Zoning Commission  
23.02 Term of Office  
23.03 Vacancies

23.04 Compensation  
23.05 Powers and Duties

**23.01 PLANNING AND ZONING COMMISSION.** The City Planning and Zoning Commission, hereinafter referred to as the Commission, consists of seven members appointed by the Council. The Commission members shall be residents of the City and shall not hold any elective office in the City government.

*(Code of Iowa, Sec. 414.6 & 392.1)*

**23.02 TERM OF OFFICE.** The term of office of the members of the Commission shall be five years. The terms of not more than one-third of the members will expire in any one year.

*(Code of Iowa, Sec. 392.1)*

**23.03 VACANCIES.** If any vacancy exists on the Commission caused by resignation, or otherwise, a successor for the residue of the term shall be appointed in the same manner as the original appointee.

*(Code of Iowa, Sec. 392.1)*

**23.04 COMPENSATION.** All members of the Commission shall serve without compensation, except their actual expenses, which shall be subject to the approval of the Council.

*(Code of Iowa, Sec. 392.1)*

**23.05 POWERS AND DUTIES.** The Commission shall have and exercise the following powers and duties:

1. Selection of Officers. The Commission shall choose annually at its first regular meeting one of its members to act as Chairperson and another as Vice Chairperson, who shall perform all the duties of the Chairperson during the Chairperson's absence or disability.

*(Code of Iowa, Sec. 392.1)*

2. Adopt Rules and Regulations. The Commission shall adopt such rules and regulations governing its organization and procedure as it may deem necessary.

*(Code of Iowa, Sec. 392.1)*

3. Zoning. The Commission shall have and exercise all the powers and duties and privileges in establishing the City zoning regulations and other related matters and may from time to time recommend to the Council amendments, supplements, changes or modifications, all as provided by Chapter 414 of the *Code of Iowa*.

*(Code of Iowa, Sec. 414.6)*

4. Review and Comment on Plats. All plans, plats, or re-plats of subdivision or re-subdivisions of land embraced in the City or adjacent thereto, laid out in lots or plats with the streets, alleys, or other portions of the same intended to be dedicated to the

public in the City, shall first be submitted to the Commission and its recommendations obtained before approval by the Council.

*(Code of Iowa, Sec. 392.1)*

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## CHAPTER 30

# POLICE DEPARTMENT

30.01 Department Established  
30.02 Organization  
30.03 Peace Officer Qualifications  
30.04 Required Training  
30.05 Compensation

30.06 Peace Officers Appointed  
30.07 Chief of Police: Duties  
30.08 Departmental Rules  
30.09 Summoning Aid  
30.10 Taking Weapons

**30.01 DEPARTMENT ESTABLISHED.** The police department of the City is established to provide for the preservation of peace and enforcement of law and ordinances within the corporate limits of the City.

**30.02 ORGANIZATION.** The department consists of the Chief of Police and such other law enforcement officers and personnel, whether full or part time, as may be authorized by the Council.

**30.03 PEACE OFFICER QUALIFICATIONS.** In no case shall any person be selected or appointed as a law enforcement officer unless such person meets the minimum qualification standards established by the Iowa Law Enforcement Academy.  
*(Code of Iowa, Sec. 80B.11)*

**30.04 REQUIRED TRAINING.** All peace officers shall have received the minimum training required by law at an approved law enforcement training school within one year of employment. Peace officers shall also meet the minimum in-service training as required by law.  
*(Code of Iowa, Sec. 80B.11[2])  
(IAC, 501-3 and 501-8)*

**30.05 COMPENSATION.** Members of the department are designated by rank and receive such compensation as shall be determined by resolution of the Council.

**30.06 PEACE OFFICERS APPOINTED.** The Mayor shall appoint and dismiss the Chief of Police subject to the consent of a majority of the Council. A super majority vote of the Council is needed for the removal of the Chief of Police. The Chief of Police shall select the other members of the department, subject to the approval of the City Administrator.  
*(Code of Iowa, Sec. 372.4)*

**30.07 CHIEF OF POLICE: DUTIES.** The Chief of Police has the following powers and duties subject to the approval of the Council.  
*(Code of Iowa, Sec. 372.13[4])*

1. General. Perform all duties required of the Chief of Police by law or ordinance.
2. Enforce Laws. Enforce all laws, ordinances, and regulations and bring all persons committing any offense before the proper court.
3. Writs. Execute and return all writs and other processes directed to the Chief of Police.

4. Accident Reports. Report all motor vehicle accidents investigated to the State Department of Transportation.  
*(Code of Iowa, Sec. 321.266)*
5. Prisoners. Be responsible for the custody of prisoners, including conveyance to detention facilities as may be required.
6. Assist Officials. When requested, provide aid to other City officers, boards, and commissions in the execution of their official duties.
7. Investigations. Provide for such investigation as may be necessary for the prosecution of any person alleged to have violated any law or ordinance.
8. Record of Arrests. Keep a record of all arrests made in the City by showing whether said arrests were made under provisions of State law or City ordinance, the offense charged, who made the arrest and the disposition of the charge.
9. Reports. Compile and submit to the Mayor and Council an annual report as well as such other reports as may be requested by the Mayor or Council.
10. Command. Be in command of all officers appointed for police work and be responsible for the care, maintenance, and use of all vehicles, equipment, and materials of the department.

**30.08 DEPARTMENTAL RULES.** The Chief of Police shall establish such rules, not in conflict with the Code of Ordinances, and subject to the approval of the Council, as may be necessary for the operation of the department.

**30.09 SUMMONING AID.** Any peace officer making a legal arrest may orally summon as many persons as the officer reasonably finds necessary to aid the officer in making the arrest.  
*(Code of Iowa, Sec. 804.17)*

**30.10 TAKING WEAPONS.** Any person who makes an arrest may take from the person arrested all items which are capable of causing bodily harm which the arrested person may have within such person's control to be disposed of according to law.  
*(Code of Iowa, Sec. 804.18)*

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## CHAPTER 31

# ALARM SYSTEMS

31.01 Declaration	31.07 Police Call Records
31.02 Definitions	31.08 Administration and Enforcement
31.03 Penalties for False Alarms	31.09 Operational Defects to be Remedied
31.04 Right to Hearing and Appeal	31.10 Automatic Dialing and Prerecorded Message Alarm Systems
31.05 Deliberate False Alarms	31.11 City Liability Limitations
31.06 Local Police Alarm System; Cutoff Required	

**31.01 DECLARATION.** It is hereby declared that the occurrence of false alarms at premises protected by emergency alarm systems constitutes both a nuisance and a hazard to life and property. In light of: (i) the traffic danger inherent in the emergency response of public safety vehicles; (ii) the danger caused by possible decreased caution on the part of emergency personnel responding to a location where previous false alarms have occurred; and (iii) the cost in money and staffing to respond where no actual emergency exists, the City Council finds it necessary to the health, safety, and welfare of citizens to enact the following provisions governing alarm systems.

**31.02 DEFINITIONS.** For the purposes of this chapter, the following words and phrases have the meanings set forth herein:

1. "Alarm business" means any person engaged in the business of installing, planning the installation, assisting in planning the installation, servicing, maintaining, monitoring, repairing, replacing, moving, or removing alarm systems in the City.
2. "Alarm coordinator" means the individual designated by the Chief of Police to enforce the provisions of this chapter.
3. "Alarm system" means any mechanism, equipment, or device which is designed to detect an unauthorized entry into any building or onto any property, or to direct attention to a robbery, burglary, or other emergency in progress, and to signal the above occurrences either by a local or audible alarm or by a silent or remote alarm. The following devices shall not constitute alarm systems within the meaning of this subsection:
  - A. Devices that do not register alarms that are audible, visible, or perceptible outside the protected premises.
  - B. Devices that are not installed, operated or used for the purpose of reporting an emergency to the City of Windsor Heights.
  - C. Alarm devices affixed to motor vehicles.
  - D. Alarm devices installed on a temporary basis by the Windsor Heights Police Department.
4. "Alarm user" means the person, firm, partnership, association, corporation, company or organization of any kind in control of any building, structure or facility or portion thereof wherein an alarm system is maintained.

5. “Central station” means an office to which alarm systems are connected, where operators supervise the circuits, and where guards and/or service personnel are maintained continuously to investigate signals.
6. “City of Windsor Heights” means the sworn and non-sworn personnel assigned by the City to the Windsor Heights Police Department, members of the Windsor Heights Fire Department, and the contracted Communication Center that provides radio and alarm information to these departments.
7. “Emergency” means the commission or attempted commission of a robbery, burglary or other criminal action.
8. “False alarm” means the activation of an alarm system, which results in a response by the City of Windsor Heights, where an emergency does not exist and for which no evidence or indication of criminal activity or other hazard is discovered. False alarms include negligently or accidentally activated signals; signals which are the result of faulty, malfunctioning, or improperly installed or maintained equipment; signals which are purposely activated to summon emergency personnel in non-emergency situations; and alarms for which the actual cause is not determined. False alarms also include an alarm signal caused by conditions of nature that are normal for that area. False alarm does not include an alarm signal caused by extraordinarily violent conditions of nature, which cannot be reasonably anticipated by the alarm user.
9. “Local alarm” means any noise-making alarm device and any alarm which emits a visual signal, such as a strobe light.
10. “User instructions” means written instructions which every alarm business selling, leasing, or furnishing to any user an alarm system which is installed on premises located in the City shall furnish to such user and which instructions enable the user to operate the alarm system properly.

**31.03 PENALTIES FOR FALSE ALARMS.**

1. For each false alarm to which emergency personnel respond, the alarm user shall be issued a notice of a municipal infraction with a penalty of:
  - A. First false alarms ..... \$50.00
  - B. Second and subsequent false alarms within a 365-day period..... \$75.00
2. If any fine is not paid within ten (10) days of receipt of notice, an additional notice of a municipal infraction will be filed against the alarm user for nonpayment.
3. The City may use all available legal remedies to collect delinquent service fees and late penalties. Any fees or costs incurred by the City shall be charged to the offender.

**31.04 RIGHT TO HEARING AND APPEAL.**

1. An alarm user shall have the right to a hearing to contest the imposition of any penalty under this chapter. A court date will be provided with citation.
2. For cases involving a municipal infraction, the alarm user must file a written request for a hearing with the Alarm Coordinator within five (5) business days of the date of mailing of the notice of imposition of the penalty. The request for a hearing shall include the alarm user’s name, address, telephone number, and a statement of the

reasons for disputing the imposition of the penalty. A timely request for a hearing shall stay the imposition of any penalty until the hearing is decided. The City's determination of a false alarm and the imposition of an administrative service fee shall be considered final if the alarm user fails to request a hearing within the time period set forth above.

3. Notice of the imposition of a penalty shall be considered satisfied if sent by regular mail to the alarm user's address.

4. The City Administrator shall conduct hearings requested by alarm users and shall affirm, modify, or vacate the imposition of the penalty after considering all of the evidence presented.

5. An alarm shall be presumed to be a false alarm unless the alarm user can establish the existence of an emergency or other hazard at the time of the alarm by a preponderance of the evidence. The burden of proving the existence of an emergency shall be upon the alarm user.

**31.05 DELIBERATE FALSE ALARMS.** No person shall cause any alarm to be transmitted to the City of Windsor Heights knowing the same to be false or without basis in fact. A violation of this section shall be a municipal infraction.

**31.06 LOCAL POLICE ALARM SYSTEM; CUTOFF REQUIRED.** Alarm systems which use a local audible or visual alarm device to attract the attention of the public shall be equipped with an automatic cutoff device which will terminate the audible or visual alarm within fifteen (15) minutes. However, this section does not apply to fire alarms, strobe lights, and fire gongs. A violation of this section shall be a municipal infraction.

**31.07 POLICE CALL RECORDS.** Alarm businesses which request the response of emergency personnel to alarm signals shall maintain a record of all alarms reported to the Windsor Heights Police Department, stating the time, date, and location of the alarm and the name, address, and phone number of the alarm user from which the alarm originated. The records shall indicate the cause of the alarm, if known. This record shall be current and shall be available to the Alarm Coordinator during normal business hours.

**31.08 ADMINISTRATION AND ENFORCEMENT.** Subject to the approval of the City Administrator, the Chief of Police shall have the authority to make such reasonable rules and regulations as may be deemed necessary to implement the provisions of this chapter.

**31.09 OPERATIONAL DEFECTS TO BE REMEDIED.**

1. The sensory mechanisms used in connection with alarm systems shall be adjusted to suppress false alarms so that the device will not be actuated by impulses due to transient pressure changes in water pipes, short flashes of light, wind noises such as the rattling or vibrating of doors or windows, vehicular noise adjacent to the installation, radio frequency energy, non-intrusive motion, or other forces unrelated to genuine alarms.

2. All components of an alarm system must be maintained in good repair by the alarm user so as to assure reliability of operation.

**31.10 AUTOMATIC DIALING AND PRERECORDED MESSAGE ALARM SYSTEMS.** It is unlawful to maintain, operate, connect, or allow to be maintained, operated, or connected, any alarm system or automatic dialing device which automatically dials the City

of Windsor Heights and then relays any prerecorded message indicating the existence of an emergency situation.

**31.11 CITY LIABILITY LIMITATIONS.** Nothing in this chapter shall create or be construed to create a duty upon the City of Windsor Heights to respond to any alarm whether or not the alarm is false. An alarm, like any other request for service, may be responded to within the resources of the City of Windsor Heights in light of other responses required at the time of the alarm.

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## CHAPTER 35

# FIRE DEPARTMENT

35.01 Establishment and Purpose  
35.02 Organization  
35.03 Fire Chief Appointed  
35.04 Fire Chief Duties

35.05 Department Members  
35.06 Duties of Members  
35.07 Fires Outside City Limits  
35.08 Authority to Cite Violations

**35.01 ESTABLISHMENT AND PURPOSE.** A Fire Department is hereby established to prevent and extinguish fires and to protect lives and property against fires, to promote fire prevention and fire safety, to provide out-of-hospital emergency medical services, to respond to and mitigate hazardous materials incidents, and to answer all emergency calls for which there is no other established agency.

*(Code of Iowa, Sec. 364.16)*

**35.02 ORGANIZATION.** The Fire Department shall consist of the Fire Chief and such other officers and personnel as may be authorized by the Council.

*(Code of Iowa, Sec. 372.13[4])*

**35.03 FIRE CHIEF APPOINTED.** The Fire Chief shall be appointed and/or discharged by the City Administrator, with approval of the Council. Discharge becomes effective upon Council approval.

*(Code of Iowa, Sec. 372.13[4])*

**35.04 FIRE CHIEF DUTIES.** The Fire Chief shall have the following powers and duties:

*(Code of Iowa, Sec. 372.14[4])*

1. Personnel. Appoint, assign, reassign, promote, reclassify, discipline, demote, and discharge all personnel of the Fire Department in compliance with law and ordinance.
2. Set Compensation. Fix the compensation of all personnel appointed by the Fire Chief, subject to the approval of the Council.
3. Management. Be responsible for the direction and control of all operations and affairs of the Fire Department; be vested with all powers, rights, and privileges attending the responsibility of management; and exercise the same, where appropriate, by rules, directives, or other orders which shall be binding on all personnel of the Fire Department when duly promulgated.
4. Organization. Determine and establish the form of organization of the Fire Department; create subordinate organizational subdivisions or sections within the Fire Department; and determine and define the functions, duties, and responsibilities of each.
5. Classification Plan. Determine and establish such classifications or ranks, grades, and positions for personnel within the Fire Department as the Fire Chief may deem appropriate as provided in the Department Rules and Regulations; prescribe the uniform and uniform insignia for all ranks; define and designate the authority, responsibility, duties, assignments, rights, and privileges for each such rank, grade, or position; and establish the order of succession to positions of command within the Fire Department.

6. Employee Performance. Regulate attendance, conduct, training, discipline, and procedures for all personnel of the Fire Department; make all other rules, regulations, and orders as may be deemed necessary for the management of the Fire Department and its personnel; and institute a system of periodic performance evaluation for all members of the Fire Department.
7. Property. Acquire, hold, control, and maintain all property, equipment, facilities, and premises necessary to the operation of the Fire Department; and dispose of the same in such manner as may be authorized by law.
8. Records. Establish and modify systems for the reception, processing, and maintenance of reports and records of all occurrences, or alleged occurrences of fire, arson, and Fire Code violations in the City, and of the administration, management, and operations of the Fire Department; and establish procedures, not inconsistent with law, for the safekeeping, photocopying, and destruction of records of the Fire Department.
9. Reports. Compile annually an analytical report based upon the records maintained by the Fire Department and summarizing the activities of the Fire Department for the year. The report shall be filed with the Council and may contain recommendations for the improvement of the Fire Department.
10. Fire Prevention. Enforce all laws and ordinances regulating fire prevention requirements with the City.
11. Right of Entry. Have the power of entry into any building or premises within the Fire Chief's jurisdiction for the purpose of making such investigation or inspection which, under law or ordinance, the Fire Chief may consider necessary to be made.
12. Fire Hazards. Make such recommendations to owners, occupants, managers, or caretakers of buildings for the purposes of eliminating fire hazards as are provided for by law or ordinance.
13. State Fire Marshal. At the request of the State Fire Marshal, and as provided by law, aid such Marshal in the performance of the Marshal's duties by investigating, preventing and reporting data pertaining to fires.
14. Building Plans. Review all commercial building and remodeling plans for compliance with appropriate Fire Codes; file a report of findings to appropriate departments or agencies.
15. Water Supply. Review and monitor the City water system as it relates to fire protection, making recommendations to the Public Works Director regarding repairs, modifications, or additions to said system as required to maintain or improve fire protection.
16. Emergency Management. Serve in capacity of emergency management officer for the City; coordinate activities with the Polk County Emergency Management Agency; write and update a disaster plan for the City; develop and maintain the emergency operations center as a functional system capable of operating effectively in a disaster mode; seek available State and federal moneys to improve disaster response capabilities; assure that all City personnel are aware of their duties in a disaster situation; conduct at least one disaster drill each year to test response capabilities; and perform other tasks assigned by the Council and the County Emergency Management Agency.
17. Council Meetings. Attend all Council meetings unless excused by the City Administrator.

18. Authority at Fires. When in charge of a fire scene, direct an operation as necessary to extinguish or control a fire, perform a rescue operation, investigate the existence of a suspected or reported fire, gas leak, or other hazardous condition, or take any other action deemed necessary in the reasonable performance of the department's duties.

*(Code of Iowa, Sec. 102.2)*

19. Control of Scenes. Prohibit an individual, vehicle or vessel from approaching a fire scene and remove from the scene any object, vehicle, vessel or individual that may impede or interfere with the operation of the Fire Department.

*(Code of Iowa, Sec. 102.2)*

20. Authority to Barricade. When in charge of a fire scene, place or erect ropes, guards, barricades or other obstructions across a street, alley, right-of-way, or private property near the location of the fire or emergency so as to prevent accidents or interference with the firefighting efforts of the Fire Department, to control the scene until any required investigation is complete, or to preserve evidence related to the fire or other emergency.

*(Code of Iowa, Sec. 102.3)*

**35.05 DEPARTMENT MEMBERS.** Persons eighteen (18) years of age or older who meet established entrance requirements for the Fire Department shall be appointed to serve as paid-on-call firefighters, fire medics and staff specialists.

**35.06 DUTIES OF MEMBERS.** When called by the Fire Chief or the Dispatcher, all members shall report for duty immediately in the manner directed by the Chief. They shall be subject to call at any time. They shall obey strictly the commands of any other officer who has been appointed by the Chief to be in command. Members shall follow all rules and regulations established for the Fire Department.

**35.07 FIRES OUTSIDE CITY LIMITS.** The Fire Department shall answer calls to fires and other emergencies outside the City limits within the limits established by Mutual Aid and Automatic Aid agreements.

**35.08 AUTHORITY TO CITE VIOLATIONS.** Fire officials acting under the authority of Chapter 100 of the *Code of Iowa* may issue citations in accordance to Chapter 805 of the *Code of Iowa*, for violations of State and/or local fire safety regulations. In addition, fire officials acting under the authority of Section 1.03 and Chapter 35 of this Code of Ordinances may issue citations for violations of Subchapter 60.10 of this Code of Ordinances.

*(Code of Iowa, Sec. 100.41)*

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## CHAPTER 36

# HAZARDOUS SUBSTANCE SPILLS

36.01 Purpose  
36.02 Definitions  
36.03 Cleanup Required  
36.04 Liability for Cleanup Costs

36.05 Notifications  
36.06 Police Authority  
36.07 Liability

**36.01 PURPOSE.** In order to reduce the danger to the public health, safety, and welfare from the leaks and spills of hazardous substances, these regulations are promulgated to establish responsibility for the treatment, removal and cleanup of hazardous substance spills within the City limits.

**36.02 DEFINITIONS.** For purposes of this chapter the following terms are defined:

1. “Cleanup” means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance.

*(Code of Iowa, Sec. 455B.381[1])*

2. “Hazardous condition” means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the State or into the atmosphere which creates an immediate or potential danger to the public health or safety or to the environment.

*(Code of Iowa, Sec. 455B.381[4])*

3. “Hazardous substance” means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. “Hazardous substance” may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under Section 311 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the Secretary of Transportation under the Hazardous Materials Transportation Act.

*(Code of Iowa, Sec. 455B.381[5])*

4. “Responsible person” means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance, the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.

*(Code of Iowa, Sec. 455B.381[7])*

**36.03 CLEANUP REQUIRED.** Whenever a hazardous condition is created by the deposit, injection, dumping, spilling, leaking or placing of a hazardous substance, so that the hazardous substance or a constituent of the hazardous substance may enter the environment or be emitted

into the air or discharged into any waters, including ground waters, the responsible person shall cause the condition to be remedied by a cleanup, as defined in the preceding section, as rapidly as feasible to an acceptable, safe condition. The costs of cleanup shall be borne by the responsible person. If the responsible person does not cause the cleanup to begin in a reasonable time in relation to the hazard and circumstances of the incident, the City may, by an authorized officer, give reasonable notice, based on the character of the hazardous condition, said notice setting a deadline for accomplishing the cleanup and stating that the City will proceed to procure cleanup services and bill the responsible person for all costs associated with the cleanup if the cleanup is not accomplished within the deadline. In the event that it is determined that immediate cleanup is necessary as a result of the present danger to the public health, safety and welfare, then no notice shall be required and the City may proceed to procure the cleanup and bill the responsible person for all costs associated with the cleanup. If the bill for those services is not paid within thirty (30) days, the City Attorney shall proceed to obtain payment by all legal means. If the cost of the cleanup is beyond the capacity of the City to finance it, the authorized officer shall report to the Council and immediately seek any State or federal funds available for said cleanup.

**36.04 LIABILITY FOR CLEANUP COSTS.** The responsible person shall be strictly liable to the City for all of the following:

1. The reasonable cleanup costs incurred by the City or the agents of the City as a result of the failure of the responsible person to clean up a hazardous substance involved in a hazardous condition.
2. The reasonable costs incurred by the City or the agents of the City to evacuate people from the area threatened by a hazardous condition caused by the person.
3. The reasonable damages to the City for the injury to, destruction of, or loss of City property, including parks and roads, resulting from a hazardous condition caused by that person, including the costs of assessing the injury, destruction or loss.
4. The excessive and extraordinary cost incurred by the City or the agents of the City in responding at and to the scene of a hazardous condition caused by that person.

**36.05 NOTIFICATIONS.**

1. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the State Department of Natural Resources and the Chief of Police of the occurrence of a hazardous condition as soon as possible but not later than six (6) hours after the onset of the hazardous condition or discovery of the hazardous condition. The Chief of Police shall immediately notify the Department of Natural Resources.
2. Any other person who discovers a hazardous condition shall notify the Chief of Police, which shall then notify the Department of Natural Resources.

**36.06 POLICE AUTHORITY.** If the circumstances reasonably so require, the law enforcement officer or an authorized representative may:

1. Evacuate persons from their homes to areas away from the site of a hazardous condition, and
2. Establish perimeters or other boundaries at or near the site of a hazardous condition and limit access to cleanup personnel.

No person shall disobey an order of any law enforcement officer issued under this section.

**36.07 LIABILITY.** The City shall not be liable to any person for claims of damages, injuries, or losses resulting from any hazardous condition, unless the City is the responsible person as defined in Section 36.02(4).

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# CHAPTER 37

## FIRE CODE

**37.01 Short Title**  
**37.02 Adoption of the Fire Code**

**37.03 Amendments, Modifications, Additions, and  
Deletions**

**37.01 SHORT TITLE.** This chapter shall be known as the Fire Code, and may be cited as such, and may be referred to herein as this chapter.

**37.02 ADOPTION OF THE FIRE CODE.** The City of Windsor Heights has adopted, as a part of the City's Building Code (Chapter 155 of this Code of Ordinances) the *International Fire Code, and Appendix Chapters, 2012 Edition, including* Appendices B, C, D, E, F and G (hereinafter referred to as the IFC), as published by the International Code Council, Inc. The provisions of said Fire Code shall be controlling for the safeguarding of life and property from the hazards of fire and explosion arising from storage, handling, and using of hazardous substances, materials, and devices, and from conditions hazardous to life and property in the use of occupancy of buildings or premises and in all matters covered by said Fire Code within the corporate limits of the City. A copy of this chapter is on file in the office of the Code Official.

**37.03 AMENDMENTS, MODIFICATIONS, ADDITIONS, AND DELETIONS.** The IFC is amended as follows:

1. Deletion. Subsection 102.6, *Historic Buildings*, Section 108, *Board of Appeals*, is deleted from the IFC and is of no force or effect in this chapter.

2. Subsection 101.1, *Title*, of the IFC is hereby deleted and there is enacted in lieu thereof the following section:

**101.1 Title.** These regulations shall be known as the Fire Code of Windsor Heights, Iowa, hereinafter referred to as "this code."

3. The title of Section 103, *Department of Fire Prevention*, of the IFC is hereby repealed and replaced with a new title, to read as follows:

**SECTION 103 FIRE MARSHAL'S OFFICE**

4. Subsection 103.1, *General*, of the IFC is hereby modified by replacing the words *Department of Fire Prevention* with the words *Fire Marshal's Office*, as follows:

**103.1 General.** The Fire Marshal's Office is established within the jurisdiction under the direction of the Fire Code official. The function of the department shall be the implementation, administration, and enforcement of the provisions of this code.

5. Subsection 103.4.1, *Legal Defense*, of the IFC is hereby amended by replacing the words *Department of Fire Prevention* with the words *Fire Marshal's Office*, as follows:

**103.4.1 Legal defense.** Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The Fire Code official or any subordinate shall not be liable for costs in an action, suit, or proceeding that is instituted in pursuance of the provisions of this code; and officers of the Fire Marshal's Office, acting in good faith and without malice, shall be free from liability

for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

6. Subsection 104.3, *Right of Entry*, of the IFC is hereby amended by adding a second paragraph in order after said subsection to read as follows:

No owner or occupant or any other person having charge, care, or control of any building or premises shall fail or neglect, after proper demand is made as herein provided, to properly permit entry therein by the Fire Chief or an authorized representative for the purpose of inspection or examination under such exigent circumstances affecting the safety of persons and/or property, or to take such prudent action to extinguish a fire or abate a fire hazard.

7. Subsection 104.3, *Right of Entry*, of the IFC is hereby amended by adding subsection 104.3.2, *Photographic Documentation*, to read as follows:

**104.3.2 Photographic documentation.** Members of the Fire Department making such examinations, inspections, or enforcements shall have the right, with proper credentials, and be authorized to take a reasonable number of photographs or videotapes for evidence and for records for use by the Fire Department to study hazards and scientific control for fire safety.

8. Subsection 104.4, *Identification*, of the IFC is hereby amended by adding subsection 104.4.1, *Impersonation*, to read as follows:

**104.4.1 Impersonation.** A person shall not impersonate the Fire Code official or his designee through the use of a uniform, identification card, badge, or any other means. And such impersonation shall be a violation of this code.

9. Section 104, *General Authority and Responsibilities*, of the IFC is hereby amended by adding subsection 104.13, *Stopping Use, Evacuation*, to read as follows:

**104.13 Stopping use, evacuation.** The Fire Code official is authorized to order an operation or use stopped or the evacuation of any premises, building, or vehicle or portion thereof which has or is a fire life safety hazard.

10. Subsection 105.1.2, *Types of Permits*, of the IFC is hereby amended by adding the following paragraphs to said subsection:

**105.1.2.1 Certificate of occupancy.** A certificate of occupancy issued pursuant to provisions of the International Building Code may be assumed to comply with Section 1, Operational Permit.

**105.1.2.2 Other permits.** Building, Mechanical, Electrical, and Plumbing permits issued pursuant to provisions of their respective codes may be assumed to comply with Section 2, Construction Permit.

11. Section 106, *Inspections*, of the IFC is hereby amended by adding subsection 106.5, *Compliance with Orders and Notices*, to read as follows:

**106.5 Compliance with orders and notices.** Orders and notices issued or served as provided by this code shall be complied with by the owner, operator, occupant, or other person responsible for the condition or violation to which the order or notice pertains. In case of extreme danger to persons or property, immediate compliance is required.

12. Subsection 108.1, *Board of Appeals Established*, of the IFC is hereby repealed and replaced with a new section, as follows:

**108.1 Board of Appeals established.**

13. Subsection 113.3, *Work Commencing Before Permit Issuance*, of the IFC is hereby amended by adding the following sentence after said subsection:

Said fee shall be 100 percent of the usual permit fee in addition to the required permit fee.

14. Subsection 113.6, *Permit Fees and Departmental Charges*, is added as follows:

**113.6 Permit fees and departmental charges.** The City Council of the City of Windsor Heights, Iowa, may by resolution prescribe the occasions when permits are required and may also prescribe the fees required for such permits. The City Council of the City of Windsor Heights, Iowa, may by resolution prescribe the occasions when other fees for response or other fire department services are required.

15. Chapter 1, *Scope and Administration*, of the IFC is hereby amended by adding Section 114, *Citations*, and following subsections to read as follows:

**SECTION 114 CITATIONS**

**114.1 Citation.** Persons operating or maintaining an occupancy, premises, or vehicle subject to the requirements of this code who allow a hazard to exist, or fail to take immediate action to abate a hazard in regard to such occupancy, premises, or vehicle, when ordered or notified to do so by the Fire Code official shall be guilty of a misdemeanor. Fire code officials, or designees, are herewith authorized to issue and deliver citations on forms prepared and approved by the City of Windsor Heights, Iowa, to persons accused of violating any of the provisions of this chapter.

**114.2 Failure to Pay Civil Citation.** A default in the payment of a fine or penalty or any installment of a fine or penalty may be collected by any means authorized for the collection of monetary judgments. The City Attorney may retain attorneys and/or private collection agents for the purpose of collecting any default in payment of any fine or penalty or installment of the fine or penalty. Any fees or cost incurred by the City with respect to attorneys or private collection agents retained under this Section shall be charged to the offender.

16. Chapter 1, *Scope and Administration*, of the IFC is hereby amended by adding Section 115, *Licenses and Plan Review*, and following subsections to read as follows:

**SECTION 115 LICENSE AND PLAN REVIEW**

**115.1 Licenses.** All installations, modifications, maintenance, or servicing of life safety systems are to be performed by an approved licensed business or person. A business or person shall obtain a license to do work in the City of Windsor Heights from the West Des Moines Finance Director Office.

**115.2 Life Safety Plans.** All life safety plans submitted for review shall include, but not be limited to, fire sprinkler system plans, fire alarm plans, and clean agent system plans, shall be designed and stamped by a person with a minimum of NICET III certification, fire protection engineer, qualified engineer with two (2) years' demonstrated experience in life safety system design, or equivalency, as determined by the Code Official. Plan approval will be based upon the plans submitted by the equipment supplier utilizing the above requirements.

**115.3 Penalties for Violation of Licenses.** Violation of rules and regulations pertaining to licensing shall result in a fine of \$500.00 for the first violation. A second violation within one year of license issuance shall result in a fine of \$750.00. A third violation within one year of license issuance shall result in a fine of \$1,000.00 and revocation of the license for the remainder of the license issuance period.

17. Chapter 1, *Scope and Administration*, of the IFC is hereby amended by adding Section 116, *Inspection Tags*, and following subsection to read as follows:

**SECTION 116 INSPECTION TAGS**

**116.1 General.** Tags for inspection of fire suppression systems, fire extinguishers, and fire alarm systems are required to be purchased from West Des Moines Fire Prevention Bureau for use in the City of Windsor Heights. West Metro tags are also acceptable.

18. Chapter 1, *Scope and Administration*, of the IFC is hereby amended by adding Section 117, *Additions to Buildings or Structures*, and following subsections to read as follows:

**SECTION 117 ADDITIONS TO BUILDINGS OR STRUCTURES**

**117.1 General.** Additions to buildings or structures shall comply with all of the requirements of Section 903.2 of the Code for new buildings or structures. The entire building or structure, existing and proposed additions, shall comply with all of the requirements of the fire sprinkler Section 903.2 of the Fire Code for new buildings and structures when the total square footage of the building exceeds 5,999 square feet, including outside wall dimensions, attached overhangs, and structures within 20 feet of the footprint of the building.

**117.2 Occupancy Requirement.** When a building is used for more than one occupancy purpose or use, the entire building shall meet the requirements of the fire sprinkler Section 903.2 of the Fire Code based on the requirements for the most restrictive occupancy group as defined in Chapter 2 of the 2012 *International Fire Code*.

19. Section 202, *General Definitions*, of the IFC shall be amended by adding the following definitions:

**ALARM USER.** Any person or business on whose premises a fire alarm system or sprinkler system is located within the City of Windsor Heights, Iowa.

**CHARCOAL GRILL.** An outdoor cooking device using solid fuels as a heat source for cooking food. Examples are (not limited to): charcoal, wood, wood chips, coal, or coke.

**FALSE ALARM.** The willful and knowing initiation or transmission of signal, message or other notification of an event of fire when no such danger exists or an alarm caused by careless use, improper maintenance, or negligence of a fire alarm system or sprinkler system which causes response of fire department apparatus and personnel.

**MULTIFAMILY COMPLEX/DEWLING.** A residential occupancy such as apartment building, condominium, or townhouse, or similar buildings with similar use.

**QUALIFIED PERSON.**

**Sprinkler or fire alarm system design.** A qualified person for plan design shall have the minimum National Institute for Certification in Engineering Technologies (NICET) Level III certification for sprinkler system design OR have NICET Level III certification for fire alarm system design. Other qualifications for sprinkler or fire alarm system design may be approved by the Fire Code official, including a licensed engineer with experience in life safety system design.

**Sprinkler system installation or inspection, testing, and maintenance.** A qualified person for automatic sprinkler system installation shall have a minimum National Institute for Certification in Engineering Technologies (NICET) Level II certification for automatic sprinkler system installation. A qualified person for automatic sprinkler system inspection, testing, and maintenance shall have a minimum NICET Level II certification for automatic sprinkler system inspection and testing of water based systems. Other qualifications for fire sprinkler system installation or inspection, testing, and maintenance may be approved by the Fire Code official, including a person who successfully completes a five-year approved apprenticeship program as a journeyman sprinkler fitter (e.g., American Fire Sprinkler Association [AFSA], National Fire Sprinkler Association [NFSA]).



**Fire alarm system installation or inspection, testing, and maintenance.** A qualified person for fire alarm system installation shall have a minimum National Institute for Certification in Engineering Technologies [NICET] Lever II certification for fire alarm systems OR be factory trained and certified for the specific fire alarm system, OR be international municipal signal association fire alarm certified, OR be a trained and qualified person employed by an organization listed by a national testing laboratory for the servicing of fire alarm systems. Other qualifications may be approved by the Fire Code official.

20. Section 305, *Ignition Sources*, of the IFC is hereby amended by adding Subsection 305.5, *Reckless Use of Fire*, to read as follows:

**305.5 Reckless Use of Fire.** No person shall so use fire or discharge any incendiary device or material as to recklessly endanger any property or safety of another.

21. Section 307.2, *Permit Required*, of the IFC is hereby amended by adding Subsection 307.2.2, *Businesses that Sell Fire Pits, Chimineas, Sky Lanterns, and other Outdoor Recreational Devices*, to read as follows:

**307.2.2 Businesses that sell fire pits, Chimineas, sky lanterns, and other outdoor recreational devices.** Within the City limits of Windsor Heights, any business that sells fire pits, Chimineas, sky lanterns, and other outdoor recreational fire/ember producing devices are required to have signage installed on the display devices notifying customers they are not allowed to be used in the City of Windsor Heights.

22. Subsection 308.1.4, *Open-Flame Cooking Devices*, of the IFC is amended by deleting exception 2 to renumber and read as follows:

**308.1.4. Open-flame cooking devices.** Charcoal burners and other open-flame cooking devices which produce ash or embers shall not be operated on combustible balconies or within 10 feet of multi-story buildings, such as apartment buildings and/or condominiums. Cooking devices and/or propane cylinders shall not be stored inside the living unit of apartment buildings and/or condominiums. A maximum of one 20-pound propane cylinder attached to the cooking device shall be allowed per living unit.

Exceptions:

1. One- and two-family dwellings.
2. LP-gas cooking devices having LP-gas container with a water capacity not greater than 47.7 pounds

23. Subsection 308.1, *General*, of the IFC is amended by adding the subsection 308.1.9, *Projection of Ignited Materials*, to read as follows:

**308.1.9 Projection of ignited materials.** No person shall drop, throw, or release into the atmosphere ignited material from the ground, a structure, or vehicle.

24. Subsection 401.3, *Emergency Responder Notification*, of the IFC is amended by adding subsection 401.3.4, *False Alarm*, to read as follows:

**401.3.4 False alarm.** An alarm user may be charged a fee for each false alarm to which the Fire Department responds.

25. Subsection 405.2, *Frequency*, is amended by adding subsection 405.2.2, *Fire Drills for E Occupancies*, to read as follows:

**405.2.2 Fire drills for E occupancies.** The Fire Chief may require a fire drill at any E occupancy at any time.

26. Section 503, *Fire Apparatus Access Roads*, is amended by adding subsections 503.7, *Fire Marshal Authority to Designate Fire Lanes*, 503.8, *Signs and Markings*, 503.9, *Summons to be Issued for Parking Violation*, 503.10, *Removal of*

*Vehicle by Property Owner, 503.11, Removal of Vehicle by Fire Chief, 503.12, Abandonment of Fire Lane, and 503.13, Maintenance of Fire Lane, to read as follows:*

**503.7 Fire Marshal authority to designate fire lane.** The Fire Marshal is hereby authorized to designate fire lanes on designated premises where such areas must be free of parked vehicles and other obstructions to provide ready access to buildings, therein, in case of fire or other emergencies. The Fire Marshal's designation of such fire lanes does not obviate the owners of such property of their responsibility to maintain the area. Further, owners of the private property or their designated representative may request that additional fire lanes be designated by the Fire Marshal.

**503.8 Signs and markings.** Wherever a fire lane has been designated, the Code Official shall cause appropriate signs and markings to be placed identifying such fire lane. Fire lanes may be painted traffic red in addition to fire lane signage. Fire lane signs shall be permanently mounted and the front of the sign set 90 degrees to the street facing the direction of travel, or as otherwise approved by the Code Official. Signs shall be 18 inches tall by 12 inches wide with red letters on a white reflective background to read "Fire Lane—No Parking Except for Emergency Vehicles, Fine \$50.00," unless otherwise directed and approved by the Code Official, conforming to State law.

**503.9 Summons to be issued for parking violation.** A summons or notice to appear in answer to a charge of parking in violation of this section specifying the location of the fire lane in which such violation occurred and the date and time of such violation, may be issued by any police officer or any member of the Fire Department designated by the Fire Chief.

**503.10 Removal of vehicle by property owner.** Except for an authorized emergency vehicle, the owners of private property, or their agent, may have any motor vehicle that is parked in a legally designated fire lane removed and stored, either at their own expense or that of the vehicle operator. The owners of the premises, or their agent, who has a vehicle removed and stored, is not liable for damages incurred as a result of removal or storage, if the vehicle is removed by a vehicle wrecker service insured against liability for property damage incurred in towing vehicles and is stored by a storage company insured against liability for property damage incurred in the storage of vehicles.

**503.11 Removal of Vehicle by Fire Chief.** Any vehicle parked in any designated fire lane may be removed at the vehicle owner's expense upon the authorization of the Fire Chief under the following conditions:

1. When the vehicle violates Ordinance number WH60.10.07.23 (the Fire Lane Ordinance) by parking in a fire lane; or
2. When a vehicle blocks the ingress/egress of a business, educational facility, theater, night club, apartment complex, gymnasium, or place of assembly; or
3. When a vehicle's presence threatens the life safety of the public by impeding the ability of the fire apparatus and emergency medical equipment to respond to an emergency.

The Fire Chief shall cause such vehicle to be removed by the towing service operating under a contract with the City and shall further cause such vehicle to be impounded.

**503.12 Abandonment of fire lane.** No owner, manager, or person in charge of any premises served by a required fire lane shall abandon or close any such fire lane without the written permission of the Fire Marshal.

**503.13 Maintenance of fire lanes.** Maintenance of the fire lane signage and painting shall be the responsibility of the property owner/tenant.

27. Section 506, *Key Boxes*, is amended by adding subsection 506.3, *Key Box (Installation Requirements)* to read as follows:

**506.3 Key box installation requirements.** Buildings provided with an alarm system or a sprinkler system shall be provided with a key box at the front of the

building, typically adjacent to the main front door(s) at a height of five (5) feet above grade or at a location approved by the Code Official.

28. Subsection 507.5, *Fire Hydrant Systems*, of the IFC is hereby amended by adding subsection 507.5.7, *Fire Hydrant Markers and Identification Color*, to read as follows:

**507.5.7 Fire hydrant markers and identification color.** When required by the Code Official, hydrant locations shall be identified by the installation of an approved reflective marker. Both public and private hydrants shall be painted to the City of Des Moines Water Works specifications.

29. Section 806, *Decorative Vegetation in New and Existing Buildings*, of the IFC is hereby amended by adding subsection 806.6, *Length of Display* to read as follows:

**806.6 Length of Display.** No cut natural Christmas tree shall be displayed in a nonresidential occupancy for more than 15 days from the date it was purchased or cut, whichever is sooner.

30. Subsection 807.4.3.2, *Artwork*, of the IFC is hereby amended to read as follows:

**807.4.3.2 Artwork.** Artwork and teaching material shall be limited to the walls of corridors and classroom walls to not more than 20 percent of the wall area.

31. Subsection 906.5, *Conspicuous Location*, of the IFC is hereby amended by adding a second paragraph in order to read as follows:

**906.5 Conspicuous location.** In addition to other areas listed herein or in NFPA 10, fire extinguishers in R occupancies may also be placed in any of the following locations to satisfy the requirements.

1. On a wall in the unit.
2. Inside the closet or pantry, mechanical closet, or storage closet as long as the door has a label indicating that there is a fire extinguisher inside and there is no locking device on the door that requires a key, combination, or special knowledge to open.

32. Subsection 907.2.11, *Single and Multi-Station Smoke Alarms*, of the IFC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**907.2.11 Single and multi-station smoke alarms.** Listed single and multi-station smoke alarms complying with UL 217 shall be installed in accordance with provisions of the code and the household fire warning equipment provisions of NFPA 72. Smoke alarms shall be addressable with sounder bases and tied into the building fire alarm system as a supervisory signal only. Mini horns are not required if notification from a building fire alarm system is through the smoke alarms with sounder bases. Note: Section 907.2.11 only applies to R-1, R-2, R-4 and I-1 occupancy classifications.

33. Section 1004, *Occupant Load*, of the IFC is hereby amended by adding Subsection 1004.7, *Overcrowding*, to read as follows:

**1004.7 Overcrowding.** Overcrowding and admittance of persons beyond the approved capacity of a place of assembly are prohibited. The Fire Code Official, upon finding overcrowding conditions, obstructions in aisles, passageways, or other means of egress, or upon finding a condition which constitutes a serious menace to life, is authorized to cause the performance, presentation, spectacle, or entertainment to be stopped until such condition or obstruction is corrected.

34. Subsection 1007.2, *Continuity and Components*, of the IFC is amended by adding the following paragraph 11 to said subsection to read as follows:

**1007.2 Continuity and components.**

11. Components of exterior walking surfaces shall be hard surfaced.

35. Subsection 1008.1.6, *Landings at Doors*, of the IFC is hereby amended by adding subsection 1008.1.6.1, *Frost Protection*, to read as follows:

**1008.1.6.1 Frost protection.** Exterior landings at doors shall be provided with frost protection.

36. Subsection 1009.15, *Handrails*, of the IFC is amended by adding the following exception to said subsection to read as follows:

**1009.15 Handrails.**

Exceptions.

6. Change in elevation of four or more risers within individual units of Group R-2 and R-3 occupancies requires a handrail on at least one side.

37. Subsection 1012.4, *(Handrail) Continuity*, of the IFC is amended by adding the following exception to said subsection to read as follows:

**1012.4 Continuity.**

Exceptions.

5. Handrails within a dwelling unit or serving an individual dwelling unit of groups R-2 and R-3 shall be permitted to be interrupted at one location in a straight stair when the rail terminates into a wall or ledge and is offset and immediately continues.

38. Subsection 1027.5, *Access to a Public Way*, of the IFC is amended by adding subsection 1027.5.1, *Walking Surfaces*, to read as follows:

**1027.5.1 Walking surfaces.** Components of exterior walking surfaces shall be hard surfaced.

39. Subsection 1029.3, *Maximum Height from Floor*, of the IFC is hereby amended by adding the following exception after said subsection to read as follows:

**1029.3 Maximum height from floor.**

Exception. Within individual units of Group R-2 and R-3 occupancies where a window is provided as a means of escape and rescue opening from a basement, it shall have a sill height of not more than 44 inches above the floor of landing. Where a landing is provided, the landing shall be not less than 36 inches wide, not less than 18 inches out from the exterior wall, and not more than 24 inches in height. The landing shall be permanently affixed to the floor below and to the wall under the openable area of the window it serves.

40. Chapter 11, *Construction Requirements for Existing Buildings*, of the IFC is amended by adding the following subsections: 1103.7.6.1, *Manual Fire Alarms, Group R-2, Including Multi-Family Rental Dwelling Units and Buildings*, 1103.9.1, *Carbon Monoxide Alarms, Group R-2, Including Existing Multi Family Rental Units and Buildings*, 1104.3.1, *Exit Sign Illumination, Group R-2, Including Existing Multi Family Rental Dwellings Units and Buildings*, 1104.5.1, *Illumination Emergency Power, Group R-2, Including Existing Multi-Family Rental Dwelling Units and Buildings*, and an effective date for these requirements in multi-family residential buildings including rental dwelling units to read as follows:

**1103.7.6.1 Manual fire alarms, Group R-2, including multi-family rental dwelling units and buildings.** Effective July 1, 2015, a manual fire alarm system shall be installed in buildings with more than 16 units in accordance with subsection 1103.7.6 of the IFC and for rental dwelling units and buildings shall be confirmed no later than the next rental registration renewal inspection thereafter.

**1103.9.1 Carbon monoxide alarms, Group R-2, including existing multi-family rental units and buildings.** Effective July 1, 2015, carbon monoxide alarms shall be installed in accordance with subsection 1103.9 of the IFC and for rental dwelling units

and buildings shall be confirmed no later than the next rental registration renewal inspection thereafter.

**1104.3.1 Exit sign illumination, Group R-2, including existing multi-family rental dwelling units and buildings.** Effective July 1, 2015, exit sign illumination shall be installed in accordance with subsections 1104.3 and 1104.4 of the IFC and for rental dwelling units and buildings shall be confirmed no later than the next rental registration renewal inspection thereafter.

**1104.5.1 Illumination emergency power, Group R-2, including existing multi-family rental dwelling units and buildings.** Effective July 1, 2015, illumination emergency power shall be installed in accordance with subsection 1104.5 of the IFC and for rental dwelling units and buildings shall be confirmed no later than the next rental registration renewal inspection thereafter.

41. Subsection 5003.5, *Hazard Identification Signs*, of the IFC is hereby amended by adding subsection 5003.5.2, *Iowa Right to Know*, to read as follows:

**5003.5.2 Iowa right to know.** Hazard identification signs shall also comply with the Iowa Right to Know law.

42. Subsection 5601.7, *Seizure*, of the IFC is hereby amended by adding subsection 5601.7.1, *Seizure of Fireworks*, to read as follows:

**5601.7.1 Seizure of fireworks.** Except as hereinafter provided, it shall be unlawful for any person to possess, store, to offer for sale, sell at retail, or use or explode any fireworks; provided, the Fire Code official or authorized official may issue permits for supervised public displays of fireworks by jurisdiction, fair association, amusement parks, and other organizations for the use of fireworks by artisans in pursuit of their trade in accordance with the Fire Code. Every such use or display shall be handled by a competent operator approved by the Fire Code official or authorized official and shall be of such character and so located, discharged, or fired so as, in the opinion of the Fire Code official, after proper investigation, not to be hazardous to property or endanger any person. The Fire Code official or authorized official shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks offered, or exposed for sale, stored, or held in violation of this section.

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**CHAPTER 40**  
**PUBLIC OFFENSES**

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- 40.01 PUBLIC PEACE**
  - 40.02 PUBLIC HEALTH AND SAFETY**
  - 40.03 PUBLIC AND PRIVATE PROPERTY**
  - 40.04 DRUGS AND CONTROLLED SUBSTANCES**
  - 40.05 WEAPONS**
  - 40.06 ALCOHOL CONSUMPTION AND INTOXICATION**
  - 40.07 MINORS**
  - 40.08 PARK REGULATIONS**
  - 40.09 OTHER PUBLIC OFFENSES ENFORCEMENT PROVISIONS**
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**SUBCHAPTER 40.01**

**PUBLIC PEACE**

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li><b>40.01.01 Assault</b></li><li><b>40.01.02 Harassment</b></li><li><b>40.01.03 Disorderly Conduct</b></li><li><b>40.01.04 Unlawful Assembly</b></li></ul> | <ul style="list-style-type: none"><li><b>40.01.05 Failure to Disperse</b></li><li><b>40.01.06 Disorderly Houses; Social Hosts</b></li><li><b>40.01.07 Public Exposure</b></li></ul> |
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**40.01.01 ASSAULT.** No person shall, without justification, commit any of the following:

1. Pain or Injury. Any act that is intended to cause pain or injury to another or that is intended to result in physical contact that will be insulting or offensive to another, coupled with the apparent ability to execute the act.

*(Code of Iowa, Sec. 708.1[1])*

2. Threat of Pain or Injury. Any act that is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

*(Code of Iowa, Sec. 708.1[2])*

An act described in subsections 1 and 2 shall not be an assault under the following circumstances: (i) if the person doing any of the enumerated acts, and such other person, are voluntary participants in a sport, social or other activity, not in itself criminal, and such act is a reasonably foreseeable incident of such sport or activity, and does not create an unreasonable risk of serious injury or breach of the peace; (ii) if the person doing any of the enumerated acts is employed by a school district or accredited nonpublic school, or is an area education agency staff member who provides services to a school or school district, and intervenes in a fight or physical struggle or other disruptive situation that takes place in the presence of the employee or staff member performing employment duties in a school building, on school grounds, or at an official school function, regardless of the location, whether the fight or physical struggle or other disruptive situation is between students or other individuals, if the degree and the force of

the intervention is reasonably necessary to restore order and to protect the safety of those assembled.

*(Code of Iowa, Sec. 708.1)*

**40.01.02 HARASSMENT.** No person shall commit harassment.

1. A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following:

A. Communicates with another by telephone, telegraph, writing, or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm.

*(Code of Iowa, Sec. 708.7)*

B. Places any simulated explosive or simulated incendiary device in or near any building, vehicle, airplane, railroad engine or railroad car, or boat occupied by the other person.

*(Code of Iowa, Sec. 708.7)*

C. Orders merchandise or services in the name of another, or to be delivered to another, without such other person's knowledge or consent.

*(Code of Iowa, Sec. 708.7)*

D. Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the same did not occur.

*(Code of Iowa, Sec. 708.7)*

2. A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate or alarm that other person. As used in this section, unless the context otherwise requires, "personal contact" means an encounter in which two or more people are in visual or physical proximity to each other. "Personal contact" does not require a physical touching or oral communication, although it may include these types of contacts.

**40.01.03 DISORDERLY CONDUCT.** No person shall do any of the following:

1. Fighting. Engage in fighting or violent behavior in any public place or in or near any lawful assembly of persons, provided that participants in athletic contests may engage in such conduct which is reasonably related to that sport.

*(Code of Iowa, Sec. 723.4[1])*

2. Noise. Make loud and raucous noise in the vicinity of any residence or public building which causes unreasonable distress to the occupants thereof.

*(Code of Iowa, Sec. 723.4[2])*

3. Abusive Language. Direct abusive epithets or make any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.

*(Code of Iowa, Sec. 723.4[3])*



4. Disrupt Lawful Assembly. Without lawful authority or color of authority, disturb any lawful assembly or meeting of persons by conduct intended to disrupt the meeting or assembly.

*(Code of Iowa, Sec. 723.4[4])*

5. False Report of Catastrophe. By words or action, initiate or circulate a report or warning of fire, epidemic, or other catastrophe, knowing such report to be false or such warning to be baseless.

*(Code of Iowa, Sec. 723.4[5])*

6. Disrespect of Flag. Knowingly and publicly use the flag of the United States in such a manner as to show disrespect for the flag as a symbol of the United States, with the intent or reasonable expectation that such use will provoke or encourage another to commit trespass or assault. As used in this subsection:

*(Code of Iowa, Sec. 723.4[6])*

- A. “Deface” means to intentionally mar the external appearance.
- B. “Defile” means to intentionally make physically unclean.
- C. “Flag” means a piece of woven cloth or other material designed to be flown from a pole or mast.
- D. “Mutilate” means to intentionally cut up or alter so as to make imperfect.
- E. “Show disrespect” means to deface, defile, mutilate, or trample.
- F. “Trample” means to intentionally tread upon or intentionally cause a machine, vehicle, or animal to tread upon.

7. Obstruct Use of Street. Without authority or justification, obstruct any street, sidewalk, highway, or other public way, with the intent to prevent or hinder its lawful use by others.

*(Code of Iowa, Sec. 723.4[7])*

8. Funeral or Memorial Service. Within 500 feet of the building or other location where a funeral or memorial service is being conducted, or within 500 feet of a funeral procession or burial:

- A. Make loud and raucous noise which causes unreasonable distress to the persons attending the funeral or memorial service or participating in the funeral procession.
- B. Direct abusive epithets or make any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.
- C. Disturb or disrupt the funeral, memorial service, funeral procession or burial by conduct intended to disturb or disrupt the funeral, memorial service, funeral procession or burial.

This subsection applies to conduct within 60 minutes preceding, during, and within 60 minutes after a funeral, memorial service, funeral procession, or burial.

*(Code of Iowa, Sec. 723.5)*

9. Disturbing the Peace. Host, sponsor, permit, or allow any congregation or assembly of more than five persons, to make loud or raucous noise in the vicinity of

any residence between the hours of 10:00 p.m. and 9:00 a.m. which causes or could reasonably be expected to cause distress to the occupants of any residence.

**40.01.04 UNLAWFUL ASSEMBLY.** It is unlawful for three or more persons to assemble together, with them or any of them acting in a violent manner, and with intent that they or any of them will commit a public offense. No person shall willingly join in or remain part of an unlawful assembly, knowing or having reasonable grounds to believe it is such.

*(Code of Iowa, Sec. 723.2)*

**40.01.05 FAILURE TO DISPERSE.** A peace officer may order the participants in a riot or unlawful assembly or persons in the immediate vicinity of a riot or unlawful assembly to disperse. No person within hearing distance of such command shall refuse to obey.

*(Code of Iowa, Sec. 723.3)*

**40.01.06 DISORDERLY HOUSES; SOCIAL HOSTS.**

1. Definition.

A. Any room, house, building, structure, place, or premises wherein or upon which any unlawful or illegal acts are committed in violation of local, State, or federal law, or which is kept in such a manner as to disturb, annoy, or scandalize the public generally or persons within a particular neighborhood is hereby declared to be a disorderly house.

B. Any room, house, building, structure, place, or premises which is kept, maintained, used, erected, established, or run for any of the following purposes (as the same are defined in the *Code of Iowa*) is hereby declared to be a disorderly house; provided, however, this shall not be construed to be conclusive, limiting, or restrictive:

- (1) Prostitution, pandering, or public indecency;
- (2) Unlawful manufacture, cultivation, growth, production, processing, sale, distribution, storage, use, or possession for any unlawful manufacture or use of any controlled substance;
- (3) Gambling or the keeping of gambling devices;
- (4) Acts of disturbing the peace or disorderly conduct, as those terms are described in Section 40.01.03 of this subchapter;
- (5) The reception, retention, or disposition of stolen moveable property of another;
- (6) Clairvoyance, fortune telling, or divination;
- (7) Consumption of alcohol by any person under the age of twenty-one (21).<sup>†</sup>

2. Disorderly Houses Prohibited. It is unlawful for the owner, lessee, renter, proprietor, or any other person to keep, run, or maintain a disorderly house, or to knowingly collect or permit to be collected therein persons who are engaging in any unlawful act or to knowingly make, cause or permit, or suffer to be made therein any

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<sup>†</sup> **EDITOR'S NOTE:** See subsection 4 for further provisions regarding consumption of alcoholic beverages by minors.

loud or improper noise to the annoyance or disturbance of any person or neighborhood. A disorderly house is declared to be a public nuisance.

3. Visiting Disorderly House Prohibited. It is unlawful for any person to become or remain an inmate of any disorderly house, or to frequent or visit with knowledge of, and participation in, the illegal activities occurring therein.

4. Social Hosts. The purpose of this subsection is to protect the public interest, welfare, health, and safety within the City by prohibiting the services to and consumption of alcoholic beverages by persons under the age of 21 at premises located in the City. The Council finds that the occurrence of social gatherings at premises where alcoholic beverages are served to or consumed by persons under the age of 21 is harmful to such persons themselves and a threat to public welfare, health, and safety. The Council further finds that persons under the age of 21 often obtain alcoholic beverages at such gatherings and that persons who are in control of such premises know or have reason to know of such service and/or consumption and will be more likely to ensure that alcoholic beverages are neither served to nor consumed by persons under the age of 21 at these gatherings. Based on these findings, the Council has deemed it necessary to enact the following regulations:

A. Definitions. The following words, terms, and phrases, when used in this subsection, have the meanings ascribed to them herein, except where the context clearly indicates a different meaning:

(1) "Alcoholic beverage" means any beverage containing more than one-half of one percent of alcohol by volume, including alcoholic liquor, wine, and beer.

(2) "Emergency responders" means firefighters, law enforcement officers, emergency medical service personnel, and other personnel having emergency response duties.

(3) "Enforcement services" means the salaries and benefits of emergency responders for the amount of time actually spent responding to or remaining at an event, gathering, or party and administrative costs attributable to the incident and includes the actual costs for medical treatment for any injured emergency responder and the costs of repairing any damage to equipment or vehicles.

(4) "Event, gathering, or party" means any group of three (3) or more persons who have assembled or gathered together for a social occasion or other activity where an underage person has consumed or possessed an alcoholic beverage.

(5) "Parent" means any person having legal custody of a juvenile as: (i) a natural parent, adoptive parent, or stepparent; (ii) a legal guardian; or (iii) a person to whom legal custody has been given by order of the court.

(6) "Premises" means any home, yard, farm, field, land, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, park, or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other

social function, and whether owned, leased, rented, or used with or without permission or compensation.

(7) “Social host” means any person who aids, conducts, allows, entertains, organizes, supervises, controls, or permits an event, gathering, or party. This includes, but is not limited to: (i) the person who owns, rents, leases, or otherwise has control of the premises where the event, gathering, or party takes place; (ii) the person in charge of the premises; or (iii) the person who organized the event. If the social host is a juvenile, then the parents of that juvenile will be jointly and severally liable for any violation of this subsection.

(8) “Underage person” means any individual under the age of twenty-one (21).

B. Prohibited Acts. It is unlawful for any social host to host an event, gathering, or party on premises when the person knows or reasonably should know that an underage person has consumed an alcoholic beverage, or possessed an alcoholic beverage with the intent to consume it, and the person fails to take reasonable steps to prevent the possession or consumption by the underage person. A social host who hosts such an event, gathering, or party does not have to be present at the time the prohibited act occurs.

C. Exceptions. This subsection 4 does not apply to conduct solely between an underage person and his or her parents while present in the parents’ household, to legally protected religious observances, and to situations where underage persons are lawfully in possession of alcoholic beverages during the course and scope of employment.

D. Enforcement. The provisions of this subsection shall be enforced by officers of the Police Department. The Police Department shall have primary but not exclusive enforcement responsibility for this subsection.

E. Violations. Violations of this subsection 4 are declared to be municipal infractions pursuant to Chapter 4 of this Code of Ordinances.

**40.01.07 PUBLIC EXPOSURE.** Except as hereinafter provided, no person shall expose those parts of his or her body hereinafter listed to another in any public place or in any place where such exposure is seen by another person located in any public place:

1. A woman’s nipple, the areola thereof, or full breast, except as necessary in the breast-feeding of a baby.
2. The pubic hair, pubes, perineum, or anus of a male or female, the penis or scrotum of a male, or the vagina of a female, excepting such body parts of prepubescent infants of either sex.

This section does not apply to limited or minimal exposures incident to the use of public restrooms or locker rooms or such other places where such exposures occur incident to the prescribed use of those facilities. This section does not apply to exposures occurring in live stage places, live theatrical performances, or live dance performances conducted in a theatre, concert hall, or similar establishment which is primarily devoted to theatrical performances.

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## CHAPTER 40 – PUBLIC OFFENSES

### SUBCHAPTER 40.02

## PUBLIC HEALTH AND SAFETY

40.02.01 Distributing Dangerous Substances	40.02.08 Abandoned or Unattended Refrigerators
40.02.02 False Reports to or Communications with Public Safety Entities	40.02.09 Antenna and Radio Wires
40.02.03 Providing False Identification Information	40.02.10 Trapping
40.02.04 Refusing to Assist Officer	40.02.11 Urinating and Defecating
40.02.05 Harassment of Public Officers and Employees	40.02.12 Fireworks
40.02.06 Removal of an Officer's Communication or Control Device	40.02.13 Littering Prohibited
40.02.07 Interference with Official Acts	40.02.14 Open Dumping Prohibited
	40.02.15 Smoking and Tobacco Use Prohibited at City Facilities

**40.02.01 DISTRIBUTING DANGEROUS SUBSTANCES.** No person shall distribute samples of any drugs or medicine, or any corrosive, caustic, poisonous or other injurious substance unless the person delivers such into the hands of a competent person, or otherwise takes reasonable precautions that the substance will not be taken by children or animals from the place where the substance is deposited.

*(Code of Iowa, Sec. 727.1)*

**40.02.02 FALSE REPORTS TO OR COMMUNICATIONS WITH PUBLIC SAFETY ENTITIES.** No person shall do any of the following:

*(Code of Iowa, Sec. 718.6)*

1. Report or cause to be reported false information to a fire department, a law enforcement authority or other public safety entity, knowing that the information is false, or report the alleged occurrence of a criminal act knowing the act did not occur.
2. Telephone an emergency 911 communications center, knowing that he or she is not reporting an emergency or otherwise needing emergency information or assistance.
3. Knowingly provide false information to a law enforcement officer who enters the information on a citation.

**40.02.03 PROVIDING FALSE IDENTIFICATION INFORMATION.** No person shall knowingly provide false identification information to anyone known by the person to be a peace officer, emergency medical care provider, or firefighter, whether paid or volunteer, in the performance of any act that is within the scope of the lawful duty or authority of that officer, emergency medical care provider, or firefighter.

*(Code of Iowa, Sec. 719.1A)*

**40.02.04 REFUSING TO ASSIST OFFICER.** Any person who is requested or ordered by any magistrate or peace officer to render the magistrate or officer assistance in making or attempting to make an arrest, or to prevent the commission of any criminal act, shall render assistance as required. No person shall unreasonably and without lawful cause, refuse or neglect to render assistance when so requested.

*(Code of Iowa, Sec. 719.2)*

**40.02.05 HARASSMENT OF PUBLIC OFFICERS AND EMPLOYEES.** No person shall willfully prevent or attempt to prevent any public officer or employee from performing the officer's or employee's duty.

*(Code of Iowa, Sec. 718.4)*

**40.02.06 REMOVAL OF AN OFFICER'S COMMUNICATION OR CONTROL DEVICE.** No person shall knowingly or intentionally remove or attempt to remove a communication device or any device used for control from the possession of a peace officer or correctional officer, when the officer is in the performance of any act which is within the scope of the lawful duty or authority of that officer and the person knew or should have known the individual to be an officer.

*(Code of Iowa, Sec. 708.12)*

**40.02.07 INTERFERENCE WITH OFFICIAL ACTS.** No person shall knowingly resist or obstruct anyone known by the person to be a peace officer, emergency medical care provider or firefighter, whether paid or volunteer, in the performance of any act which is within the scope of the lawful duty or authority of that officer, emergency medical care provider or firefighter, or shall knowingly resist or obstruct the service or execution by any authorized person of any civil or criminal process or order of any court. The terms "resist" and "obstruct" as used in this section do not include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to execute a verbal threat physically.

*(Code of Iowa, Sec. 719.1)*

**40.02.08 ABANDONED OR UNATTENDED REFRIGERATORS.** No person shall abandon or otherwise leave unattended any refrigerator, ice box, or similar container, with doors that may become locked, outside of buildings and accessible to children, nor shall any person allow any such refrigerator, ice box, or similar container, to remain outside of buildings on premises in the person's possession or control, abandoned or unattended and so accessible to children.

*(Code of Iowa, Sec. 727.3)*

**40.02.09 ANTENNA AND RADIO WIRES.** It is unlawful for a person to allow antenna wires, antenna supports, radio wires, or television wires to exist over any street, alley, highway, sidewalk, public way, public ground, or public building without written consent of the Council.

*(Code of Iowa, Sec. 364.12[2])*

**40.02.10 TRAPPING.** No person shall set or use a steel, claw, or box trap outside of any structure or building for the purpose of taking, killing, maiming, wounding, ensnaring, trapping, or capturing an animal or which is injurious to persons or animals except for the following:

1. Any trap designed for the primary use of capturing mice, rats, gophers, moles, or aquatic rodents which are trapped in water;
2. Any trapping by a governmental unit to capture animals which are creating a public nuisance or for the protection of public or private property.

**40.02.11 URINATING AND DEFECATING.** It is unlawful for any person to urinate or defecate onto any sidewalk, street, alley, or other public way, or onto any public or private building, including but not limited to the wall, floor, hallway, steps, stairway, doorway, or window thereof, or onto any public or private land.

**40.02.12 FIREWORKS.** The sale, use and exploding of fireworks within the City are subject to the following:

1. Definition. For purposes of this section, definitions are enumerated in the Iowa Code section 727.2, which definitions are incorporated herein by reference.

*(Code of Iowa, Sec. 727.2)*

2. Use of Consumer Fireworks Prohibited. It is unlawful for any person to use or explode Consumer Fireworks within the City limits. Any person who violates this provision shall be guilty of a simple misdemeanor, punishable by a fine of six hundred twenty-five dollars (\$625.00).

*(Code of Iowa, Sec. 364.2 & 727.2)*

3. Use of Display Fireworks Prohibited. It is unlawful for any person to use or explode Display Fireworks within the City limits, provided the City may, upon application in writing, grant a permit for the use of Display Fireworks by a City agency, fair associations, amusement parks and other organizations or groups of individuals approved by City authorities when such fireworks display will be handled by a competent operator. No permit shall be granted hereunder unless the operator or sponsoring organization has filed with the City evidence of insurance in the following amounts:

- |                     |                      |
|---------------------|----------------------|
| A. Personal Injury: | \$500,000 per person |
| B. Property Damage: | \$500,000            |
| C. Total Exposure:  | \$2,000,000          |

Any person who violates this provision shall be guilty of a simple misdemeanor, punishable by a fine of six hundred twenty-five dollars (\$625.00).

*(Code of Iowa, Sec. 364.2 & 727.2)*

4. Sale of Consumer Fireworks. It is unlawful for any person to offer for sale, expose for sale, or sell at retail Consumer Fireworks, unless such person holds a valid Consumer Fireworks Seller License pursuant to Iowa Code Chapter 100.19 and, provided, the sale of the same is otherwise authorized by applicable building or zoning regulations. It is further unlawful to sell Consumer Fireworks to a person who is less than eighteen (18) years of age, and for any person who is less than eighteen (18) years of age to purchase or attempt to purchase Consumer Fireworks. Any person who violates any prohibition under this section shall be guilty of a simple misdemeanor, punishable by a fine of six hundred twenty-five dollars (\$625.00).

*(Code of Iowa, Sec. 100.19 & 727.2)*

5. Sale of Display Fireworks. It is unlawful for any person to offer for sale, expose for sale, sell, display, or sell at retail any Display Fireworks, except that the City may permit the display of the same as set forth in Subsection 3 above.

*(Code of Iowa, Sec. 727.2(2))*

6. Exceptions. This section does not prohibit the sale by a resident, dealer, manufacturer or jobber of such fireworks as are not prohibited by this section and which occurs in accordance with applicable building or zoning regulations; the sale of fireworks if they are to be shipped out of State; the sale or use of blank cartridges for a show or theatre, for signal purposes in athletic sports or by railroads or trucks for signal purposes, or by a recognized military organization. This section does not apply to any substance or composition prepared and sold for medicinal or fumigation purposes.

*(Code of Iowa, Sec. 727.2(5))*

*(Sec. 40.02.12 – Ord. 18-17 – Nov. 18 Supp.)*

**40.02.13 LITTERING PROHIBITED.** No person shall discard any litter onto or in any water or land, except that nothing in this section shall be construed to affect the authorized collection and discarding of such litter in or on areas or receptacles provided for such purpose. When litter is discarded from a motor vehicle, the driver of the motor vehicle shall be responsible for the act in any case where doubt exists as to which occupant of the motor vehicle actually discarded the litter.

*(Code of Iowa, Sec. 455B.363)*

**40.02.14 OPEN DUMPING PROHIBITED.** No person shall dump or deposit or permit the dumping or depositing of any solid waste on the surface of the ground or into a body or stream of water at any place other than a sanitary disposal project approved by the Director of the State Department of Natural Resources, unless a special permit to dump or deposit solid waste on land owned or leased by such person has been obtained from the Director of the State Department of Natural Resources. However, this section does not prohibit the use of rubble at places other than a sanitary disposal project. "Rubble" means dirt, stone, brick, or similar inorganic materials used for beneficial fill, landscaping, excavation, or grading at places other than a sanitary disposal project. Rubble includes asphalt waste only as long as it is not used in contact with water in a floodplain. For purposes of this section, rubble does not mean gypsum or gypsum wallboard, coal combustion residue, foundry sand, or industrial process wastes unless those wastes are approved by the State Department of Natural Resources.

*(Code of Iowa, Sec. 455B.301, Sec. 455B.307 and IAC, 567-100.2)*

**40.02.15 SMOKING AND TOBACCO USE PROHIBITED AT CITY FACILITIES.**

1. Definitions.

A. City Facilities. The term "city facilities" means all property, whether or not enclosed, under the control of the City of Windsor Heights (City). City facilities include, but are not limited to, all: work areas; employee lounges; restrooms; conference rooms; classrooms; cafeterias; meeting rooms; elevators; stairways; parking garages; parking lots; vehicles and equipment owned, rented, or leased by the City; and any public or private area open to the public for recreational purposes, such as fairgrounds; athletic fields; beaches; gardens; parks; parklets; plazas; skate parks; swimming pools; trails; outdoor picnic tables; and grassy areas. City facilities do not include streets and sidewalks used only as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this section or other law.

B. Electronic Smoking Device. The term "electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine or other substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

C. Smoking. The term "smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco, nicotine, or plant product intended for inhalation, including hookah and marijuana, whether natural or synthetic. "Smoking" also includes the use of an electronic smoking device.

D. Tobacco Product. The term "tobacco product" means any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated,



chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" also includes electronic smoking devices. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

2. Smoking and Tobacco Use Prohibited. Smoking and tobacco use is prohibited in all City facilities at all times. No person shall smoke, use, sell or distribute any tobacco product at or on any City facilities.

3. Violations. Violations of this section are declared to be municipal infractions pursuant to Chapter 4 of this Code of Ordinances. Any person who smokes or uses tobacco in an area where smoking and tobacco use is prohibited by the provisions of this section shall be guilty of a municipal infraction, punishable by a fine not exceeding fifty dollars (\$50) for a first offense and one hundred (\$100) for any repeat offense.

*(Section 40.02.15 – Ord. 18-13 – Nov. 18 Supp.)*

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## CHAPTER 40 – PUBLIC OFFENSES

### SUBCHAPTER 40.03

## PUBLIC AND PRIVATE PROPERTY

40.03.01 Trespassing	40.03.06 Use of Streets
40.03.02 Criminal Mischief	40.03.07 Picketing of a Residence or Dwelling
40.03.03 Defacing Proclamations or Notices	40.03.08 Use of Public Property for Drug Trafficking
40.03.04 Fraud and Theft	40.03.09 Graffiti Prohibited
40.03.05 Coasters and Roller Skates	

#### 40.03.01 TRESPASSING.

1. Prohibited. It is unlawful for a person to knowingly trespass upon the property of another.

*(Code of Iowa, Sec. 716.8)*

2. Definitions. For purposes of this section:

*(Code of Iowa, Sec. 716.7[1])*

A. “Property” includes any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure, whether publicly or privately owned.

B. “Public utility” is a public utility as defined in Section 476.1 of the *Code of Iowa* or an electric transmission line as provided in Chapter 478 of the *Code of Iowa*.

C. “Public utility property” means any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure owned, leased, or operated by a public utility and that is completely enclosed by a physical barrier of any kind.

D. “Railway corporation” means a corporation, company, or person owning, leasing, or operating any railroad in whole or in part within this State.

E. “Railway property” means all tangible real and personal property owned, leased, or operated by a railway corporation, with the exception of any administrative building or offices of the railway corporation.

- F. “Trespass” means one or more of the following acts:

*(Code of Iowa, Sec. 716.7[2a])*

(1) Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense or to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate.

(2) Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public

employee whose duty it is to supervise the use or maintenance of the property.

(3) Entering upon or in property for the purpose or with the effect of unduly interfering with the lawful use of the property by others.

(4) Being upon or in property and wrongfully using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.

(5) Entering or remaining upon or in railway property without lawful authority or without the consent of the railway corporation which owns, leases, or operates the railway property. This paragraph does not apply to passage over a railroad right-of-way, other than a track, railroad roadbed, viaduct, bridge, trestle, or railroad yard, by an unarmed person if the person has not been notified or requested to abstain from entering onto the right-of-way or to vacate the right-of-way and the passage over the right-of-way does not interfere with the operation of the railroad.

(6) Entering or remaining upon or in public utility property without lawful authority or without the consent of the public utility that owns, leases, or operates the public utility property. This paragraph does not apply to passage over public utility right-of-way by a person if the person has not been notified or requested by posted signage or other means to abstain from entering onto the right-of-way or to vacate the right-of-way.

3. Specific Exceptions. "Trespass" does not mean either of the following:  
(*Code of Iowa, Sec. 716.7[2b]*)

A. Entering upon the property of another for the sole purpose of retrieving personal property which has accidentally or inadvertently been thrown, fallen, strayed, or blown onto the property of another, provided that the person retrieving the property takes the most direct and accessible route to and from the property to be retrieved, quits the property as quickly as is possible, and does not unduly interfere with the lawful use of the property. This paragraph does not apply to public utility property where the person has been notified or requested by posted signage or other means to abstain from entering.

B. Entering upon the right-of-way of a public road or highway.

**40.03.02 CRIMINAL MISCHIEF.** It is unlawful, for any person who has no right to do so, to intentionally damage, deface, alter, or destroy property.

(*Code of Iowa, Sec. 716.1*)

**40.03.03 DEFACING PROCLAMATIONS OR NOTICES.** It is unlawful for a person intentionally to deface, obliterate, tear down, or destroy in whole or in part, any transcript or extract from or of any law of the United States or the State, or any proclamation, advertisement or notification, set up at any place within the City by authority of the law or by order of any court, during the time for which the same is to remain set up.

(*Code of Iowa, Sec. 716.1*)

**40.03.04 FRAUD AND THEFT.** It is unlawful for any person to commit a fraudulent practice in the fifth degree as defined in Sections 714.8 and 714.13 of the *Code of Iowa* or to commit theft in the fifth degree as defined in Sections 714.1 and 714.2 of the *Code of Iowa*. A person commits theft when the person does any of the following:

*(Code of Iowa, Sec. 714.1)*

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.
2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person.
3. Obtains the labor or services of another, or a transfer of possession, control, or ownership of the property of another, or the beneficial use of property of another, by deception.
4. Exercises control over stolen property, knowing such property to have been stolen, or having reasonable cause to believe that such property has been stolen, unless the person's purpose is to promptly restore it to the owner or to deliver it to an appropriate public officer.
5. Takes, destroys, conceals, or disposes of property in which someone else has a security interest, with intent to defraud the secured party.
6. Makes, utters, draws, delivers, or gives any check, share draft, draft, or written order on any bank, credit union, person or corporation, and obtains property, the use of property, including rental property, or service in exchange for such instrument, if the person knows that such check, share draft, draft or written order will not be paid when presented.
7. Obtains gas, electricity, or water from a public utility or obtains cable television or telephone service from an unauthorized connection to the supply or service line or by intentionally altering, adjusting, removing, or tampering with the metering or service device so as to cause inaccurate readings.
8. Knowingly and without authorization accesses or causes to be accessed a computer, computer system or computer network, or any part thereof, for the purpose of obtaining computer services, information, or property or knowingly and without authorization and with the intent to permanently deprive the owner of possession, takes, transfers, conceals, or retains possession of a computer, computer system, or computer network or any computer software or computer program, or computer data contained in a computer, computer system, or computer network.
9. Obtains the temporary use of video rental property with the intent to deprive the owner of the use and possession of the video rental property without the consent of the owner, or lawfully obtains the temporary use of video rental property and fails to return the video rental property by the agreed time with the intent to deprive the owner of the use and possession of the video rental property without the consent of the owner. The aggregate value of the video rental property involved shall be the original retail value of the video rental property.
10. Any act that is declared to be theft by any provision of the *Code of Iowa*.

**40.03.05 COASTERS AND ROLLER SKATES.** No person upon roller skates or riding in or by means of any coaster, toy vehicle, or similar device shall go upon any roadway except when crossing a street on a crosswalk.

**40.03.06 USE OF STREETS.**

1. Removal of Warning Devices. It is unlawful for a person to willfully remove, throw down, destroy or carry away from any street or alley any lamp, obstruction, guard or other article or things, or extinguish any lamp or other light, erected or placed thereupon for the purpose of guarding or enclosing unsafe or dangerous places in said street or alley without the consent of the person in control thereof.

*(Code of Iowa, Sec. 716.1)*

2. Obstructing or Defacing. It is unlawful for any person to obstruct, deface, or injure any street or alley in any manner.

*(Code of Iowa, Sec. 716.1)*

3. Placing Debris On. It is unlawful for any person to throw or deposit on any street or alley any glass, glass bottle, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, leaves, grass or any other debris likely to be washed into the storm sewer and clog the storm sewer, or any substance likely to injure any person, animal or vehicle.

*(Code of Iowa, Sec. 321.369)*

4. Playing In. It is unlawful for any person to coast, sled, or play games on streets or alleys, except in the areas blocked off by the City for such purposes.

*(Code of Iowa, Sec. 364.12[2])*

5. Traveling on Barricaded Street or Alley. It is unlawful for any person to travel or operate any vehicle on any street or alley temporarily closed by barricades, lights, signs, or flares placed thereon by the authority or permission of any City official, police officer or member of the Fire Department.

6. Use for Business Purposes. It is unlawful to park, store or place, temporarily or permanently, any machinery or junk or any other goods, wares, and merchandise of any kind upon any street or alley for the purpose of storage, exhibition, sale or offering same for sale, without permission of the Council.

7. Washing Vehicles. It is unlawful for any person to use any public sidewalk, street, or alley for the purpose of washing or cleaning any automobile, truck equipment, or any vehicle of any kind when such work is done for hire or as a business. This does not prevent any person from washing or cleaning his or her own vehicle or equipment when it is lawfully parked in the street or alley.

8. Burning Prohibited. No person shall burn any trash, leaves, rubbish, or other combustible material in any curb and gutter or on any paved or surfaced street or alley.

**40.03.07 PICKETING OF A RESIDENCE OR DWELLING.** It is unlawful for any person to engage in focused picketing before, about, or immediately adjacent to the residential lot or dwelling of any individual in the City.

1. For the purpose of this section, “before, about, or immediately adjacent to” means:

A. Within one house on either side of the targeted residential lot or dwelling; or

- B. On any public property immediately adjacent to the targeted residential lot or dwelling; or
  - C. On any public property directly across the street from the targeted residential lot or dwelling.
2. For the purpose of this section, “focused picketing” means any picketing or organized demonstration that is intended or can be reasonably viewed as one or more of the following:
- A. Intended or reasonably calculated to cause emotional distress or disturbance to the occupants of the targeted residential lot or dwelling; or
  - B. Causing emotional distress or disturbance to the occupants of the targeted residential lot or dwelling; or
  - C. Intended or reasonably calculated to disturb the sense of peace and tranquility of the occupants of the targeted residential lot or dwelling; or
  - D. Causing a disturbance to the sense of peace and tranquility of the occupants of the targeted residential lot or dwelling.

**40.03.08 USE OF PUBLIC PROPERTY FOR DRUG TRAFFICKING.**

- 1. No person shall behave in or upon any public property in a manner in and under circumstances by which he or she manifests the purpose of inducing, inviting, enticing, persuading, soliciting, or procuring another to conduct an illegal drug transaction.
- 2. The violator’s conduct must be such as to demonstrate a specific intent to induce, invite, entice, persuade, solicit, or procure another to conduct an illegal drug transaction.
- 3. Intent to induce, invite, entice, persuade, solicit, or procure another to conduct an illegal drug transaction shall be shown by specific acts which may, but need not, include any of the following:
  - A. Repeatedly beckoning to, stopping, or attempting to stop or engage passersby in conversation; or
  - B. Repeatedly stopping or attempting to stop motor vehicle operators by hailing, waving of arms, or any other bodily gesture; or
  - C. Repeatedly interfering with the free passage of other persons.

**40.03.09 GRAFFITI PROHIBITED.** No person shall, by use of any substance whatsoever, including spray paint, inscribe graffiti upon any structure, sidewalk, street surface or other public or private property.

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## CHAPTER 40 – PUBLIC OFFENSES

### SUBCHAPTER 40.04

## DRUGS AND CONTROLLED SUBSTANCES

40.04.01 Purpose

40.04.02 Controlled Substance Defined

40.04.03 Drug Paraphernalia Defined

40.04.04 Determining Factors

40.04.05 Possession of Drug Paraphernalia

40.04.06 Manufacture, Delivery, or Offering For Sale

40.04.07 Possession of a Controlled Substance

**40.04.01 PURPOSE.** The purpose of this subchapter is to prohibit the use, possession with intent to use, manufacture, and delivery of drug paraphernalia as defined herein.

**40.04.02 CONTROLLED SUBSTANCE DEFINED.** The term “controlled substance” as used in this subchapter is defined as the term “controlled substance” is defined in the Uniform Controlled Substance Act, Chapter 124 of the *Code of Iowa*, as it now exists or is hereafter amended.

**40.04.03 DRUG PARAPHERNALIA DEFINED.** The term “drug paraphernalia” as used in this subchapter means all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, concealing, containing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Act, Chapter 124 of the *Code of Iowa*. It includes, but is not limited to:

1. Growing Kits. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
2. Processing Kits. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.
3. Isomerization Devices. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
4. Testing Equipment. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.
5. Scales. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
6. Diluents. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, used, intended for use, or designed for use in cutting controlled substances.
7. Separators; Sifters. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana.

8. Mixing Devices. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.
9. Containers. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
10. Storage Containers. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.
11. Injecting Devices. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
12. Ingesting-Inhaling Device. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing heroin, marijuana, cocaine, hashish, or hashish oil into the human body, such as:
  - A. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - B. Water pipes;
  - C. Carburetion tubes and devices;
  - D. Smoking and carburetion masks;
  - E. Roach clips, meaning objects used to hold burning materials, such as a marijuana cigarette that has become too small or too short to be held in the hand;
  - F. Miniature cocaine spoons and cocaine vials;
  - G. Chamber pipes;
  - H. Carburetor pipes;
  - I. Electric pipes;
  - J. Air driven pipes;
  - K. Chillums;
  - L. Bongs;
  - M. Ice pipes or chillers.

**40.04.04 DETERMINING FACTORS.** In determining whether an object is drug paraphernalia for the purpose of enforcing this subchapter, the following factors should be considered in addition to all other logically relevant factors:

1. Statements. Statements by an owner or by anyone in control of the object concerning its use.
2. Prior Convictions. Prior convictions, if any, of an owner, or of anyone in control of the object under any State or federal law relating to any controlled substance.
3. Proximity to Violation. The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substance Act, Chapter 124 of the *Code of Iowa*.
4. Proximity to Substances. The proximity of the object to controlled substances.

5. Residue. The existence of any residue of controlled substances on the object.
6. Evidence of Intent. Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of the Uniform Controlled Substances Act, Chapter 124 of the *Code of Iowa*.
7. Innocence of an Owner. The innocence of an owner, or of anyone in control of the object, as to a direct violation of the Uniform Controlled Substances Act, Chapter 124 of the *Code of Iowa*, should not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.
8. Instructions. Instructions, oral or written, provided with the object concerning its use.
9. Descriptive Materials. Descriptive materials accompanying the object which explain or depict its use.
10. Advertising. National and local advertising concerning its use.
11. Displayed. The manner in which the object is displayed for sale.
12. Licensed Distributor or Dealer. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
13. Sales Ratios. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise.
14. Legitimate Uses. The existence and scope of legitimate uses for the object in the community.
15. Expert Testimony. Expert testimony concerning its use.

**40.04.05 POSSESSION OF DRUG PARAPHERNALIA.** It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substance Act, Chapter 124 of the *Code of Iowa*.

**40.04.06 MANUFACTURE, DELIVERY, OR OFFERING FOR SALE.** It is unlawful for any person to deliver, possess with intent to deliver, manufacture with intent to deliver, or offer for sale drug paraphernalia, intending that the drug paraphernalia will be used, or knowing, or under circumstances where one reasonably should know that it will be used, or knowing that it is designed for use to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act, Chapter 124 of the *Code of Iowa*.

**40.04.07 POSSESSION OF A CONTROLLED SUBSTANCE.** It is unlawful to be in possession of a controlled substance in violation of the Uniform Controlled Substances Act, Chapter 124 of the *Code of Iowa*.

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## CHAPTER 40 – PUBLIC OFFENSES

### SUBCHAPTER 40.05

## WEAPONS

40.05.01 Lasers and Simulated Laser Devices  
40.05.02 Sale or Exchange of Daggers, Brass Knuckles  
40.05.03 Knives on School Property  
40.05.04 Blowguns

40.05.05 Slings and Slingshots  
40.05.06 Bows and Arrows  
40.05.07 Throwing and Shooting; Discharging Weapons  
40.05.08 Furnishing Weapons to Minors

#### 40.05.01 LASERS AND SIMULATED LASER DEVICES.

1. Definitions. Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms, for the purpose of this section, have the meanings given in this subsection.

A. “Laser” means any pointing device, siting device or other device that converts incident electromagnetic radiation of mixed frequencies to one or more discrete frequencies of highly amplified and coherent visible radiation. This includes any device that emits light amplified by the stimulated emission of radiation that is visible to the human eye.

B. “Minor” means any person under eighteen (18) years of age.

C. “School or other educational facility” means the buildings, grounds or facilities (or any portion thereof) owned, occupied by, or under the custody or control of public or private institutions for the primary purpose of providing educational or recreational instruction to students.

D. “Simulated laser” means any pointing device, siting device or other device that emits a beam of light similar in effect or appearance to that of a laser.

E. “Vehicle” means every device in, upon, or by which any person or property is, or may be, transported or drawn upon a street, including motor vehicles, motorcycles, and bicycles.

2. Pointing of Lasers at Individuals. No person shall use a laser or simulated laser in such a manner as to cause the beam of such laser or simulated laser to come into direct contact with another individual. A violation of this provision shall be classified as an “assault” under Section 40.01.01 of this Code of Ordinances and shall be punishable accordingly.

3. Pointing of Lasers at a Police Officer or Emergency Service Provider. No person shall use a laser or simulated laser in such a manner as to cause the beam of such laser or simulated laser to come into direct contact with a law enforcement official, uniformed police officer, uniformed traffic enforcement officer, uniformed member of a paid or volunteer fire department, uniformed emergency medical service worker, uniformed ambulance worker or other uniformed City, County, State, or federal peace officer, investigator or emergency service worker. A violation of this provision shall be classified as an “assault” under Section 40.01.01 of this Code of Ordinances. Any

person found guilty of this provision shall be punished with the maximum fine and jail time allowed by law.

4. **Pointing of Lasers at a Vehicle.** No person shall use a laser or simulated laser in such a manner as to cause the beam of such laser or simulated laser to come into direct contact with a vehicle. For purposes of this provision, the term “vehicle” includes only those vehicles being operated on a public street at the time the vehicle comes into contact with any laser or simulated laser. A violation of this provision shall be classified as “harassment” under Section 40.01.02 of this Code of Ordinances and shall be punishable accordingly.

5. **Pointing of Lasers at Police or Emergency Service Vehicles.** No person shall use a laser or simulated laser in such a manner as to cause the beam of such laser or simulated laser to come into direct contact with a vehicle being operated by a law enforcement official, uniformed police officer, uniformed traffic enforcement officer, uniformed member of a paid or volunteer fire department, uniformed emergency medical service worker, uniformed ambulance worker or other uniformed City, County, State, or federal peace officer, investigator, emergency service worker or law enforcement official on duty and performing official acts with the City. A violation of this provision shall be classified as “harassment” under Section 40.01.02 of this Code of Ordinances. Any person found guilty of this provision shall be punished with the maximum fine and jail time allowed by law.

6. **Pointing of Lasers at a Public Facility.** No person shall use a laser or simulated laser in such a manner as to cause the beam of such laser or simulated laser to come into direct contact with any facility, property, or equipment owned or operated by the City of Windsor Heights or any other governmental entity. A violation of this provision shall be classified as “harassment” under Section 40.01.02 of this Code of Ordinances. Any person found guilty of this provision shall be punished with the maximum fine and jail time allowed by law.

7. **Use of Lasers by Minors.** No person shall furnish to any minor by gift, sale, or otherwise, any laser or simulated laser unless: (i) said minor is on the property of a school or other educational facility and actually participating in a supervised school program at the time the minor is given actual possession of the laser or simulated laser; or (ii) said minor is using the laser or simulated laser on private property and in the direct supervision of an adult.

**40.05.02 SALE OR EXCHANGE OF DAGGERS, BRASS KNUCKLES.** No person shall exhibit for sale, exchange, gift, or any other purpose, in any showcase, show window, or other place, exposed to public view, any dagger, Bowie knife, stiletto, butterfly knife, switchblade knife, or other knife or instrument which opens by hand pressure applied to a button or other device in the handle of the knife or by operation of inertia, gravity, or both, throwing stars, or any other martial arts weapon, brass knuckles, or knuckles of lead, brass, or other metal or materials; or display any sign, poster, cartoon or card, suggesting the keeping for sale, exchange, or gift of any of the above described articles. Nothing in this section shall be deemed to prohibit the display of such articles for educational or historical purposes.

**40.05.03 KNIVES ON SCHOOL PROPERTY.** No person shall possess, own, or carry, on or about his or her person, whether concealed or not, any knife on primary or secondary school property within the City, with the exception of a knife or knives furnished by such school system or specifically authorized by such school system, and then only in connection with the specific activity for which so authorized.

**40.05.04 BLOWGUNS.** No person shall use any blowgun or similar device, or throw any stone, stick, or other substance in such a manner as to hit, injure, or endanger any person, window, or other property.

**40.05.05 SLINGS AND SLINGSHOTS.** No person shall keep, possess, sell, give, use, fire, shoot, or discharge any sling, slingshot, wrist slingshot, or wrist-supported slingshot of any type or kind within the corporate limits.

**40.05.06 BOWS AND ARROWS.** No person shall shoot a bow and arrow, except pursuant to the following subsections, within the City or within a City-owned park, without permission from the Chief of Police. Such permission shall limit the time and place of shooting and may be revoked by the Chief of Police. To “shoot a bow and arrow” means to place a nock of the arrow in the string of a bow or of any other object and to release the arrow in such fashion that when the string is pulled and released, the arrow thrusts forward.

1. General Regulations. No person shall shoot a bow and arrow within the City or in a City-owned park except as follows:

A. Any person may participate in a supervised program of physical education or competitive sports in a public or private school or in a City park area designated by the City.

B. Any person may shoot a bow and arrow at a public or private lane or range that has been certified by the Archery Lane Operators Association or the National Field Archery Association.

C. Any participant may shoot a bow and arrow in a tournament which either has been approved by the City Administrator at least one week prior to the time of the tournament and for which tournament rules have been submitted to the City Administrator, or is conducted at a licensed lane or range.

D. Any person may shoot a bow and arrow on private or school property provided the requirements of the following subsection are met.

2. Use of Bows and Arrows on Private Property. No person shall shoot a bow and arrow in such fashion that it travels beyond the boundaries of the private or school property on which the person is shooting. Any person shooting a bow and arrow on private or school property shall direct the arrow toward a backdrop composed of a substance which will not allow the arrow to pass through and such backdrop must extend at least five feet beyond the target on the top and both sides and must extend from the bottom of the target to the ground. The target shall be constructed and installed so that the target face cannot move more than two inches in any direction.

3. Use of Bows and Arrows for Hunts. No person shall shoot a bow and arrow within the City limits or in a City-owned park at any living being such as an animal, bird, fish or fowl.

4. Use of Bows and Arrows by Minors. No person shall furnish to any minor under 15 years of age by gift, sale, or otherwise, any arrows or components thereof unless said minor is participating in a supervised school program, or is practicing at an approved public or private archery lane or range, or is practicing on the private property of the supervising adult.

**40.05.07 THROWING AND SHOOTING; DISCHARGING WEAPONS.** It is unlawful for a person to throw stones, bricks, or missiles of any kind or to shoot, fire, or

discharge rifles, shotguns, revolvers, pistols, guns, air guns, BB guns, or firearms of any kind within the City limits except by authorization of the Council. The term "air gun" means any gun, including handguns, capable of propelling a pellet or other projectile from the barrel of such gun by non-explosive means, such as compressed air, CO<sub>2</sub>, or other gas. The term "BB gun" means any such gun capable of propelling a BB or other projectile from the barrel by means of a spring mechanism or air. The terms "shoot," "fire," and "discharge" mean the act of triggering the mechanism of such air gun or BB gun so that it propels a pellet, BB or other projectile from the barrel of such gun.

**40.05.08 FURNISHING WEAPONS TO MINORS.** No person shall give, sell, lend, or provide to any person under the age of eighteen (18) years any sword, dirk, dagger, or knife other than an ordinary penknife or pocketknife with a blade not to exceed three inches in length, or any spring blade, switch blade, or snap blade knife, or any blackjack, bludgeon, or similar weapon, or metallic knuckles, or any firearm, air gun, or other missile throwing device, or any ammunition or missiles for use therewith, or any explosive substance or device, or any other device designed primarily for use as a weapon; provided, however, arms, ammunition, and other equipment for hunting, fishing, and other lawful sports may be furnished to a person under the age of eighteen (18) years by or with the consent of that person's parent or guardian. No minor under 18 years of age shall possess, own, or carry on or about his or her person, whether concealed or not, within the City any knife which opens by hand pressure applied to a button, lever, switch, or other device in the handle of the knife or by operation of inertia, gravity or both. No person under the age of 18 shall shoot, fire, or discharge any air gun or BB gun unless under the direct supervision of an adult.

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## CHAPTER 40 – PUBLIC OFFENSES

### SUBCHAPTER 40.06

## ALCOHOL CONSUMPTION AND INTOXICATION

40.06.01 Persons Under Legal Age

40.06.02 Public Consumption or Intoxication

40.06.03 Open Containers in Motor Vehicles

40.06.04 Prohibited Sales and Acts

**40.06.01 PERSONS UNDER LEGAL AGE.** As used in this section, “legal age” means twenty-one (21) years of age or more.

1. Social Host. A person who is the owner or lessee of, or who otherwise has control over, property that is not a licensed premises shall not knowingly permit any person, knowing or having reasonable cause to believe the person to be under the age of eighteen, to consume or possess on such property any alcoholic liquor, wine, or beer. The provisions of this subsection do not apply to a landlord or manager of the property or to a person under legal age who consumes or possesses any alcoholic liquor, wine, or beer in connection with a religious observance, ceremony, or rite.

*(Code of Iowa, Sec. 123.47[1A])*

2. Purchase, Consume, or Possess. A person or persons under legal age shall not purchase or attempt to purchase, consume, or individually or jointly have alcoholic liquor, wine or beer in their possession or control; except in the case of liquor, wine or beer given or dispensed to a person under legal age within a private home and with the knowledge, presence and consent of the parent or guardian, for beverage or medicinal purposes or as administered to the person by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages, wine, and beer during the regular course of the person’s employment by a liquor control licensee, or wine or beer permittee under State laws.

*(Code of Iowa, Sec. 123.47[2])*

3. Misrepresentation of Age. A person under legal age shall not misrepresent the person’s age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee.

*(Code of Iowa, Sec. 123.49[3])*

**40.06.02 PUBLIC CONSUMPTION OR INTOXICATION.**

1. As used in this section unless the context otherwise requires:

A. “Arrest” means the same as defined in Section 804.5 of the *Code of Iowa* and includes taking into custody pursuant to Section 232.19 of the *Code of Iowa*.

B. “Chemical test” means a test of a person’s blood, breath, or urine to determine the percentage of alcohol present by a qualified person using devices and methods approved by the Commissioner of Public Safety.

C. “Peace officer” means the same as defined in Section 801.4 of the *Code of Iowa*.

D. "School" means a public or private school or that portion of a public or private school that provides teaching for any grade from kindergarten through grade twelve.

2. A person shall not use or consume alcoholic liquor, wine or beer upon the public streets or highways. A person shall not use or consume alcoholic liquor, wine, or beer in any public place, except premises covered by a liquor control license or a wine or beer permit. An exception to this provision shall be granted for legal consumption of wine or beer in City parks. A person shall not possess or consume alcoholic liquors, wine, or beer on public school property or while attending any public or private school-related function. A person shall not be intoxicated in a public place.

3. A person shall not simulate intoxication in a public place.

4. When a peace officer arrests a person on a charge of public intoxication under this section, the peace officer shall inform the person that the person may have a chemical test administered at the person's own expense. If a device approved by the Commissioner of Public Safety for testing a sample of a person's breath to determine the person's blood alcohol concentration is available, that is the only test that need be offered the person arrested. In a prosecution for public intoxication, evidence of the results of a chemical test performed under this subsection is admissible upon proof of a proper foundation. The percentage of alcohol present in a person's blood, breath, or urine established by the results of a chemical test performed within two hours after the person's arrest on a charge of public intoxication is presumed to be the percentage of alcohol present at the time of arrest.

*(Code of Iowa, Sec. 123.46)*

**40.06.03 OPEN CONTAINERS IN MOTOR VEHICLES.** [See Section 60.03.01(62) and 60.03.01(63) of this Code of Ordinances.]

**40.06.04 PROHIBITED SALE AND ACTS.** See Section 120.05 of this Code of Ordinances for restrictions imposed on persons or clubs holding a liquor license or retail wine or beer permit.

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## CHAPTER 40 – PUBLIC OFFENSES

### SUBCHAPTER 40.07

### MINORS

40.07.01 Cigarettes and Tobacco  
40.07.02 Contributing to Delinquency

40.07.03 Persons Under Legal Age

**40.07.01 CIGARETTES AND TOBACCO.** It is unlawful for any person under eighteen (18) years of age to smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes. Possession of tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes by a person under eighteen years of age shall not constitute a violation of this section if said person possesses the tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes as part of the person's employment and said person is employed by a person who holds a valid permit under Chapter 453A of the *Code of Iowa* or who lawfully offers for sale or sells cigarettes or tobacco products.

*(Code of Iowa, Sec. 453A.2)*

**40.07.02 CONTRIBUTING TO DELINQUENCY.** It is unlawful for any person to encourage any child under eighteen (18) years of age to commit any act of delinquency.

*(Code of Iowa, Sec. 709A.1)*

**40.07.03 PERSONS UNDER LEGAL AGE.** See Section 121.07 of this Code of Ordinances for provisions relating to persons selling, giving, or otherwise supplying tobacco, tobacco products, or cigarettes to persons under 18 years of age.

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## CHAPTER 40 – PUBLIC OFFENSES

### SUBCHAPTER 40.08

## PARK REGULATIONS

40.08.01 Park Hours	40.08.12 Buildings and Animals
40.08.02 Park Shelter, Performance Pavilion, and Bandstand Fees	40.08.13 Dogs and Pets
40.08.03 Parking	40.08.14 Posted Notices
40.08.04 Use of Drives Required	40.08.15 Unauthorized Signs
40.08.05 Public Meetings and Organized Uses	40.08.16 Moving Benches and Tables
40.08.06 Destruction of Plant or Animal Life	40.08.17 Removal of Wood, Grass, or Gravel
40.08.07 Fires	40.08.18 Golf Balls
40.08.08 Fireworks and Explosives	40.08.19 Power-Driven Model Airplanes
40.08.09 Waste Material and Littering	40.08.20 Responsibility of Parent or Guardian
40.08.10 Camping Areas	40.08.21 Roller Skates, Roller Blades, Skateboards, Coasters, Scooters, and Bicycles
40.08.11 Disorderly and Obscene Conduct; Nuisances	40.08.22 Misdemeanor

**40.08.01 PARK HOURS.** No person shall remain in any public park, community center, or City recreational facility during the periods of time set by this section unless special permission shall have been given by the City Administrator for such person or group of persons to remain there:

1. No person shall remain in or on any City park or the grounds thereof from 11:00 p.m. to 5:00 a.m. (Sunday through Thursday).
2. No person shall remain in or on any City park or the grounds thereof from 12:00 midnight to 5:00 a.m. (Friday and Saturday).
3. Any person can utilize any City greenbelt trail, bike trail, or walking trail twenty-four hours a day. *(Ord. 18-12 – Nov. 18 Supp.)*

**40.08.02 PARK SHELTER, PERFORMANCE PAVILION, AND BANDSTAND FEES.** The shelter house and the performance pavilion of the City Park located at 6900 School Street and the bandstand/gazebo located at Lions' Park behind City Hall at 1133 66<sup>th</sup> Street, may each be reserved for meetings, gatherings, and organized events, such as picnics, parties, and entertainment for charitable purposes, upon receipt of permission from the City Administrator and payment of a daily fee. Such assemblages shall be conducted in a lawful and orderly manner. The rental fees for the use of these facilities and associated amenities (such as audio-visual equipment) are established by resolution of the Council.

**40.08.03 PARKING.** All vehicles parked in a park shall be parked in designated parking areas.

**40.08.04 USE OF DRIVES REQUIRED.** No person shall drive any vehicle, or ride or drive any horse, in any portion of a park except upon the established drives or roadways therein or such other places as may be officially designated by the City.

**40.08.05 PUBLIC MEETINGS AND ORGANIZED USES.** Public meetings, religious, political, or otherwise, including picnics, parties, and entertainment for charitable or religious purposes, may be held in any public park upon first obtaining permission from the City Administrator. Such assemblages shall be conducted in a lawful and orderly manner, shall be

under the supervision of the City, and shall occupy such ground as may be reserved for them. Permits shall be obtained from the City Administrator for use of parks and facilities by organized groups for all such purposes including athletic and sporting activities.

**40.08.06 DESTRUCTION OF PLANT OR ANIMAL LIFE.** No unauthorized person shall in any manner deface, injure, or remove any tree, shrub, or plant standing or growing in any public park or recreation facility, or pick or destroy any flowers or seeds growing therein. No persons, except persons authorized, shall remove or attempt to remove, injure, or kill any wild or captive animal in any public park or recreation facility.

**40.08.07 FIRES.** No person shall kindle, build, maintain, or in any way light a fire in any public park in the City except in fireplaces provided, or in self-supporting barbecue grills or stoves in places designated as picnic areas, or by special written permit from the City Administrator after a determination that such fire creates no hazards to the park or to persons in the immediate vicinity. No fire shall be built within ten feet of any tree or building or beneath the branches of any tree or in any underbrush unless such fire is enclosed within a stove, oven, or fireplace provided on the premises by the City for use in picnic cooking. Any fire shall be continuously under the care and control of a competent person, from the time it is kindled until it is extinguished.

**40.08.08 FIREWORKS AND EXPLOSIVES.** No person shall use firearms, explosives, weapons, firecrackers, or fireworks of any character in any public park, except as otherwise provided by ordinance.

**40.08.09 WASTE MATERIAL AND LITTERING.** No person shall place, deposit, or throw any waste, refuse, litter, or foreign substance on the ground or in any area or receptacle in a park except in receptacles provided for that purpose. Park waste receptacles shall not be used for dumping trash or rubbish introduced in that form to the park.

**40.08.10 CAMPING AREAS.** No person shall camp in any portion of a park.

**40.08.11 DISORDERLY AND OBSCENE CONDUCT; NUISANCES.** No person shall use any loud, violent, obscene, or profane language while in any public park, nor shall any person conduct himself or herself in a disorderly or obscene manner or commit any nuisance therein.

**40.08.12 BUILDINGS AND ANIMALS.** No person shall disturb or interfere with any building or improvement of any kind made or being made in or about any public park, or disturb or interfere with birds or animals kept or found therein.

**40.08.13 DOGS AND PETS.** No dog or pet shall be allowed to run at large in any public park. Any dog or pet shall be deemed to be found running at large, unless the owner carries such dog or pet or leads such dog or pet by a chain, strap, or rope not exceeding six feet in length, or keeps any such dog or pet confined in an automobile. However, any dog or pet especially trained to assist a blind or partially blind person and accompanying such person shall not be deemed to be running at large, even though restraints as described herein are not used. Such person shall keep the guide dog under control and shall be liable for any damage done to the premises or facilities by the dog or pet. The Chief of Police shall remove and impound any dog or pet running at large in any public park.

**40.08.14 POSTED NOTICES.** No person shall enter upon any land owned or leased to the City and under its jurisdiction, and conduct activities thereon in disregard of signs or posted notices forbidding the same.

**40.08.15 UNAUTHORIZED SIGNS.** No person shall post, paste, fasten, paint, or affix any placard, bill, notice, or sign upon any structure, tree, stone, fence, or enclosure along or within any park.

**40.08.16 MOVING BENCHES AND TABLES.** No person shall move benches, seats, or tables from their places in any park except on picnic grounds.

**40.08.17 REMOVAL OF WOOD, GRASS, OR GRAVEL.** No person shall cut or remove any wood, turf, grass, soil, rock, sand, or gravel from any public park without written permission from the City Council.

**40.08.18 GOLF BALLS.** No one shall drive, hit, or play with a golf ball in any City park except in an area clearly designated by a sign permitting such activity, posted in a conspicuous place.

**40.08.19 POWER-DRIVEN MODEL AIRPLANES.** No one shall fly, glide, or play with a fuel-powered model airplane in any City park except in an area clearly designated by a sign permitting such activity, posted in a conspicuous place.

**40.08.20 RESPONSIBILITY OF PARENT OR GUARDIAN.** No parent, guardian, or custodian of a minor shall allow the minor to do any act prohibited by any provision of the rules set out by the provisions of this subchapter.

**40.08.21 ROLLER SKATES, ROLLER BLADES, SKATEBOARDS, COASTERS, SCOOTERS, AND BICYCLES.** No person shall ride in, ride upon, or in any manner operate any roller skates, roller blades, skateboard, coaster, scooter, bicycle, or similar devices in the following facilities: outdoor performance pavilion in Colby Park. The provisions of this section shall not apply to wheelchairs or other devices designed to aid handicapped or impaired persons when operated by a handicapped or impaired person.

**40.08.22 MISDEMEANOR.** Any person who violates Sections 40.08.01 through 40.08.20 of this subchapter shall be guilty of a misdemeanor. Any person violating Section 40.08.21 of this subchapter, in lieu of the standard penalty provided for violation of this Code of Ordinances, may suffer the person's roller skates, in-line skates, skateboard, coaster, scooter, bicycle, or similar device to be impounded for not less than five days for a first offense, ten days for a second offense, and 30 days for the third offense. The violator must pay an impound release fee of \$15.00, \$25.00, and \$35.00, respectively, in order for the impounded property to be released to the violator. Any person violating the provisions of Section 40.08.21 more than three times will forfeit the person's skates, scooter, coaster, skateboard, or bicycle and be subject to a fine of not less than \$250.00 or more than \$750.00.

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## CHAPTER 40 – PUBLIC OFFENSES

### SUBCHAPTER 40.09

## OTHER PUBLIC OFFENSES ENFORCEMENT PROVISIONS

40.09.01 Peddlers, Solicitors, and Transient Merchants  
40.09.02 Adult Entertainment Facilities

40.09.03 Sidewalk Regulations

#### **40.09.01 PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS.**

1. License Required. See Section 122.02 of this Code of Ordinances for provisions relating to licenses required for persons engaged in peddling and soliciting.
2. Display of License. See Section 122.07 of this Code of Ordinances for provisions requiring peddlers and solicitors to keep license available.
3. Time Restrictions. See Section 122.09 of this Code of Ordinances for provisions relating to times when peddlers and solicitors may operate.

**40.09.02 ADULT ENTERTAINMENT FACILITIES.** See Chapter 125 of this Code of Ordinances for provisions relating to the operation of an adult entertainment facility.

#### **40.09.03 SIDEWALK REGULATIONS.**

1. Interference with Sidewalk Improvements. See Section 136.12 of this Code of Ordinances for provisions relating to driving vehicles upon or removing, destroying, marring or defacing any part of a sidewalk.
2. Fires or Fuels. See Section 136.15 of this Code of Ordinances for provisions relating to fires or fuels on sidewalks.
3. Defacing. See Section 136.16 of this Code of Ordinances for provisions relating to painting or writing on sidewalks.
4. Debris. See Section 136.17 of this Code of Ordinances for provisions relating to throwing or depositing trash or debris of any kind on sidewalks.
5. Merchandise Display. See Section 136.18 of this Code of Ordinances for provisions relating to sale of merchandise on sidewalks.
6. Sales Stands. See Section 136.19 of this Code of Ordinances for provisions relating to vending machines or other sales stands on sidewalks.

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## CHAPTER 50

# NUISANCE ABATEMENT PROCEDURE

50.01 Definition of Nuisance  
50.02 Nuisances Enumerated  
50.03 Nuisances Prohibited  
50.04 Nuisance Abatement

50.05 Abatement of Nuisance by Written Notice  
50.06 Municipal Infraction Abatement Procedure  
50.07 Termination of Rental Certificate

**50.01 DEFINITION OF NUISANCE.** Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property so as essentially to interfere unreasonably with the comfortable enjoyment of life or property is a nuisance.

*(Code of Iowa, Sec. 657.1)*

**50.02 NUISANCES ENUMERATED.** The following subsections include, but do not limit, the conditions that are deemed to be nuisances in the City:

*(Code of Iowa, Sec. 657.2)*

1. **Offensive Smells.** Erecting, continuing or using any building or other place for the exercise of any trade, employment, or manufacture which, by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals or the public.
2. **Filth or Noisome Substance.** Causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others.
3. **Water Pollution.** Corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.
4. **Blocking Public and Private Ways.** Obstructing or encumbering, by trees, hedges, fences, billboards, buildings, or other obstructions (including moveable objects), the public roads, private ways, streets, alleys, commons, landing places, or burying grounds. All obstructions, whether natural or manmade, which hinder persons from having an adequate view of traffic so as to prevent them from the continued safe travel on a public street.
5. **Prostitution; Gambling; Gang Activity.** Real or personal property kept for the purpose of prostitution and lewdness; unlawful gambling; places resorted to by persons participating in criminal gang activity prohibited by Chapter 723A of the *Code of Iowa*, or places resorted to by persons using controlled substances, as defined in *Code of Iowa* Section 124.101, subsection 5, in violation of law, or real or personal property where drunkenness, quarreling, fighting or breaches of the peace are carried on or permitted to the disturbance of others.
6. **Billboards.** Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard, or alley or of a railroad or street railway track as to render dangerous the use thereof.
7. **Obstructing Air Traffic.** Any object or structure erected within one thousand (1,000) feet of the limits of any municipal or regularly established airport or landing

place, which may endanger or obstruct aerial navigation including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

8. Storing of Flammable Material. Depositing or storing of flammable material, including (but not limited to) old rags, rope, cordage, rubber, bones, and paper, by dealers in such articles within the fire limits of the City, unless in a building of fireproof construction.

9. Air Pollution. Emission of dense smoke, noxious fumes, or fly ash.

10. Weeds, Brush. Dense growth of all weeds, vines, brush, or other vegetation in the City so as to constitute a health, safety, or fire hazard, or which otherwise constitute a nuisance under this chapter. For purposes of this subsection, all growths of grass or weeds in excess of six inches (6") in height shall be deemed to be a nuisance. Exempt from this subsection are growths used primarily for educational and/or research purposes, so long as the growths are controlled. Also exempt from this subsection is ornamental grass.

11. Diseased or Damaged Trees or Plant Materials. Any dead, diseased, or damaged trees or plant materials, which may harbor serious insect or disease pests or diseases injurious to other trees or plant materials, or any healthy tree in such a state of deterioration that any part of such tree is likely to fall and damage property or cause injury to persons.

12. Damaged Vehicles. The storage of damaged vehicles, as defined in Chapter 51 of this Code of Ordinances.

13. Junk or Abandoned Vehicles. The storage of junk or abandoned vehicles, as defined in Chapter 52 of this Code of Ordinances.

14. Sewage. The discharge or exposure of sewage, garbage, or any other organic waste matter into or on any public place.

15. Poison. The deposit of any poisonous material or thing on any premises, so as to allow access to it by any animal or person.

16. Stagnant Water. Breeding places for mosquitoes, to include stagnant water in fish ponds, swimming pools, tires, open barrels, and other devices holding water.

17. Unsafe Signs. Any sign or sign structure which is structurally unsafe, or constitutes a hazard to safety or health by reason of its location, inadequate maintenance or dilapidation, or is not kept in good repair, or is capable of causing electric shocks to persons likely to come in contact with it, or which obstructs free ingress or egress from a required door, window, fire escape, or other required exit.

18. Obscene Signs. Signs accessible to the general public containing statements, words, or pictures of an obscene or pornographic character.

19. Construction Debris. Depositing or permitting to be deposited dirt, debris, or other sedimentation resultant from grading, construction, demolition, or repair activities:

A. Onto public rights-of-way in amounts which could cause a danger to public health, safety, or welfare; or

B. Into public storm sewers or drainage ways in amounts which could cause an obstruction to the flow of same; or

- C. Into a public stream, river, or lake in amounts which could cause pollution of same.
20. Dangerous Structures. Residential or nonresidential structures, the condition of which constitutes a hazard to safety or to health as determined by the Building Official.
21. Vacant Buildings or Sheds. Unoccupied buildings or sheds found to be frequently open or accessible and vacated for more than six months.
22. Faulty Water Service. Discharge of water upon or under public streets or sidewalks by reason of faulty water service.
23. Noise Pollution. Any sound which disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans as defined in Chapter 54 of this Code of Ordinances.
24. Litter. Any decomposable or non-decomposable solid or other waste material as defined in Chapter 53 of this Code of Ordinances.
25. Hazardous Accumulations. Accumulation of rubbish or trash and rank growth of weeds or other vegetation and plants tending to harbor vermin and/or rodents, or which are otherwise conducive to hazard.
26. Snow and Ice on Sidewalks. All snow and ice not removed from public sidewalks forty-eight (48) hours after the snow and ice have ceased being deposited thereon from one continuous event.
27. Tree Limbs. All tree limbs which are less than eight (8) feet above the surface of any public sidewalk or which are less than fourteen (14) feet above the traveled way of any public street.
28. Structures Damaged by Fire or Decay. All buildings, walls, and other structures which have been damaged by fire, decay, or otherwise to an extent exceeding half of their original value and which are so situated as to endanger the safety of the public.
29. Open Accumulation of Inoperable Vehicles, Machinery, or Appliances. Accumulation in the open of parked, stored, discarded, or disused machinery; unlicensed, unregistered or damaged or inoperable vehicle; household appliance; automobile or other vehicle body, parts, or components thereof, or any material parked, stored, discarded, or disused in a manner conducive to the harboring of rats, mice, snakes, or vermin, or to fire, health, or safety hazards from such accumulation of other material or from the rank growth of vegetation among the items so accumulated. This subsection does not apply to any vehicle in an enclosed building or so located upon the premises as not to be readily visible from any public place or from any surrounding private property. This subsection also does not apply with regard to any vehicle on the premises of a business enterprise operated in a lawful place, other than in a residential district, and operated in a lawful manner, when the keeping or maintenance of such vehicle is necessary to the operation of such business enterprise; or to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the City or any other public agency or entity.
30. Floodlights. Permitting or allowing the illumination of floodlights, yard lights, or similar lights to be focused in such a fashion so as to encroach upon the peaceful enjoyment of neighboring property.

31. Vehicles on Lawns. Vehicles parked on a lawn or parking surface not in compliance with Section 174.08 of this Code of Ordinances.
32. Dangerous Machinery. All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public.
33. Loose Overhanging Objects. Loose, overhanging objects or accumulations of ice or snow, which by reason of location above ground level constitute a danger of falling on persons in the vicinity thereof.
34. Fireworks. All use or display of fireworks except as permitted by law or this Code of Ordinances. The use of illegal fireworks will be deemed an immediate nuisance and shall be subject to enforcement by municipal infraction.
35. Required Improvements. Failure to install any improvement required by any portion of this Code or Ordinance, or other law or agreement.
36. Abandoned Appliances. Abandoning or otherwise leaving unattended any refrigerator, ice box, or similar container, with doors that may become locked or fastened, which are outside of enclosed buildings and may become accessible to children or others, or allowing any such refrigerator, ice box, or similar container, to remain outside of enclosed buildings on premises in the person's possession or control, abandoned or unattended and so accessible to children or others.
37. Cottonwood Trees. The planting of cotton-bearing cottonwood trees and all other cotton-bearing poplar trees.
38. Nuisance Houses. Houses that require more than one police response to the same location or address within a 180-day period, during which police response an officer makes a determination that something at or on the location or address is injurious to health, indecent, or unreasonably offensive to the senses, or is an obstruction to the free use of property, essentially interfering unreasonably with the comfortable enjoyment of life or property.

**50.03 NUISANCES PROHIBITED.** The creation or maintenance of a nuisance is prohibited, and a nuisance, public or private, may be abated in the manner provided for in this chapter or State law.

*(Code of Iowa, Sec. 657.3)*

**50.04 NUISANCE ABATEMENT.** Whenever any authorized municipal officer finds that a nuisance exists, such officer has the authority to determine on a case-by-case basis whether to utilize the nuisance abatement procedure described in Section 50.05 of this chapter or the municipal infraction procedure referred to in Section 50.06. With regard to the nuisance enumerated in Section 50.02(38) (Nuisance Houses), property owners will be notified after the first determination by a police officer that conditions exist posing a nuisance and that a second determination of this kind will immediately constitute the failure to abate a nuisance as outlined in Section 50.05(8), subjecting the property owner to applicable fines.

*(Code of Iowa, Sec. 364.12[3h])*

**50.05 ABATEMENT OF NUISANCE BY WRITTEN NOTICE.** Any nuisance, public or private, may be abated in the manner provided for in this section:

*(Code of Iowa, Sec. 364.12[3h])*

1. Contents of Notice to Property Owner. The notice to abate shall contain:

- A. Description of Nuisance. A description of what constitutes the nuisance.
  - B. Location of Nuisance. The location of the nuisance.
  - C. Acts Necessary to Abate. A statement of the act or acts necessary to abate the nuisance.
  - D. Reasonable Time. A reasonable time within which to complete the abatement.
  - E. Assessment of City Costs. A statement that if the nuisance or condition is not abated as directed and no request for hearing is made within the time prescribed, the City will abate it and assess any and all costs associated with such effort, including (but not limited to) collection costs, against the property owner.
2. Method of Service. The notice may be in the form of an ordinance or sent by certified mail to the property owner.  
*(Code of Iowa, Sec. 364.12[3h])*
  3. Request for Hearing. Any person ordered to abate a nuisance may have a hearing with the Council as to whether a nuisance exists. A request for a hearing must be made in writing and delivered to the Clerk within the time stated in the notice, or it will be conclusively presumed that a nuisance exists and it must be abated as ordered. The hearing will be before the Council at a time and place fixed by the Council. The findings of the Council shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a reasonable time under the circumstances.
  4. Abatement in Emergency. If it is determined that an emergency exists by reason of the continuing maintenance of the nuisance or condition, the City may perform any action that may be required under this chapter without prior notice. The City shall assess the costs as provided in subsection 6 of this section after notice to the property owner under the applicable provisions of subsection 1 and 2, and the hearing as provided in subsection 3.  
*(Code of Iowa, Sec. 364.12[3h])*
  5. Abatement by City. If the person notified to abate a nuisance or condition neglects or fails to abate as directed, the City may perform the required action to abate, keeping an accurate account of the expense incurred. The itemized expense account shall be filed with the Clerk, who shall pay such expenses on behalf of the City.  
*(Code of Iowa, Sec. 364.12[3h])*
  6. Collection of Costs. The Clerk shall send a statement of the total expense incurred, by certified mail, to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within 30 days after the statement was sent, the Clerk may retain attorneys and/or private collection agents for the purpose of collecting any default in payment of any fine or penalty or installment of that fine or penalty. Any fees or costs incurred by the City with respect to attorneys or private collection agents retained under this subsection shall be charged to the offender.  
*(Code of Iowa, Sec. 364.12[3h])*
  7. Installment Payment of Cost of Abatement. If the amount expended to abate the nuisance or condition exceeds five hundred dollars (\$500.00), the City may permit the assessment to be paid in up to ten (10) annual installments, to be paid in the same

manner and with the same interest rates provided for assessments against benefited property under State law.

*(Code of Iowa, Sec. 364.13)*

8. Failure to Abate. Any person causing or maintaining a nuisance who shall fail or refuse to abate or remove the same within the reasonable time required and specified in the notice to abate is in violation of this Code of Ordinances.

**50.06 MUNICIPAL INFRACTION ABATEMENT PROCEDURE.** In lieu of the abatement procedures set forth in Section 50.05, the requirements of this chapter may be enforced under the procedures applicable to municipal infractions as set forth in Chapter 4 of this Code of Ordinances.

**50.07 TERMINATION OF RENTAL CERTIFICATE.** Rental certificates shall automatically terminate and become null and void upon issuance of a nuisance abatement notice that is related, in any way, to property to which a rental certificate applies. The owner of any such rental property shall be required to register the property again, including the complete inspection process, as provided in Chapter 156 of this Code of Ordinances. Failure to obtain a valid rental certificate is a municipal infraction.

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## CHAPTER 51

# DAMAGED OR INOPERABLE VEHICLES

### 51.01 Definitions

### 51.02 Damaged or Inoperable Vehicle a Nuisance

### 51.03 Exceptions

### 51.04 Notice to Abate

### 51.05 Contents of Notice

### 51.06 Method of Service

### 51.07 Request for Hearing and Appeal

### 51.08 Duty of Owner to Abate

### 51.09 Abatement by City

**51.01 DEFINITIONS.** “Vehicle” means and includes any device in, upon or by which a person or property is or may be transported or drawn upon a highway or street, excepting devices moved by human power or used exclusively upon stationary rails or tracks, and includes, without limitation, motor vehicle, bus, motor home, automobile, truck, trailer, motorcycle, tractor, wagon or any combination thereof. A damaged or inoperable vehicle means any one of the above vehicles which is not licensed for the current year as required by law or which exhibits any one of the following characteristics:

1. It is not equipped with one or more operable headlamps as required by *Code of Iowa*, Section 321.385.
2. It is not equipped with one or more operable rear lamps when required by *Code of Iowa*, Section 321.387.
3. It is not equipped with operable brakes when required by *Code of Iowa*, Section 321.430 and 321.431.
4. It is not equipped with a muffler in good working order as required by *Code of Iowa*, Section 321.436.
5. It is not equipped with a windshield and one or more windows as required by *Code of Iowa*, Sections 321.438 and 321.444.
6. Any vehicle which is not equipped with tires or when the tires attached to the vehicle do not meet the requirements of *Code of Iowa*, Section 321.440.
7. Any vehicle or part of a vehicle with a broken or loose fender, door, bumper, hood, wheel, steering wheel, trunk top or tailpipe, all of which combined render its value less than 50% of the official *Kelley Blue Book* value.
8. Any vehicle which is lacking an engine or one or more wheels or other structural or part which renders such vehicle inoperable.
9. Any vehicle or part of a vehicle which has become a habitat for rats, mice or snakes or any other vermin or insects.
10. Any vehicle or part of a vehicle which, because of its defective condition, constitutes a threat to the public health and safety.
11. Any vehicle that is not capable of moving in both forward and reverse gears.
12. Any vehicle which is not equipped with a part or mechanism, the lack of which renders the vehicle inoperable.
13. Any vehicle that appears to be dismantled or partially dismantled, which cannot be made operable without the addition or replacement of vital parts or mechanisms.

14. Any vehicle or partially dismantled vehicle on private property outside of an enclosed building that has not been operated on a public roadway within the previous 180 days or more.

**51.02 DAMAGED OR INOPERABLE VEHICLE A NUISANCE.** The City hereby declares that the parking or storage of damaged vehicles on private property within the corporate limits of the City, where not authorized by law, is a nuisance because the same is injurious to health, indecent, and offensive to the senses, and is an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life and property.

**51.03 EXCEPTIONS.** The provisions of this chapter do not apply to:

1. Storage in Buildings. Damaged or inoperable vehicles kept on private property stored entirely within an enclosed building; or

2. On Premises of Licensed Vehicle Recycler. Damaged vehicles kept on private property in a GC or LI District under the Zoning Ordinance by a person licensed as an authorized vehicle recycler under the provisions of the *Code of Iowa*, Chapter 321H, when storage thereof is permitted under the certificate of occupancy issued for the private property involved.

3. Restoration. A single vehicle which is being restored, which would otherwise constitute a damaged or inoperable vehicle on private property, under the following conditions:

A. The owner of the vehicle shall register the vehicle with the City Clerk by obtaining a Vehicle Restoration Permit from the City Clerk. The City Clerk is authorized to issue a Vehicle Restoration Permit only if the owner of a vehicle meets the following conditions:

(1) Submits a completed and signed application form containing the name and address of the owner of the vehicle and the address of the private property on which the vehicle is to be stored and restored, together with the make, model, year, and description of the vehicle, including its vehicle identification number. In addition, the applicant shall submit evidence satisfactory to the City Clerk that the vehicle will be appropriately covered during any period of outdoor storage.

(2) Provides proof of liability insurance for said vehicle.

(3) Pays a fee of fifty dollars (\$50.00).

B. A Vehicle Restoration Permit shall be valid for a period of one year from the date of issuance and may be renewable for a second one-year period if the applicant meets the conditions as provided herein. Only one permit may be issued per property; the maximum period permitted by the City for restoring an antique or classic vehicle which would otherwise constitute a damaged or inoperable vehicle is two years.

**51.04 NOTICE TO ABATE.** Whenever the City Administrator or other authorized municipal officer, including a peace officer, finds that a damaged vehicle is stored on private property in violation of this chapter, the officer shall cause a written notice to abate to be served upon the owner of the private property as shown by the records of the Polk County Auditor. A copy of the notice to abate shall be served upon the owner of the damaged vehicle if such owner

is different than the owner of the private property involved and his or her identity can be readily ascertained.

**51.05 CONTENTS OF NOTICE.** The notice to abate shall contain:

1. The name and mailing address of the owner of the private property involved.
2. The local address of the property involved if different than the mailing address of the owner.
3. A brief description of the property, including street address, involved.
4. The date on which the condition or conditions were noted.
5. A description of each damaged vehicle observed, the name and address of the owner thereof, if known, and the condition or conditions observed.
6. A statement that each damaged vehicle must be removed or repaired within ten (10) days from the date of receipt of the notice to abate.
7. A statement that the owner has a right to a hearing before the Chief of Police by filing a written request therefor with such officer within ten (10) days from the date of receipt of the notice to abate.
8. A statement that if the damaged vehicle is not removed or repaired as directed, and no request for hearing is made within the time prescribed, the City will remove the damaged vehicle and assess the costs thereof to the owner of the private property involved.

**51.06 METHOD OF SERVICE.** The notice to abate shall be served upon the owner of the private property, and the owner of the damaged or inoperable vehicle, if different than the owner of the private property involved and if his or her identity can be readily ascertained, by personal service, or by certified mail, return receipt requested.

**51.07 REQUEST FOR HEARING AND APPEAL.** The owner of the private property of record may request a hearing before a hearing officer to determine whether a nuisance or prohibited condition exists. A request for hearing must be made in writing and must be delivered to the Chief of Police within ten (10) days from the date of receipt of the notice or it will be conclusively presumed that a nuisance or prohibited condition exists and that it must be abated as ordered. At the conclusion of the hearing, the hearing officer shall render a written decision as to whether a nuisance or prohibited condition exists. If the hearing officer finds that a nuisance or prohibited condition exists, the hearing officer must order it abated within an additional time which must be reasonable under the circumstances. An appeal from this decision may be had by immediately filing a written notice with the hearing officer. This appeal will be heard before the City Council at a time and place fixed by the Council. The findings of the Council shall be conclusive and, if a nuisance or prohibited condition is found to exist, it shall be ordered abated within a time reasonable under the circumstances.

**51.08 DUTY OF OWNER TO ABATE.** The owner of private property upon which a damaged vehicle is found must, within ten (10) days after receipt of the notice to abate or such other time as may be fixed on hearing or appeal:

1. Remove the damaged vehicle to a lawful place of storage; or
2. Repair the damaged vehicle to remove all defects which cause the vehicle to violate the provisions of this chapter.

**51.09 ABATEMENT BY CITY.** If the owner of private property upon which a damaged vehicle is found neglects or fails to remove or repair the same as required by Section 51.08 of this chapter within ten (10) days after receipt of the notice to abate, or such other time as may be fixed on hearing or appeal, the Chief of Police shall abate such nuisance by causing the damaged or inoperable vehicle to be impounded. The Chief of Police shall keep an accurate account of the expenses incurred. The itemized expense account shall be filed with the City Administrator who shall cause such expense to be paid by the City.

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## CHAPTER 52

# ABANDONED VEHICLES

52.01 Definitions

52.02 Authority to Take Possession of Abandoned Vehicles

52.03 Notice by Mail

52.04 Notification in Newspaper

52.05 Fees for Impoundment

52.06 Disposal of Abandoned Vehicles

52.07 Disposal of Totally Inoperable Vehicles

52.08 Proceeds from Sales

52.09 Duties of Demolisher

52.10 Bids for Towing and Storage

**52.01 DEFINITIONS.** For use in this chapter, the following terms are defined:

*(Code of Iowa, Sec. 321.89[1] & Sec. 321.90)*

1. “Abandoned vehicle” means any of the following:
  - A. A vehicle that has been left unattended on public property for more than twenty-four (24) hours and lacks current registration plates or two or more wheels or other parts which renders the vehicle totally inoperable.
  - B. A vehicle that has remained illegally on public property for more than 24 hours.
  - C. A vehicle that has been unlawfully parked or placed on private property without the consent of the owner or person in control of the property for more than 24 hours.
  - D. A vehicle that has been legally impounded by order of a police authority and has not been reclaimed for a period of ten (10) days. However, a police authority may declare the vehicle abandoned within the ten-day period by commencing the notification process.
  - E. Any vehicle parked on the highway determined by a police authority to create a hazard to other vehicle traffic.
  - F. A vehicle that has been impounded pursuant to Section 321J.4B of the *Code of Iowa* by order of the court and whose owner has not paid the impoundment fees after notification by the person or agency responsible for carrying out the impoundment order.
2. “Demolisher” means a person licensed under Chapter 321H of the *Code of Iowa* whose business it is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck, or dismantle vehicles.
3. “Garage keeper” means any operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of motor vehicles.
4. “Police authority” means the Iowa State Patrol or any law enforcement agency of a county or city.

**52.02 AUTHORITY TO TAKE POSSESSION OF ABANDONED VEHICLES.** A police authority, upon the authority’s own initiative or upon the request of any other authority having the duties of control of highways or traffic, shall take into custody an abandoned vehicle on public property and may take into custody any abandoned vehicle on private property. The police authority may employ its own personnel, equipment, and facilities or hire a private entity,

equipment, and facilities for the purpose of removing, preserving, storing, or disposing of abandoned vehicles. A property owner or other person in control of private property may employ a private entity that is a garage keeper to dispose of an abandoned vehicle, and the private entity may take into custody the abandoned vehicle without a police authority's initiative. If a police authority employs a private entity to dispose of abandoned vehicles, the police authority shall provide the private entity with the names and addresses of the registered owners, all lienholders of record, and any other known claimant to the vehicle or the personal property found in the vehicle.

*(Code of Iowa, Sec. 321.89[2])*

**52.03 NOTICE BY MAIL.** The police authority or private entity that takes into custody an abandoned vehicle shall notify, within twenty (20) days, by certified mail, the last known registered owner of the vehicle, all lienholders of record, and any other known claimant to the vehicle or to personal property found in the vehicle, addressed to the parties' last known addresses of record, that the abandoned vehicle has been taken into custody. Notice shall be deemed given when mailed. The notice shall describe the year, make, model and vehicle identification number of the vehicle, describe the personal property found in the vehicle, set forth the location of the facility where the vehicle is being held, and inform the persons receiving the notice of their right to reclaim the vehicle and personal property within ten (10) days after the effective date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody and upon payment of the costs of the notice. The notice shall also state that the failure of the owner, lienholders or claimants to exercise their right to reclaim the vehicle or personal property within the time provided shall be deemed a waiver by the owner, lienholders and claimants of all right, title, claim and interest in the vehicle or personal property and that failure to reclaim the vehicle or personal property is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher and to disposal of the personal property by sale or destruction. If the abandoned vehicle was taken into custody by a private entity without a police authority's initiative, the notice shall state that the private entity may claim a garage keeper's lien as described in Section 321.90 of the *Code of Iowa*, and may proceed to sell or dispose of the vehicle. If the abandoned vehicle was taken into custody by a police authority or by a private entity hired by a police authority, the notice shall state that any person claiming rightful possession of the vehicle or personal property who disputes the planned disposition of the vehicle or property by the police authority or private entity or of the assessment of fees and charges provided by this section may ask for an evidentiary hearing before the police authority to contest those matters. If the persons receiving notice do not ask for a hearing or exercise their right to reclaim the vehicle or personal property within the ten-day reclaiming period, the owner, lienholders or claimants shall no longer have any right, title, claim, or interest in or to the vehicle or the personal property. A court in any case in law or equity shall not recognize any right, title, claim, or interest of the owner, lienholders or claimants after the expiration of the ten-day reclaiming period.

*(Code of Iowa, Sec. 321.89[3a])*

**52.04 NOTIFICATION IN NEWSPAPER.** If it is impossible to determine with reasonable certainty the identity and addresses of the last registered owner and all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet all requirements of notice under Section 52.03. The published notice may contain multiple listings of abandoned vehicles and personal property but shall be published within the same time requirements and contain the same information as prescribed for mailed notice in Section 52.03.

*(Code of Iowa, Sec. 321.89[3b])*

**52.05 FEES FOR IMPOUNDMENT.** The owner, lienholder, or claimant shall pay all fees, fines, and costs associated with the impoundment, including those established by the storage facility; whereupon, the vehicle shall be released.

*(Code of Iowa, Sec. 321.89[3a])*

**52.06 DISPOSAL OF ABANDONED VEHICLES.** If an abandoned vehicle has not been reclaimed as provided herein, the police authority or private entity shall make a determination as to whether or not the motor vehicle should be sold for use upon the highways, and shall dispose of the motor vehicle in accordance with State law.

*(Code of Iowa, Sec. 321.89[4])*

**52.07 DISPOSAL OF TOTALLY INOPERABLE VEHICLES.** The City or any person upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost or destroyed, may dispose of such motor vehicle to a demolisher for junk, without a title and without notification procedures, if such motor vehicle lacks an engine or two or more wheels or other structural part which renders the vehicle totally inoperable. The police authority shall give the applicant a certificate of authority. The applicant shall then apply to the County Treasurer for a junking certificate and shall surrender the certificate of authority in lieu of the certificate of title.

*(Code of Iowa, Sec. 321.90[2e])*

**52.08 PROCEEDS FROM SALES.** Proceeds from the sale of any abandoned vehicle shall be applied to the expense of auction, cost of towing, preserving, storing, and notification required, in accordance with State law. Any balance shall be held for the owner of the motor vehicle or entitled lienholder for ninety (90) days, and then shall be deposited in the State Road Use Tax Fund. Where the sale of any vehicle fails to realize the amount necessary to meet costs the police authority shall apply for reimbursement from the Department of Transportation.

*(Code of Iowa, Sec. 321.89[4])*

**52.09 DUTIES OF DEMOLISHER.** Any demolisher who purchases or otherwise acquires an abandoned motor vehicle for junk shall junk, scrap, wreck, dismantle, or otherwise demolish such motor vehicle. A demolisher shall not junk, scrap, wreck, dismantle, or demolish a vehicle until the demolisher has obtained the junking certificate issued for the vehicle.

*(Code of Iowa, Sec. 321.90[3a])*

**52.10 BIDS FOR TOWING AND STORAGE.** At least once each year, the Council may take bids from privately owned garages for schedules of fees for towing and storing impounded vehicles or vehicles taken up because of illegal parking. Thereupon, the Council shall designate such of the bidders as shall be geographically located to tow and store such vehicles at a minimum cost in the event City facilities are not available for towing or storing vehicles to be impounded. The Chief of Police is hereby authorized to direct the public garage designated by the Council as aforesaid and located nearest to such vehicle to tow and store the same until disposed of as provided in this chapter. Such garage is hereby authorized to retain such vehicle until the fees for towing and storage on the basis of its bid shall be paid.

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## CHAPTER 53

# LITTER CONTROL

53.01 Definitions

53.02 Throwing or Distributing Handbills in Public Places

53.03 Posting Notices Prohibited

53.04 Placing Handbills on Vehicles

53.05 Depositing Handbills on Vacant Premises

53.06 Distributing Handbills at Private Premises

53.07 Owner to Maintain Premises Free of Litter

53.08 Clearing of Litter From Private Property by City

**53.01 DEFINITIONS.** The following terms are defined as used in this chapter:

1. “Commercial handbill” means any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper booklet, or any other printed or otherwise reproduced original or copies of any matter of literature which:

A. Advertises for sale any merchandise, product, commodity, or thing; or

B. Directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or

C. Directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind for which an admission fee is charged for the purpose of private gain or profit, but the terms of this clause do not apply where an admission is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition or event of any kind when the same is held, given, or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order; provided, nothing in this clause shall be deemed to authorize the holding, giving, or taking place of any meeting, theatrical performance, exhibition, or event of any kind without a license, where such license is or may be required by any law of the State or under any ordinance of the City; or

D. While containing reading matter other than advertising matter, is predominately and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of person so engaged as advertiser or distributor.

2. “Litter” means any decomposable or non-decomposable solid or other waste material.

3. “Noncommercial handbill” means any printed or written matter, any sample, or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper booklet, or any other printed or otherwise reproduced original or copies of any matter of literature not included in the preceding definitions of a commercial handbill or newspaper.

4. “Person” means any person, firm, partnership, association, corporation, company, or organization of any kind.

5. “Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

**53.02 THROWING OR DISTRIBUTING HANDBILLS IN PUBLIC PLACES.**

1. No person shall throw or deposit, or cause to be thrown or deposited, any commercial or noncommercial handbill in or upon any sidewalk, street or other public place within the City.
2. If handbills become deposited upon any public place, the person distributing or causing distribution of such handbills shall remove them the same day.

**53.03 POSTING NOTICES PROHIBITED.** No person shall post or affix any notice, poster, or other paper or device, calculated to attract the attention of the public, to any lamppost, public utility pole, shade tree upon any public property, or public structure or building, except as may be authorized or required by law.

**53.04 PLACING HANDBILLS ON VEHICLES.** No person shall place any commercial or noncommercial handbill in or upon any vehicle not owned or controlled by said person.

**53.05 DEPOSITING HANDBILLS ON VACANT PREMISES.** No person shall throw or deposit any commercial or noncommercial handbill in or upon any private premises, whether owned by such person or not, which are temporarily or continuously uninhabited or vacant. Nothing herein provided shall prevent the owner or person in control of such property from properly and securely storing such materials thereon.

**53.06 DISTRIBUTING HANDBILLS AT PRIVATE PREMISES.**

1. No person shall throw, deposit, or distribute any commercial or noncommercial handbill in or upon private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant, or other person then present in or upon such private premises.
2. However, in cases of inhabited premises which are not posted, such person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets, or other public places, and except that mailboxes may not be so used when so prohibited by federal postal law or regulations.
3. The provisions of this section do not apply to the distribution of mail by the United States or to newspapers except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk, or other public place or upon private property.

**53.07 OWNER TO MAINTAIN PREMISES FREE OF LITTER.** The owner or person in control of any private property shall at all times maintain the premises free of litter; provided, however, this section does not prohibit the storage of litter in authorized private receptacles for collection.

**53.08 CLEARING OF LITTER FROM PRIVATE PROPERTY BY CITY.**

1. Notice to Remove. The City Administrator is hereby authorized and empowered to notify the owner of any open or vacant private property within the City or the agent of such owner to properly dispose of litter located on such owner's property. Such notice shall be by certified mail addressed to the owner at his or her last known address.

2. Action upon Noncompliance. Upon the failure, neglect, or refusal of any owner or agent so notified, to properly dispose of litter within a time set by the City Administrator, after receipt of written notice provided for in subsection 1 of this section, or within this set time after the date of such notice, in the event the notice is returned to the City because of inability to make delivery thereof, provided the notice was properly addressed to the last known address of such owner or agent, the City Administrator is hereby authorized and empowered to pay for the disposing of such litter or to order its disposal by the City.
3. Assessment and Allocation of Costs. When the City has effected the removal of litter from private property or has paid for its removal, the actual cost of removal of such litter shall be paid by the owner of the property and shall be assessed against such property and collected by the City in any manner provided by law.

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## CHAPTER 54

# NOISE POLLUTION

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54.10 Construction	54.20 Sound Variance; Right to Appeal
	54.21 Sound Variance Appeal Process

### 54.01 DEFINITIONS. The following terms are defined as used in this chapter:

1. “Ambient sound level” means the noise associated with a given environment, exclusive of a particular noise being tested, being usually a composite of sounds from many sources near and far, exclusive of intruding noises from isolated identifiable sources.
2. “A-weighted sound level” means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level is designated dB(a) or dBa.
3. “Construction” means any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or of public or private right-of-way, structures, utilities or similar property.
4. “Decibel (dB)” means a logarithmic and dimensionless unit of measure often used in describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).
5. “Demolition” means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.
6. “Emergency” means any occurrence or set of circumstances involving actual or imminent physical or psychological trauma or property damage which demands immediate action.
7. “Emergency work” means any work performed for the purpose of alleviating or resolving an emergency.
8. “Equivalent A-weighted sound level ( $L_{eq}$ )” means the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. For the purpose of this chapter, a time period of one hour shall be used, unless the likely duration or intensity of the sound being measured makes a shorter time period reasonable.
9. “Impulsive sound” means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop force impacts, and the discharge of firearms.

10. “Motorboat” means any vessel which operates on water and which is propelled by a motor, including, but not limited to, boats, barges, amphibious craft, water ski towing devices and hovercraft.
11. “Motorcycle” means any motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground. The term includes motorized bicycles and motor scooters.
12. “Motor vehicle” means any motor-operated vehicle licensed for use on the public highways, but not including a motorcycle.
13. “Noise” means any sound which disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.
14. “Noise disturbance” means any sound which endangers or injures the welfare, safety, or health of a human being, or disturbs a reasonable person of normal sensitivities, or devalues or injures personal or real property.
15. “Noise sensitive activities” means activities which should be conducted under conditions of exceptional quiet including, but not limited to, operation of schools, libraries open to the public, and churches.
16. “Noise sensitive area” means any area designated by the City Council for the purpose of ensuring exceptional quiet and clearly posted with “Noise Sensitive Area” signs, because of the noise sensitive activities conducted therein.
17. “Powered model vehicle” means any self-propelled airborne, waterborne, or land borne model plane, vessel, or vehicle, which is not designed to carry persons, including (but not limited to) any model airplane, boat, car, or rocket.
18. “Public right-of-way” means any street, avenue, boulevard, highway, sidewalk, or alley or similar place which is owned or controlled by a governmental entity.
19. “Public space” means any real property, including any structure thereon, which is owned or controlled by a governmental entity.
20. “Pure tone” means any sound which can be distinctly heard as a single pitch or a set of single pitches.
21. “Real property boundary” means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.
22. “Receiving land use” means, for the purposes of this chapter, the use or occupancy of the property which receives the transmissions of sound as hereinafter defined.
23. “Recreational vehicle” means any racecar, motorcycle, snowmobile, or any other motorized vehicle equipped for use in racing or other recreational events or uses off of public right-of-way on public or private property.
24. “Residential” means any property on which is located a building or structure used wholly or partially for living or sleeping purposes.
25. “RMS sound pressure” means the square root of the time averaged square of the sound pressure, denoted  $P_{\text{rms}}$ .
26. “Sound” means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause

compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

27. “Sound equipment” means any radio, record player, stereo, television, tape deck or player, loud speakers, amplifier, sound truck or other device for producing, reproducing, or amplifying sounds.

28. “Sound level” means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971, or the latest approved revision thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

29. “Sound level meter” means an instrument which includes a microphone, amplifier, RMS detector, integrator or time average, output or display meter, and weighting networks used to measure sound pressure levels, which complies with American National Standards Institute Standard 1.4-1971.

30. “Sound pressure” means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

31. “Sound pressure level” means 20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micronewtons per square meter ( $20 \times 10^{-6}$  N/m<sup>2</sup>). The sound pressure level is denoted  $L_p$  or SPL and is expressed in decibels.

32. “Used” and “occupied,” when used in this chapter, both shall be deemed to include the words “intended, designed, or arranged to be used or occupied.”

**54.02 EXCEPTIONS.** The provisions of this chapter do not apply to:

1. The emission of sound for the purpose of alerting persons to the existence of an emergency.
2. The emission of sound in the performance of emergency work.
3. Noncommercial public speaking and public assembly activities conducted on any private property, public space, or public right-of-way.
4. The emission of sound in the legal discharge of weapons or in fireworks displays licensed by the City.
5. The emission of sound in the operation of snow removal equipment.
6. Parades or processions for which a parade permit has been issued by the City.

**54.03 NOISE DISTURBANCE PROHIBITED.** No person shall make, continue, or cause to be made or continued, except as permitted, any noise disturbance, as defined in this chapter, or any noise in excess of the limits for such noise established in this chapter.

**54.04 MAXIMUM PERMISSIBLE SOUND LEVELS BY RECEIVING LAND USE; IMMEDIATE THREAT.**

1. Maximum Permissible Sound Levels. With the exception of sound levels elsewhere specifically authorized or allowed in this chapter, the following are the maximum permissible sound levels allowed at or within the real property boundary of a receiving land use:

Table 1. Sound Levels by Receiving Land Use

Zoning Category of Receiving Land Use	Time	Sound Level Limit, dBa
R-1, R-2, R-3, R-4 Residential	7:00 a.m. to 10:00 p.m.	60
	10:00 p.m. to 7:00 a.m.	50
TC, CC, GC, UC	at all times	65
LI	7:00 a.m. to 10:00 p.m.	65
	10:00 p.m. to 7:00 a.m.	55
Noise Sensitive Areas	at all times	55

- A. Violation. For the purposes of this chapter, sound levels in excess of the dBa listed in Table 1 above shall be deemed a violation.
  - B. Correction for Character of Sound. For any source of sound which emits a pure tone, the maximum sound level limits set forth above shall be reduced by 5 dBa.
2. The provisions of this section do not apply to:
- A. Activities covered by the following sections: 54.05 (Emergency Signaling Devices); 54.08 (Amplified Sound); 54.09 (Motorized Vehicles); 54.10 (Construction); 54.11 (Stationary Non-Emergency Signaling Devices); and 54.16 (Noise Covered by Sound Variance).
  - B. The operation of the following domestic power tools of equipment between the hours of 7:00 a.m. and 10:00 p.m.
    - (1) Electrical power tools actually being used for their intended purpose.
    - (2) Motor-powered, muffler-equipped lawn, garden and tree trimming equipment actually being used for their intended purpose.
3. Immediate Threats.
- A. The City Administrator shall order an immediate halt to any sound that exposes any person, except those specifically exempted by this chapter, to continuous sound levels in excess of those shown in Table 2 or to impulsive sound levels in excess of those shown in Table 3. If the sound has not abated within a reasonable length of time following issuance of such an order, the City Administrator may apply to the appropriate court for an injunction to replace the order or may treat the violation in the manner of other Code violations.
  - B. No order under paragraph A hereof shall be issued if the only person exposed to sound levels in excess of those listed in Tables 2 and 3 is exposed



as a result of (i) trespass, (ii) invitation upon private property by the person causing or permitting the sound, or (iii) employment by the person or contractor of the person causing or permitting the sound.

C. Any person subject to an order issued pursuant to paragraph A hereof shall comply with such order until: (i) the sound is brought into compliance with the order as determined by the City Administrator; or (ii) a judicial order has superseded such order.

**Table 2. Continuous Sound Levels that Pose an Immediate Threat to Health and Welfare**  
(Measured at 50 Feet)

Sound Level Limit (dBa)	Duration
90	24 hours
93	12 hours
96	6 hours
99	3 hours
102	1.5 hours
105	45 minutes
108	22 minutes

D. Correction for Character of Sound. For any source of sound which emits a pure tone, the maximum sound level limits set forth hereinabove shall be reduced by 5 dBa.

E. Varying Sound Level. Where the sound level (dBa) varies over the measuring period, the equivalent A-weighted (average) sound level ( $L_{eq}$ ) shall be determined by figuring the time and intensity levels for time periods set out in Tables 2 and 3.

**Table 3. Impulsive Sound Levels that Pose an Immediate Threat To Health and Welfare**  
(Measured at 50 Feet)

Sound Level Limit (Db)	Number of Repetitions Per 24-Hour Period
140	1
130	10
120	100

**54.05 EMERGENCY SIGNALING DEVICES.**

1. No person shall operate or permit the intentional sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided for in this section.
2. Testing of a stationary signaling device shall occur at the same time of day each time the test is performed, but not before 9:00 a.m. or after 4:00 p.m. Any such testing shall use only the minimum cycle test time. In no case shall test times exceed 60 seconds.

**54.06 SPECIFIC ACTIVITIES PROHIBITED.**

1. Sales by “Hawking” or “Barking.” No person shall offer for sale or sell anything by shouting or raised voice within any residential or commercial area in the City.
2. Loading and Unloading. No person shall so load, unload, open, close or handle boxes, crates, containers, building materials, garbage cans, or similar objects between the hours of 7:00 p.m. and 7:00 a.m. the following morning as to create a noise disturbance across a residential real property boundary or within a noise sensitive area. This section shall not apply to activities covered by Section 54.09.
3. Vehicle or Motorboat Repairs and Testing. No person shall repair, rebuild, modify, or test any motor vehicle, motorcycle, or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary or outdoors within a noise sensitive area.

**54.07 MUSICAL INSTRUMENTS AND SIMILAR DEVICES.** No person shall operate, play, or permit the operation or playing of any drum, musical instrument, or similar device which produces sound in such a manner as to create a noise disturbance across a residential real property boundary as defined herein, or outdoors within a noise sensitive area.

**54.08 REGULATION OF SOUND EQUIPMENT AND SOUND AMPLIFYING EQUIPMENT.**

1. Sound Equipment Restricted. Except for activities open to the public and for which a permit has been issued by the City under this section, no person shall so operate, play, or permit the operation or playing of any sound equipment:
  - A. As to create a noise disturbance across a residential real property boundary or outdoors within a noise sensitive area.
  - B. As to create a noise disturbance 50 feet from the device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a boat on public waters.
2. Permit Required. No person shall, use, operate, or cause to be used or operated any sound equipment upon the public streets or in any building or upon any premises, public or private, if the sound therefrom is plainly audible from any public street or public place within the City, unless said person:
  - A. First obtains a permit in accordance with this section;
  - B. Complies with the conditions imposed by the permit, including the maximum permitted sound level shown therein;

- C. Complies with all other applicable provisions of this Code of Ordinances.
3. Exclusions. Sound equipment shall not include:
- A. Equipment used for public health and safety purposes;
  - B. Church or clock carillons, bells or chimes;
  - C. Automobile radios, tape decks or players, or other standard automobile equipment used or intended for the use and enjoyment of the occupants, provided the sound emitting therefrom is not audible for more than 50 feet from the vehicle.
  - D. Recorded music used in a nonresidential district in conjunction with a civil or religious celebration;
  - E. Unamplified live music provided, sponsored, or funded, in whole or in part, by a governmental entity.
  - F. Mobile radio or telephone signaling devices.
4. Fees. A separate permit shall be required for each type of activity described below, and permits shall be nontransferable. The permit shall be conspicuously displayed on or immediately adjacent to the sound equipment. A nonrefundable fee for sound equipment permits shall be paid as follows:
- A. Permits for one day or less ..... \$ 20.00
  - B. Permits for over one day through one week..... \$ 40.00
  - C. Permits over one week through one year ..... \$ 75.00

No fee shall be required for any sound equipment permit issued to the City, State, or federal government or a governmental subdivision or agency.

5. Information Required. Applications for permits required herein shall be made in writing to the City Administrator, accompanied by the required permit fee and the following information:
- A. Type of permit requested;
  - B. Name and address of applicant;
  - C. The purpose for which the sound equipment will be used;
  - D. The location where the sound equipment will be used;
  - E. The number of days of use and proposed hours of operation of the sound equipment;
  - F. A general description of the sound equipment, including the license number of any motor vehicle upon which it is to be operated;
  - G. The proposed sound pressure level output of the sound equipment, including:
    - (1) Type B Permits. The approximate decibel output measured in dB(a)s at a distance of 100 feet from the sound equipment.
    - (2) Type A, C, D and E Permits. The address of the residence nearest the sound equipment, the approximate decibel output measured

in dB(a)s at the real property boundary of the private residence nearest the sound equipment, and the decibel output measured in dB(a)s at a distance of 50 feet from the sound equipment. If the application contains the required information and is accompanied by the required fee, and the proposed use of the sound equipment complies with the standards and other requirements of this section and all other applicable laws and ordinances, the zoning enforcement officer shall issue the appropriate permit.

6. Application Standards.

A. Type A Permit – General Standards. A type A permit may be issued for sound equipment emitting music or human speech registering not more than 60 dB(a)s when measured at the real property boundary of the private residence alleging a noise disturbance when known, or at the real property boundary of the private residence nearest the sound equipment, and registering not more than 100 dB(a)s at a distance of 50 feet from the sound equipment. Sound equipment permitted under a Type A permit may be used only in areas of the City zoned for nonresidential use and only between the hours of 9:00 a.m. and 11:00 p.m.

B. Type B Permit; Sound Trucks – General Standards. Sound trucks may be operated only under a type B permit. A type B permit may be issued for sound equipment mounted upon a motor vehicle and intended for use upon City streets provided that the sound equipment emits only music or human speech registering not more than 80 dB(a)s when measured at a distance of 100 feet from the sound equipment. Sound equipment permitted under a type B permit may be used only in nonresidential areas from 9:00 a.m. to 9:00 p.m.

C. Type C Permit; Parks – General Standards. A type C permit may be used for sound equipment emitting music or human speech registering not more than 50 dB(a)s when measured at the real property boundary of the private residence alleging a noise disturbance when known, or at the real property boundary of the private residence nearest the sound equipment, and registering not more than 100 dB(a)s when measured at a distance of 50 feet from the sound equipment. Sound equipment permitted under a type C permit may be used only in public parks owned and operated by the City, or public grounds owned and operated by another governmental body, from 10:00 a.m. to 11:00 p.m. for events authorized and approved by the City or other body having jurisdiction over the park or public grounds.

D. Type D Permit; School Grounds – General Standards. A type D permit may be issued for sound equipment emitting music or human speech registering not more than 50 dB(a)s when measured at the real property boundary of the private residence alleging a noise disturbance when known, or at the real property boundary of the private residence nearest the sound equipment, and registering not more than 100 dB(a)s when measured at a distance of 50 feet from the sound equipment. Sound equipment permitted under a type D permit may be used only on school grounds, or in conjunction with a school sponsored activity, from 10:00 a.m. to 11:00 p.m. for events authorized and approved by the school authorities having jurisdiction of the grounds.

E. Type E Permit; Residential Events – General Standards. A type E permit may be issued for sound equipment emitting music or human speech

registering not more than 50 dB(a)s when measured at the real property boundary of the private residence alleging a noise disturbance when known, or at the real property boundary of the private residence nearest the sound equipment, and registering not more than 100 dB(a)s when measured at a distance of 50 feet from the sound equipment. Sound equipment permitted under a type E permit may be used only pursuant to a permitted street closing, from 10:00 a.m. to 11:00 p.m.

7. Commercial Advertising; Sound Equipment Prohibited. No sound equipment shall be permitted to be used on public streets or public places, or in any building or upon any premises if the sound therefrom may be plainly audible from any public street or public place within the city, when any such use is for commercial advertising purposes or for the purpose of attracting the attention of the public to any building or structure for monetary gain.

**54.09 MOTORIZED VEHICLES.**

1. This section applies to the total noise from a vehicle or combination of vehicles and shall not be construed as limited or precluding the enforcement of any other provisions of this code relating to motor vehicle mufflers or noise control.

2. No person shall operate the engine providing motive power, or an auxiliary engine, of a motor vehicle with a manufacturer’s gross vehicle weight rating of 10,000 pounds or more for a period longer than 20 minutes while such vehicle is standing and located within 150 feet of property zoned and used for residential purposes except where such vehicle is standing within a completely enclosed building and does not create a noise disturbance across a real property boundary as defined in this chapter. This section shall not apply to deliver or pickup vehicles that require the operation of the engine to unload or load their vending loads.

3. No person shall operate within the speed limits specified in this section either a motor vehicle, or a combination of vehicles of a type subject to registration, at any time or under any condition of grade, load, acceleration or deceleration in such manner as to exceed the noise limit listed herein below for the category of motor vehicle, based on the legal speed limit, posted or not, of the road or way on which operate, such noise to be measured at a distance of no more than 50 feet from the centerline of travel under test procedures established by subsection 4 of this section. In the event the distance of the measuring instrument from centerline of travel is less than 50 feet, such listed noise limits shall be corrected to reflect the equivalent noise limits for the actual distance.

Noise Limit in Relation to Legal Speed Limit

Type of Vehicle	Below 35 MPH	Over 35 MPH
Any motor vehicle with a manufacturer’s gross vehicle weight rating of 10,000 pounds or more and any combination of vehicles towed by such motor vehicle.	88 dB(a)	92 dB(a)
Any motorcycle	82 dB(a)	86 dB(a)
Any other motor vehicle and any combination of motor vehicles towed by such motor vehicle	76 dB(a)	82 dB(a)

4. The measurement of sound or noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute or its successor body. The instrument shall be maintained in calibration and good working order. Octave band corrections may be employed in meeting the response specification. A calibration check shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used when required. Traffic, aircraft and other transportation noise sources and other background noises shall not be considered in taking measurements except where such background noise interferes with the primary noise being measured.
5. Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke. No person shall use a muffler cutout, bypass, or similar device upon a motor vehicle on a highway.
6. No person shall modify the exhaust system of a motor vehicle or motorcycle by installation of a muffler cutout or bypass, and no person shall operate a motor vehicle or motorcycle which has been so modified. A motor vehicle so operated shall be deemed equipped with a muffler which emits excessive and unusual noise and which is not in good working order.
7. No person shall operate a recreational vehicle or permit the operation of one or more recreational vehicles individually or in a group or in an organized racing event, on public or private property in such a manner that the sound level resulting from such operation exceeds: 73 dBa for any total of three minutes in any continuous one-hour period, or exceeds 90 dBa for any period of time during such operation. Sound levels which exceed the limits herein described at the real property boundary of the receiving land use shall be deemed a noise disturbance.
8. Notwithstanding other provisions of this chapter, no person shall permit the conducting of any part of an organized racing event which involves contest between or among recreational vehicles on public or private property between the hours of 10:30 p.m. and 10:00 a.m. the following morning.

#### **54.10 CONSTRUCTION.**

1. No person shall operate or permit the operation of any tools or equipment in construction, drilling or demolition work, or in preventive maintenance work for public service utilities:
  - A. Between the hours of 10:00 p.m. and 7:00 a.m., in any manner which creates a noise disturbance as defined in this chapter across a residential real property boundary or within a noise sensitive area.
  - B. At any other time, in any manner which creates a noise disturbance across a residential real property boundary or within a noise sensitive area; for purposes of this paragraph, a sound level at or across a residential real property boundary in excess of an  $L_{eq}$  of 85 dBa shall be deemed a noise disturbance.
2. The terms of this section do not apply to:
  - A. Emergency work or repair work performed by or for governmental entities or public service utilities.

- B. The use of domestic power tools or equipment subject to other provisions of this chapter.

#### **54.11 STATIONARY NON-EMERGENCY SIGNALING DEVICES.**

1. No person shall operate or permit the sounding of any stationary bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes, from any place, for more than one minute in any hourly period.
2. Devices used in conjunction with places of religious worship are exempt from the operation of this section.
3. Exemptions for sound sources covered by this section, but not exempted herein may be granted under the procedure set forth in Section 54.08 of this chapter.

**54.12 ANIMALS AND BIRDS.** No person shall own, possess, or harbor any animal or bird which frequently or for continued duration emits sounds native to the species which are a noise disturbance across a residential real property boundary, or within a noise sensitive area.

**54.13 PLACES OF PUBLIC ENTERTAINMENT.** No person shall operate, play, or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound in any place of public entertainment at a sound level greater than 90 dBa as read by the slow response on a sound level meter at any point therein that is normally occupied by a customer, unless a conspicuous and legible sign is located outside such place, near each public entrance, stating: *WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT.*

#### **54.14 POWERS AND DUTIES OF THE NOISE CONTROL DIVISION.**

1. The noise control program established by this chapter shall be implemented, administered, and enforced by the City Administrator and police departments.
2. The provisions of this chapter which prohibit the making, continuing, or causing the making or continuing across a real property boundary or within a noise sensitive area, shall be enforced upon receipt of complaint made or filed with City officials by a person disturbed by such noise disturbance or by direction of the Chief of Police. Certification by an official charged with enforcement of provisions of this chapter that such complaint was made shall be sufficient to establish the fact of such complaint.
3. To implement and enforce this chapter, the City Administrator shall have the additional power to:
  - A. Conduct research, monitoring, and other studies related to sound.
  - B. Conduct programs of public education regarding the causes, effects, and general methods of abatement and control of noise, as well as the actions prohibited by this chapter and the procedures for reporting violations.
  - C. Coordinate the noise control activities of all municipal departments.
  - D. Review public and private projects, including those subject to mandatory review or approval by other departments, for compliance with this chapter, if these projects are likely to cause sounds in violation of this chapter.
  - E. Upon presentation of proper credentials, enter and inspect any private property or place, and inspect any report or records at any reasonable time when

granted permission by the owner or by some other person with apparent authority to act for the owner.

- F. Issue sound variances pursuant to the provisions of this chapter.
- G. Prepare recommendations for consideration by the City Council, after publication of notice and public hearing, for establishing the boundaries of noise sensitive areas.

**54.15 DEPARTMENT ACTIONS.** All departments and agencies of the City shall carry out their programs in furtherance of the policy of this chapter.

**54.16 SOUND VARIANCES; APPLICATION.**

1. Any person desiring to exceed the permitted sound levels set out in this chapter may apply to the City for a variance from such regulations.
2. All applicants for such variances shall apply in writing to the City Administrator. Such application shall be submitted at least 60 days prior to the proposed date of the need for the variance.
3. All variance applications shall contain the following information:
  - A. The name and address of the applicant.
  - B. If the application is made on behalf of an organization, the name and address of that organization.
  - C. The name and phone number of a contact person.
  - D. The proposed dates of the event for which a variance is required.
  - E. A description of the event and its potential cause for excessive noise.
  - F. The times the event will generate excessive noise.
  - G. Information which would demonstrate that bringing the source of sound or activity for which the sound variance is sought, into compliance, would constitute an unreasonable hardship on the applicant, on the community, or on other persons.
4. An application for a variance shall be submitted to the City Administrator accompanied by a nonrefundable fee of \$100.00 to cover the cost of processing the application.
5. Upon receipt of an application for a sound variance, the City Administrator shall determine what property interests may be affected by the grant of a variance, including, but not limited to:
  - A. The occupants of surrounding single-family or duplex residences located in an area that includes the next two homes in any direction, or those within 100 feet of the noise source, whichever is less; or
  - B. The owner or manager of multiple residence structures, including hotels.
6. The City Administrator shall notify such property owners or occupants as identified in subsection 5 above, in writing, and delivered by the U.S. Postal Service, ordinary mail, of the application for a sound variance and give ten days to the affected property owners or occupants to give written cause why the variance should not be



granted. Additionally, the City Administrator shall cause a notice of variance application to be published in a local publication.

7. If the City Administrator receives written statements from 25% or more occupants who claim to be adversely affected by allowance of the sound variance, the City Administrator shall schedule a hearing to consider the application for a variance.

**54.17 SOUND VARIANCES; HEARING.** Upon receipt from the City Administrator that 25% or more property owners or occupants have given cause why the variance should not be granted, the City Administrator shall schedule a hearing and shall send by the regular U.S. Postal Service, a notice of the time, date, and location of the hearing to the applicant and all property owners previously notified.

**54.18 SOUND VARIANCES; CONDUCT OF HEARING.** The variance hearing shall be conducted before the City Administrator not less than twenty business days, excluding Saturdays, Sundays, and City holidays, from the proposed date for the variance. The sole issue before the City Administrator shall be whether the grant of the variance shall create an adverse impact on the health, safety, and welfare of persons or property affected. The applicant for a variance shall carry the burden of establishing that an adverse impact shall not be created by the grant of a variance. In the event the City Administrator determines there will be an adverse impact, then the variance shall not be granted and the reasons therefor shall be in writing and delivered to the applicant and filed with the City. In the event the City Administrator determines that an adverse impact will not be created, then the variance shall be granted subject to those limitations set out by the City Administrator. The proceedings at the administrative hearing shall be tape recorded by the City Administrator. Such tape recording shall serve as the official record of the administrative hearing for appeal purposes. The City Administrator shall retain all such tape recordings until the time for filing a notice of appeal has expired. Should a notice of appeal be timely filed, the City Administrator shall retain the tape-recorded record of the administrative hearing until the appeal has been acted upon by the Council.

**54.19 ADVERSE IMPACT.** “Adverse impact” means such a state of facts as would lead a person of ordinary care and prudence to conclude that the economic, entertainment, and philanthropic benefits to the community do not reasonably outweigh the quiet use and enjoyment of the affected property.

**54.20 SOUND VARIANCE; RIGHT TO APPEAL.** The decision of the City Administrator may be appealed to the Council by the applicant for a variance, or any impacted resident, provided that such entity or person files a written notice of appeal with the Clerk’s office within seven days of the City Administrator’s decision. Failure to file a written notice of appeal within such period shall be deemed a waiver of the right to appeal the decision of the City Administrator to the Council.

**54.21 SOUND VARIANCE APPEAL PROCESS.** The appeal shall be considered and a decision rendered by the Council within 14 days of the filing of the written notice of appeal. The time for considering the appeal may be extended for good cause. The appeal process shall consist of a review by the Council of the transcript of the tape-recorded record of the earlier administrative hearing. No additional evidence may be presented as a part of the appeal. The sole issue before the Council shall be whether the decision of the City Administrator was supported by sufficient evidence. The decision of the Council is final.

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## CHAPTER 55

# ANIMAL PROTECTION AND CONTROL

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**55.01 DEFINITIONS.** The following terms are defined for use in this chapter.

1. “Advertise” means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag or articulation.
2. “Animal” means a living creature, not human, and being either domestic or wild.
3. “Animal Control Officer” means a person designated by the City to perform such duties involving animal control and to have authority to enforce this chapter and Chapter 56 of this Code of Ordinances.
4. “Animal pound or shelter” means any premises, either designated by or contracted for by the Council, for the proper care of impounded animals held under the authority of this chapter.
5. “At large” means an animal off the premises of the owner. An animal properly licensed as required by this chapter shall not be deemed at large if such animal:
  - A. Is confined within a suitable enclosure under the control of a competent person, or
  - B. Is confined within a motor vehicle under the control of a competent person, or
  - C. Is under the control of a person competent to restrain and control the animal, either by leash, cord, chain, or other similar restraint not more than ten (10) feet in length, or properly restrained within a motor vehicle, or
  - D. Is properly housed in a veterinary hospital or licensed kennel, pet shop, or City designated animal pound.
6. “Business” means any enterprise relating to any of the following:
  - A. The sale or offer for sale of goods or services.
  - B. A recruitment for employment or membership in an organization.

- C. A solicitation to make an investment.
  - D. An amusement or entertainment activity.
7. “Cat” means all members of the *Felis Domestica* species, male or female, altered or unaltered.
  8. “Competent person” means a person of such maturity as to be able to exercise control over a dog or cat.
  9. “Dog” means and includes members of the canine species, male or female, altered or unaltered.
  10. “Fair” means any of the following:
    - A. The annual fair and exposition held by the Iowa State Fair Board pursuant to Chapter 173 of the *Code of Iowa* or any fair event conducted by a fair under the provisions of Chapter 174 of the *Code of Iowa*.
    - B. An exhibition of agricultural or manufactured products.
    - C. An event for operation of amusement rides or devices or concession booths.
  11. “Game” means a “game of chance” or “game of skill” as defined in Section 99B.1 of the *Code of Iowa*.
  12. “Livestock” means an animal belonging to the bovine, caprine, equine, ovine or porcine species, ostriches, rheas and emus; farm deer as defined in Section 170.1 of the *Code of Iowa*; or poultry.  
(*Code of Iowa, Sec. 717.1*)
  13. “Owner” means any person or persons, firm, association or corporation, owning, keeping, paying the license for, or harboring a dog, cat, horse, or other animal.

**55.02 PETS; TYPES AND NUMBERS OF ANIMALS PERMITTED.** The following animals may be owned as pets under the following conditions:

1. Dogs not to exceed three in number and cats not to exceed three in number at or in a residential dwelling, which dogs and cats are owned and maintained in compliance with the provisions of this chapter relating to such animals.
2. Rabbits not to exceed three in number at or in a residential dwelling, and which must be maintained in a hutch or other type of enclosure.
3. Domestic poultry and fowl; that is, poultry and fowl ordinarily raised for production of eggs or meat, not to exceed two in number considered together at or in a residential dwelling and maintained at all times in a pen and/or coup.
4. Vietnamese Pot Bellied Pigs, Asian Pot Bellied Pigs or pot bellied pigs not to exceed two in number of the types considered together at or in a residential dwelling.
5. The young produced by any pets permitted herein may be maintained at or in a residential dwelling with the parent animals for a period of approximately eight weeks but in no case longer than ten weeks.

**55.03 ENCLOSURES.** Any enclosure, pen, coup, or hutch in which pets are maintained shall be cleaned at least every other day or oftener if deemed advisable or necessary by a

health officer or the Chief of Police. Said enclosures shall be located at a minimum of twenty-five (25) feet from a neighboring residential dwelling. No animal may be enclosed or fenced in the front yard of a residential dwelling.

**55.04 OFFENSES.** No owner of any dog, cat, or other animal (or any person having control or responsibility thereof) shall:

1. Allow or permit such animal to run at large.
2. Allow or permit such animal to urinate or defecate on private property without the express consent of the owner of such property.
3. Fail to pick up and dispose of any feces deposited by such animal on private property without the express consent of the owner thereof.
4. Allow or permit such animal to urinate or defecate on public property, including, but not limited to, public property located between curb lines of public streets and adjacent property lines and public property located within parks.
5. Fail to pick up and dispose of any feces deposited by such animal on public property.
6. Allow or permit such animal to pass upon public or private property thereby causing damages to or interference with such property.
7. Allow or permit a dog to cause annoyance or disturbance to any person by frequent and habitual barking, howling, or yelping.
8. Allow or permit an animal to run after, chase, or attack any person or vehicle or place any person in reasonable fear of attack or injury.
9. Keep, shelter, or harbor any unlicensed animal.
10. Keep, shelter, or harbor any animal without a license tag attached to its collar or harness as required by this chapter.
11. Keep, shelter, or harbor any animal with an expired license tag attached to its collar or harness.
12. Keep, shelter, or harbor any unvaccinated animal.
13. Keep, shelter, or harbor any animal without a vaccination tag attached to its collar or harness as required by law.
14. Keep, shelter, or harbor any animal with an expired vaccination tag attached to its collar or harness.
15. Allow or permit such animal to destroy or damage property other than the property of the owner of such animal.
16. Abandon any animal within the corporate limits of the City.

**55.05 SEIZURE AND IMPOUNDING.** Any animal found in violation of the provisions of Section 55.04 of this chapter may be seized and impounded. It is the duty of the Chief of Police or the duly appointed Animal Control Officer of the City to cause any animal in violation of this chapter to be seized and impounded.

**55.06 NOTICE TO OWNER OF LICENSED ANIMAL.** The owner of any animal licensed in accordance with the provisions of this chapter which has been seized and impounded

shall be notified of such seizure and impounding within three (3) business days thereof by such person and in such manner as the City Council may direct by resolution.

**55.07 DISPOSITION OF IMPOUNDED ANIMALS.** The owner of any animal licensed in accordance with the provisions of this chapter which has been seized and impounded may obtain the release of such animal by the payment of the impoundment fee and the reasonable cost of food and care for such animal during the period of impoundment. Any such animal not released to its owner within three (3) days of the date of notice to such owner may be transferred to a designated humane society or animal shelter facility. The owner of any unlicensed or unvaccinated animal which has been seized and impounded may obtain the release of such animal, upon proper identification of the owner and the animal, by obtaining a license for such animal in accordance with the provisions of this chapter and by the payment of the impoundment fee and the reasonable cost of food and care for such animal during the period of impoundment.

**55.08 IMPOUNDMENT FEE.** An impoundment fee shall be charged on all impounded animals. Such impoundment fees may be established by the Council based on the recidivism of the same animal and increasing on successive impoundments. Animals properly licensed to an owner within the City shall receive a \$25.00 discount on impoundment fees. Information regarding fees is located in Section 55.30 of this chapter.

**55.09 ANIMAL NEGLECT.** It is unlawful for a person who impounds or confines, in any place, an animal, excluding livestock, to fail to supply the animal during confinement with a sufficient quantity of food or water, or to fail to provide a confined dog or cat with adequate shelter, or to torture, deprive of necessary sustenance, mutilate, beat, or kill such animal by any means which causes unjustified pain, distress or suffering.

*(Code of Iowa, Sec. 717B.3)*

**55.10 LIVESTOCK NEGLECT.** It is unlawful for a person who impounds or confines livestock in any place to fail to provide the livestock with care consistent with customary animal husbandry practices or to deprive the livestock of necessary sustenance or to injure or destroy livestock by any means which causes pain or suffering in a manner inconsistent with customary animal husbandry practices.

*(Code of Iowa, Sec. 717.2)*

**55.11 LIVESTOCK.** It is unlawful for a person to keep livestock within the City except by written consent of the Council or except in compliance with the City's zoning regulations.

**55.12 ANNUAL LICENSE REQUIRED.** The owners of all dogs and cats six (6) months of age or older shall annually obtain a license therefor as hereinafter provided. Every owner of a dog or cat under the age of six months on January 1 of any year shall apply for an annual license for each such dog or cat on or before the first day of the first month after each such dog or cat reaches the age of six months.

**55.13 EXCEPTIONS TO LICENSE REQUIREMENTS.** The requirements for licensing dogs and cats shall not apply to such animals if one or more of the following situations apply:

1. In transit through the City only.
2. First 30 days of residency by the owner.
3. Housed in a veterinary hospital.
4. Housed temporarily in an animal grooming shop.

5. Housed in a licensed kennel.
6. Housed in an accredited institution for research purposes only.

**55.14 APPLICATIONS FOR LICENSES.** The owner of a dog or cat for which a license is required shall, on the first day of January of each year, apply to the City Clerk for a license for each such dog or cat. Applications made on or after April 1 of that year shall be delinquent. An application for an annual license for a dog or cat which is under the age of six months on January 1 of any year shall be delinquent if made on or after the first day of the sixth month after such dog or cat reaches the age of six months. Applications for licenses shall be in writing on forms provided by the City Clerk, and shall state the breed, sex, age, color, markings, and name, if any, of the dog or cat, the address at which the owner regularly keeps, shelters or harbors the dog or cat, and the name and address of the owner, and be signed by said owner. Such application shall also state the date of the most recent rabies vaccination, the type of vaccine administered, and the date the dog or cat shall be re-vaccinated. Such application shall be accompanied by a certificate of vaccination issued by a licensed veterinarian showing that the dog or cat described in the application has been vaccinated against rabies.

**55.15 LICENSE FEES.** An application for an annual license for a dog or cat shall be accompanied by the required annual license fee. Information regarding license fees is located in Section 55.30 of this chapter.

**55.16 DELINQUENCY.** All license fees for dogs and cats become delinquent on April 1 of the year in which they are due and payable, and a penalty of double the original license fee shall be added to each unpaid license on and after said date.

**55.17 DELINQUENT FEE LIST.** The City Clerk may, in the Clerk's discretion or at the request of the City Council, prepare and submit to the Council a delinquent fee list which shall show the following:

1. The name and residence address of each person within the City who is the owner of a dog or cat which is not licensed in accordance with the provisions of this chapter for the current year and the amount of fees, including delinquency fees, due from such owner.
2. The name and residence address of each person within the City who licensed a dog or cat in accordance with the provisions of this chapter in the previous year which is not licensed in accordance with the provisions of this chapter for the current year and the amount of fees, including delinquency fees, due from such owner.

The foregoing list shall not include any owner who, upon the death, transfer of ownership, or disappearance for more than 60 days of any dog or cat, within 10 days of such event, notifies the City Clerk of such event and surrenders the license and license tag, if available, issued to the owner.

**55.18 PUBLIC HEARING; DELINQUENT FEE LIST.** Upon submission of the delinquent fee list to the Council, the Council may by resolution fix a date, time, and place for a public hearing thereon. The Clerk shall mail a written notice of such public hearing to the owner of each dog or cat which appears on such list by ordinary mail at least ten (10) days prior to the date fixed for such public hearing. The notice shall state the date, time, and place of such public hearing and shall advise the owner of each dog or cat which appears on such list that he or she may appear at such hearing and show cause why the delinquent fees shown thereon for each such dog or cat should not be paid. After such public hearing, the Council shall enforce

such fees by any legal means permitted under this Code or release obligation for payment of fees if sufficient cause is shown for nonpayment.

**55.19 VACCINATION OF DOGS AND CATS.** All dogs and cats over the age of six (6) months shall be inoculated for the prevention of rabies and the owner of said animal shall obtain and return a certificate as evidence of said anti-rabies inoculation by a licensed veterinarian. The certificate shall show that the vaccination is current at the effective date of the dog or cat license.

**55.20 ISSUANCE OF LICENSE AND LICENSE TAG.** Upon receipt of an application for an annual license for a dog or cat in accordance with the provisions of this chapter, and the payment of all fees applicable thereto, the City Clerk shall issue to the owner a dog or cat license and a dog or cat license tag. The dog or cat license shall state the number of the license, the name and residence address of the owner of the dog or cat, and a description of the dog or cat. The dog or cat license tag shall state the number of the license and the year for which it is issued.

**55.21 DISPLAY OF LICENSE TAG.** Upon issuance of the license tag, the owner of the dog or cat shall cause the license tag to be securely fastened to a collar or harness which shall be worn by the dog or cat for which the license tag is issued.

**55.22 DUPLICATE LICENSE TAG.** Upon proof by the owner of a dog or cat that a license tag issued to such dog or cat in accordance with the provisions of this chapter has been lost or destroyed, the City Clerk shall issue a duplicate tag to the owner of such dog or cat. Such duplicate license tag shall be securely fastened to the collar or harness of such dog or cat in accordance with the provisions of this chapter.

**55.23 DUPLICATE LICENSE TAG FEE.** A duplicate license tag fee of \$1.00 shall be charged for all duplicate license tags.

**55.24 TRANSFER OF LICENSE OR LICENSE TAG PROHIBITED.** No license or license tag issued in accordance with the provisions of this chapter shall be transferred to any other person or dog or cat.

**55.25 EXPIRATION OF LICENSE AND LICENSE TAG.** All licenses and license tags issued in accordance with the provisions of this Chapter shall expire on January 1 of the year following the year for which they were issued.

**55.26 TRAPPING.** It is unlawful for any person to place out of doors on public or private property any trap, snare, or other device that is designed to entrap or capture any animal or fowl without the permission of the Chief of Police. In any proceeding charging the violation of this section, a prima facie presumption shall exist that the owner of said trap, snare, or other device was the person placing the same.

**55.27 QUARANTINE FOR A MINIMUM PERIOD OF 14 DAYS.**

1. It shall be the duty of the Chief of Police to order the owner of any animal which has bitten a person or another animal, or of any animal suspected of being infected with rabies, to confine such animal for a period of fourteen (14) days at the animal shelter, a veterinary clinic, or a registered kennel.



2. Notwithstanding subsection 1 of this section, the Animal Control Officer may allow a dog or cat or any other animal to remain in quarantine for that period on the property of the owner so long as the dog or cat or any other animal is confined there and is out of contact with members of the public or other animals during the quarantine period when the dog, cat, or any other animal:

- A. Has a current certificate of inoculation for rabies; and
- B. Is properly licensed, in the case of dogs; and
- C. Has properly displayed all required tags; and
- D. Has not previously bitten a person; and
- E. The owner has suitable and secure quarters in which to isolate the animal.

Home quarantine shall not be allowed where there is a reasonable belief that the animal's condition, or circumstances including consideration of the nature or severity of the bite, require observation at the animal shelter, a veterinary clinic, or a registered kennel, or where the animal does not remain in quarantine in the manner prescribed by the animal control officer for the 14-day period.

**55.28 REQUIREMENTS WHEN ANIMAL HAS BITTEN A PERSON.** The owner of an animal shall report at once to the Police Department the fact that his or her animal has bitten or attacked a person or domestic animal, and all persons having knowledge of such fact shall report the same to the Police Department. Any person claiming to have been bitten by an animal must go in person to the Police Department or to a physician to show proof of a bite if deemed necessary by the director of public health. Children claiming to have been bitten by an animal must be accompanied by a parent or legal guardian.

**55.29 REPORT OF PERSON WHOSE ANIMAL HAS BEEN BITTEN.** Every person owning or having possession, custody, or control of an animal which is known to have been bitten by an animal infected with rabies shall immediately report this fact to the Police Department and shall have the exposed animal placed in isolation and quarantine as provided by this Code.

**55.30 FEES.** Fees for animal control activities are adopted by the Council periodically by resolution. Information about these fees is available from the City Clerk's office.

**55.31 PET AWARDS PROHIBITED.**

*(Code of Iowa, Ch. 717.E)*

1. Prohibition. It is unlawful for any person to award a pet or advertise that a pet may be awarded as any of the following:
  - A. A prize for participating in a game.
  - B. A prize for participating in a fair.
  - C. An inducement or condition for visiting a place of business or attending an event sponsored by a business.
  - D. An inducement or condition for executing a contract which includes provisions unrelated to the ownership, care, or disposition of the pet.
2. Exceptions. This section does not apply to any of the following:

- A. A pet shop licensed pursuant to Section 162.5 of the *Code of Iowa* if the award of a pet is provided in connection with the sale of a pet on the premises of the pet shop.
- B. Youth programs associated with 4-H Clubs; Future Farmers of America; the Izaak Walton League of America; or organizations associated with outdoor recreation, hunting or fishing, including but not limited to the Iowa Sportsmen's Federation.

As used in this section "pet" means a living dog, cat, or an animal normally maintained in a small tank or cage in or near a residence, including but not limited to a rabbit, gerbil, hamster, mouse, parrot, canary, mynah, finch, tropical fish, goldfish, snake, turtle, gecko, or iguana.

**55.32 INDOOR PETS.** Gerbils, hamsters, guinea pigs, mice, birds, non-venomous and non-constrictive snakes and other similar animals normally maintained as pets in an enclosure inside a residential dwelling are not subject to the provisions of this chapter unless provided otherwise by this Code of Ordinances.

**55.33 FEEDING DEER.** No person shall place or allow any feeding device or any fruit, grain, mineral, plant, salt, vegetable, or other material to be placed outdoors on any public or private property for the purpose of attracting or feeding deer. Pursuant to this chapter, a rebuttable presumption is created that the placement of fruit, grain, mineral, plant, salt, vegetable, or other material ("feed materials") in a drop feeder, deer feeder kit, automatic feeder, any natural object (hollowed tree stump, etc.) or similar device ("feeding device") regardless of the height of the fruit, grain, mineral, plant, salt, vegetable, or other material is for the purpose of feeding deer.

1. Each property owner or occupant of the property shall have the duty to remove any feed materials placed on the owner's property in violation of this ordinance. Failure to remove feed materials within twenty four (24) hours after notice from the City shall constitute a violation of this ordinance.
2. Each property owner or occupant of the property shall have the duty to remove any feeding device placed on the owner's property to which deer are attracted or from which deer actually feed. Alternatively, a property owner or occupant may modify a feeding device or make other changes to the property that prevent deer from having access to or feeding from the feeding device. Failure to remove such a feeding device or to make such modifications within twenty four (24) hours after notice from the City shall constitute a violation of this ordinance.
3. Exceptions.
  - A. Naturally Growing Materials. This ordinance does not apply to naturally growing materials, including, but not limited to, fruit, grain, nuts, seeds, and vegetables.
  - B. Planted Materials. This ordinance does not apply to planted materials growing in gardens, as standing crops, or in a wildlife food plot.
  - C. Stored Crops. This ordinance does not apply to stored crops, provided that the stored crop is not intentionally made available to deer.
  - D. Incidental Spills. This ordinance does not apply to spills of seed materials intended for planting or to crop materials that have been harvested if

the spills are incidental to normal agricultural operations and such materials are not intentionally made available to deer.

4. Penalties. Any person violating any provision of this article shall be subject to a civil penalty for a municipal infraction as set forth in Section 4.04 of the Code of Ordinances for the City of Windsor Heights, Iowa. Each day a municipal infraction occurs and/or is permitted to exist constitutes a separate offense.

*(Section 55.03 – Ord. 19-08 – Oct. 19 Supp.)*

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## CHAPTER 56

# DANGEROUS DOGS

56.01 Definitions

56.02 Determination of a Potentially Dangerous Dog

56.03 Determination of a Dangerous Dog

56.04 Exceptions

56.05 Potentially Dangerous Dog or Dangerous Dog  
Declaration Requirements

56.06 Registration or Licensing Requirements

56.07 Responsibility of Owners

**56.01 DEFINITIONS.** For purposes of this chapter, the following terms are defined:

1. “Dangerous dog” means any dog that:
  - A. Without provocation, causes a serious injury to a person or domestic animal; or
  - B. Has been designated as a potentially dangerous dog and engages in behavior that poses a threat to public safety as described in subsection 8 of this section or serious injury as defined in subsection 9.
2. “Impound” means to take a potentially dangerous dog or dangerous dog into custody by the Animal Control Authority or the organization authorized to enforce this chapter.
3. “Owner” means any person possessing, harboring, keeping, having an interest in, or having control or custody of a dog.
4. “Pet safety course” means a course, preapproved by the Animal Control Officer or the organization authorized to enforce this chapter, consisting of (but not limited to) instruction in safe management of dogs.
5. “Potentially dangerous dog” means a dog that may reasonably be assumed to pose a threat to public safety as demonstrated by any of the following behaviors:
  - A. Without provocation, causes an injury to a person or domestic animal on public or private property that is less severe than a serious injury;
  - B. Without provocation, chases or approaches a person, a domestic animal or a wheeled conveyance upon the streets, sidewalks, or any public or private property, in an apparent attitude of attack; or has a known propensity, tendency, or disposition to attack, causing injury or otherwise threatening the safety of humans or domestic animals;
  - C. Without provocation, acts in a highly aggressive manner within a fenced yard or enclosure and appears, to a reasonable adult, able to jump over or escape;
  - D. Acts in a highly aggressive manner within a fenced yard/enclosure and appears to a reasonable person able to jump over or escape.
6. “Proper enclosure” of potentially dangerous and dangerous dogs requires:
  - A. Potentially dangerous and dangerous dogs shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel, except when leashed as provided in this section or caged for

transportation. Also, when a dangerous dog is not securely confined or caged for transportation a muzzle shall be placed on the dog.

B. A pen or kennel must have secure sides and a secure top attached to the sides or, in lieu of a top, walls at least six feet in height and at least six feet taller than any internal structure. A pen or kennel must have a secure bottom, floor or foundation attached to the sides of the pen or kennel, or the sides of the pen or kennel must be embedded in the ground no less than two feet so as to prevent digging under the sides of the pen or kennel by the confined potentially dangerous dog or dangerous dog.

C. All pens, kennels, or structures erected to house a potentially dangerous dog or dangerous dog must comply with all zoning and building regulations in their jurisdictions. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.

D. All pens or kennels designed, constructed, or used to confine potentially dangerous and dangerous dogs must be locked with a key or combination lock when such animals are within the structure.

E. No potentially dangerous or dangerous dog may be kept on a porch, patio, or in any part of a house or structure that would allow the potentially dangerous or dangerous dog to exit such building on its own volition.

F. No potentially dangerous dog or dangerous dog may be tied or leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.

7. "Proper leashing" of potentially dangerous dogs and dangerous dogs requires that potentially dangerous dogs and dangerous dogs shall not be permitted to go outside a proper enclosure as defined in subsection 6 unless secured on a leash no longer than six (6) feet in length that is under the actual physical control of a person eighteen (18) years of age or older who has the physical ability to restrain the dog. Also, when a dangerous dog is not securely confined or caged for transportation, a muzzle shall be placed on the dog.

8. "Provocation" means that the threat, injury, or damage caused by the dog was sustained by a person who, at the time, was willfully trespassing upon the premises occupied by the owner of the dog, or the person was tormenting, abusing, or assaulting the dog, or was committing or attempting to commit a crime.

9. "Serious injury" means any physical injury incurred by a dog that results in a major bone fracture, muscle tears, disfiguring lacerations or requires multiple sutures or corrective surgery or cosmetic surgery.

## **56.02 DETERMINATION OF A POTENTIALLY DANGEROUS DOG.**

1. After an investigation, the Animal Control Officer or the organization authorized to enforce this chapter is authorized to make a declaration that a dog is potentially dangerous based on the factors listed in subsection 56.01(5) of this chapter and will notify the owner of the dog in writing by certified mail or personal service or posting in a conspicuous place at the last known residence of the owner of the dog.

2. Upon notice, the owner of the dog declared potentially dangerous may, within three (3) business days, file a written appeal in this jurisdiction seeking review of the declaration. However, during an appeal the owner of the dog shall properly confine or

properly leash the dog and provide proof of liability insurance in accordance with this chapter.

3. If a written appeal is filed, the owner of the dog declared dangerous will be given no less than three (3) days' (business or otherwise) written notice of the date, time, and location of the hearing.
4. Following notice to the owner of the dog, if the Animal Control Officer or the organization authorized to enforce this chapter has reasonable cause to believe that a dog is a potentially dangerous dog which may pose a threat to public safety, or if the owner has not provided proof of liability insurance, the dog will be impounded, pending disposition of an appeal or until the dog owner has fulfilled the requirements of a potentially dangerous dog declaration. However, if after 30 days from the date of notice the owner of the dog has not completed the requirements, the dog shall be impounded and destroyed in a humane manner.
5. Any dog that is under impoundment or quarantine at the animal shelter and is declared a potentially dangerous dog will not be returned to the owner pending disposition of an appeal or until the owner completes all of the requirements of subsection 56.06(1), except paragraph H of said subsection, which must be completed within 30 days from the date of notice.
6. The owner of the dog shall be liable for the costs of impounding and keeping of the dog.

#### **56.03 DETERMINATION OF A DANGEROUS DOG.**

1. After an investigation the Animal Control Officer or the organization authorized to enforce this chapter is authorized to make a declaration that a dog is dangerous based on the factors listed in subsection 56.01(1) and will notify the owner of the dog in writing by certified mail or personal service or posting in a conspicuous place at the last known residence of the owner of the dog.
2. Upon notice, the owner of the dog declared dangerous may, within three (3) business days, file a written appeal seeking review of the determination. However, during an appeal the owner of the dog shall properly confine or properly leash the dog and show proof of liability insurance in accordance with this chapter.
3. If a written appeal is filed, the owner of the dog declared dangerous will be given no less than three (3) days' (business or otherwise) written notice of the date, time, and location of the hearing.
4. Following notice to the owner of the dog, if the Animal Control Officer or the organization authorized to enforce this chapter has reasonable cause to believe the dog to be a dangerous dog which may pose a threat to public safety, or if the owner has not provided proof of liability insurance, the dog will be impounded, pending disposition of an appeal or until the dog owner has fulfilled the requirements of a dangerous dog declaration. However, if after 30 days after the date of notice the owner of the dog has not completed the requirements, the dog shall be impounded and destroyed in a humane manner.
5. Any dog that is under impoundment or quarantine at the animal shelter and is declared a dangerous dog will not be returned to the owner pending disposition of an appeal or until the owner completes all of the requirements of subsection 56.06(1), except paragraph H of said subsection, which must be completed within 30 days from the date of notice, and subsection 56.06(2).

6. The owner of the dog shall be liable for the costs of impounding and keeping the dog if the dog is determined to be a dangerous dog.

**56.04 EXCEPTIONS.** No dog shall be declared a dangerous or potentially dangerous dog if:

1. The dog was used by a law enforcement or military official for legitimate law enforcement or military purposes.
2. The dog was protecting or defending a human, offspring, or another animal, within the immediate vicinity of the dog, from an attack or assault.

**56.05 POTENTIALLY DANGEROUS DOG OR DANGEROUS DOG DECLARATION REQUIREMENTS.**

1. If the Animal Control Officer or the organization authorized to enforce this chapter declares that a dog is a potentially dangerous dog, the owner of the dog shall comply with the provisions of subsections 56.01(6) and (7) and subsection 56.06(1) of this chapter.
2. If the Animal Control Officer or the organization authorized to enforce this chapter declares that a dog is a dangerous dog, the owner of the dog shall comply with the provisions of subsections 56.01(6) and (7) and Section 56.06 of this chapter.
3. Following notice to the owner of the dog, if the Animal Control Officer or the organization authorized to enforce this chapter has reasonable cause to believe the dog to be a dangerous dog and may pose a threat to public safety, or if the owner has not provided proof of liability insurance, the dog will be impounded, pending disposition of an appeal or until the dog owner has fulfilled the requirements of a dangerous dog declaration. However, if after 30 days from the date of notice the owner of the dog has not completed the requirements, the dog shall be destroyed in a humane manner.
4. If after the notice of declaration a potentially dangerous dog or a dangerous dog is found improperly confined or leashed more than once, the dog will be impounded and destroyed in a humane manner.
5. If after the notice of declaration the liability insurance on a potentially dangerous dog or dangerous dog is found to be invalid more than twice, the dog will be impounded and destroyed in a humane manner.
6. The owner of the dog shall be liable for the costs of impounding and keeping the potentially dangerous dog or dangerous dog whether or not the dog is reclaimed.

**56.06 REGISTRATION OR LICENSING REQUIREMENTS.**

1. The Animal Control Officer or the organization authorized to enforce this chapter will issue a certificate of registration or license to the owner of a potentially dangerous dog if the owner establishes to the satisfaction of the Animal Control Officer or other authority that:
  - A. The owner of the potentially dangerous dog is 18 years of age or older and has the physical ability to control the dog.
  - B. The owner of the potentially dangerous dog presents a certificate of insurance issued by an insurance company licensed to do business in this State, providing personal liability insurance coverage as in a homeowner's policy, with a minimum liability amount of \$1,000,000.00 for the injury or death of



any person, for damage to property of others and for acts of negligence by the owner or his or her agents, in the keeping or owning of such potentially dangerous dog. The certificate shall require notice to the City, in conformity with general City standards for certificates of insurance, if the underlying policy of insurance is cancelled for any reason. In lieu of such a certificate, a copy of a current homeowner's policy designating these requirements shall be sufficient proof of insurance for purposes of this subsection. If a certificate of insurance or policy is not immediately available, a binder indicating the coverage may be accepted for up to 30 days subsequent to the determination that a dog is potentially dangerous; however, if after 30 days a certificate of insurance or a policy has not been submitted or the insurance coverage is cancelled, the dog shall be deemed unregistered or unlicensed and subject to immediate impoundment.

C. The potentially dangerous dog has a current rabies vaccination at the owner's expense.

D. The owner has a proper enclosure to prevent the entry of any person or animal and the escape of said potentially dangerous dog as described in subsection 56.01(6).

E. The potentially dangerous dog has been spayed or neutered at the owner's expense.

F. The potentially dangerous dog has been implanted with a microchip containing owner identification information at the owner's expense. The microchip information must be registered with the Animal Control Officer or the organization authorized to enforce this chapter.

G. The potentially dangerous dog has been photographed for identification purposes.

H. The potentially dangerous dog owner shall satisfactorily complete a pet safety course preapproved by the Animal Control Officer at the dog owner's expense.

2. The Animal Control Officer or the organization authorized to enforce this chapter will issue a certificate of registration or license to the owner of a dangerous dog if the owner, in addition to satisfying the requirements for registration or licensing of a potentially dangerous dog pursuant to subsection 1 of this section, establishes to the satisfaction of the Animal Control Authority that:

A. The owner will maintain the dangerous dog exclusively on the owner's property except for medical treatment or examination.

B. The owner of the dangerous dog has posted on the premises a clearly visible written warning sign that there is a dangerous dog on the property with a conspicuous warning symbol that informs children of the presence of a dangerous dog. The sign shall be very visible from the public roadway or 50 feet, whichever is less.

3. If any dog previously determined to be a potentially dangerous dog has not exhibited any of the behaviors specified in Section 56.01(5) within twelve (12) months since the date of the potentially dangerous dog determination, then that dog is eligible for a review of the determination with the potential for lifting the requirements of this section; provided, however, that same dog may again be declared a dangerous or

potentially dangerous dog if it again exhibits any of the specified behaviors. Such a review shall be completed by a review committee appointed by the City Council consisting of a minimum of three people including a member of the public, a dog professional, and an Animal Control Director or his/her designee.

**56.07 RESPONSIBILITY OF OWNERS.** It is unlawful to:

1. Keep a dog determined to be dangerous or potentially dangerous without a valid certificate of registration issued under Section 56.06 of this chapter.
2. Permit a potentially dangerous dog to be outside a proper enclosure unless the potentially dangerous dog is properly leashed as defined in Section 56.01 of this chapter.
3. Fail to maintain a dangerous dog exclusively on the owner's property as required except for medical treatment or examination, or permit a dangerous dog to be outside of proper confinement without being properly leashed and muzzled or caged for transportation. When removed from the owner's property for medical treatment or examination, the dangerous dog shall be caged or under the control of a responsible person as defined in Section 56.01, muzzled and restrained with a substantial leash not exceeding six (6) feet in length. The muzzle shall be made in a manner that will not cause injury to the dog or obscure its vision or interfere with its respiration but shall prevent it from biting any human being or animal.
4. Permit a dangerous or potentially dangerous dog to be tied or leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.
5. Fail to notify law enforcement or the Animal Control Officer immediately in person or by telephone upon escape if a dangerous or potentially dangerous dog is on the loose, is unconfined, has attacked another domestic animal, or has attacked a human being.
6. Fail to notify, within three business days, the Animal Control Officer or the organization authorized to enforce this chapter of a change of address or telephone number of the owner of the dangerous or potentially dangerous dog.
7. Fail to notify, within three business days, the Animal Control Officer or the organization authorized to enforce this chapter if the dangerous or potentially dangerous dog has died and the whereabouts of the dead dog.
8. Fail to notify, within one business day, the Animal Control Officer or the organization authorized to enforce this chapter with the name, address, and telephone number of a new owner of the dangerous or potentially dangerous dog if the dog has been sold or has been given away.
9. Fail to surrender a dangerous dog or potentially dangerous dog to the Animal Control Officer or the organization authorized to enforce this chapter for impoundment and confinement, pending a disposition of the case when there is a reason to believe that the dangerous dog or potentially dangerous dog may pose a threat to public safety.

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## CHAPTER 57

# ILLEGAL OR DANGEROUS ANIMALS

### 57.01 Definitions

### 57.02 Keeping of Illegal Animals Prohibited

### 57.03 Seizure, Impoundment, and Disposition of Illegal Animals

### 57.04 Exemption

### 57.05 Keeping of Dangerous Animals Prohibited

### 57.06 Seizure, Impoundment, and Disposition of Dangerous Animals

**57.01 DEFINITIONS.** Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms, for the purpose of this chapter, have the meanings in this section:

1. "Illegal animal" means: (i) any animal which is not naturally tame or gentle, and which is of a wild nature or disposition, and which is capable of killing, inflicting serious injury upon, maiming, or causing disease among, human beings or domestic animals and having known tendencies as a species to do so; (ii) any animal declared to be illegal by the board of health or the Mayor; (iii) the following animals which shall be deemed to be illegal animals per se:

- A. Lions, tigers, jaguars, leopards, cougars, lynx and bobcats;
- B. Wolves, coyotes and foxes;
- C. Badgers, wolverines, weasels, skunks and mink;
- D. Raccoons;
- E. Bears;
- F. Monkeys and chimpanzees;
- G. Bats;
- H. Alligators and crocodiles;
- I. Elephants;
- J. Tarantula spiders and scorpions;
- K. Snakes that are venomous or constrictors;
- L. Gila monsters;
- M. Apes, baboons and macaques;
- N. Opossums

2. "Dangerous animal" means any animal, except for an illegal animal per se, as listed above, that has bitten or clawed a person or persons without provocation while running at large, or any animal that has exhibited vicious propensities in present or past conduct, including any animal which: (i) has bitten a person or persons on two separate occasions within a 12-month period; (ii) did bite once causing injuries above the shoulders of a person; (iii) could not be controlled or restrained by the owner at the time of the attack to prevent the occurrence; (iv) has attacked or bitten any domestic animal or fowl on two separate occasions within a 12-month period; or (v) has been found to possess such a propensity by a majority of the City Council, after notice and hearing.

**57.02 KEEPING OF ILLEGAL ANIMALS PROHIBITED.** No person shall own, keep, shelter, or harbor any illegal animal or act as a temporary custodian for such animal, or keep for any other purpose or in any other capacity within the City any illegal animal, except in the following circumstances:

1. The keeping of illegal animals in a public zoo, bona fide educational or medical institution, humane society, or museum where they are kept as live specimens for the public to view, or for the purpose of instruction, research or study.
2. The keeping of illegal animals for exhibition to the public by a circus, carnival, exhibit, or show.
3. The keeping of illegal animals in a bona fide, licensed veterinary hospital for treatment.
4. The keeping of illegal animals by a wildlife rescue organization with appropriate permit from the Iowa Department of Natural Resources.
5. Any illegal animals under the jurisdiction of and in the possession of the Iowa Department of Natural Resources, pursuant to Chapters 481A and 481B of the *Code of Iowa*.
6. Any illegal animal exempted pursuant to Section 57.04 of this chapter.

**57.03 SEIZURE, IMPOUNDMENT, AND DISPOSITION OF ILLEGAL ANIMALS.**

1. In the event that an illegal animal is found at large and unattended upon public property, or the property of someone other than its owner, thereby creating a hazard to person or property, such animal may, in the discretion of the Chief of Police or the Chief's designee, be destroyed. The City shall be under no duty to attempt the confinement or capture of an illegal animal found at large, nor shall it have a duty to notify the owner of such animal prior to its destruction.
2. Upon the complaint of any individual that a person is keeping, sheltering, or harboring an illegal animal on premises in the City, the Chief of Police shall cause the matter to be investigated; and if after investigation, the facts indicate that the person named in the complaint is keeping, sheltering or harboring an illegal animal in the City, the Chief of Police shall order the person named in the complaint safely to remove such animal from the City, permanently place the animal with an organization or group allowed under Section 57.02 of this chapter to possess illegal animals, or destroy the animal, within three days of the receipt of such order. Such order shall be contained in a notice to remove the illegal animal, which notice shall be given in writing to the person keeping, sheltering, or harboring the animal and shall be served personally or by certified mail. Such order and notice to remove the illegal animal shall not be required where such animal has previously caused serious physical harm or death to any person in which case the Chief of Police shall cause the animal to be immediately seized and impounded or killed if seizure and impoundment are not possible without risk of serious physical injury or death to any person.
3. The order to remove an illegal animal issued by the Chief of Police may be appealed to the City Administrator. In order to appeal such order, written notice of appeal must be filed with the City Administrator within three days after receipt of the order contained in the notice to remove the illegal animal. Failure to file such written notice of appeal shall constitute a waiver of right to appeal the order of the Chief of Police.

4. The notice of appeal shall state the grounds for such appeal and shall be delivered personally or by certified mail to the City Administrator. The hearing of such appeal shall be scheduled within seven days of the receipt of notice of appeal. After such hearing, the City Administrator may affirm or reverse the order of the Chief of Police. Such determination shall be contained in a written decision and shall be filed with the City Administrator within three days after the hearing, or any continued session thereof.

5. If the City Administrator affirms the action of the Chief of Police, the City Administrator shall order in its written decision that the individual or entity owning, sheltering, harboring, or keeping such illegal animal, remove such animal from the City, permanently place such animal with an organization or group allowed under Section 57.02 of this chapter to possess illegal animals, or destroy it. The decision and order shall immediately be served upon the person or entity against whom rendered in the same manner as the notice of removal. If the original order of the Chief of Police is not appealed and is not complied with within three days, or the order of the City Administrator after appeal is not complied with within three days of its issuance, the Chief of Police is authorized to seize and impound such illegal animal or kill the animal if seizure and impoundment is not possible without risk of serious physical injury or death to any person. An animal which is seized shall be impounded for a period of seven days. If at the end of the impoundment period the individual or entity against whom the decision and order of the City Administrator was issued has not petitioned the Polk County District Court for a review of said order, the City Administrator shall cause the animal to be disposed of by sale, permanently place such animal with an organization or group allowed under Section 57.02 of this chapter to possess such animals, or destroy such animal in a humane manner. Failure to comply with an order issued pursuant to this chapter shall constitute a misdemeanor offense.

#### **57.04 EXEMPTION.**

1. Any person owning or keeping an illegal animal as of February 1, 1985, may obtain an exemption, allowing that person to continue to keep such animal by complying with the provisions of this section.
2. A person owning or keeping an illegal animal as of February 1, 1985, in order to obtain an exemption, must register such animal with the City Clerk prior to March 31, 1985. The animal must be re-registered each year subsequent thereto until the animal dies or is otherwise removed from the City.
3. The person shall provide the City Clerk with:
  - A. His or her name and address;
  - B. The address where the animal is kept;
  - C. A description of the animal;
  - D. A description of the method of containing or controlling the animal at that location; and
  - E. Evidence of the existence of a certificate or policy of insurance in an amount not less than \$100,000.00, providing liability coverage for all damages or injuries which might arise to any person as a result of the keeping of such animal.

- F. Certification from a licensed doctor of veterinary medicine that the animal is healthy and is not infected with rabies or any disease dangerous to humans.
4. As a condition of exemption, the owner or keeper of the illegal animal must sign an agreement, provided by the City Clerk, indemnifying the City and agreeing to defend it and hold it harmless from all claims for damages, indemnity, or contributions arising as a result of the keeping or ownership of such animal.
5. All illegal animals, not exempted by the provisions of this section, must be removed from the City of Windsor Heights prior to March 31, 1985.
6. If any owner or keeper of an animal exempted pursuant to the provision of this section shall fail to re-register the animal in any subsequent year, the City may proceed to have the animal removed or destroyed pursuant to this chapter.

**57.05 KEEPING OF DANGEROUS ANIMALS PROHIBITED.** No person shall own, keep, shelter, or harbor for any reason within the City a dangerous animal so defined herein, except in the following circumstances:

1. Animals under the control of a law enforcement or military agency.
2. The keeping of guard dogs. However, guard dogs must be kept within a structure or fixed enclosure at all times, and any guard dog found at large may be processed as a dangerous animal pursuant to the provisions of Sections 57.05 and 57.06 of this chapter. Any premises guarded by a guard dog shall be prominently posted with a sign containing the wording "guard dog," "dangerous dog," or words of similar import, and the owner of such premises shall inform the Chief of Police that a guard dog is on duty at said premises.

**57.06 SEIZURE, IMPOUNDMENT, AND DISPOSITION OF DANGEROUS ANIMALS.**

1. The Chief of Police, in his or her discretion or upon receipt of a complaint alleging that a particular animal is a dangerous animal as defined herein, may initiate proceedings to declare such animal a dangerous animal. If the owner contests said designation, a hearing on the matter shall be conducted by the City Administrator. The person owning, keeping, sheltering, or harboring the animal in question shall be given not less than 72 hours' written notice of the time and place of said hearing. Said notice shall set forth the description of the animal in question and the basis for the allegation of dangerousness. The notice shall also set forth that if the animal is determined to be dangerous, the owner may be required to license and confine the animal as required by this chapter. The notice shall be served upon any adult residing at the premises where the animal is located or may be posted on those premises if no adult is present to accept service.
2. If, after hearing, the City Administrator determines an animal is a dangerous animal, or a dangerous animal held in violation of this chapter as set out in the notice of hearing, the City Administrator shall order the person owning, sheltering, harboring, or keeping the animal to license and confine the animal as required by this chapter, or remove it from the City. The order shall immediately be served upon the individual or entity against whom issued in the same manner as the notice of hearing. If the order is not complied with within three days of its issuance, the City Administrator is authorized to seize and impound the animal. An animal so seized shall be impounded for a period of seven days. If at the end of the impoundment period, the person against whom the

order of the City Administrator was issued has not appealed such order to the City Council, or has not complied with the order, the City Administrator shall cause the animal or animals to be destroyed.

3. The order to license, confine, or remove a dangerous animal from the City issued by the City Administrator may be appealed to the City Council. In order to appeal such order, written notice of appeal must be filed with the City Administrator within three days after receipt of the order. Failure to file such written notice of appeal shall constitute a waiver of right to appeal the order of the City Administrator.

4. The notice of appeal shall state the grounds for such appeal and shall be delivered personally or by certified mail to the City Administrator. The hearing of such appeal shall be scheduled within twenty (20) days of the receipt of notice of appeal. The hearing may be continued for good cause. After such hearing, the City Council may affirm or reverse the order of the City Administrator. Such determination shall be contained in a written decision and shall be filed with the City Administrator within three days after the hearing, or any continued session thereof. The hearing shall be confined to the record made before the City Administrator, the arguments of the parties or their representatives, any additional evidence which was not available at the time of the hearing before the City Administrator, and any other information the City Council deems necessary.

5. If the City Council affirms the action of the City Administrator, the City Council shall order in its written decision that the person owning, sheltering, harboring, or keeping such dangerous animal shall license and confine said animal as required by this chapter or remove such animal from the City. The decision and order shall immediately be served upon the person or entity against whom rendered in the same manner as the notice set out in subsection 1 of this section. If the original order of the City Administrator is not appealed and is not complied with within three days or the order of the City Council after appeal is not complied with within three days of its issuance, the Chief of Police is authorized to seize and impound such dangerous animal. An animal so seized shall be impounded for a period of seven days. If at the end of the impoundment period, the person against whom the decision and order of the City Administrator or the City Council was issued has not petitioned the Polk County District Court for a review of said order or has not complied with the order, the City Administrator shall cause the animal to be destroyed in a humane manner.

6. Failure to comply with an order of the City Administrator issued pursuant hereto and not appealed, or of the City Council after appeal, is a misdemeanor.

7. Any animal which is alleged to be dangerous and which is under impoundment or quarantine at the animal shelter shall not be released to the owner, but shall continue to be held at the expense of the owner pending the outcome of the hearing. All costs of such impoundment or quarantine shall be paid by the owner if the animal is determined to be dangerous. If the animal is not determined to be dangerous, all costs shall be paid by the City except costs attributable to initial confinement prior to notice or costs of any required quarantine which shall nonetheless be paid by the owner.

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**CHAPTER 60**  
**TRAFFIC AND VEHICLES**

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**TITLE.** This chapter may be known and cited as the “Windsor Heights Traffic Code” and is referred to in this chapter as the “Traffic Code.”

**SUBCHAPTER 60.01**

**ADMINISTRATION OF TRAFFIC CODE**

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**60.01.01 DEFINITIONS.** Where words and phrases used in the Traffic Code are defined by State law, such definitions apply to their use in said Traffic Code and are adopted by reference. Those definitions so adopted that need further definition or are reiterated, and other words and phrases used herein, have the following meanings:

*(Code of Iowa, Sec. 321.1)*

1. “Business District” means the territory contiguous to and including a highway when fifty percent (50%) or more of the frontage thereon for a distance of three hundred (300) feet or more is occupied by buildings in use for business.
2. “Park” or “parking” means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.
3. “Peace officer” means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.
4. “Residence district” means the territory contiguous to and including a highway not comprising a business, suburban or school district, where forty percent (40%) or

more of the frontage on such a highway for a distance of three hundred (300) feet or more is occupied by dwellings or by dwellings and buildings in use for business.

5. "Road work zone" means the portion of a highway which is identified by posted or moving signs as the site of construction, maintenance, survey, or utility work. The zone starts upon meeting the first sign identifying the zone and continues until a posted or moving sign indicates that the work zone has ended.

6. "School district" means the territory contiguous to and including a highway for a distance of two hundred (200) feet in either direction from a schoolhouse.

7. "Stand" or "standing" means the halting of a vehicle, whether occupied or not, otherwise than for the purpose of and while actually engaged in receiving or discharging passengers.

8. "Stop" means when required, the complete cessation of movement.

9. "Stop" or "stopping" means when prohibited, any halting of a vehicle, even momentarily, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or traffic control sign or signal.

10. "Suburban district" means all other parts of the city not included in the business, school, or residence districts.

11. "Traffic control device" means all signs, signals, markings, and devices not inconsistent with this chapter, lawfully placed or erected for the purpose of regulating, warning, or guiding traffic.

12. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, street, or alley.

**60.01.02 ADMINISTRATION AND ENFORCEMENT.** Provisions of this chapter and State law relating to motor vehicles and law of the road are enforced by the Police Department.

*(Code of Iowa, Sec. 372.13[4])*

**60.01.03 POWER TO DIRECT TRAFFIC.** A peace officer and, in the absence of a peace officer, any officer of the Fire Department when at the scene of a fire is authorized to direct all traffic by voice, hand or signal in conformance with traffic laws. In the event of an emergency, traffic may be directed as conditions require, notwithstanding the provisions of the traffic laws.

*(Code of Iowa, Sec. 102.4 & 321.236[2])*

**60.01.04 TRAFFIC ACCIDENTS: REPORTS.** The driver of a vehicle involved in an accident within the limits of the City shall file a report as and when required by the Iowa Department of Transportation. A copy of this report shall be filed with the City for the confidential use of peace officers and shall be subject to the provisions of Section 321.271 of the *Code of Iowa*.

*(Code of Iowa, Sec. 321.273)*

**60.01.05 PEACE OFFICER'S AUTHORITY.** A peace officer is authorized to stop a vehicle to require exhibition of the driver's license of the driver, to serve a summons or memorandum of traffic violation, to inspect the condition of the vehicle, to inspect the vehicle with reference to size, weight, cargo, log book, bills of lading or other manifest of employment,

tires and safety equipment, or to inspect the registration certificate, the compensation certificate, travel order, or permit of such vehicle. A peace officer having probable cause to stop a vehicle may require exhibition of the proof of financial liability coverage card issued for the vehicle.

*(Code of Iowa, Sec. 321.492)*

**60.01.06 OBEDIENCE TO PEACE OFFICERS.** No person shall willfully fail or refuse to comply with any lawful order or direction of any peace officer invested by law with authority to direct, control, or regulate traffic.

*(Code of Iowa, Sec. 321.229)*

**60.01.07 PARADES REGULATED.** No person shall conduct or cause any parade on any street except as provided herein:

1. Definition. "Parade" means any march or procession of persons or vehicles organized for marching or moving on the streets in an organized fashion or manner or any march or procession of persons or vehicles represented or advertised to the public as a parade.
2. Permit Required. No parade shall be conducted without first obtaining a written permit from the Mayor or Chief of Police. Such permit shall state the time and date for the parade to be held and the streets or general route therefor. Such written permit granted to the person organizing or sponsoring the parade shall be permission for all participants therein to parade when such participants have been invited by the permittee to participate therein. No fee shall be required for such permit.
3. Sponsor Signature. The application for a permit shall be signed by the president, secretary, or some person having authority connected with the association, company, society, order, or exhibition sponsoring the parade.
4. Approval. If the Mayor or Chief of Police, upon presentation of an application for a permit for a street parade, is satisfied that the march or parade will not interfere with the safety of travel or good order of the City, he or she shall issue a permit without charge. Nothing in this section shall be construed as requiring a permit for funeral processions.
5. Conditions. The Mayor or Chief of Police is empowered to prescribe the conditions governing any parade, procession or march, including the designation of the routes to be followed, held or proposed to be held on any public street. Should the public interest so require, he or she may for limited periods of time prohibit or restrict parking on any street where unrestricted or restricted parking is permitted under the provisions of this Code. Signs shall be placed, police officers stationed, or other steps taken to inform the public of special regulations.
6. Parade Not A Street Obstruction. Any parade for which a permit has been issued as herein required, and the persons lawfully participating therein, shall not be deemed an obstruction of the streets notwithstanding the provisions of any other ordinance to the contrary.
7. Control by Police and Firefighters. Persons participating in any parade shall at all times be subject to the lawful orders and directions in the performance of their duties of law enforcement personnel and members of the Fire Department.

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## CHAPTER 60 – TRAFFIC AND VEHICLES

### SUBCHAPTER 60.02

## TRAFFIC CONTROL DEVICES

60.02.01 Installation of Traffic Control Devices

60.02.02 Compliance

60.02.03 Crosswalks

60.02.04 Traffic Lanes

60.02.05 Necessity of Signs

60.02.06 Standards

60.02.07 (Reserved)

60.02.08 Automated Traffic Enforcement

**60.02.01 INSTALLATION OF TRAFFIC CONTROL DEVICES.** The Public Works Director shall cause to be placed and maintained appropriate traffic control devices to indicate parking spaces and zones, no parking zones, limited parking zones, reserved parking zones, loading zones, safety zones, school zones, hospital zones, quiet zones, traffic zones other than the above, truck routes, school stops, stop intersections, yield right-of-way intersections, one-way streets, streets to be laned for traffic and play streets. The Chief of Police shall establish the location of traffic control devices and shall also have the power to designate and indicate intersections at which traffic shall be controlled by traffic signals; intersections at which left turns, right turns and U-turns shall be prohibited; and intersections at which markers, buttons or other indications shall be placed to indicate the course to be traveled by vehicles traversing or turning at such intersections. The City shall keep a record of all such traffic control devices.

**60.02.02 COMPLIANCE.** No driver of a vehicle shall disobey the instructions of any official traffic control device placed in accordance with the provisions of this subchapter, unless at the time otherwise directed by a peace officer, subject to the exceptions granted the driver of an authorized emergency vehicle under Section 321.231 of the *Code of Iowa*.

*(Code of Iowa, Sec. 321.256)*

**60.02.03 CROSSWALKS.** The Chief of Police is hereby authorized to designate and maintain crosswalks by appropriate traffic control devices at intersections where, due to traffic conditions, there is particular danger to pedestrians crossing the street or roadway, and at such other places as traffic conditions require.

*(Code of Iowa, Sec. 372.13[4] & 321.255)*

**60.02.04 TRAFFIC LANES.** Where traffic lanes have been marked on street pavements at such places as traffic conditions require, it is unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement.

*(Code of Iowa, Sec. 372.13[4] & 321.255)*

**60.02.05 NECESSITY OF SIGNS.** No provision of this Traffic Code for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in a viewable position and sufficiently legible to an ordinarily observant person.

**60.02.06 STANDARDS.** Traffic control devices shall comply with standards established by *The Manual of Uniform Traffic Control Devices for Streets and Highways*.

*(Code of Iowa, Sec. 321.255)*

**60.02.07 (RESERVED)**

**60.02.08 AUTOMATED TRAFFIC ENFORCEMENT.** The City of Windsor Heights, in accordance with its police powers, may deploy, erect or cause to have erected an automated traffic enforcement system for making video and/or photographic images of vehicles that fail to obey red light traffic signals at intersections designated by the City Administrator, or designee, or fail to obey speed regulations at other locations in the City. The systems may be managed by a private contractor where the City or private contractor owns and operates the requisite equipment, with supervisory control vested in the City's Police Department. Video and/or photographic images shall be provided to the Police Department by the contractor for review.

*(Ord. 16-03 – Aug. 16 Supp.)*

1. Definitions. The following terms are defined as used in this section:
  - A. "Automated traffic citation" means a notice of fine generated in connection with the automated traffic enforcement system.
  - B. "Automated traffic enforcement contractor" means the company or entity, if any, with which the City contracts to provide equipment and/or services in connection with the automated traffic enforcement system.
  - C. "Automated traffic enforcement system" (ATE system) shall mean an electronic system consisting of photographic, video, and/ or electronic camera(s) and a vehicle sensor(s) installed to work in conjunction with an official traffic controller or Police Department employee(s) to automatically produce photographs, video or digital images of each vehicle violating a standard traffic control device or speed restriction.
  - D. "Vehicle owner" means the person or entity identified by the Iowa Department of Transportation, or registered with any other State vehicle registration office, as the registered owner of a vehicle.
2. Vehicle Owner's Civil Liability for Certain Traffic Offenses.
  - A. The vehicle owner shall be liable for a fine as imposed below if such a vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for that vehicle's direction is emitting a steady red light or arrow.
  - B. The Vehicle Owner shall be liable for a fine as imposed below if such vehicle travels at a speed above the established limit.

*(Ord. 16-03 – Aug. 16 Supp.)*
  - C. The violation may be exempted from liability as outlined in this section, and other defenses may be considered in connection with the appeals process.
  - D. An automated traffic citation will not be sent or reported to the Iowa Department of Transportation or similar department of any other state for the purpose of being added to the vehicle owner's driving record.
3. Notice of Violation; Fine.
  - A. A notice of any automated traffic citation will be mailed to the vehicle owner. The automated traffic enforcement contractor shall mail the notice within 30 days after the Police Department determines a violation of the City's Traffic Code has occurred. The notice shall include the name and address of

the vehicle owner; the vehicle make, if available and readily discernible, and registration number; the violation charged; the time; the date; the location of the alleged violation; the applicable fine; information on how to contest the notice on its merits; and that the basis of the notice is a photographic record obtained by an automated traffic enforcement system.

**B.** (Ord. 18-16 – Nov. 18 Supp.)

C. Any violation of paragraph 2(A) of this section shall be subject to a civil fine of \$100.00), made payable to the City of Windsor Heights.

D. Any violation of Subsection 2(B) shall be subject to one of the civil fines identified in the table below. The fine for any violation committed in a designated Road Work Zone, as defined by the City’s Code of Ordinances Subsection 60.01.01(12), shall be doubled – as identified in the table below. All civil fines shall be made payable to the City of Windsor Heights.

<b>Speed Over the Limit in Miles Per Hour (MPH)</b>	<b>Civil Fine</b>	<b>If in a Road Work Zone</b>
1 through 15 MPH	\$65.00	\$130.00
16 through 20 MPH	\$75.00	\$150.00
21 MPH and over	\$80.00, plus \$5.00 for each additional mile over 21 MPH	\$160.00, plus \$5.00 for each additional mile over 21 MPH

(Ord. 16-03 – Aug. 16 Supp.)

4. Contesting an Automated Traffic Citation. A vehicle owner who has been issued an automated traffic citation may contest the citation as follows:

A. By submitting, in a form specified by the City, a request for an administrative review to be held at the Police Department before an impartial administrative appeals board (the “Board”). Such a request must be filed within thirty (30) days from the date of the first notice of the Automated Traffic Citation sent to the vehicle owner. The Board may either uphold or dismiss the Automated Traffic citation and shall mail its written decision within ten (10) days after the review to the address provided on the request for the review. If the citation is upheld, then the Board shall include in its written decision a date by which the fine must be paid and, on or before that date, the vehicle owner shall either pay the fine or submit a request pursuant to the paragraph B of this subsection.

(Ord. 16-03 – Aug. 16 Supp.)

B. By submitting, in a form specified by the City, a request that—in lieu of the automated traffic citation—a municipal infraction citation be filed with the Small Claims Division of the Iowa District Court in Polk County. Such a request will require the vehicle owner to file an answer and appearance with the Clerk of Court for the matter to be set for trial. If at trial the Court finds the vehicle owner guilty of the municipal infraction, State-mandated court costs and municipal infraction penalties may be added to the amount of the fine imposed by this section.

(Ord. 18-16 – Nov. 18 Supp.)

5. Exceptions to Owner Liability. There shall be no liability pursuant to this section if:

A. The operator of the vehicle in question was issued a uniform traffic citation for the violation pursuant to the Section 60.11.01 of this Code of Ordinances or Chapter 321 of the *Code of Iowa*; or

B. The violation occurred at any time after the vehicle in question or its State registration plates were reported to a law enforcement agency as having been stolen; provided, however, the vehicle or its plates had not been recovered by the vehicle owner at the time of the alleged violation; or

C. The vehicle in question was an authorized emergency vehicle engaged in an official act; or

D. The officer inspecting the recorded image determines that the vehicle in question was lawfully participating in a funeral procession; or

E. The officer inspecting the recorded image determines that the vehicle in question entered the intersection in order to yield the right-of-way to an emergency vehicle when cited for a red light violation.

*(Ord. 16-03 – Aug. 16 Supp.)*

6. Failure to Pay or Appeal in a Timely Manner. If the recipient of an automated traffic citation either does not pay the civil penalty when due or does not contest the automated traffic citation as provided herein, the City may file a civil municipal infraction citation, which shall be served and filed with the courts in the manner prescribed by the applicable provision(s) of this Code. Such municipal infraction citation may seek a penalty and/or additional relief to the extent permitted by law. If at trial the Court finds the vehicle owner guilty of the municipal infraction, State-mandated court costs will be added to the amount of the fine imposed by the applicable provision(s) of this Code.

*(Ord. 18-16 – Nov. 18 Supp.)*

*(Subchapter 60.02 - Ord. 16-02 – Feb. 16 Supp.)*

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## CHAPTER 60 – TRAFFIC AND VEHICLES

### SUBCHAPTER 60.03

## GENERAL TRAFFIC REGULATIONS

60.03.01 Violation of Regulations

60.03.02 Boarding or Alighting From Moving Vehicle

60.03.03 Vehicles on Sidewalks

60.03.04 Clinging to Vehicle

60.03.05 Climbing on Vehicles Prohibited

60.03.06 Quiet Zones

60.03.07 Pushcarts and Animals on Roadway

60.03.08 Excessive Tire Noise

60.03.09 Dumping of Snow

**60.03.01 VIOLATION OF REGULATIONS.** Any person who willfully fails or refuses to comply with any lawful order of a peace officer or direction of a Fire Department officer during a fire, or who fails to abide by the applicable provisions of the following Iowa statutory laws relating to motor vehicles and the statutory law of the road is in violation of this section. These sections of the *Code of Iowa* are adopted by reference and are as follows:

1. Section 321.17 – Misdemeanor to violate registration provisions.
2. Section 321.25 – Application for registration and title; cards attached.
3. Section 321.32 – Registration card, carried and exhibited; exception.
4. Section 321.34 – Plates or validation sticker furnished.
5. Section 321.37 – Display of plates.
6. Section 321.38 – Plates, method of attaching, imitations prohibited.
7. Section 321.41 – Change of address or name or fuel type.
8. Section 321.45 – Title transfer.
9. Section 321.46 – New title upon transfer of ownership.
10. Section 321.47 – Transfers by operation of law.
11. Section 321.48 – Vehicles acquired for resale.
12. Section 321.52 – Out of state sales.
13. Section 321.54 – Registration and financial liability coverage required of certain nonresident carriers.
14. Section 321.55 – Registration and financial liability coverage required for certain vehicles owned or operated by nonresidents.
15. Section 321.57 – Operation under special plates.
16. Section 321.62 – Records required for special plates.
17. Section 321.67 – Certificate of title must be executed.
18. Section 321.78 – Injuring or tampering with vehicle.
19. Section 321.79 – Intent to injure.
20. Section 321.91 – Penalty for abandonment.

21. Section 321.98 – Operation without registration.
22. Section 321.99 – Fraudulent use of registration.
23. Section 321.104 – Penal offenses against title law.
24. Section 321.115 – Antique vehicles; model year plates permitted.
25. Section 321.174 – Operators licensed.
26. Section 321.174A – Operation of motor vehicles with expired license.
27. Section 321.180 – Instruction permits.
28. Section 321.180B – Graduated driver’s licenses for persons aged fourteen through seventeen.
29. Section 321.193 – Restricted licenses.
30. Section 321.194 – Special minor’s licenses.
31. Section 321.208A – Operation in violation of out-of-service order.
32. Section 321.216 – Unlawful use of license and nonoperator’s identification card.
33. Section 321.216B – Use of driver’s license or nonoperator’s identification card by underage person to obtain alcohol.
34. Section 321.216C – Use of driver’s license or nonoperator’s identification card by underage person to obtain cigarettes or tobacco products.
35. Section 321.218 – Operating without valid driver’s license or when disqualified.
36. Section 321.219 – Permitting unauthorized minor to drive.
37. Section 321.220 – Permitting unauthorized person to drive.
38. Section 321.221 – Employing unlicensed chauffeur.
39. Section 321.222 – Renting motor vehicle to another.
40. Section 321.223 – License inspected.
41. Section 321.224 – Record kept.
42. Section 321.229 – Obedience to peace officers.
43. Section 321.231 – Authorized emergency vehicles and police bicycles.
44. Section 321.232 – Speed detection jamming devices; penalty.
45. Section 321.234A – All-terrain vehicles.
46. Section 321.235A – Electric personal assistive mobility devices.
47. Section 321.247 – Golf cart operation on City streets.
48. Section 321.257 – Official traffic control signal.
49. Section 321.259 – Unauthorized signs, signals or markings.
50. Section 321.260 – Interference with devices, signs or signals; unlawful possession.

51. Section 321.262 – Damage to vehicle.
52. Section 321.263 – Information and aid.
53. Section 321.264 – Striking unattended vehicle.
54. Section 321.265 – Striking fixtures upon a highway.
55. Section 321.266 – Reporting accidents.
56. Section 321.275 – Operation of motorcycles and motorized bicycles.
57. Section 321.277 – Reckless driving.
58. Section 321.277A – Careless driving.
59. Section 321.278 – Drag racing prohibited.
60. Section 321.284 – Open container; drivers.
61. Section 321.284A – Open container; passengers.
62. Section 321.288 – Control of vehicle; reduced speed.
63. Section 321.295 – Limitation on bridge or elevated structures.
64. Section 321.297 – Driving on right-hand side of roadways; exceptions.
65. Section 321.298 – Meeting and turning to right.
66. Section 321.299 – Overtaking a vehicle.
67. Section 321.302 – Overtaking and passing.
68. Section 321.303 – Limitations on overtaking on the left.
69. Section 321.304 – Prohibited passing.
70. Section 321.306 – Roadways laned for traffic.
71. Section 321.307 – Following too closely.
72. Section 321.308 – Motor trucks and towed vehicles; distance requirements.
73. Section 321.309 – Towing; convoys; drawbars.
74. Section 321.310 – Towing four-wheel trailers.
75. Section 321.312 – Turning on curve or crest of grade.
76. Section 321.313 – Starting parked vehicle.
77. Section 321.314 – When signal required.
78. Section 321.315 – Signal continuous.
79. Section 321.316 – Stopping.
80. Section 321.317 – Signals by hand and arm or signal device.
81. Section 321.318 – Method of giving hand and arm signals.
82. Section 321.319 – Entering intersections from different highways.
83. Section 321.320 – Left turns; yielding.
84. Section 321.321 – Entering through highways.

85. Section 321.322 – Vehicles entering stop or yield intersection.
86. Section 321.323 – Moving vehicle backward on highway.
87. Section 321.323A – Approaching certain stationary vehicles.
88. Section 321.324 – Operation on approach of emergency vehicles.
89. Section 321.324A – Funeral processions.
90. Section 321.329 – Duty of driver; pedestrians crossing or working on highways.
91. Section 321.330 – Use of crosswalks.
92. Section 321.332 – White canes restricted to blind persons.
93. Section 321.333 – Duty of drivers approaching blind persons.
94. Section 321.340 – Driving through safety zone.
95. Section 321.341 – Obedience to signal indicating approach of railroad train or railroad track equipment.
96. Section 321.342 – Stop at certain railroad crossings; posting warning.
97. Section 321.343 – Certain vehicles must stop.
98. Section 321.344 – Heavy equipment at crossing.
99. Section 321.344B – Immediate safety threat; penalty.
100. Section 321.354 – Stopping on traveled way.
101. Section 321.359 – Moving other vehicle.
102. Section 321.362 – Unattended motor vehicle.
103. Section 321.363 – Obstruction to driver's view.
104. Section 321.364 – Vehicles shipping food; preventing contamination by hazardous material.
105. Section 321.365 – Coasting prohibited.
106. Section 321.367 – Following fire apparatus.
107. Section 321.368 – Crossing fire hose.
108. Section 321.369 – Putting debris on highway.
109. Section 321.370 – Removing injurious material.
110. Section 321.371 – Clearing up wrecks.
111. Section 321.372 – School buses.
112. Section 321.381 – Movement of unsafe or improperly equipped vehicles.
113. Section 321.381A – Operation of low-speed vehicles.
114. Section 321.382 – Upgrade pulls; minimum speed.
115. Section 321.383 – Exceptions; slow vehicles identified.
116. Section 321.384 – When lighted lamps required.
117. Section 321.385 – Head lamps on motor vehicles.

118. Section 321.386 – Head lamps on motorcycles and motorized bicycles.
119. Section 321.387 – Rear lamps.
120. Section 321.388 – Illuminating plates.
121. Section 321.389 – Reflector requirement.
122. Section 321.390 – Reflector requirements.
123. Section 321.392 – Clearance and identification lights.
124. Section 321.393 – Color and mounting.
125. Section 321.394 – Lamp or flag on projecting load.
126. Section 321.395 – Lamps on parked vehicles.
127. Section 321.398 – Lamps on other vehicles and equipment.
128. Section 321.402 – Spot lamps.
129. Section 321.403 – Auxiliary driving lamps.
130. Section 321.404 – Signal lamps and signal devices.
131. Section 321.404A – Light-restricting devices prohibited.
132. Section 321.405 – Self-illumination.
133. Section 321.406 – Cowl lamps.
134. Section 321.408 – Back-up lamps.
135. Section 321.409 – Mandatory lighting equipment.
136. Section 321.415 – Required usage of lighting devices.
137. Section 321.417 – Single-beam road-lighting equipment.
138. Section 321.418 – Alternate road-lighting equipment.
139. Section 321.419 – Number of driving lamps required or permitted.
140. Section 321.420 – Number of lamps lighted.
141. Section 321.421 – Special restrictions on lamps.
142. Section 321.422 – Red light in front.
143. Section 321.423 – Flashing lights.
144. Section 321.430 – Brake, hitch, and control requirements.
145. Section 321.431 – Performance ability.
146. Section 321.432 – Horns and warning devices.
147. Section 321.433 – Sirens, whistles, and bells prohibited.
148. Section 321.434 – Bicycle sirens or whistles.
149. Section 321.436 – Mufflers, prevention of noise.
150. Section 321.437 – Mirrors.
151. Section 321.438 – Windshields and windows.

152. Section 321.439 – Windshield wipers.
153. Section 321.440 – Restrictions as to tire equipment.
154. Section 321.441 – Metal tires prohibited.
155. Section 321.442 – Projections on wheels.
156. Section 321.444 – Safety glass.
157. Section 321.445 – Safety belts and safety harnesses; use required.
158. Section 321.446 – Child restraint devices.
159. Section 321.449 – Motor carrier safety regulations.
160. Section 321.450 – Hazardous materials transportation.
161. Section 321.454 – Width of vehicles.
162. Section 321.455 – Projecting loads on passenger vehicles.
163. Section 321.456 – Height of vehicles; permits.
164. Section 321.457 – Maximum length.
165. Section 321.458 – Loading beyond front.
166. Section 321.460 – Spilling loads on highways.
167. Section 321.461 – Trailers and towed vehicles.
168. Section 321.462 – Drawbars and safety chains.
169. Section 321.463 – Maximum gross weight.
170. Section 321.465 – Weighing vehicles and removal of excess.
171. Section 321.466 – Increased loading capacity; reregistration.
172. Section 321A.32 – Other violations; penalties.
173. Section 321.276 – Use of electronic communication device while driving; text-messaging.
174. Section 321.281 – Actions against bicyclists.
175. Section 321.449A – Rail crew transport drivers.

*(Ord. 15-08 – Nov. 15 Supp.)*

**60.03.02 BOARDING OR ALIGHTING FROM MOVING VEHICLE.** No person shall board or alight from any vehicle on the public highway while such vehicle is in motion.

**60.03.03 VEHICLES ON SIDEWALKS.** The driver of a vehicle shall not drive upon or within any sidewalk area except at a driveway.

**60.03.04 CLINGING TO VEHICLE.** No person shall drive a motor vehicle on the streets of the City unless all passengers of said vehicle are inside the vehicle in the place intended for their accommodation. No person riding upon any bicycle, coaster, roller skates, in-line skates, sled, or toy vehicle shall attach the same or himself or herself to any vehicle upon a roadway.

**60.03.05 CLIMBING ON VEHICLES PROHIBITED.** It is unlawful for any person to jump or climb on or hang upon any vehicle on any street, alley, or other public place without the permission of the driver thereof.

**60.03.06 QUIET ZONES.** Whenever authorized signs are erected indicating a quiet zone, no person operating a motor vehicle within any such zone shall sound the horn or other warning device of such vehicle except in an emergency.

**60.03.07 PUSHCARTS AND ANIMALS ON ROADWAY.** Every person propelling any pushcart or riding an animal upon a roadway and every person driving any animal-drawn vehicle shall be subject to the provisions of this Code of Ordinances applicable to the driver of a vehicle, except those provisions which by their nature can have no application.

**60.03.08 EXCESSIVE TIRE NOISE.** No person shall skid, slide or spin the tires of the motor vehicle such person is operating so as to cause the emission of excessive or unusual noise when the same is not necessary for the safe operation of the vehicle.

**60.03.09 DUMPING OF SNOW.** It is unlawful for any person to throw, push, or place or cause to be thrown, pushed or placed, any ice or snow from private property, sidewalks, or driveways onto the traveled way of a street or alley so as to obstruct gutters, or impede the passage of vehicles upon the street or alley or to create a hazardous condition therein; except where, in the cleaning of large commercial drives in the business district it is absolutely necessary to move the snow onto the street or alley temporarily, such accumulation shall be removed promptly by the property owner or agent. Arrangements for the prompt removal of such accumulations shall be made prior to moving the snow.<sup>†</sup>

*(Code of Iowa, Sec. 364.12[2])*

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<sup>†</sup> **EDITOR'S NOTE:** See Section 40.03.06 of this Code of Ordinances for additional provisions regarding use of City streets.

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## CHAPTER 60 – TRAFFIC AND VEHICLES

### SUBCHAPTER 60.04

## SPEED REGULATIONS

60.04.01 General

60.04.02 State Code Speed Limits

60.04.03 Parks and Parking Lots

60.04.04 Special Speed Zones

60.04.05 Minimum Speed

60.04.06 Use of Automated Enforcement

**60.04.01 GENERAL.** Every driver of a motor vehicle on a street shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface and width of the street and of any other conditions then existing, and no person shall drive a vehicle on any street at a speed greater than will permit said driver to bring it to a stop within the assured clear distance ahead, such driver having the right to assume, however, that all persons using said street will observe the law.

*(Code of Iowa, Sec. 321.285)*

**60.04.02 STATE CODE SPEED LIMITS.** The following speed limits are established in Section 321.285 of the *Code of Iowa* and any speed in excess thereof is unlawful unless specifically designated otherwise in this subchapter as a special speed zone.

1. Business District – twenty (20) miles per hour.
2. Residence or School District – twenty-five (25) miles per hour.
3. Suburban District – forty-five (45) miles per hour.

**60.04.03 PARKS AND PARKING LOTS.** A speed in excess of fifteen (15) miles per hour in any public park or parking lot, unless specifically designated otherwise in this subchapter, is unlawful.

*(Code of Iowa, Sec. 321.236[5])*

**60.04.04 SPECIAL SPEED ZONES.** In accordance with requirements of the Iowa Department of Transportation, or whenever the Council shall determine upon the basis of an engineering and traffic investigation that any speed limit listed in Section 60.04.02 is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the City street system, the Council shall determine and adopt by ordinance such higher or lower speed limit as it deems reasonable and safe at such location. The following special speed zones have been established:

*(Code of Iowa, Sec. 321.290)*

1. Special 25 MPH Speed Zones. (Repealed by Ord. 19-04 – Jul. 19 Supp.)
2. Special 30 MPH Speed Zones. A speed in excess of 30 miles per hour is unlawful on any of the following designated streets or parts thereof.
  - A. 63<sup>rd</sup> Street. 63<sup>rd</sup> Street, from the south line of Hickman Avenue to the south line of University Avenue.
  - B. University Avenue. University Avenue, from the east corporate limits to the west corporate limits.

3. Special 35 MPH Speed Zones. A speed in excess of 35 miles per hour is unlawful on any of the following designated streets or parts thereof.
  - A. 73<sup>rd</sup> Street. 73<sup>rd</sup> Street, from the south corporate limits to the south line of University Avenue;
  - B. 63<sup>rd</sup> Street. 63<sup>rd</sup> Street, from the south line of University Avenue to the south corporate limits.
4. Interstate 235. Notwithstanding any speed restrictions contained in this Traffic Code, the following speed restrictions apply to Interstate Highway 235 when official signs are erected giving notice thereof:
  - A. Maximum Speed. No person shall operate a vehicle on said highway at a speed in excess of 60 miles per hour.
  - B. Minimum Speed. No person shall operate a vehicle on said highway at a speed less than 40 miles per hour.
  - C. Vehicle Capability. No person shall operate any vehicle, implement, or conveyance on said highway which is incapable of obtaining and maintaining a speed of 40 miles per hour.

*(Section 60.04.04 – Ord. 19-04 – Jul. 19 Supp.)*

**60.04.05 MINIMUM SPEED.** A person shall not drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation, or in compliance with law.

*(Code of Iowa, Sec. 321.294)*

**60.04.06 USE OF AUTOMATED ENFORCEMENT.** Automated traffic enforcement technologies may be utilized to enforce speed regulations in this subchapter by civil fine pursuant to ATE regulations set forth in Section 60.02.07.

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## CHAPTER 60 – TRAFFIC AND VEHICLES

### SUBCHAPTER 60.05

## TURNING REGULATIONS

60.05.01 Turning at Intersections  
60.05.02 U-Turns

60.05.03 Left Turn for Parking

**60.05.01 TURNING AT INTERSECTIONS.** The driver of a vehicle intending to turn at an intersection shall do so as follows:

*(Code of Iowa, Sec. 321.311)*

1. Both the approach for a right turn and a right turn shall be made as close as practical to the right-hand curb or edge of the roadway.
2. Approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof and after entering the intersection the left turn shall be made so as to depart from the intersection to the right of the centerline of the roadway being entered.
3. Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection. A left turn from a one-way street into a two-way street shall be made by passing to the right of the centerline of the street being entered upon leaving the intersection.

The Chief of Police may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct, as traffic conditions require, that a different course from that specified above be traveled by vehicles turning at intersections, and when markers, buttons or signs are so placed, no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs.

*(Code of Iowa, Sec. 321.256)*

**60.05.02 U-TURNS.** It is unlawful for a driver to make a U-turn except at an intersection; however, U-turns are prohibited within the Business District and at intersections where there are automatic traffic signals.

*(Code of Iowa, Sec. 321.236[9])*

**60.05.03 LEFT TURN FOR PARKING.** No person shall make a left hand turn, crossing the centerline of the street, for the purpose of parking on said street.

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## CHAPTER 60 – TRAFFIC AND VEHICLES

### SUBCHAPTER 60.06

## STOP OR YIELD REQUIRED

60.06.01 Stop or Yield

60.06.02 School Stops

60.06.03 Stop Before Crossing Sidewalk

60.06.04 Stop When Traffic Is Obstructed

60.06.05 Yield to Pedestrians in Crosswalks

**60.06.01 STOP OR YIELD.** Every driver of a vehicle shall stop or yield as directed by traffic control devices posted in accordance with Subchapter 60.02 of this Traffic Code.

*(Code of Iowa, Sec. 321.256)*

**60.06.02 SCHOOL STOPS.** At any school crossing zone, every driver of a vehicle approaching said zone shall bring the vehicle to a full stop at a point ten (10) feet from the approach side of the crosswalk marked by an authorized school stop sign and thereafter proceed in a careful and prudent manner until the vehicle shall have passed through such school crossing zone.

*(Code of Iowa, Sec. 321.249)*

**60.06.03 STOP BEFORE CROSSING SIDEWALK.** The driver of a vehicle emerging from a private roadway, alley, driveway, or building shall stop such vehicle immediately prior to driving onto the sidewalk area and thereafter shall proceed into the sidewalk area only when able to do so without danger to pedestrian traffic and shall yield the right-of-way to any vehicular traffic on the street into which the vehicle is entering.

*(Code of Iowa, Sec. 321.353)*

**60.06.04 STOP WHEN TRAFFIC IS OBSTRUCTED.** Notwithstanding any traffic control signal indication to proceed, no driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle.

**60.06.05 YIELD TO PEDESTRIANS IN CROSSWALKS.** Where traffic control signals are not in place or in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping, if need be, to yield to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection.

*(Code of Iowa, Sec. 321.327)*

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## CHAPTER 60 – TRAFFIC AND VEHICLES

### SUBCHAPTER 60.07

## LOAD AND WEIGHT RESTRICTIONS

60.07.01 Temporary Embargo

60.07.02 Permits for Excess Size and Weight

60.07.03 Load Limits Upon Certain Streets

60.07.04 Load Limits on Bridges

60.07.05 Truck Routes

**60.07.01 TEMPORARY EMBARGO.** If the Council declares an embargo when it appears by reason of deterioration, rain, snow or other climatic conditions that certain streets will be seriously damaged or destroyed by vehicles weighing in excess of an amount specified by the signs, no such vehicles shall be operated on streets so designated by such signs erected in accordance with Subchapter 60.02 of this Traffic Code.

*(Code of Iowa, Sec. 321.471 & 472)*

**60.07.02 PERMITS FOR EXCESS SIZE AND WEIGHT.** The Chief of Police may, upon application and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified by State law or the City over those streets or bridges named in the permit which are under the jurisdiction of the City and for which the City is responsible for maintenance.

*(Code of Iowa, Sec. 321.473 & 321E.1)*

**60.07.03 LOAD LIMITS UPON CERTAIN STREETS.** When signs are erected giving notice thereof, no person shall operate any vehicle with a gross weight in excess of the amounts specified on such signs at any time upon any of the streets or parts of streets for which said signs are erected in accordance with Subchapter 60.02 of this Traffic Code.

*(Code of Iowa, Sec. 321.473 & 475)*

**60.07.04 LOAD LIMITS ON BRIDGES.** Where it has been determined that any City bridge has a capacity less than the maximum permitted on the streets of the City, or on the street serving the bridge, the Council may cause to be posted and maintained signs, in accordance with Subchapter 61 of this Traffic Code, on said bridge and at suitable distances ahead of the entrances thereof to warn drivers of such maximum load limits. No person shall drive upon said bridge any vehicle weighing, loaded or unloaded, in excess of such posted limit.

*(Code of Iowa, Sec. 321.471)*

**60.07.05 TRUCK ROUTES.** When truck routes have been designated in accordance with Subchapter 60.02, any motor vehicle exceeding established weight limits shall comply with the following:

1. Use of Established Routes. Every such motor vehicle having no fixed terminal within the City or making no scheduled or definite stops within the City for the purpose of loading or unloading shall travel over or upon those streets within the City designated as truck routes and none other.

*(Code of Iowa, Sec. 321.473)*

2. Deliveries Off Truck Route. Any such motor vehicle, when loaded or empty, having a fixed terminal, making a scheduled or definite stop within the City for the purpose of loading or unloading shall proceed over or upon the designated routes to the nearest point of its scheduled or definite stop and shall proceed thereto, load or unload and return, by the most direct route to its point of departure from said designated route.

*(Code of Iowa, Sec. 321.473)*

3. Employer's Responsibility. The owner, or any other person, employing or otherwise directing the driver of any vehicle shall not require or knowingly permit the operation of such vehicle upon a street in any manner contrary to this section.

*(Code of Iowa, Sec. 321.473)*

*(Ch. 60.07 – Ord. 17-09 – Dec. 17 Supp.)*



## CHAPTER 60 – TRAFFIC AND VEHICLES

### SUBCHAPTER 60.08

## PEDESTRIANS

60.08.01 Pedestrians Subject to Traffic Control Signals

60.08.02 Pedestrians on Left

60.08.03 Pedestrian's Right-of-Way

60.08.04 When Pedestrian Shall Yield

60.08.05 Prohibited Crossing

60.08.06 Pedestrians Prohibited on Interstate 235

60.08.07 Pedestrians Soliciting Rides

#### **60.08.01 PEDESTRIANS SUBJECT TO TRAFFIC CONTROL SIGNALS.**

Pedestrians are subject to traffic control signals at intersections, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this subchapter. Any person failing to heed the command of an automatic traffic control signal shall be fined not more than \$25.00 or imprisoned not to exceed three (3) days.

*(Code of Iowa, Sec. 321.325)*

**60.08.02 PEDESTRIANS ON LEFT.** Pedestrians shall, at all times when walking on or along a street, walk on the left side of such street.

*(Code of Iowa, Sec. 321.326)*

**60.08.03 PEDESTRIAN'S RIGHT-OF-WAY.** Where traffic control signals are not in place or in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this subchapter.

*(Code of Iowa, 1995, Sec. 321.327)*

**60.08.04 WHEN PEDESTRIAN SHALL YIELD.** Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway. The foregoing rules of this section have no application under the conditions stated in Section 60.08.05 of this subchapter when pedestrians are prohibited from crossing at certain designated places.

**60.08.05 PROHIBITED CROSSING.** Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a crosswalk. No pedestrian shall cross a roadway other than in a crosswalk in any Business District.

**60.08.06 PEDESTRIANS PROHIBITED ON INTERSTATE 235.** No person shall walk upon, along, or within any fenced portion of the right-of-way of Interstate Highway 235, except persons duly engaged in construction, maintenance or law enforcement or persons present for the purpose of leaving, servicing, or removing a disabled vehicle or aiding the injured.

**60.08.07 PEDESTRIANS SOLICITING RIDES.** No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private vehicle. Nothing in this subchapter shall be construed so as to prevent any pedestrian from standing on that portion of the street or

roadway not ordinarily used for vehicular traffic for the purpose of soliciting a ride from the driver of any vehicle.

## CHAPTER 60 – TRAFFIC AND VEHICLES

### SUBCHAPTER 60.09

## ONE-WAY TRAFFIC

**60.09.01**      **ONE-WAY TRAFFIC REQUIRED.** When appropriate signs are in place, as provided for in Subchapter 60.02 of this Traffic Code, vehicular traffic, other than permitted cross traffic, shall move only in the direction indicated on such signs.

*(Code of Iowa, Sec. 321.236[4] and 321.305)*

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## CHAPTER 60 – TRAFFIC AND VEHICLES

### SUBCHAPTER 60.10

## PARKING REGULATIONS

60.10.01 Parking Limited or Controlled  
60.10.02 Left Side to Curb Prohibited  
60.10.03 Distance from Curb  
60.10.04 Angle Parking  
60.10.05 Manner of Angle Parking  
60.10.06 Parking for Certain Purposes Illegal

60.10.07 Parking Prohibited  
60.10.08 Persons With Disabilities Parking  
60.10.09 Truck Parking Limited  
60.10.10 Snow Removal  
60.10.11 Temporary No-Parking Signs Near Excavations

**60.10.01 PARKING LIMITED OR CONTROLLED.** Parking of vehicles shall be controlled or limited where so indicated by designated traffic control devices in accordance with Subchapter 60.02 of this Traffic Code. No person shall stop, park or stand a vehicle in violation of any such posted parking regulations unless in compliance with the directions of a peace officer.

*(Code of Iowa, Sec. 321.256)*

**60.10.02 LEFT SIDE TO CURB PROHIBITED.** Every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to the right-hand curb except as in the case of angle parking and vehicles parked adjacent to the left-hand curb of a one-way street.

**60.10.03 DISTANCE FROM CURB.** Every vehicle stopped or parked upon a roadway shall be so stopped or parked within eighteen (18) inches of the curb.

**60.10.04 ANGLE PARKING.** Angle or diagonal parking is permitted only in the following locations:

*(Code of Iowa, Sec. 321.361)*

1. 66<sup>th</sup> Street, on the east side, from the north line of University Avenue to a point 100 feet north of the north line of University Avenue, at an angle of 45 degrees.

**60.10.05 MANNER OF ANGLE PARKING.** Upon those streets or portions of streets which have been signed or marked for angle parking, no person shall park or stand a vehicle other than at an angle to the curb or edge of the roadway or in the center of the roadway as indicated by such signs and markings. No part of any vehicle or the load thereon, when said vehicle is parked within a diagonal parking district, shall extend into the roadway more than a distance of sixteen (16) feet when measured at right angles to the adjacent curb or edge of roadway.

*(Code of Iowa, Sec. 321.361)*

**60.10.06 PARKING FOR CERTAIN PURPOSES ILLEGAL.** No person shall park a vehicle upon public property for more than 24 hours, unless otherwise limited under the provisions of Section 60.10.01 of this subchapter, or for any of the following principal purposes:

*(Code of Iowa, Sec. 321.236[1])*

1. Sale. Displaying such vehicle for sale.

2. Repairing. For lubricating, repairing or for commercial washing of such vehicle except such repairs as are necessitated by an emergency.
3. Advertising. Displaying advertising.
4. Merchandise Sales. Selling merchandise from such vehicle except in a duly established market place or when so authorized or licensed under the Code of Ordinances.
5. Abandoned. Vehicles defined as “abandoned” pursuant to Section 52.01 of this Code of Ordinances.

**60.10.07 PARKING PROHIBITED.** No one shall stop, stand, or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or traffic control device, in any of the following places:

1. Crosswalk. On a crosswalk.  
*(Code of Iowa, Sec. 321.358[5])*
2. Center Parkway. On the center parkway or dividing area of any divided street.  
*(Code of Iowa, Sec. 321.236[1])*
3. Mailboxes. Within twenty (20) feet on either side of a mailbox which is so placed and so equipped as to permit the depositing of mail from vehicles on the roadway.  
*(Code of Iowa, Sec. 321.236[1])*
4. Sidewalks. On or across a sidewalk.  
*(Code of Iowa, Sec. 321.358[1])*
5. Driveway. In front of, or within three (3) feet of a curb cut of, a public or private driveway.  
*(Code of Iowa, Sec. 321.358[2])*
6. Intersection. Within an intersection or within ten (10) feet of an intersection of any street or alley, or as otherwise marked.
7. Fire Hydrant. Within five (5) feet of a fire hydrant.  
*(Code of Iowa, Sec. 321.358[4])*
8. Stop Sign or Signal. Within ten (10) feet upon the approach to any flashing beacon, stop or yield sign, or traffic control signal located at the side of a roadway.  
*(Code of Iowa, Sec. 321.358[6])*
9. Railroad Crossing. Within fifty (50) feet of the nearest rail of a railroad crossing, except when parked parallel with such rail and not exhibiting a red light.  
*(Code of Iowa, Sec. 321.358[8])*
10. Fire Station. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance when properly sign posted.  
*(Code of Iowa, Sec. 321.358[9])*
11. Excavations. Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic.  
*(Code of Iowa, Sec. 321.358[10])*

12. Double Parking. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.

*(Code of Iowa, Sec. 321.358[11])*

13. Hazardous Locations. When, because of restricted visibility or when standing or parked vehicles would constitute a hazard to moving traffic, or when other traffic conditions require, the Council may cause curbs to be painted with a yellow color and erect no parking or standing signs.

*(Code of Iowa, Sec. 321.358[13])*

14. Churches, Nursing Homes and Other Buildings. A space of fifty (50) feet is hereby reserved at the side of the street in front of any theatre, auditorium, hotel having more than twenty-five (25) sleeping rooms, hospital, nursing home, taxicab stand, bus depot, church, or other building where large assemblages of people are being held, within which space, when clearly marked as such, no motor vehicle shall be left standing, parked or stopped except in taking on or discharging passengers or freight, and then only for such length of time as is necessary for such purpose.

*(Code of Iowa, Sec. 321.360)*

15. Alleys. No person shall park a vehicle within an alley except for the expeditious loading, unloading, and delivery which is incident to said loading and unloading of material or merchandise or passengers, and in no event shall any vehicle park in any alley for more than forty (40) minutes at any one time.

16. Ramps. In front of a curb cut or ramp which is located on public or private property in a manner which blocks access to the curb cut or ramp.

*(Code of Iowa, Sec. 321.358[15])*

17. Area Between Lot Line and Curb Line. On any unpaved portion of any street between the curb line and the lot line, except that, on recommendation of the City Administrator, duly approved by resolution of the Council, parking may be permitted at such locations when requested in writing by property owners. Each such location must be properly marked by approved metal signs at the extremities of such location. The expense of such signs shall be borne by the property owner.

18. In More Than One Space. In any designated parking space so that any part of the vehicle occupies more than one such space or protrudes beyond the markings designating such space.

19. Safety Zones. Between a safety zone and the adjacent curb or within ten (10) feet of points on the curb immediately opposite the ends of a safety zone.

*(Code of Iowa, Sec. 321.358[7])*

20. Off-Street Parking. On privately owned property or in an area developed as an off-street parking facility, without the consent of the owner, lessee, or person in charge of such privately owned property or facility. (A violation of this subsection shall place such vehicle in the status of an illegally parked vehicle and, upon complaint of the owner, lessee, or person in charge of the privately owned property or facility, said vehicle may be dealt with pursuant to the procedures in this Code of Ordinances governing abandoned vehicles.)

21. Unimproved Surfaces – Private or Public. On grass, unpaved areas, or any unimproved portion of a yard or lawn. Parking is only permitted on improved surfaces, such as concrete or asphalt.

22. Automotive Sales. In an area not zoned for commercial use, parking on private or public property incidental to the sale of automobiles, as defined in Section 167.07(2)(A) of this Code of Ordinances, and as prohibited in Section 171.08(2)(G) of this Code of Ordinances.

23. Fire Lanes. Within any No Parking Fire Lane and/or within ten (10) feet of any No Parking Fire Lane traffic control device.

**60.10.08 PERSONS WITH DISABILITIES PARKING.** The following regulations shall apply to the establishment and use of persons with disabilities parking spaces:

1. Establishment. Persons with disabilities parking spaces shall be established and designated in accordance with Chapter 321L of the *Code of Iowa* and Iowa Administrative Code, 661-18. No unauthorized person shall establish any on-street persons with disabilities parking space without first obtaining Council approval.

2. Improper Use. The following uses of a persons with disabilities parking space, located on either public or private property, constitute improper use of a persons with disabilities parking permit, which is a violation of this Code of Ordinances:

*(Code of Iowa, Sec. 321L.4[2])*

A. Use by an operator of a vehicle not displaying a persons with disabilities parking permit;

B. Use by an operator of a vehicle displaying a persons with disabilities parking permit but not being used by a person issued a permit or being transported in accordance with Section 321L.2[1b] of the *Code of Iowa*;

C. Use by a vehicle in violation of the rules adopted under Section 321L.8 of the *Code of Iowa*.

3. Wheelchair Parking Cones. No person shall use or interfere with a wheelchair parking cone in violation of the following:

A. A person issued a persons with disabilities parking permit must comply with the requirements of Section 321L.2A(1) of the *Code of Iowa* when utilizing a wheelchair parking cone.

B. A person shall not interfere with a wheelchair parking cone which is properly placed under the provisions of Section 321L.2A(1) of the *Code of Iowa*.

**60.10.09 TRUCK PARKING LIMITED.** No person shall park a motor truck, semi-trailer, or other motor vehicle with trailer attached in violation of the following regulations. The provisions of this section shall not apply to pickup, light delivery or panel delivery trucks.

*(Code of Iowa, Sec. 321.236[1])*

1. Residential Districts. Excepting only when actually making pickups or deliveries to or conducting lawful business at any resident or building within the districts, governed by this section, no person shall park such vehicle (including specifically any motor truck having a freight capacity greater than one ton) on any portion of a street abutting or adjacent to property zoned for R-1, R-1A, R-2 or R-3 occupancy as defined in this Code of Ordinances.

2. Business District. Excepting only when such vehicles are actually engaged in the delivery or receiving of merchandise or cargo, no person shall park or leave



unattended such vehicle on any streets within the Business District. When actually receiving or delivering merchandise or cargo such vehicle shall be stopped or parked in a manner which will not interfere with other traffic.

3. Livestock. No such vehicle containing livestock shall be parked on any street, alley, or highway for a period of time of more than thirty (30) minutes.

**60.10.10 SNOW REMOVAL.** Notwithstanding all other parking restrictions in this Traffic Code, it is unlawful to park any vehicle, except to avoid an accident or in obedience to the signal of a police officer or a traffic control device, upon any of the streets of the City during the time of any snowfall and within 24 hours following the end of any snowfall.

**60.10.11 TEMPORARY NO-PARKING SIGNS NEAR EXCAVATIONS.** No person shall excavate or obstruct any street until the person first reports to the Public Works Director of the person's intention to do so; whereupon, it shall be the duty of the Director to authorize the erection of temporary "NO PARKING" signs alongside of or opposite such area if the stopping, standing, or parking of vehicles therein would obstruct traffic.

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## CHAPTER 60 – TRAFFIC AND VEHICLES

### SUBCHAPTER 60.11

## TRAFFIC CODE ENFORCEMENT PROCEDURES

60.11.01 Arrest or Citation

60.11.02 Scheduled Violations

60.11.03 Parking Violations: Alternate

60.11.04 Parking Violations: Vehicle Unattended

60.11.05 Presumption in Reference to Illegal Parking

60.11.06 Impounding Vehicles

**60.11.01 ARREST OR CITATION.** Whenever a peace officer has reasonable cause to believe that a person has violated any provision of the Traffic Code, such officer may:

1. Immediate Arrest. Immediately arrest such person and take such person before a local magistrate, or
2. Issue Citation. Without arresting the person, prepare in quintuplicate a combined traffic citation and complaint as adopted by the Iowa Commissioner of Public Safety, or issue a uniform citation and complaint utilizing a State-approved computerized device.

*(Code of Iowa, Sec. 805.6 & 321.485)*

**60.11.02 SCHEDULED VIOLATIONS.** For violations of the Traffic Code which are designated by Section 805.8A of the *Code of Iowa* to be scheduled violations, the scheduled fine for each of those violations shall be as specified in Section 805.8A of the *Code of Iowa*.

*(Code of Iowa, Sec. 805.8 & 805.8A)*

**60.11.03 PARKING VIOLATIONS: ALTERNATE.** Uncontested violations of parking restrictions imposed by this Code of Ordinances shall be charged upon a simple notice of a fine, payable at the office of the City Clerk, in accordance with the following.

*(Code of Iowa, Sec. 321.236[1a])*

1. The simple notice of a fine for violation of Section 60.10.08, Persons with Disabilities Parking, is \$100.00.
2. The simple notice of a fine for violation of Section 60.10.10, Snow Removal, is \$25.00.
3. The simple notice of a fine for violation of a No Parking Fire Lane traffic control device pursuant to Section 60.10.07(23) of this Code of Ordinances is \$50.00.
4. The simple notice of a fine for all other parking violations is \$15.00.

If the simple notice of a fine in subsections 2, 3, and 4 is not paid within 30 days, it shall be increased by \$5.00.

**60.11.04 PARKING VIOLATIONS: VEHICLE UNATTENDED.** When a vehicle is parked in violation of any provision of the Traffic Code, and the driver is not present, the notice of fine or citation as herein provided shall be attached to the vehicle in a conspicuous place.

**60.11.05 PRESUMPTION IN REFERENCE TO ILLEGAL PARKING.** In any proceeding charging a standing or parking violation, a prima facie presumption that the

registered owner was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred, shall be raised by proof that:

1. Described Vehicle. The particular vehicle described in the information was parked in violation of the Traffic Code, and
2. Registered Owner. The defendant named in the information was the registered owner at the time in question.

**60.11.06 IMPOUNDING VEHICLES.** A peace officer is hereby authorized to remove, or cause to be removed, a vehicle from a street, public alley, public parking lot, or highway to the nearest garage or other place of safety, or to a garage designated or maintained by the City, under the circumstances hereinafter enumerated:

1. Disabled Vehicle. When a vehicle is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.

*(Code of Iowa, Sec. 321.236[1])*

2. Illegally Parked Vehicle. When any vehicle is left unattended and is so illegally parked as to constitute a definite hazard or obstruction to the normal movement of traffic.

*(Code of Iowa, Sec. 321.236[1])*

3. Snow Removal. When any vehicle is left parked in violation of a ban on parking during snow removal operations.

4. Parked Over Limited Time Period. When any vehicle is left parked for a continuous period in violation of any limited parking time. If the owner can be located, the owner shall be given an opportunity to remove the vehicle.

*(Code of Iowa, Sec. 321.236[1])*

5. Costs. In addition to the standard penalties provided, the owner or driver of any vehicle impounded for the violation of any of the provisions of this subchapter shall be required to pay the reasonable cost of towing and storage.

*(Code of Iowa, Sec. 321.236[1])*

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## CHAPTER 60 – TRAFFIC AND VEHICLES

### SUBCHAPTER 60.12

## ALL-TERRAIN VEHICLES AND SNOWMOBILES

60.12.01 Purpose

60.12.02 Definitions

60.12.03 General Regulations

60.12.04 Operation of Snowmobiles

60.12.05 Operation of All-Terrain Vehicles

60.12.06 Negligence

60.12.07 Accident Reports

**60.12.01 PURPOSE.** The purpose of this subchapter is to regulate the operation of all-terrain vehicles and snowmobiles within the City.

**60.12.02 DEFINITIONS.** For use in this subchapter the following terms are defined:

1. “All-terrain vehicle” or “ATV” means a motorized vehicle, with not less than three and not more than six non-highway tires, that is limited in engine displacement to less than 1,000 cubic centimeters and in total dry weight to less than 1,200 pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

*(Code of Iowa, Sec. 321I.1)*

2. “Off-road motorcycle” means a two-wheeled motor vehicle that has a seat or saddle designed to be straddled by the operator and handlebars for steering control and that is intended by the manufacturer for use on natural terrain. “Off-road motorcycle” includes a motorcycle that was originally issued a certificate of title and registered for highway use under Chapter 321 of the *Code of Iowa*, but which contains design features that enable operation over natural terrain. An operator of an off-road motorcycle is also subject to the provisions of this chapter governing the operation of all-terrain vehicles.

*(Code of Iowa, Sec. 321I.1)*

3. “Off-road utility vehicle” means a motorized vehicle, with not less than four and not more than eight non-highway tires or rubberized tracks, that has a seat that is of bucket or bench design, not intended to be straddled by the operator, and a steering wheel or control levers for control. “Off-road utility vehicle” includes the following vehicles:

*(Code of Iowa, Sec. 321I.1)*

A. “Off-road utility vehicle – type 1” includes vehicles with a total dry weight of 1,200 pounds or less and a width of 50 inches or less.

B. “Off-road utility vehicle – type 2” includes vehicles, other than type 1 vehicles, with a total dry weight of 2,000 pounds or less and a width of 65 inches or less.

C. “Off-road utility vehicle – type 3” includes vehicles with a total dry weight of more than 2,000 pounds or a width of more than 65 inches, or both.

An operator of an off-road utility vehicle is also subject to the provisions of this chapter governing the operation of all-terrain vehicles.

4. "Snowmobile" means a motorized vehicle that weighs less than 1,000 pounds, that uses sled-type runners or skis, endless belt-type tread with a width of 48 inches or less, or any combination of runners, skis, or tread, and is designed for travel on snow or ice. "Snowmobile" does not include an all-terrain vehicle that has been altered or equipped with runners, skis, belt-type tracks, or treads.

*(Code of Iowa, Sec. 321G.1)*

**60.12.03 GENERAL REGULATIONS.** No person shall operate an ATV, off-road motorcycle or off-road utility vehicle within the City in violation of Chapter 321I of the *Code of Iowa* or a snowmobile within the City in violation of the provisions of Chapter 321G of the *Code of Iowa* or in violation of rules established by the Natural Resource Commission of the Department of Natural Resources governing their registration, equipment and manner of operation.

*(Code of Iowa, Ch. 321G & Ch. 321I)*

**60.12.04 OPERATION OF SNOWMOBILES.** The operators of snowmobiles shall comply with the following restrictions as to where snowmobiles may be operated within the City:

1. Streets. Snowmobiles shall be operated only upon streets which have not been plowed during the snow season and on such other streets as may be designated by resolution of the Council.

*(Code of Iowa, Sec. 321G.9[4a])*

2. Exceptions. Snowmobiles may be operated on prohibited streets only under the following circumstances:

- A. Emergencies. Snowmobiles may be operated on any street in an emergency during the period of time when and at locations where snow upon the roadway renders travel by conventional motor vehicles impractical.

*(Code of Iowa, Sec. 321G.9[4c])*

- B. Direct Crossing. Snowmobiles may make a direct crossing of a prohibited street provided all of the following occur:

- (1) The crossing is made at an angle of approximately ninety degrees (90°) to the direction of the street and at a place where no obstruction prevents a quick and safe crossing;

- (2) The snowmobile is brought to a complete stop before crossing the street;

- (3) The driver yields the right-of-way to all on-coming traffic which constitutes an immediate hazard; and

- (4) In crossing a divided street, the crossing is made only at an intersection of such street with another street.

*(Code of Iowa, Sec. 321G.9[2])*

3. Railroad Right-of-Way. Snowmobiles shall not be operated on an operating railroad right-of-way. A snowmobile may be driven directly across a railroad right-of-way only at an established crossing and notwithstanding any other provisions of law may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic.

*(Code of Iowa, Sec. 321G.13[1h])*

4. Trails. Snowmobiles shall not be operated on all-terrain vehicle trails except where so designated.

*(Code of Iowa, Sec. 321G.9[4f])*

5. Parks and Other City Land. Snowmobiles shall not be operated in any park, playground or upon any other City-owned property without the express permission of the City. A snowmobile shall not be operated on any City land without a snow cover of at least one-tenth of one inch.

6. Sidewalk or Parking. Snowmobiles shall not be operated upon the public sidewalk or that portion of the street located between the curb line and the sidewalk or property line commonly referred to as the “parking” except for purposes of crossing the same to a public street upon which operation is authorized by this subchapter.

**60.12.05 OPERATION OF ALL-TERRAIN VEHICLES.** The operators of ATVs shall comply with the following restrictions as to where ATVs may be operated within the City:

1. Streets. ATVs and off-road utility vehicles may be operated on streets only in accordance with Section 321.234A of the *Code of Iowa* or on such streets as may be designated by resolution of the Council for the operation of registered ATVs or registered off-road utility vehicles. In designating such streets, the Council may authorize ATVs and off-road utility vehicles to stop at service stations or convenience stores along a designated street.

*(Code of Iowa, Sec. 321I.10[1 & 3])*

2. Trails. ATVs shall not be operated on snowmobile trails except where designated.

*(Code of Iowa, Sec. 321I.10[4])*

3. Railroad Right-of-way. ATVs shall not be operated on an operating railroad right-of-way. An ATV may be driven directly across a railroad right-of-way only at an established crossing and notwithstanding any other provisions of law may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic.

*(Code of Iowa, Sec. 321I.14[1h])*

4. Parks and Other City Land. ATVs shall not be operated in any park, playground or upon any other City-owned property without the express permission of the City.

5. Sidewalk or Parking. ATVs shall not be operated upon the public sidewalk or that portion of the street located between the curb line and the sidewalk or property line commonly referred to as the “parking.”

**60.12.06 NEGLIGENCE.** The owner and operator of an ATV or snowmobile are liable for any injury or damage occasioned by the negligent operation of the ATV or snowmobile. The owner of an ATV or snowmobile shall be liable for any such injury or damage only if the owner was the operator of the ATV or snowmobile at the time the injury or damage occurred or if the operator had the owner’s consent to operate the ATV or snowmobile at the time the injury or damage occurred.

*(Code of Iowa, Sec. 321G.18 & 321I.19)*

**60.12.07 ACCIDENT REPORTS.** Whenever an ATV or snowmobile is involved in an accident resulting in injury or death to anyone or property damage amounting to one thousand five hundred dollars (\$1,500.00) or more, either the operator or someone acting for the operator

shall immediately notify a law enforcement officer and shall file an accident report, in accordance with State law.

*(Code of Iowa, Sec. 321G.10 & 321I.11)*

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# CHAPTER 60 – TRAFFIC AND VEHICLES

## SUBCHAPTER 60.13

### BICYCLE REGULATIONS

60.13.01 Scope of Regulations	60.13.10 Control
60.13.02 Traffic Code Applies	60.13.11 Operation on Sidewalks
60.13.03 Obedience to Signals	60.13.12 Towing
60.13.04 Double Riding Restricted; Riding on Handlebars Prohibited	60.13.13 Improper Riding
60.13.05 Place of Riding; Two Abreast Limit	60.13.14 Parking
60.13.06 Bicycle Paths; Nondiscrimination on the Basis of Disability	60.13.15 Equipment Requirements
60.13.07 Speed and Reckless Operation	60.13.16 Alteration of Serial Frame Number
60.13.08 Emerging from Alley or Driveway	60.13.17 Sirens or Whistles
60.13.09 Carrying Articles	60.13.18 Prohibited Operation – Interstate 235
	60.13.19 Following Emergency Vehicles

**60.13.01 SCOPE OF REGULATIONS.** These regulations shall apply whenever a bicycle is operated upon any street or upon any public path set aside for the exclusive use of bicycles, subject to those exceptions stated herein. The following terms are defined as used in this subchapter.

*(Code of Iowa, Sec. 321.236[10])*

1. “Bicycle” means either of the following:
  - A. A device having up to four wheels and having at least one saddle or seat for the use of a rider and which is propelled by human power.
  - B. A device having up to four wheels with fully operable pedals and an electric motor of one horsepower or less.
2. “Multi-use trail” means a way or place, the use of which is controlled by the City as an owner of real property, designated by the multi-use recreational trail maps, as approved by resolution by the Council, and no multi-use trail shall be considered as a street or highway.
3. “Other power-driven mobility device” means any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—which is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway PT, or any mobility device designed to operate in areas without defined pedestrian routes, but which is not a wheelchair within the meaning of this section. This definition does not apply to federal wilderness areas; wheelchairs in such areas are defined in Section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).
4. “Wheelchair” means a manually operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion. This definition does not apply to federal wilderness areas; wheelchairs in such areas are defined in Section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

**60.13.02 TRAFFIC CODE APPLIES.** Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of the State declaring rules of the road applicable to vehicles or by the Traffic Code of the City applicable to the driver of a vehicle, except as to those provisions which by their nature can have no application.

*(Code of Iowa, Sec. 321.234)*

**60.13.03 OBEDIENCE TO SIGNALS.** Any person operating a bicycle shall obey the directions of traffic control signs, signals, and devices applicable to other vehicles unless otherwise directed by a police officer and shall obey direction signs relative to turns permitted unless such person dismounts from the bicycle, in which case he or she shall then obey the regulations applicable to pedestrians.

**60.13.04 DOUBLE RIDING RESTRICTED; RIDING ON HANDLEBARS PROHIBITED.** A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped. It is unlawful for the operator of any bicycle (or of any motorcycle not equipped with a side car or built to transport two persons), when upon any public street, to carry any other person upon the handlebars, frame, or other part thereof, or for any other person to so ride on such vehicle. This section does not apply to the use of a bicycle in a parade or special event authorized by the City.

*(Code of Iowa, Sec. 321.234[3 and 4])*

**60.13.05 PLACE OF RIDING; TWO ABREAST LIMIT.**

1. Any person operating a bicycle upon a roadway at a speed less than the normal speed of traffic moving in the same direction shall ride as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:
  - A. When overtaking and passing another bicycle vehicle proceeding in the same direction.
  - B. When preparing for a left turn at an intersection or into a private road or driveway.
  - C. When reasonably necessary to avoid conditions, including (but not limited to) fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes, which make it unsafe to continue along the right-hand curb or edge. For purposes of this section, a "substandard width lane" is a lane that is too narrow for a bicycle and a vehicle to travel safely side by side within the lane.
  - D. A facility that would allow bicycle traffic on the left side of the roadway.
2. Any person operating a bicycle upon a roadway which carries traffic in one direction only and has two or more marked traffic lanes, may ride as near the left-hand curb or edge of such roadway as practicable.
3. When so riding upon any multi-use trail with other cyclists, there shall not be more than two abreast.
4. This section does not apply to the use of a bicycle in a parade or special event authorized by the City.

**60.13.06 BICYCLE PATHS; NONDISCRIMINATION ON THE BASIS OF DISABILITY.** Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. The City shall permit individuals with mobility disabilities to use wheelchairs and manually powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any area open to pedestrian use, including bicycle paths. The City shall also permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless it is demonstrated that the class of power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the City has adopted in accordance with the Americans with Disabilities Act Part 35.

*(Code of Iowa, Sec. 321.236[10])*

**60.13.07 SPEED AND RECKLESS OPERATION.** No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing, and no person shall operate a bicycle in such a manner as to constitute a willful and wanton disregard for the safety of persons or property.

*(Code of Iowa, Sec. 321.236[10])*

**60.13.08 EMERGING FROM ALLEY OR DRIVEWAY.** The operator of a bicycle emerging from an alley, driveway, or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on said sidewalk or sidewalk area, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

*(Code of Iowa, Sec. 321.236[10])*

**60.13.09 CARRYING ARTICLES.** No person operating a bicycle shall carry any package, bundle, or article which prevents the rider from keeping at least one hand upon the handlebars.

*(Code of Iowa, Sec. 321.236[10])*

**60.13.10 CONTROL.** The operator of a bicycle upon a street or public way shall keep the same under control at all times and at all times during operation shall have one or both hands upon the handlebars and the feet engaged with the braking device if the braking device is designed to be actuated by the feet.

**60.13.11 OPERATION ON SIDEWALKS.** Bicycles may be operated upon the public sidewalks in a careful and prudent manner, except where signs are erected to prohibit riding on the sidewalk, and at a rate of speed not exceeding eight miles per hour. Every person lawfully operating a bicycle upon a public sidewalk, when approaching a pedestrian or a vehicle occupied by a child under the age of 16 years, shall either dismount or give a clear right-of-way to the full extent of such sidewalk to such pedestrian or child and, in overtaking such pedestrian or child, shall give an audible signal before passing.

**60.13.12 TOWING.** It is unlawful for any person riding a bicycle to be towed or to tow any other vehicle upon the streets of the City unless the vehicle is manufactured for such use.

**60.13.13 IMPROPER RIDING.** No person shall ride a bicycle in an irregular or reckless manner such as zigzagging, stunting, speeding, or otherwise so as to disregard the safety of the operator or others.

**60.13.14 PARKING.** No person shall leave a bicycle lying on its side on any sidewalk, or park a bicycle on a sidewalk in any other position, so that there is not an adequate path for

pedestrian traffic. Local authorities may, by ordinance or resolution, prohibit bicycle parking in designated areas of the public highway, provided that appropriate signs are erected.

**60.13.15 EQUIPMENT REQUIREMENTS.** Every person riding a bicycle shall be responsible for providing and using equipment as provided herein:

1. Lamps and Reflectors. Every bicycle shall be equipped with a lamp on the front exhibiting a white light, when used on the public ways of the City at any time from sunset to sunrise, and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the street at a distance of 500 feet ahead. Such light shall be visible from a distance of at least 300 feet to the front. Such bicycle when so used shall display a lamp on the rear exhibiting a red light visible from a distance of 300 feet to the rear, except that in lieu thereof may be used a red reflector mounted not less than 24 inches or more than 42 inches above the ground, which shall be visible at night from all distances within 500 feet to 50 feet from the bicycle when directly in front of a motor vehicle displaying lawfully lit headlamps.
2. Brakes. Each bicycle used upon the public ways of the City shall be equipped with a brake which will enable the operator to make the braked wheel skid on a dry, level pavement and which may be applied and bring the bicycle to a stop without the brake locking the braked wheel.
3. Equivalent equipment such as headlamps and red light attachments to the arm or leg may be used in lieu of a lamp on the front and a red light on the rear of the bicycle.
4. A peace officer riding a police bicycle is not required to use either front or rear lamps if duty so requires.

**60.13.16 ALTERATION OF SERIAL FRAME NUMBER.** It is unlawful for any person willfully or maliciously to remove, destroy, mutilate, or alter the manufacturer's serial frame number of any bicycle.

**60.13.17 SIRENS OR WHISTLES.** No bicycle shall be equipped with nor shall any person use upon a bicycle any siren or whistle. This section does not apply to bicycles ridden by peace officers in the line of duty.

**60.13.18 PROHIBITED OPERATION – INTERSTATE 235.** No person shall ride, park, or stop any bicycle within any fenced portion of the right-of-way of Interstate Highway 235.

**60.13.19 FOLLOWING EMERGENCY VEHICLES.** No person riding a bicycle shall follow closer than 500 feet to an emergency vehicle, as defined by Section 321.1 of the *Code of Iowa*, which has emergency lights and/or siren activated, and shall not stop, park, or leave a bicycle within 500 feet of an emergency vehicle stopped in response to an emergency.

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## CHAPTER 90

# WATER SERVICE SYSTEM

90.01 Definitions

90.02 Mandatory Connections

90.03 Water Service Provided by Des Moines Water Works

90.04 Permits

90.05 Fees and Charges

90.06 Collections and Liens

90.07 Compliance with Plumbing Code

90.08 Plumber Required

90.09 Failure to Maintain

90.10 Completion by the City

90.11 Operation of Curb Valve and Hydrants

**90.01 DEFINITIONS.** The following terms are defined for use in the chapters in this Code of Ordinances pertaining to the Water Service System:

1. “Customer” means, in addition to any person receiving water service from the City, the owner of the property served, and as between such parties the duties, responsibilities, liabilities and obligations hereinafter imposed shall be joint and several.
2. “Des Moines Water Works” means the City water utility organized under Chapter 388, *Code of Iowa*, which is officially known as the Board of Water Works Trustees of the City of Des Moines, Iowa.
3. “Water service pipe” means the pipe from the water main to the building served.
4. “Water system” means all public facilities for securing, collecting, storing, pumping, treating, and distributing water.

**90.02 MANDATORY CONNECTIONS.** All residences and business establishments within the City limits intended or used for human habitation, occupancy or use shall be connected to the public water system, if it is reasonably available and if the building is not furnished with pure and wholesome water from some other source.

**90.03 WATER SERVICE PROVIDED BY DES MOINES WATER WORKS.** Water service to all customers, within and without the City, that are connected to the water system of the City shall be provided by the Des Moines Water Works, pursuant to the terms of a Chapter 28E Agreement between the City and the Des Moines Water Works. All such service shall be provided directly by Des Moines Water Works as the water service provider to customer and shall be pursuant to the rates, fees, rules, and regulations established by the Des Moines Water Works from time to time.

**90.04 PERMITS.** Before any person makes a connection with the public water system, a written permit must be obtained from the Des Moines Water Works as provided in its rules and regulations.

**90.05 FEES AND CHARGES.** Fees and charges for permits, taps, connections, and all other services, including system development fees, shall be established by, collected by, and subject to the policies and procedures of the Des Moines Water Works.

**90.06 COLLECTIONS AND LIENS.** The Des Moines Water Works shall have, and may exercise, all authority for collection of water rates and charges granted by law, including discontinuing service and imposition of liens as provided by law.

**90.07 COMPLIANCE WITH PLUMBING CODE.** The installation of any water service pipe and any connection with the water system shall comply with all pertinent and applicable provisions, whether regulatory, procedural, or enforcement provisions, of the Plumbing Code of the City and the laws of the State of Iowa.

**90.08 PLUMBER REQUIRED.** All installations of water service pipes and connections to the water system shall be made by a State-licensed plumber, except that Des Moines Water Works shall be allowed to make routine service line repairs in connection with water main repairs.

**90.09 FAILURE TO MAINTAIN.** When any portion of the water service pipe which is the responsibility of the property owner becomes defective or creates a nuisance and the owner fails to correct such nuisance, the Des Moines Water Works may do so, and the City may assess the costs thereof to the property.

**90.10 COMPLETION BY THE CITY.** Should any excavation be left open or only partly refilled for twenty-four hours after the water service pipe is installed and connected with the water system, or should the work be improperly done, the City shall have the right to finish or correct the work, and the Council shall assess the costs to the property owner or the plumber. If the plumber is assessed, the plumber must pay the costs before receiving another permit, and the plumber's bond or cash deposit shall be security for the assessment. If the property owner is assessed, such assessment may be collected with, and in the same manner as, general property taxes.

**90.11 OPERATION OF CURB VALVE AND HYDRANTS.** It is unlawful for any person, except the Des Moines Water Works or authorized City personnel, to turn water on at the curb valve, and no person, unless specifically authorized by the City or the Des Moines Water Works, shall open or attempt to draw water from any fire hydrant for any purpose whatsoever.

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## CHAPTER 91

# CROSS CONNECTION CONTROL

91.01 Definitions	91.07 Required Backflow Prevention Assemblies for Containment – Fire Protection Systems
91.02 Administrative Authority	91.08 Backflow Prevention Assembly Technicians
91.03 New Water Services	91.09 Installation of Backflow Prevention Assemblies
91.04 Existing Water Services	91.10 Testing of Backflow Prevention Assemblies
91.05 Customer Responsibilities	91.11 Repair of Backflow Prevention Assemblies
91.06 Required Backflow Prevention Assemblies for Containment – Water Services	91.12 Customer Noncompliance

**91.01 DEFINITIONS.** The following definitions apply only to this chapter. For the purpose of this chapter, these definitions supersede definitions given elsewhere in this Code of Ordinances.

1. “Administrative authority” means Des Moines Water Works and the City of Windsor Heights.
2. “Approved backflow prevention assembly for containment” means a backflow prevention assembly which is listed by the University of Southern California Foundation for Cross Connection Control and Hydraulic Research as having met the requirements of ANSI-AWWA Standard C510-97, *Double Check Valve Backflow Prevention Assemblies*, of ANSI-AWWA Standard C511-97, *Reduced Pressure Principle Backflow Prevention Assemblies*, for containment. The listing shall include the limitations of use based on the degree of hazard. The backflow prevention assembly must also be listed by the International Association of Plumbing and Mechanical Officials.
3. “Approved backflow prevention assembly for containment in a fire protection system” means a backflow prevention assembly to be used in a fire protection system which meets the requirements of Factory Mutual Research Corporation (FM) and Underwriters Laboratory (UL), and the requirements of the Fire Code and the Building Code of Windsor Heights, in addition to the requirements of Section 91.07 of this chapter. Devices sized smaller than 2½ inches which have not been listed by Underwriters Laboratory (UL) and tested by Factory Mutual Research Corporation (FM) may be allowed if they meet the requirements of the Fire Code and the Building Code.
4. “Auxiliary water supply” means any water supply on or available to the premises other than City of Windsor Heights or its designee’s approved public water supply, such as (but not limited to) a private well, pond, or river.
5. “Containment” means a method of backflow prevention which requires the installation of a backflow prevention assembly at the water service entrance.
6. “Cross connection” means any actual or potential connection or arrangement, physical or otherwise, between a potable water supply system and any plumbing fixture or tank, receptacle, equipment, or device, through which it may be possible for non-potable, used, unclean, polluted, and contaminated water or other substance to enter into any part of such potable water system under any condition.

7. “Customer” means the owner, operator, or occupant of a building or property which has a water service from a public water system, or the owner or operator of a private water system which has a water service from a public water system.
8. “Degree of hazard” means the rating given by the administrative authority of a cross connection or water service which indicates its potential to cause contamination or pollution of the public water supply.
9. “Double check valve backflow prevention assembly” means a backflow prevention device consisting of two independently acting internally loaded check valves, four properly located test cocks, and two isolation valves.
10. “High hazard cross connection” means a cross connection which may cause an impairment of the quality of the public potable water supply by creating an actual hazard to public health, through poisoning or through the spread of disease by sewage, industrial fluids, or waste.
11. “Isolation” means a method of backflow prevention in which a backflow prevention assembly is located at the cross connection rather than at the water service entrance.
12. “Low hazard cross connection” means a cross connection which may cause an impairment of the quality of the public potable water supply to a degree which does not create a hazard to public health, but which does adversely and unreasonably affect the aesthetic qualities of such potable waters for domestic use.
13. “Reduced pressure principle backflow prevention assembly” means a backflow prevention device consisting of two independently acting internally loaded check valves, a pressure relief valve, four properly located test cocks, and two isolation valves.
14. “Registered backflow prevention assembly technician” means a person who is registered by the State of Iowa to test and repair backflow prevention assemblies and report on the condition of those assemblies.
15. “Thermal expansion” means volumetric increase of water due to heating resulting in increased pressure in a closed system.
16. “Water service” means, depending on the context, the physical connection between a public water system and a customer’s building, property, or private water system, or the act of providing potable water to a customer.
17. “Public water supplier,” for the purpose of this section, means the entity providing public water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serving an average of at least 25 people for at least 60 days a year.

#### **91.02 ADMINISTRATIVE AUTHORITY.**

1. The City of Windsor Heights or Des Moines Water Works shall have the right to enter, with the consent of the customer or upon the basis of a suitable warrant issued by a court of appropriate jurisdiction, any property to inspect for possible cross connections.
2. Des Moines Water Works shall maintain records of cross connection hazard surveys, and the installation, testing, and repair of all backflow prevention assemblies installed for containment purposes.



**91.03 NEW WATER SERVICES.**

1. Plans shall be submitted to Des Moines Water Works for review on all new water services to determine the degree of hazard.
2. Des Moines Water Works shall determine the type of backflow prevention assembly required for containment based on the degree of hazard.
3. The Des Moines Water Works shall inspect the installation of the required backflow prevention assembly for containment before the initiation of water service.

**91.04 EXISTING WATER SERVICES.**

1. Upgrades of existing water services shall be treated as new water services for the purpose of this section.
2. Customers whose premises are not classified as single-family residential shall complete and return a "Water Usage Inventory" to Des Moines Water Works to be used to determine the degree of hazard of the facility.
3. Des Moines Water Works shall, on the basis of information received from the Water Usage Inventory or gathered through on-site investigations or surveys, determine the degree of hazard and type of backflow prevention assembly required for containment.
4. Within the time frame specified in writing by Des Moines Water Works, the customer shall install a backflow prevention assembly for containment.
5. For existing water services, Des Moines Water Works may inspect the premises to determine the degree of hazard. When high hazard cross connections are present, Des Moines Water Works shall assign a deadline for the installation of a backflow prevention assembly for containment.
6. Failure of the customer to install a backflow prevention assembly by the deadline as required will result in termination of the water service until the installation is complete.
7. Failure of Des Moines Water Works to notify a customer that a high hazard cross connection exists and that a backflow prevention assemblies for containment must be installed in no way relieves a customer of the responsibility to comply with all requirements of this section.

**91.05 CUSTOMER RESPONSIBILITIES.**

1. The customer shall be responsible for ensuring that no cross connections exist without approved backflow protection within his or her premises, starting at the point of service from the public potable water system.
2. The customer shall, at his or her own expense, cause installation, operation, testing, and maintenance of backflow prevention assemblies.
3. The customer shall ensure that copies of records of the installation and of all tests and repairs made to all backflow prevention assemblies be submitted to the Des Moines Water Works on the approved form within fifteen (15) days after testing and/or repairs are completed.

4. In the event of a backflow incident, the customer shall immediately notify Des Moines Water Works of the incident, and the Des Moines Water Works will recommend steps to confine the contamination or pollution.

**91.06 REQUIRED BACKFLOW PREVENTION ASSEMBLIES FOR CONTAINMENT – WATER SERVICES.**

1. An air gap or an approved reduced pressure principle backflow prevention assembly is required for water services having one or more cross connections which the administrative authority has classified as high hazard.
2. An approved double check valve assembly is required for water services having no high hazard cross connections but having one or more cross connections which Des Moines Water Works has classified as low hazard.

**91.07 REQUIRED BACKFLOW PREVENTION ASSEMBLIES FOR CONTAINMENT – FIRE PROTECTION SYSTEMS.**

1. A reduced pressure principle backflow prevention assembly shall be installed on all new and existing fire protection systems, which are determined to have any one of the following:
  - A. Direct connections from public water mains with an auxiliary water supply on or available to the premises for pumper connection.
  - B. Interconnections with auxiliary supplies such as reservoirs, rivers, ponds, wells, mills, or other industrial water systems.
  - C. Use of antifreezes or other additives in the fire protection system.
  - D. Combined industrial and fire protection systems supplied from public water mains only, with or without gravity storage or pump suction tanks.
  - E. Any other facility, connection, or condition, which may cause contamination.
2. A double check valve assembly will be required for all other fire protection systems. The double check valve assembly shall be required on all new systems at the time of installation and on existing systems at the time that they are upgraded.
3. Submittal of proposed backflow prevention devices to Des Moines Water Works does not relieve the designer or the sprinkler contractor of the responsibility of submitting plans, including backflow prevention devices to the City of Windsor Heights for approval.

**91.08 BACKFLOW PREVENTION ASSEMBLY TECHNICIANS.**

1. A backflow prevention assembly technician registered by the State of Iowa shall include his or her registration number on all correspondence and forms required by or associated with this chapter.
2. Noncompliance with any of the following by a registered technician shall be grounds for reporting said individual to the State Health Department.
  - A. Improper testing or repair of backflow prevention assemblies.
  - B. Improper reporting of the results of testing or of repairs made to backflow prevention assemblies.

- C. Failure to meet registration requirements.
- D. Related unethical practices.

#### **91.09 INSTALLATION OF BACKFLOW PREVENTION ASSEMBLIES.**

1. The required backflow prevention assemblies for containment shall be installed in horizontal plumbing immediately following the meter or as close to that location as deemed practical by Water Works. In any case, it shall be located upstream from any branch piping. Installation at this point does not eliminate the responsibility of the customer to protect the water supply system from contamination or pollution between the backflow prevention assembly and the water main.
2. Reduced pressure principle backflow prevention assemblies shall be installed so as to be protected from flooding.
3. Reduced pressure principle backflow prevention assemblies shall not be installed in underground vaults or pits.
4. All backflow prevention assemblies shall be protected from freezing. Those devices used for seasonal water services may be removed in lieu of being protected from freezing; however, the devices must be reinstalled and tested by a registered backflow prevention technician prior to service being reactivated.
5. If hot water is used within the water system, thermal expansion shall be provided for when installing a backflow prevention assembly for containment.
6. Provisions shall be made to convey the discharge of water from reduced pressure principle backflow prevention assemblies to a suitable drain.
7. No backflow prevention assemblies shall be installed in a place where it would create a safety hazard, such as, but not limited to over an electrical panel, or above ceiling level.
8. If interruption of water service during testing and repair of backflow prevention assemblies for containment is unacceptable, another backflow prevention assembly, sized to handle the temporary water flow needed during the time of test or repair, should be installed in parallel piping.
9. All backflow prevention assemblies shall be installed so that they are accessible for testing.
10. All shut-off valves shall conform to the current edition of the *Manual of Cross Connection Control* (University of Southern California) requirements for either ball or resilient seat gate valves at the time of installation. Ball valves shall be used on assemblies installed in piping two inches and smaller and resilient seat gate valves on assemblies installed in piping larger than two inches.
11. Location and protection of the containment assembly shall be approved by Des Moines Water Works prior to installation.

**91.10 TESTING OF BACKFLOW PREVENTION ASSEMBLIES.** Testing of backflow prevention assemblies shall be performed by a registered backflow prevention assembly technician. The costs of tests required in the following subsections shall be borne by the customer.

1. Backflow prevention assemblies shall be tested upon installation and tested and inspected at least annually.

2. Backflow prevention assemblies, which are in place, but have been out of operation for more than three months, shall be tested before being put back into operation. Backflow prevention assemblies used in seasonal applications shall be tested before being put into operation each season.
3. Any backflow prevention assembly which fails a periodic test shall be repaired or replaced. When water service has been terminated for noncompliance, the backflow prevention assembly shall be repaired or replaced prior to the resumption of water service. Backflow prevention assemblies shall be retested by a registered backflow prevention assembly technician immediately after repair or replacement.
4. Des Moines Water Works may require backflow prevention assemblies to be tested at any time in addition to the annual testing requirement.
5. The registered backflow prevention assembly technician shall report the successful test of a backflow prevention assembly to the customer and to Des Moines Water Works within fifteen (15) days of the test.

Des Moines Water Works may require, at the owner's expense, additional tests of individual backflow prevention assemblies as it shall deem necessary to verify test procedures and results.

#### **91.11 REPAIR OF BACKFLOW PREVENTION ASSEMBLIES.**

1. All repairs to backflow prevention assemblies shall be performed by registered backflow prevention assembly technicians.
2. The registered backflow prevention assembly technician shall not change the design, material, or operational characteristics of a backflow prevention assembly during repair or maintenance, and shall use only original manufacturer replacement parts.
3. The registered backflow prevention assembly technician shall report the repair of a backflow prevention assembly to the customer and to the Des Moines Water Works within fifteen (15) days of the repair. The report shall include the list of materials or replacement parts used.
4. Any time fire services are discontinued for a period of time longer than necessary to test the device; the tester is required to notify the Fire Marshal's office that the fire service is shut off for repair.

**91.12 CUSTOMER NONCOMPLIANCE.** The water service may be discontinued in the case of noncompliance with this section. Noncompliance includes (but is not limited to) the following:

1. Refusal to allow Des Moines Water Works access to the property to inspect for cross connections.
2. Removal of a backflow prevention assembly, which has been required by Des Moines Water Works and/or the City of Windsor Heights.
3. Bypassing of a backflow prevention assembly which has been required by Des Moines Water Works and/or the City of Windsor Heights.
4. Providing inadequate backflow protection when cross connections exist.
5. Failure to install a backflow prevention assembly, which has been required by Des Moines Water Works and/or the City of Windsor Heights.

6. Failure to test and/or properly repair a backflow prevention assembly as required by Des Moines Water Works and/or the City of Windsor Heights.
7. Failure to comply with the requirements of this chapter.

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## CHAPTER 95

# SANITARY SEWER SYSTEM

95.01 Purpose

95.02 Definitions

95.03 Superintendent

95.04 Prohibited Acts

95.05 Sewer Connection Required

95.06 Service Outside the City

95.07 Access to Premises

95.08 Use of Easements

95.09 Special Penalties

95.10 Fees and Charges

**95.01 PURPOSE.** The purpose of the chapters of this Code of Ordinances pertaining to Sanitary Sewers is to establish rules and regulations governing the treatment and disposal of sanitary sewage within the City in order to protect the public health, safety, and welfare.

**95.02 DEFINITIONS.** For use in these chapters, unless the context specifically indicates otherwise, the following terms are defined:

1. “B.O.D.” (denoting Biochemical Oxygen Demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees (20°) C, expressed in milligrams per liter or parts per million.
2. “Building drain” means that part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.
3. “Building sewer” means that part of the horizontal piping from the building wall to its connection with the main sewer or the primary treatment portion of an on-site wastewater treatment and disposal system conveying the drainage of one building site.
4. “Combined sewer” means a sewer receiving both surface run-off and sewage.
5. “Customer” means any person responsible for the production of domestic, commercial, or industrial waste which is directly or indirectly discharged into the public sewer system.
6. “Garbage” means solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of food products and produce.
7. “Industrial wastes” means solid, liquid, or gaseous substances from any industrial, manufacturing, commercial, or business establishment, or process, or from the development, recovery, or processing of any natural resource which any person discharges or allows to be discharged into the public sewer, but does not include any wastes from a building used exclusively for residential purposes which contains eight dwelling or rooming units or less.
8. “Inspector” means the person duly authorized by the Council to inspect and approve the installation of building sewers and their connections to the public sewer system; and to inspect such sewage as may be discharged therefrom.
9. “Natural outlet” means any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

10. “On-site wastewater treatment and disposal system” means all equipment and devices necessary for proper conduction, collection, storage, treatment, and disposal of wastewater from four or fewer dwelling units or other facilities serving the equivalent of fifteen persons (1500 gpd) or less.
11. “Parts per million (ppm)” means a weight-to-weight ratio; the parts-per-million value multiplied by the factor 8.345 is equivalent to pounds per million gallons of water, and for the purposes of these Sanitary Sewer chapters, it means the same as milligrams per liter (mg/l).
12. “Paunch manure” means any material found in the stomachs or paunches of livestock.
13. “pH” means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.
14. “Public sewer” means a sanitary sewer provided by or under the jurisdiction of the City or a sewer provided by or under the jurisdiction of any other city or sewer district which ultimately discharges into a sewer under the jurisdiction of the City.
15. “Sanitary sewer” means a sewer that conveys sewage or industrial wastes or a combination of both, and into which storm, surface, and ground waters or unpolluted industrial wastes are not intentionally admitted.
16. “Sewage” means the water-carried human, animal, and household wastes in a public or private drain, together with such groundwater infiltration, surface drainage and industrial wastes as may be present.
17. “Sewage treatment plant” means the arrangement of devices and structures and equipment of the City of Des Moines for treating sewage and industrial wastes.
18. “Sewage works” means all facilities for collecting, pumping, treating, and disposing of sewage and industrial wastes.
19. “Sewer” means a pipe or conduit for carrying sewage or any other wastes liquids, including storm, surface, and ground water drainage.
20. “Slug” means any discharge of water, sewage, or industrial waste 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 or flows during normal operation.
21. “Standard methods” means the examination and analytical procedures set forth in the most recent edition of *Standard Methods for the Examination of Water, Sewage, and Industrial Wastes*, published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation.
22. “Storm drain” or “storm sewer” means a sewer which carries storm and surface waters and drainage but excludes sewage and industrial wastes, other than unpolluted cooling water.
23. “Storm water runoff” means that portion of rainfall that is drained into the sewers.
24. “Superintendent” means the Public Works Director of the City or any authorized deputy, agent, or representative.



25. “Suspended solids” means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

26. “Unpolluted water or liquids” means any water or liquid containing none of the following: free or emulsified grease or oil; substances that may impart taste-and-odor or color characteristics; volatile, explosive, toxic, or poisonous substances in suspension, colloidal state, or solution; explosive, odorous, or otherwise obnoxious gases. Such water or liquids shall not contain more than 25 mg/l of suspended solids, and not more than 25 mg/l of B.O.D.

27. “Watercourse” means a channel in which a flow of water occurs, either continuously or intermittently.

**95.03 SUPERINTENDENT.** The Superintendent shall exercise the following powers and duties:

*(Code of Iowa, Sec. 372.13[4])*

1. Operation and Maintenance. Operate and maintain the City sewage system.
2. Inspection and Tests. Conduct necessary inspections and tests to assure compliance with the provisions of these Sanitary Sewer chapters.
3. Records. Maintain a complete and accurate record of all sewers, sewage connections and manholes constructed showing the location and grades thereof.

**95.04 PROHIBITED ACTS.** No person shall do, or allow, any of the following:

1. Damage Sewer System. Maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sewer system.

*(Code of Iowa, Sec. 716.1)*

2. Surface Run-off or Groundwater. Connect a roof downspout, sump pump, exterior foundation drain, areaway drain, or other source of surface run-off or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

3. Manholes. Open or enter any manhole of the sewer system, except by authority of the Superintendent.

4. Objectionable Wastes. Place or deposit in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage, or other objectionable waste.

5. Septic Tanks. Construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage except as provided in these chapters.

*(Code of Iowa, Sec. 364.12[3f])*

6. Untreated Discharge. Discharge to any natural outlet within the City, or in any area under its jurisdiction, any sanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of these chapters.

*(Code of Iowa, Sec. 364.12[3f])*

**95.05 SEWER CONNECTION REQUIRED.** The owners of any houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is now located, or may in the future be located, a public sanitary or combined sewer, are hereby required to install, at such owner's expense, suitable toilet facilities therein and a building sewer connecting such facilities directly with the proper public sewer, and to maintain the same all in accordance with the provisions of these Sanitary Sewer chapters. Such compliance shall be completed within sixty (60) days after date of official notice from the City to do so, provided that said public sewer is located within 200 feet of the property line of such owner and is of such design as to receive and convey by gravity such sewage as may be conveyed to it.

*(Code of Iowa, Sec. 364.12[3f])*

*(IAC, 567-69.1[3])*

**95.06 SERVICE OUTSIDE THE CITY.** The owners of property outside the corporate limits of the City so situated that it may be served by the City sewer system may apply to the Council for permission to connect to the public sewer upon the terms and conditions stipulated by resolution of the Council.

*(Code of Iowa, Sec. 364.4[2 & 3])*

**95.07 ACCESS TO PREMISES.** The City shall be entitled access to the premises of any customer for the purpose of inspection, observation, measurement, sampling, and testing at any reasonable time and to such extent as may be necessary to carry out the provisions of these chapters, and it shall be deemed a part of the agreement on the part of the customer, as a condition to permission to connect with the public sewer, that such access be granted.

**95.08 USE OF EASEMENTS.** The Superintendent and 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 sewage works 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.

**95.09 SPECIAL PENALTIES.** The following special penalty provisions shall apply to violations of these Sanitary Sewer chapters:

1. Notice of Violation. Any person found to be violating any provision of these chapters except subsections 1, 3, and 4 of Section 95.04, 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.
2. Continuing Violations. Any person who shall continue any violation beyond the time limit provided for in subsection 1 hereof shall be in violation of this Code of Ordinances. Each day in which any such violation shall continue shall be deemed a separate offense.
3. Liability Imposed. Any person violating any of the provisions of these chapters shall become liable to the City for any expense, loss, or damage occasioned the City by reason of such violation.

**95.10 FEES AND CHARGES.** Fees and charges for all sewer services shall be established by the Urbandale/Windsor Heights Sanitary Sewer District, and shall be collected by the Des Moines Water Works.

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## CHAPTER 96

### BUILDING SEWERS AND CONNECTIONS

96.01 Permit; Fees  
96.02 Plumber Required  
96.03 Excavations  
96.04 Connection Requirements  
96.05 Sewer Tap

96.06 Inspection Required  
96.07 Property Owner's Responsibility  
96.08 Abatement of Violations  
96.09 Sewer Lateral Repair/Replacement

**96.01 PERMIT; FEES.** No unauthorized person shall uncover, make any connection with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City. The person who makes the building sewer connection application shall pay a permit fee to the Clerk to cover the cost of issuing the permit and supervising, regulating, and inspecting the work. All permit fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such permit fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective permit fees shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours. Sewer service connection fees are charged for the addition of a new service onto a City sewer. Connection fees are not to be charged for the replacement of an existing service lateral. Fees are charged as follows:

1. Residential Sewer Connection Fee. A fee of \$200 is to be paid prior to the issuance of any permits.
2. Non-Residential Sewer Connection Fee. A fee of \$300 is to be paid prior to the issuance of any permits.

**96.02 PLUMBER REQUIRED.** All installations of building sewers and connections to the public sewer shall be made by a State-licensed plumber.

**96.04 EXCAVATIONS.** All trench work, excavation, and backfilling required for the installation of a building sewer shall be performed in accordance with the provisions of the *International Plumbing Code* and the provisions of Chapter 135 of this Code of Ordinances.

**96.04 CONNECTION REQUIREMENTS.** The installation of the building sewer and its connection to the public sewer shall conform to the requirements of the *International Plumbing Code*, the laws of the State and other applicable rules and regulations of the City.

**96.05 SEWER TAP.** Connection of the building sewer into the public sewer shall be made at the "Y" branch, if such branch is available at a suitable location. If no properly located "Y" branch is available, a saddle "Y" shall be installed at the location specified by the Superintendent. The public sewer shall be tapped with a tapping machine and a saddle appropriate to the type of public sewer shall be glued or attached with a gasket and stainless steel clamps to the sewer. At no time shall a building sewer be constructed so as to enter a manhole unless special written permission is received from the Superintendent and in accordance with the Superintendent's direction if such connection is approved.

**96.06 INSPECTION REQUIRED.** No building sewer shall be covered, concealed, or put into use until it has been tested, inspected, and accepted as prescribed in the *International Plumbing Code*.

**96.07 PROPERTY OWNER'S RESPONSIBILITY.** All costs and expenses incident to the installation, connection, and maintenance of the building sewer shall be borne by the owner. The property owner is responsible for the "Y," or any other type of connection or connecting device, that connects the City sewer to the sewer service lateral. The property owner is responsible for the delivery of sewage to the sewer main.

**96.08 ABATEMENT OF VIOLATIONS.** Construction or maintenance of building sewer lines, whether located upon the private property of any owner or in the public right-of-way, which construction or maintenance is in violation of any of the requirements of this chapter, shall be corrected, at the owner's expense, within thirty (30) days after date of official notice from the Council of such violation. If not made within such time, the Council shall, in addition to the other penalties herein provided, have the right to finish and correct the work and assess the cost thereof to the property owner. Such assessment shall be collected with and in the same manner as general property taxes.

*(Code of Iowa, Sec. 364.12[3])*

**96.09 SEWER LATERAL REPAIR/REPLACEMENT.**

1. Requirements for Sewer Lateral Repair and/or Replacement. The Superintendent shall issue a notice to repair to the property owner when the sewer lateral has conditions which would result in an unacceptable amount of inflow or infiltration to enter the sewer system or which would result in an unacceptable risk of blockages. The Superintendent shall have the sole discretion to determine when repair and/or replacement is required due to unacceptable conditions of a sewer lateral. A sewer lateral shall be considered in compliance with the provisions of this chapter if inspection verifies all of the following conditions to the satisfaction of the Superintendent:

- A. The sewer lateral is free of roots, deposits of fat, oil and grease (FOG), and/or other solids which may impede or obstruct the flow of sewage.
- B. There are no illicit or illegal connections to the sewer lateral which would cause inflow, such as roof leaders, sump pumps or yard drains.
- C. All joints in the sewer lateral are tight and sound to prevent the exfiltration of sewage and/or the infiltration of groundwater.
- D. The sewer lateral is free of structural defects, cracks, breaks, or missing portions and the grade is reasonably uniform without major sags or offsets.
- E. The sewer lateral is equipped with cleanouts, if required, as determined by Superintendent.
- F. The sewer lateral is constructed of materials that are corrosive resistant, nonabsorbent, durable, and with a remaining design life of at least twenty-five years. "Orangeburg pipe," a bituminized fiber pipe made from layers of wood pulp and pitch pressed together, shall be considered to be at the end of its design life and not compliant with the provisions of this chapter.
- G. A sewer relief valve, if required, is installed.
- H. A sewer backwater valve, if required, is installed.

2. Owners' Duty to Make Connection. When any street or alley is ordered to be paved or otherwise permanently improved, it shall be the duty of all owners of property abutting upon such street or alley upon written notice from the City to at once make permanent and substantial connections meeting the conditions listed within this ordinance with sewer, along such street or alley at their own cost and expense. The City shall order such connections made as are necessary, stating generally the location of the street, and the kind and character of connections to be made with the kind of materials to be used, and when the work of making such connections shall be completed.
3. Method and Material. The connections made within the street or alley from the mains to and right of way in front of the abutting property and shall be in accordance with the most current version of the Statewide Urban Design and Specifications (SUDAS).
4. Method. All the connections shall be made in a thorough and substantial manner under the direction and order of the Superintendent, and in the manner provided by plans or resolution for making connections therewith, so that whenever any such paving is once laid it need not be disturbed for the making of any such connection. No repairs are allowed to be made to "Orangeburg" pipe without the written permission of the Superintendent. When encountered, "Orangeburg" is to be replaced in its entirety of the sewer service.
5. Notice to Connect. In case any property owner or title holder fails to make such connections within the time allotted within the provided notice for the improvements of any such street or alley, the Council may order the same and cause the Superintendent to prepare notices to such delinquent property owners to make such connections within 10 days thereafter. The notices shall be mailed by certified mail to the last known address of the property owner or personally served on the property owner. The Superintendent may at his/her option, also publish notice in a newspaper in the City stating the particular lot or lots or parcel of ground in front of which connections shall be made. The publication shall be made as required by law.
6. Completion of Work. The City shall include the connections the property owners fail to make within the capital improvement project (CIP).
7. Connections Made by City. If any owner of abutting property fails to comply with the provisions of this section by the time stated in the notice to connect, the City may proceed to have such connections made under the supervision and direction of the Superintendent, and keep an accurate account of the expenses incurred.
8. Assessment. The City Clerk shall send a statement of the total expense incurred, by certified mail, to the last known address of the property owner who has failed to abide by the notice to connect. If the amount shown on the statement is not paid within 30 days of mailing, the cost and expense of putting in connections by the City as provided herein shall be levied as a special tax against the property abutting or adjacent thereto and the method of estimating, assessing, levying, and collecting the tax shall be the same as that prescribed for general taxes.
9. Excavations. After Pavement Laid. Whenever any street or alley has been ordered to be paved, and property owners owning property abutting or lying along such street or alley, have been notified by the City to connect their property by laying down pipes within the right of way in front of or along the property, any person so notified who has refused to comply with the requirements of the notice shall not enter upon such street or alley after it has been paved and make any excavation in the paved portion

thereof for the purpose of connecting their property with such mains within 4 years after such paving is laid and not thereafter except by special resolution of the Council.

10. Permit Requirements. Property owner shall request permit from the City of Windsor Heights. Permit fees are waived for permits related to CIP.

*(Ch. 96 – Ord. 19-06 – Jul. 19 Supp.)*



## CHAPTER 97

# USE OF PUBLIC SEWERS

### 97.01 STORM WATER.

1. Drainage Required. Roofs, paved areas, yards, courts, courtyards, and areaways shall be drained into a storm sewer when such a sewer is abutting the property, or otherwise available as required by the Superintendent. Such drainage may be discharged into a combined sewer system where such a system is available and where not prohibited by the administrative authority having jurisdiction.
2. Prohibited Drainage. Storm water runoff, roof runoff, and subsurface drainage shall not be drained into sewers intended for sanitary sewage only.
3. Disposal of Subsurface Drainage and Storm Water. Where a storm sewer is not available, the disposition of storm water and subsurface drainage shall be as follows:
  - A. For one- and two-family dwellings, to sump and pump to grade or drywell seepage pit as shown in the illustration of proper disposal of subsurface drainage and storm water, on file in the office of the Superintendent.
  - B. For other than one- and two-family dwellings, to sump and pump to drywell seepage pit, or use lateral system similar to septic system with overflow on end.
  - C. Exception to paragraphs A and B of this subsection, gravity drainage approved if footing and area drainage elevation is higher than drywell seepage pit drain discharge flow line.
4. Traps. Leaders or downspouts, when connected to a combined sewer, shall be trapped.
5. Expansion Joints. Expansion joints or sleeves shall be provided where warranted by temperature variations or physical conditions.
6. Subsoil Drainage. No subsoil drainage system shall be installed to drain into a sewer intended for sanitary sewage.
7. Subsoil Drain. Where subsoil drains are placed under the cellar or basement floor or are used to surround the outer walls of a building, they shall be installed in accordance with the Building Code and shall be made of open-jointed, horizontally split, or perforated clay tile or asbestos-cement pipe or rigid plastic pipe not less than four inches in diameter. They shall be drained into an open sump with protective cover. Such sumps need not be vented. The building storm and subsoil drainage systems shall be connected to a storm sewer when such a sewer abuts the property. Where a sump pump is used, the discharge piping to the storm sewer, drywell seepage pit, or lateral system shall be inspected and approved before use.
8. Parking Lot and Retention Pond Drains. Parking lot and retention pond drains shall be installed as directed by the City Engineer and in accordance with the approved site plan, a copy of which shall be available on the job site.

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## CHAPTER 98

# ON-SITE WASTEWATER SYSTEMS

98.01 When Prohibited  
98.02 When Required  
98.03 Compliance with Regulations  
98.04 Permit Required  
98.05 Discharge Restrictions

98.06 Maintenance of System  
98.07 Systems Abandoned  
98.08 Septic Systems Required to Switch to City Sewer  
98.09 Disposal of Septage

**98.01 WHEN PROHIBITED.** Except as otherwise provided in this chapter, it is unlawful to construct or maintain any on-site wastewater treatment and disposal system or other facility intended or used for the disposal of sewage.

*(Code of Iowa, Sec. 364.12[3f])*

**98.02 WHEN REQUIRED.** When a public sanitary sewer is not available under the provisions of Section 95.05, every building wherein persons reside, congregate or are employed shall be provided with an approved on-site wastewater treatment and disposal system complying with the provisions of this chapter. Upon the effective date of this Code of Ordinances, any person that sells a home which utilizes a private septic system or on-site wastewater treatment and disposal system must install a building sewer connecting the property to the public sewer system.

*(IAC, 567-69.1[3])*

**98.03 COMPLIANCE WITH REGULATIONS.** The type, capacity, location, and layout of a private on-site wastewater treatment and disposal system shall comply with the specifications and requirements set forth by the Iowa Administrative Code 567, Chapter 69, and with such additional requirements as are prescribed by the regulations of the County Board of Health.

*(IAC, 567-69.1[3 & 4])*

**98.04 PERMIT REQUIRED.** No person shall install or alter an on-site wastewater treatment and disposal system without first obtaining a permit from the County Board of Health.

**98.05 DISCHARGE RESTRICTIONS.** It is unlawful to discharge any wastewater from an on-site wastewater treatment and disposal system (except under an NPDES permit) to any ditch, stream, pond, lake, natural or artificial waterway, drain tile or to the surface of the ground.

*(IAC, 567-69.1[3])*

**98.06 MAINTENANCE OF SYSTEM.** The owner of an on-site wastewater treatment and disposal system shall operate and maintain the system in a sanitary manner at all times and at no expense to the City.

**98.07 SYSTEMS ABANDONED.** At such time as a public sewer becomes available to a property served by an on-site wastewater treatment and disposal system, as provided in Section 95.05, a direct connection shall be made to the public sewer in compliance with these Sanitary Sewer chapters and the on-site wastewater treatment and disposal system shall be abandoned and filled with suitable material.

*(Code of Iowa, Sec. 364.12[3f])*

**98.08 SEPTIC SYSTEMS REQUIRED TO SWITCH TO CITY SEWER.** All septic systems used by commercial, home-based business, rental, or contract sales homes must switch over to the public sewer within one year after the adoption of this Code of Ordinances. Residential homes must switch over from septic to City sewer prior to the transfer of title or sale of property. A yearly inspection of all septic systems by a licensed plumber is required, with a report to be given to the City for the Building Inspector's review.

**98.09 DISPOSAL OF SEPTAGE.** No person shall dispose of septage from an on-site treatment system at any location except an approved disposal site.

## CHAPTER 100

# REGULATION OF INDUSTRIAL WASTEWATER AND COMMERCIAL WASTEWATER

100.01	Definitions	100.49	Reinstatement of Service
100.02	Abbreviations	100.50	Emergency Disconnection of Service
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100.12	Local Limits for Specific Pollutants	100.60	Compliance Procedures
100.13	National Categorical Pretreatment Standards	100.61	Installation of Grease Interceptors and Grease Traps
100.14	State Requirements	100.62	Operation, Maintenance and Cleaning of Grease Interceptors and Grease Traps and Grease Hauler Certification
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### DIVISION 1. GENERAL PROVISIONS REGARDING INDUSTRIAL WASTE

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

1. "Act or Clean Water Act" means the 1972 Federal Water Pollution Control Act, the 1977 Clean Water Act, and the 1987 Water Quality Act, as amended.
2. "Approval authority" means the Iowa Department of Natural Resources.
3. "Authorized representative" means:
  - A. An executive officer of a corporation.
  - B. A general partner of a partnership.
  - C. The proprietor of a proprietorship.
  - D. The conservator, trustee, attorney in fact, receiver or other person or agent authorized in law and in fact to act on behalf of users which are not corporations, partnerships, or proprietorships or on behalf of other entities which must legally act through an agent.
  - E. Any other authorized representative of a person or entity identified in Subsections (A), (B), (C), or (D) of this definition, if the authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the discharge originates, such as the position of plant manager or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company and the written authorization is submitted to the director.
  - F. Any other person authorized by law to act on behalf of any entity.
4. "Baseline monitoring report" means the report required by 40 CFR 403.12(b)(1-7).
5. "Biochemical oxygen demand (BOD)" means the analysis of BOD as described in Environmental Protection Agency methods.
6. "Building drain" means that part of the lowest horizontal piping of a drainage system which receives the discharge from waste and other drainage pipes inside the wall of the building and conveys it to the building sewer, beginning three feet outside the building wall.
7. "Building sewer" or "lateral sewer" means the sewer extending from the building drain to the connection with the POTW.
8. "Bypass" means the intentional diversion of waste streams from any portion of an industrial user's pretreatment facility.
9. "Carbonaceous Biochemical Oxygen Demand (CBOD)" means the analysis of BOD as described in Environmental Protection Agency methods while inhibiting the nitrogenous oxygen demand.
10. "Categorical user" means a user subject to National Categorical Pretreatment Standards.
11. "Chemical oxygen demand (COD)" means the measurement of the susceptibility of a sample to oxidation by a strong chemical oxidant expressed in mg/l and using Environmental Protection Agency methods.
12. "City" means the political subdivision known as the City of Windsor Heights, Iowa, and also means the territory within the corporate boundaries of the City of Windsor Heights.

13. “City sanitary sewer system” or “sanitary sewer system” means the local outfall sewers, trunk sewers, pumping stations, force mains, and wastewater equalization basins, and all other structures, devices and appliances appurtenant thereto, which are used for collecting, conveying or storing wastewater and which serve and are owned, operated and maintained by the City or by a sanitary district serving the City.
14. “Combined waste stream formula” means the formula as found in 40 CFR 403.6(e).
15. “Composite sample” means a representative sample using a minimum of three grab sample aliquots obtained over a period of time and mixed using either a flow proportional or time proportional method.
16. “Conventional pollutant” means BOD, COD, O&G, suspended solids, pH, ammonia nitrogen, total Kjeldahl nitrogen and fecal coliform bacteria.
17. “Discharge” or “indirect discharge” means the introduction of treated or untreated wastewater into the POTW.
18. “Dissolved solids” means the concentration of residue left in an evaporating dish after evaporation and drying at defined temperatures using Environmental Protection Agency methods or standard methods.
19. “Domestic wastewater” means all household-type waste discharged from places of human habitation, including toilet, bath, kitchen and laundry wastewater. “Domestic wastewater” is further defined as waste which does not exceed daily maximum limits of 300 mg/l COD, 200 mg/l BOD, 250 mg/l suspended solids, 100 mg/l oil & grease, 30 mg/l TKN, and 15 mg/l NH<sub>3</sub>-N at a discharge rate of 100 gallons per capita per day. This loading is equal to 0.25 pound of COD, 0.17 pound of BOD, 0.20 pound of suspended solids, 0.083 pound of oil & grease, 0.025 pound of TKN and 0.013 pound of NH<sub>3</sub>-N per capita per day.
20. “Domestic user” means a person discharging only domestic wastewater to the POTW, which wastewater is discharges from any building or parts of a building designed for or occupied by one or more persons as a single housekeeping unit, including such units within multifamily dwellings and apartment buildings, which building or premises is a source of wastewater discharge into a POTW.
21. “Environmental Protection Agency” or “EPA” means the U.S. Environmental Protection Agency.
22. “Environmental Protection Agency methods” means standard procedures for wastewater analysis approved by the U.S. Environmental Protection Agency and prescribed in 40 CFR 136, and includes alternate methods approved by the approval authority.
23. “E. Coli or Escherichia coli” means bacteria that are a member of the fecal coliform group and whose presence indicates fecal contamination in water.
24. “Fecal coliform” means bacteria common to the intestinal tracts of humans and animals whose presence in water is an indication of pollution.
25. “Fat, oil, and grease” or “oil and grease” or “FOG” means those substances which are detectable and measurable using analytical test procedures established in 40 CFR 136, as may be amended from time to time. All are sometimes referred to herein as “grease” or “greases”.

26. “Garbage” means solid waste from the domestic and commercial preparation, cooking and dispensing of food, and from the commercial handling, storage and sale of produce.
27. “Grab sample” means a single aliquot sample collected either directly or by means of a mechanical device.
28. “Headworks” means the main wet well at the WRF prior to any treatment process.
29. “Industrial user” means a person whose property, building or premises is a source of wastewater discharge into the POTW, other than a domestic user.
30. “Industrial waste” means the liquid waste from industrial users as distinct from domestic sewage.
31. “Interference” means a discharge which, alone or in conjunction with a discharge or discharges from other sources, which both:
- A. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal, and
  - B. Causes a violation of any requirement of the WRA's National Pollutant Discharge Elimination System permit (including an increase in the magnitude or duration of a violation) or prevents sewage sludge use or disposal in compliance with any federal, state or local regulations or permits.
32. “Limit” means the maximum allowable discharge of a given pollutant as in the following definitions:
- A. “Daily maximum limit” or “daily instantaneous maximum limit” means the maximum allowable discharge of pollutant as measured at any time during a calendar day, expressed as either a concentration limit or a daily mass limit. It is a violation if the concentration limit on any single sample taken exceeds that discharge limits in the discharge permit for the user, or the discharge limits set forth in Section 100.12.
  - B. “Monthly average limit” means the maximum allowable value for the average of all measurements of a pollutant obtained during one calendar month.
33. “National Categorical Pretreatment Standards (NCPS)” or “categorical standards” means any limitations on pollutant discharges to POTW promulgated by the U.S. Environmental Protection Agency that apply to specified process wastewater of particular industrial categories.
34. “National Pollutant Discharge Elimination System (NPDES) permit” means a permit issued pursuant to the Act.
35. “New source” means a source as defined by 40 CFR 403.3(k).
36. “Nonconventional pollutants” means all pollutants which are not included in the definition of conventional pollutants.
37. “NH<sub>3</sub>-N” means the ammonia nitrogen concentration in mg/l as determined using Environmental Protection Agency methods.
38. “O&M” means operation and maintenance.
39. “Pass through” means a discharge which exits the POTW into water of the state in quantities or concentrations which, alone or in conjunction with a discharge from



other sources, is a cause of a violation of any requirement of the WRA's National Pollutant Discharge Elimination System permit, including an increase in the magnitude or duration of a violation, or other permit issued to the WRA by the Iowa Department of Natural Resources or the U.S. Environmental Protection Agency.

40. "Person" means any individual, partnership, co-partnership, firm, company, association, joint stock company, society, corporation trust, estate, municipality, governmental entity, group, or any other legal entity, or their legal representatives, agents, or assigns.

41. "pH" means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

42. "Pollution" means the alteration of chemical, physical, biological, or radiological integrity of water as a result of human activity or enterprise.

43. "POTW treatment plant" means that portion of the publicly owned treatment works which is designed to provide treatment, including recycling and reclamation, of municipal sewage and industrial waste.

44. "Pretreatment" means the reduction, elimination, or alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into the POTW.

45. "Pretreatment facility" means the equipment used to accomplish pretreatment.

46. "Pretreatment requirements" means any substantive or procedural requirement related to pretreatment standards, imposed on an industrial user.

47. "Pretreatment standards" means, for any specified pollutant, the prohibitive discharge standards as set forth in Section 100.11 of this chapter, the specific limitations on discharge as set forth in Section 100.12 of this chapter, the state pretreatment standards or the National Categorical Pretreatment Standards, whichever standard is most stringent.

48. "Properly shredded garbage" means the waste from the preparation, cooking and dispensing of food that has been shredded to such a degree that all particles are carried freely under the flow conditions normally prevailing in the POTW, with no particle greater than one-half inch in any dimension.

49. "Publicly owned treatment works" or "POTW" means and includes "POTW" treatment works as defined by Section 212 of the Act, and which is owned by the Des Moines Metropolitan Wastewater Reclamation Authority or any of participating communities that make up the WRA. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances if they convey wastewater to a POTW treatment plant.

50. "Sampling chamber" or "sampling maintenance hole" means a device or structure suitable and appropriate to permit sampling and flow measurement of a wastewater stream to determine compliance with this chapter.

51. "Sanitary district" means the Urbandale Sanitary Sewer District and Urbandale-Windsor Heights Sanitary District incorporated pursuant to Iowa Code Chapter 358 and serving the cities of Urbandale and Windsor Heights.

52. “Severe property damage” means substantial physical damage to property, damage to a pretreatment facility causing it to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
53. “Sewage” means and includes wastewater as herein defined.
54. “Sewage system” means sewers, intercepting sewers, pipes or conduits, pumping stations, force mains, and all other constructions, devices and appliances appurtenant thereto used for collecting or conducting sewage to a point of treatment or ultimate disposal.
55. “Significant user” means:
- A. All categorical users.
  - B. All industrial users that:
    - (1) Discharge 25,000 gallons per day or more of process wastewater (excludes sanitary, non-contact cooling, and boiler blowdown wastewater);
    - (2) Contribute a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the WRF; or
    - (3) Contribute a discharge that has a reasonable potential, in the opinion of the director, to adversely affect the POTW treatment plant by causing interference or pass through.
56. “Sludge” means the solids separated from the liquids during the wastewater treatment process.
57. “Slug” or “slug load” means any discharge of water or wastewater which, in concentration of any pollutant, measured using a grab or composite sample, is more than five times the allowable concentration as set forth in Sections 100.11 and 100.12 of this chapter or in a user's most recent wastewater discharge permit or which exceeds a slug concentration level specified in a wastewater discharge permit. A discharge with pH outside the allowable range by more than one standard unit (S.U.) shall also be considered a slug.
58. “Standard industrial classification (SIC)” means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, most recent edition.
59. “Standard Methods” means the laboratory procedures set forth in the latest USEPA approved edition of Standard Methods for the Examination of Wastewater prepared and published jointly by the American Public Health Association, the American Water Works Association, and the Water Environment Federation.
60. “Storm sewer” means a sewer which carries stormwater, surface water and drainage but excludes sewage and industrial waste other than unpolluted cooling water.
61. “T,” when used as a portion of a chemical name, shall designate “total” such as in “cyanide-T” where “T” means “total” cyanide.

62. “TKN” means the Total Kjeldahl Nitrogen concentration expressed in mg/l as determined using Environmental Protection Agency methods or standard methods.
63. “Total metal” means the sum total of the suspended and dissolved concentrations of a metal specified in a wastewater discharge permit or as specified in Section 100.12 hereof.
64. “Total suspended solids (TSS)” means the portion of total solids retained by a filter using Environmental Protection Agency methods or standard methods.
65. “Total Toxic Organics (TTO)” means the summation of all quantified values greater than 0.01 milligram per liter for the toxic organics as specified in the applicable regulation.
66. “Toxic Pollutant” means any pollutant or combination of pollutants listed in 40 CFR 403, Appendix B.
67. “Unpolluted Water” means water containing none of the following: free or emulsified oil and grease; substances that may impart taste, odor or color characteristics; volatile, explosive, toxic or poisonous substances in suspension or solution; explosive, odorous or otherwise obnoxious gases. Such water shall not contain more than 25 mg/l of suspended solids, and not more than 25 mg/l of BOD.
68. “Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed pretreatment facilities, inadequate pretreatment facilities, lack of preventive maintenance, or careless or improper operation.
69. “User” means a person discharging anything other than domestic wastewater into the POTW, and includes categorical users as herein defined.
70. “Waste hauler” means a private contractor licensed by the WRA to deliver wastewater to the WRF or other locations approved by the WRA Director, and includes all persons required to have a license under Section 100.73 of this chapter.
71. “Wastewater” means and includes “sewage” as defined in federal law and regulation, or a combination of the liquid and water-carried waste from residences, commercial buildings, institutions and industrial establishments, together with such groundwater, surface water, and stormwater as may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.
72. “Wastewater discharge permit” means the document issued to a user by the WRA in accordance with the terms of this chapter which permits such user to discharge wastewater to the POTW.
73. “Water of the state” means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.
74. “WRA” or “wastewater reclamation authority” means the Des Moines Metropolitan Wastewater Reclamation Authority, an entity organized and existing under Chapters 28E and 28F of the Iowa Code, and established pursuant to the WRA Agreement. The term “WRA” means and includes the representatives of the

participating communities on the WRA Board, and the officers and employees of the WRA.

75. “WRA agreement” means the Amended and Restated Agreement for the Des Moines Metropolitan Wastewater Reclamation Authority, approved and executed by the WRA and its participating communities and effective as of July 1, 2004.

76. “WRA Director” or “director” means the person appointed by the WRA Board, or by the WRA operating contractor upon consultation with the board, as provided in Section 2.63 of the WRA operating contract, who is charged with the administration and management of the WRA system and of the provision of all services outlined in operating contract. Unless otherwise indicated in the text, the director shall mean and include the person acting as the director's authorized designee in the director's absence in carrying out the director's duties under this chapter.

77. “WRA operating contractor” or “operating contractor” means the City of Des Moines, pursuant to the Initial Operating Contractor executed by the City of Des Moines and the WRA Board on and as of July 1, 2004, or such successor operating contractor as the WRA shall contract with to provide operation and management services to the WRA.

78. “WRA participating community” or WRA “participating communities” means, individually or collectively, depending on context, the cities of Altoona, Ankeny, Bondurant, Clive, Cumming, Des Moines, Johnston, Norwalk, Pleasant Hill, Polk City, Waukee, and West Des Moines, and Polk County, Warren County, the Urbandale Sanitary Sewer District, the Urbandale-Windsor Heights Sanitary District and the Greenfield Plaza/Hills of Coventry Sanitary District, together with any other cities, counties, or sanitary districts that become participating communities under the provisions of the WRA agreement.

79. “WRA wastewater collection and conveyance system” or “WCCS” means the WRA sanitary sewer interceptors and extensions to same, detention basins, equalization basins, storage facilities, pumping stations, force mains and all related property and improvements.

80. “WRA wastewater reclamation facility” or “WRF” means the wastewater treatment plant located generally at 3000 Vandalia Road, Des Moines, Iowa, as the same may be expanded or improved in the future, and any other wastewater treatment plants hereafter acquired or constructed and operated by the WRA.

81. “WRA system” means and includes the WRF, the WCCS, satellite wastewater and CSO treatment facilities hereafter constructed, all real and personal property of every nature hereinafter owned by the WRA and comprising part of or used as a part of the WRA system, and all appurtenances, contracts, leases, franchises and other intangibles of the WRA.

**100.02 ABBREVIATIONS.** The following abbreviations, when used in this chapter, shall have the designated meanings:

BETX	Benzene, ethylbenzene, toluene, and xylenes (total)
BOD	Biochemical oxygen demand
BMR	Baseline monitoring report
C	Celsius
CFR	Code of Federal Regulations
COD	Chemical oxygen demand
EPA	Environmental Protection Agency
F	Fahrenheit
FOG	Fat oil, and grease
GPD	Gallons per day
IDNR	Iowa Department of Natural Resources
lb/day	Pounds per day
mgd	Million gallons per day
mg/l	Milligrams per liter
NCPS	National Categorical Pretreatment Standards or categorical standards
NH <sub>3</sub> -N	Ammonia nitrogen
NPDES	National Pollutant Discharge Elimination System
O&G	Oil and grease
POTW	Publicly owned treatment works
SCP	Spill control plan
SIC	Standard industrial classification
SNC	Significant noncompliance
RCRA	Resource Conservation and Recovery Act
TCLP	Toxicity characteristic leaching procedure
TFE	Trichlorotrifluoroethane
TKN	Total Kjeldahl nitrogen
TOH	Total organic hydrocarbons
TRC	Technical review criteria
TSS	Total suspended solids
TTO	Total toxic organics
USC	United States Code
U.S. EPA	United States Environmental Protection Agency
VPH	Volatile petroleum hydrocarbons

**100.03 GENERAL ADOPTION.** The provisions of this chapter are enacted to aid in the enforcement of the pretreatment regulations set forth in this chapter and may be placed in a separate portion of the municipal or county code of any WRA participating community which adopts these provisions. Each WRA participating community by enacting this chapter designates the WRA and its operating contractor as the enforcement agency under this chapter. Employees, agents and officers of the WRA and of its operating contractor, while acting to enforce this chapter for the WRA, are empowered to make such inspections, issue such orders or permits and take such actions within the corporate boundaries of the City within the boundaries of the sanitary district as are authorized by this chapter. The WRA or its operating contractor is also authorized to impose and collect all fees or penalties authorized by this chapter, and are authorized to directly bill and collect from contributors penalties, fees charges and surcharges from all users within the City. A user's failure to pay any fee, charge, penalty or surcharge is a municipal infraction and shall also be grounds to discontinue sewer service to the user, all as hereafter more particularly provided. The enforcement of this chapter in the

sanitary district is not dependent upon passage of this chapter or a similar ordinance by other WRA participating communities.

**100.04 INTENT AND CONSTRUCTION.** This chapter seeks to implement provisions of the Act, the general pretreatment regulations found at 40 CFR, Part 403, and the Iowa Administrative Code, Chapter 567, Sections 62.4 and 62.8. This chapter is to be construed and applied in accordance with the Clean Water Act amendments, the general pretreatment regulations, the Iowa Administrative Code and the purpose and policy provision set forth in Section 100.05 of this chapter.

**100.05 PURPOSE AND POLICY.**

1. This chapter regulates the use of sanitary sewers; private wastewater disposal; the installation and connection of building sewers; and the discharge of wastewater or waste into the POTW. This chapter sets forth uniform requirements for discharges into the POTW, and the deposit of wastewater and waste hauled to the WRF or to other locations approved by the WRA Director for disposal and treatment.
2. The objectives of this chapter are to:
  - A. To prevent the introduction of pollutants into the POTW that may interfere with the operation of the system or interfere with sludge management and disposal.
  - B. Prevent the introduction of pollutants into the POTW that may pass through the system inadequately treated and ultimately into receiving water, the atmosphere, or otherwise be incompatible with the system.
  - C. Protect workers' safety and health and protect against damage to the POTW.
  - D. Provide for equitable distribution of treatment and industrial pretreatment costs resulting from pollutants introduced into the POTW.

**100.06 JURISDICTION.** The sections of this chapter are applicable in their entirety to all users who contribute wastewater, directly or indirectly, into the POTW without regard to whether the physical facilities of such users are situated within or outside the corporate limits of the sanitary district or City.

**100.07 SEVERABILITY.** If any provision of this chapter or the application thereof to any particular person or particular circumstance is held invalid, the invalidity shall not affect other provisions or application of this chapter which can be given effect without the invalid provision or application. To this end the provisions of this chapter are severable.

**100.08 INTERPRETATION.** This chapter shall be construed and interpreted to conform with 40 CFR I, and it is the intent of this chapter that it comply with the federal regulations.

**100.09 RESERVED.**

## DIVISION 2. WASTEWATER TREATMENT AND PRETREATMENT.

**100.10 USER REQUIREMENTS.**

1. The following requirements shall apply to all users of the POTW:
  - A. All users shall promptly notify the WRA Director in advance of any substantial change in the volume or character of pollutants in their discharge.
  - B. New or increased contributions of pollutants or changes in the nature of pollutant discharged to the POTW shall require prior approval by the WRA Director.
  - C. Industrial users shall notify the WRA Director, the Environmental Protection Agency Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261. The notification shall comply with the requirements set forth in 40 CFR 403.12(p).
  - D. Discharge of any pollutants without the notice and approval required by this section is prohibited. Upon the receipt of notice required by this section, the WRA Director shall within 180 days or less approve the discharge if he or she finds the proposed discharge meets applicable pretreatment standards and requirements and would not cause the WRA to violate its National Pollutant Discharge Elimination System permit. The WRA Director shall deny permission for the discharge if he or she finds applicable pretreatment standards and requirements are not met or the discharge would cause a violation of the National Pollutant Discharge Elimination System permit for the WRF. In lieu of denial of permission for discharge, the WRA Director may allow such discharge or contribution upon conditions which would not violate applicable pretreatment standards or requirements and would not cause a violation of the National Pollutant Discharge Elimination System permit for the WRF.
  - E. Food service establishments shall be regulated first under Division 5 of this ordinance but may be required to obtain a wastewater discharge permit and be subject to the requirements of Divisions 1-4 if the WRA Director determines that additional pretreatment is required in order to comply with fat, oil, & grease discharge limits.
2. Any part of this section notwithstanding, upon receipt of the notice required by this section, the WRA Director may require, in addition to the requirements of this section, that an industrial user obtain a permit under this chapter.
3. Users who are determined to be industrial users as herein defined and who refuse to apply for or obtain a wastewater discharge permit shall be subject to termination of sewer services as provided in Section 100.47 hereof.

**100.11 DISCHARGE PROHIBITIONS.** The following general prohibitions shall apply to all users of the POTW unless the user is subject to a more restrictive National Categorical Pretreatment Standards, the Iowa Department of Natural Resources, or wastewater discharge permit limit. The following substances are prohibited from discharge to the POTW:

1. Pollutants creating a fire or explosion hazard in the POTW, including but not limited to waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit

(60 degrees Celsius) using test methods referenced in 40 CFR 261.21. Waste streams shall not be ignitable at ambient temperatures. At no time shall two successive readings on a meter capable of reading L.E.L. (lower explosive limit) at the nearest accessible point to the POTW, at the point of discharge into the POTW or at any point in the POTW, be more than five percent nor any single reading greater than ten percent.

2. Any substance which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0 or greater than 12.0.

3. Solid or viscous pollutants which will cause obstruction to the flow in the POTW resulting in interference. Such pollutants include but are not limited to grease, garbage with particles greater than one-half inch any dimension, animal 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, wipes, spent grains, spent hops, wastepaper, wood, plastics, tar, asphalt residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing waste, or tumbling and de-burring stones, and wastewater containing fat, wax, O&G, or other substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (0 and 65 degrees Celsius).

4. Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate or pollutant concentration which will cause interference or pass through at the WRF or which constitutes a slug load as defined in this chapter.

5. Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case wastewater or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius) at the point of introduction into the POTW, and in no case wastewater or vapor which alone or in concert with other discharges produces a temperature at the WRF greater than 104 degrees Fahrenheit (40 degrees Celsius).

6. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems or a public nuisance.

8. Any trucked or hauled pollutants, except at discharge points designated by the WRA.

9. Radioactive wastes unless they comply with Atomic Energy Commission Act of 1954 (68 Stat. 919 as amended and Part 20, Subpart D, Waste Disposal, Section 20.303 of the regulations issued by the Atomic Energy Commission, or amendments thereto).

10. Any wastewater containing concentrations of inert suspended solids, such as but not limited to fuller's earth, lime slurries, and lime residues, or of dissolved solids, such as but not limited to, sodium chloride and sodium sulfate, which exceed 3,000 mg/l nonvolatile or 3,000 mg/l total dissolved solids unless approved by the WRA Director.

11. Pollutants causing excessive discoloration, such as but not limited to dye waste and vegetable tanning solutions.



**100.12 LOCAL LIMITS FOR SPECIFIC POLLUTANTS.**

1. Generally. Local limits for specific pollutants discharged pursuant to this chapter shall be as follows:

A. Dilution. Dilution of the discharge from a pretreatment facility or from a regulated process is prohibited as a method for treatment of wastes in order to meet the limits set forth in this chapter.

B. Sample location. Measurement of pollutant concentrations to determine compliance shall be made at the point immediately following the pretreatment facility and before mixture with other waters, unless another point is designated by the WRA Director. If necessary, the concentrations so measured shall be recomputed to exclude the effect of any dilution that is improper using the combined waste stream formula.

2. Headworks limits; average mass. The average composite loading of all industrial users contributing the following specific pollutants to the POTW shall not exceed the allowable total pounds. The allocation of pollutants between industrial and nonindustrial sources may be adjusted by the director provided that the allowable total loading for any pollutant at the headworks of the WRF is not exceeded.

Pollutant	30-Day Average Allowable Pounds/Day	
	Total	Industrial
BOD	195,600	135,153
TSS	300,400	208,463
NH3	13,000	6,959
TKN	27,760	16,950

Pollutant	Maximum Allowable Headworks Loading Pounds/Day	Maximum Allowable Industrial Loading Pounds/Day
	Total	Industrial
Arsenic-T	7.58	3.81
Cadmium-T	3.65	2.16
Chromium-T	136.35	120.90
Copper-T	148.56	125.51
Cyanide-T	17.08	8.28
Lead-T	28.17	20.94
Mercury-T	0.999	0.747
Nickel-T	87.27	75.75
Silver-T	23.30	19.77
Zinc-T	360.59	283.53

3. Discharge concentration limits and review criteria. Discharge concentration limits and review criteria shall be as follows:

A. The discharge into the POTW of any materials, water or waste having a pollutant concentration greater than the limits in Subsections (3)(C), (D), and

(E) of this section or containing pollutants not listed in this subsection shall be subject to the review and approval of the WRA Director. After review of the proposed discharges, the WRA Director may:

- (1) Reject the waste for reasons consistent with Section 100.05 of this chapter.
- (2) Require pretreatment to an acceptable pollutant concentration for discharge to the POTW.
- (3) Require control of the quantities and rates of discharge of the water or waste.
- (4) Require payment to cover the added cost of handling and treatment of water and waste or any combination thereof.
- (5) Reduce the maximum or average mass loading of present and prospective individual users on any reasonable prorated basis to meet headworks loading limits at the WRF.
- (6) Require the user to obtain a wastewater discharge permit and be subject to any of the rules and regulations contained therein.
- (7) Require the user to meet local limits when local limits are more restrictive than National Categorical Pretreatment Standards, provided that headworks loading limits are met.
- (8) Initiate enforcement action in response to any noncompliance with this chapter using the enforcement procedures outlined in this chapter.
- (9) Take any combination of the steps in Subsections 3(A)(1) through 3(A)(7), as appropriate.

B. Users discharging wastewater to the POTW whose pollutant concentrations or flows are greater than the following shall be considered industrial users for purposes of sewer charges and may be regulated or permitted by the WRA Director as appropriate:

	Pollutant	Daily Maximum (mg/l)
a.	BOD	200
b.	TSS	250
c.	COD	300
d.	O&G-T	100
e.	TKN	30
f.	NH3-N	15
g.	An average daily flow greater than 5,000 gallons or having an unusual concentration of flow.	

C. Pollutant limits. Average and maximum concentration limits for users without National Categorical Pretreatment Standards for these pollutants shall be as follows:

Pollutant	Daily Maximum (mg/l)	Monthly Average (mg/l)
Arsenic-T	0.38	0.25
Cadmium-T	0.08	0.05
Chromium-T	6.43	4.29
Copper-T	10.21	6.80
Cyanide-T	0.53	0.36
Lead-T	1.43	0.95
Mercury-T	0.042	0.028
Nickel-T	7.22	4.81
O&G-T	400.0	--
O&G-Mineral	100.0	--
Silver-T	1.30	0.87
VPH	10.0	--
Zinc-T	19.64	13.09

pH range shall be not lower than 5.0 or greater than 12.0.

Temperatures (liquids or vapors) shall be not greater than 150 degrees Fahrenheit at the point of entry into the POTW.

D. Daily maximum pollutant limits for hauled waste. Wastes delivered to the WRF by truck or rail shall not exceed the following concentrations in any load or overall daily loading limits unless otherwise approved by the WRA Director:

Pollutant	Concentration (mg/l)	Loading (pounds/day)
COD	100,000	--
O&G-T	50,000	--
VPH	10.0	--
Arsenic-T	--	0.014
Cadmium-T	--	0.93
Chromium-T	--	24.74
Copper-T	--	23.71
Cyanide-T	--	0.29
Lead-T	--	6.70
Mercury-T	--	0.12
Nickel-T	--	3.71
Silver-T	--	0.26
Zinc-T	--	87.62

pH range shall be not lower than 5.0 or greater than 12.0.

E. Daily maximum limit for gasoline cleanup projects. Discharge of wastewater from sites where gasoline is being removed from the soil or groundwater shall meet the following limits prior to discharge to the POTW:

Pollutant	mg/l
Benzene	0.050
BETX	0.750

4. No subsection of this section shall be construed to provide lesser discharge standards than are or that may be imposed and required by U.S. Environmental Protection Agency or the Iowa Department of Natural Resources, nor to allow the average allowable total loading for any pollutant at the headworks of the WRF to be exceeded.

**100.13 NATIONAL CATEGORICAL PRETREATMENT STANDARDS.** Users subject to National Categorical Pretreatment Standards (NCPS) as contained in 40 CFR I, Subchapter N, Part 405-471 shall comply with the standards and applicable reporting requirements under 40 CFR 403.12. New sources of categorical discharge shall meet National Categorical Pretreatment Standards in the shortest feasible time, but in no case longer than 90 days from the commencement of discharge. Failure to comply shall be a violation of this chapter and subject the user to enforcement action. The WRA is required to notify all known affected categorical users of the applicable reporting requirements under 40 CFR 403.12. Failure of the WRA to notify a user shall not relieve the user of the duty, if any, to comply with National Categorical Pretreatment Standards.

**100.14 STATE REQUIREMENTS.** State of Iowa requirements and limitations on discharges pursuant to this chapter shall apply when they are more stringent than U.S. Environmental Protection Agency or WRA requirements and limitations unless allowed by the Iowa Department of Natural Resources.

**100.15 CITY’S RIGHT OF REVISION.** The City, acting at the direction of the WRA, reserves the right to establish more stringent limitations or requirements on discharges to the POTW than those contained in this chapter if deemed necessary to comply with the purpose and policy objectives presented in Section 100.05 of this chapter.

**100.16 PRETREATMENT.**

1. A user discharging or with potential to discharge any waste into the POTW as set forth in Section 100.11, 100.12 or 100.13 of this division shall be required by the WRA Director to construct, install and operate, at the user's sole expense, such pretreatment facilities as may be required in order to:

- A. Reduce the objectionable characteristics or constituents of wastewater to within the maximum limits provided for in Sections 100.11, 100.12, 100.13, or 100.14 of this chapter.
- B. Control the quantities and rates of discharge of such wastewater.
- C. Reduce the pollutants to such concentration and flows as may be contained in the user's wastewater discharge permit.
- D. Prevent the discharge of liquid waste containing FOG, sand in excessive amounts, any flammable waste, or other harmful pollutants. All traps or similar devices shall be of a type and capacity needed to perform effectively and shall be readily and easily accessible for cleaning and inspection. All traps or devices shall be provided and maintained in efficient operating condition at

all times. Materials removed from traps shall be considered unacceptable for disposal at the WRF unless specifically approved by the WRA Director.

2. All plans, specifications, technical operating data and other information pertinent to the proposed operation and maintenance of pretreatment facilities shall be reviewed and approved by the WRA Director prior to construction. Design and installation of such facilities shall be subject to the requirements of all applicable codes, chapters and laws, including local zoning regulations. The review and approval of such plans and operating procedures shall, in no way, relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the WRA Director under this chapter. Any subsequent changes in the pretreatment facilities or method of operations shall be reported to and be acceptable to the WRA Director prior to the user's initiations of the changes.
3. Users shall continuously maintain all pretreatment facilities required by this chapter in satisfactory and effective operating condition at the sole expense of such user.
4. No section contained in this chapter shall be construed to prevent or prohibit a separate or special agreement between the WRA and any user whereby wastewater containing waste of unusual strength, character or composition may be accepted for treatment, subject to additional payment by such user; provided, however, that such agreement shall have the prior approval of the WRA Board, shall not conflict with the Iowa Department of Natural Resources and U.S. Environmental Protection Agency requirements, and shall be consistent with Subsection 100.66(2) and Sections 100.13 and 100.14 of this chapter, and Subsection 6 of this section.
5. The WRA Director may reject any waste which, in the opinion of the director, may cause interference or pass through.
6. Users shall obtain the specific approval of the WRA Director prior to discharging any waste resulting from a pretreatment facility to the POTW. The WRA Director may develop a documentation system to track the transportation and final disposition of any pretreatment waste. Pretreatment waste regulated by this subsection shall include waste generated as a result of pretreatment processes used to comply with National Pollutant Discharge Elimination System permits, air pollution permits, wastewater discharge permits, soil/groundwater reclamation processes, and pollutants resulting from a spill of any liquid or solid material or the cleanup of any such spill. Pretreatment waste is prohibited from disposal to the water of the state except as specifically permitted by the Iowa Department of Natural Resources.

**100.17 DILUTION PROHIBITED.** Users shall not increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate pretreatment to achieve compliance with the limitations contained in the National Categorical Pretreatment Standards, or with any other pollutant-specific limitation developed by the WRA or its operating contractor.

**100.18 SPILL CONTAINMENT.**

1. Users having the ability to cause interference or pass through or to discharge a slug shall provide protection from accidental discharge to the POTW of prohibited materials or other substances regulated by this chapter. Facilities to prevent accidental discharge of prohibited materials shall be constructed, installed, operated and maintained at the user's sole cost and expense.

2. Users meeting the criteria in Subsection 1 of this section shall develop a spill containment plan. The plan shall require the approval of the WRA Director and shall contain the following:
  - A. A description of discharge practices, including non-routine batch discharges.
  - B. A description of stored chemicals.
  - C. Procedures for immediately notifying the WRA of slug discharges, including any that would violate the discharge prohibitions in Section 100.11 of this division. Notification procedures shall comply with Subsections 3 and 4 of this section.
  - D. A description of procedures and structures necessary to prevent adverse impacts upon the POTW from accidental spills including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants including solvents, and/or measures and equipment for emergency response.
  - E. A schedule for the completion or implementation of necessary procedures and structures. Complete implementation and installation of any procedures or structures shall be according to the shortest possible schedule, but in no case longer than one year. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify and operate its facility as necessary to meet the requirements of this chapter.
3. Users shall immediately telephone and notify the WRA of any accidental or deliberate discharge of pollutants which violates Section 100.11 of this division or which is a slug load. Any discharge into the POTW of a substance which is a listed or characteristic waste under Section 3001 of RCRA must be immediately reported to the U.S. Environmental Protection Agency Regional Director, the Iowa Department of Natural Resources, and the WRA. Notifications required in this subsection shall include the name of caller, location and time of discharge, pollutant concentration, volume and the corrective actions taken.
4. Users shall submit a written report to the WRA Director within five days following such an accidental or deliberate discharge describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Users shall submit follow-up reports as may be required by the WRA Director. Such report shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property, nor shall such report relieve the user of any fines, civil penalties, or other liability which may be imposed by this chapter or otherwise. Failure to report accidental or deliberate discharges may, in addition to any other remedies available to the City and sanitary district, result in the revocation of the discharger's wastewater discharge permit.
5. Users shall control production or all discharges to the extent necessary to maintain compliance with all applicable regulations upon reduction, loss, or failure of its pretreatment facility until the facility is restored or an alternative method of pretreatment is provided. This requirement applies in the situation where, among other

things, the primary source of power to the user's pretreatment facility is reduced, lost or fails.

6. Users required to have a spill containment plan must permanently post a notice in English and the language of common use on the user's bulletin board or other prominent place advising employees whom to call if a prohibited discharge occurs. Users shall ensure that all employees who are in a position to cause, discover, or observe such an accidental discharge are advised of the emergency notification procedures.

#### **100.19 TREATMENT UPSETS.**

1. Users shall inform the WRA Director within one hour of becoming aware of an upset in operations that places it in a temporary state of noncompliance with the pollutant limits in this chapter. Users shall provide a follow-up written report to the WRA Director within five days. The report must demonstrate that the pretreatment facility was being operated in a prudent and appropriate manner and shall contain:

- A. A description of the upset, its cause, and impact on the user's compliance status.
- B. The duration of noncompliance, including exact dates and times of noncompliance, and, if the noncompliance is continuing, the time by which compliance is reasonably expected to be restored.
- C. All steps taken or planned to reduce, eliminate, and prevent recurrence of such an upset.

#### **100.20 TREATMENT BYPASS.**

1. Under this chapter, bypass is prohibited unless it is unavoidable to prevent loss of life, personal injury, or severe property damage or no feasible alternatives exist such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime.

2. The user may allow a bypass to occur which does not cause a violation of pretreatment standards, but only if it is for essential maintenance to ensure efficient operation.

3. Notification of bypass shall be submitted in accordance with the following:

- A. Anticipated bypass. If the user knows in advance of the need for a bypass, it shall submit prior written notice, at least ten days before the date of the bypass, to the WRA Director.
- B. Unanticipated bypass. The user shall immediately notify the WRA Director and submit a written report to the WRA within five days. This report shall specify the following:

- (1) A description of the bypass, its cause, and the duration.
- (2) Whether the bypass has been corrected.
- (3) The steps being taken or to be taken to reduce, eliminate and prevent a reoccurrence of the bypass.

4. Proper notification shall not relieve the user of liability for treatment costs and fees or other remedies as provided for in Section 100.16 of this division.

2. **100.21 FEES.** To provide for the recovery of costs from users of the POTW and for the implementation of the pretreatment program established by this chapter, the following fees are hereby established and shall be applicable to discharges by all users:

1. All users shall be subject to the following fees and charges:
  - A. The wastewater discharge permit application fee shall be \$200.00 for a Class A permit, \$100 for a Class B permit, and \$100 for a soil/groundwater remediation permit.
  - B. The annual fee for a Class A wastewater discharge permit shall be \$1000.00.
  - C. The annual fee for a Class B wastewater discharge permit shall be \$400.00.
  - D. The fee paid by each industrial user when an accidental discharge or slug load occurs shall be up to \$1,000.00. The fee shall reimburse the WRA for any costs incurred as a result of the discharge.
  - E. The fee for sampling a user's discharge shall be \$50.00 per day when using a 24-hour automatic sampler. The fee for subsequent consecutive days and for collecting grab samples shall be \$25.00 per day. When a sampling event must be rescheduled due to failure of the user's sampling equipment or due to a sampler seal (used to detect sample tampering) being broken, a trip charge of \$25.00 and a rescheduling fee of \$50.00 shall be assessed. The trip charge fee may be waived if the user informs the WRA of sampling equipment failure prior to 8:00 a.m. of a scheduled sampling day.
  - F. Laboratory analysis fees for those analyses performed by the WRA shall be as follows:



## LABORATORY ANALYSIS FEES

Test	Cost/ Sample	
BOD	\$20.00	
COD	20.00	
Total Organic Carbon (TOC)	20.00	
TSS	10.00	
pH	5.00	
Oil and grease – Total	35.00	
Mineral/nonmineral	35.00	
Nitrogen, ammonia	15.00	
Nitrogen, nitrate	15.00	
TKN	30.00	
Phosphorous, total	25.00	
Potassium	12.00	
Calcium carbonate equivalent	15.00	
Soil analysis, each pollutant	20.00	
Phenols	28.00	
Cyanide	30.00	
Metals:		
	Arsenic	20.00
	Selenium	20.00
	Mercury	25.00
	Other metals (per parameter)	15.00
	BETX (OA-1)	40.00
	VPH (OA-1)	40.00
	BETX & VPH (OA-1)	45.00
USEPA Tests:		
	608 Organochlorine Pesticides & PCBs	70.00
	624 Volatile Organic Compounds	140.00
	625 Base/Neutral Organic Compounds and/or	290.00
	625 Acid/Organic Compounds	290.00

G. Fees for analysis performed by laboratories other than the WRA laboratory shall be the full cost of each analysis.

H. Fees for annual or biannual inspections of permitted users shall be \$100.00 for those holding a Class A permit and \$50.00 for those holding a Class B permit.

I. Fees for copying and mailing documents shall be \$1.00 for the initial page and \$0.25 for each additional page plus postage. No charges shall be

assessed for requests for copies received from individuals or agencies served by the WRA, provided the number of pages requested does not exceed ten.

J. Fees for past due reminders sent each 30 days that a balance remains unpaid shall be \$5.00.

K. Prohibitive waste charges for each pollutant discharged in excess of permit or ordinance limits shall be \$25.00 per day for Class B permit holders and \$50.00 per day for Class A permit holders. High strength charges shall double if discharges are slug loads. Payment of fees does not preclude other enforcement action and may not be paid in lieu of compliance with discharge limitations.

L. Fees for inspection of a food service establishment as defined in Division 5 of this chapter, regulation of fats, oils, and grease discharge by food service establishments, shall be \$50 per visit.

2. All users contributing wastewater in excess of the following concentrations shall be assessed a surcharge, which shall be in addition to the rates and charges ordinarily billed to such users for sewer use:

Pollutant	Surcharge (per pound)
Suspended solids in excess of 250 mg/l	\$0.16
BOD or CBOD in excess of 200 mg/l	0.11
TKN in excess of 30 mg/l	0.61
Oil and grease in excess of 100 mg/l	0.06

Chemical oxygen demand (COD) in excess of 300 mg/l may be used at the discretion of the WRA Director in lieu of CBOD. In such case the excess COD concentration shall be multiplied by the known CBOD/COD ratio or by a ratio of two-thirds to establish an equivalent CBOD concentration.

Ammonia nitrogen (NH3-N) in excess of 15 mg/l may be used at the discretion of the WRA director in lieu of TKN by multiplying the excess NH3-N concentration times two to establish an equivalent TKN concentration.

3. The establishment and imposition of new or different fees or charges, in addition or in substitution for those provided above in this section, shall be by ordinance amending this chapter. The amounts of the fees and charges established in this section shall be and remain in effect until such time as the WRA Board shall by resolution revise said fee amounts. Said revised fees and charges shall take effect after the board causes said resolution to be sent to this city council and the sanitary district board thereafter causes same to be published in a newspaper of general circulation in each county in which participating communities are located.

**100.22 RESERVED.**

DIVISION 3. INDUSTRIAL WASTEWATER DISCHARGE PERMITS AND REPORTING  
REQUIREMENTS.**100.23 CLASSES OF PERMITS.** Discharge permit classifications shall be as follows:

1. Class A permit issued to a user discharging 25,000 gallons per day or more of process wastewater (excludes sanitary, non-contact cooling, and boiler blowdown).
2. Class B permits issued to a user discharging less than 25,000 gallons per day of process wastewater.

**100.24 PERMIT REQUIREMENTS.**

1. All new industrial users shall notify the WRA Director of the nature and characteristics of their proposed discharge 180 days prior to commencing discharge. A notification form prescribed by the WRA shall be used for this purpose.
2. Significant users shall discharge wastewater, either directly or indirectly, into the POTW only after obtaining a wastewater discharge permit from the WRA Director. Obtaining a wastewater discharge permit does not relieve a user of the obligation to obtain other permits required by federal, state, or local law.
3. Other users, including waste haulers, shall obtain permits as required by the WRA Director.

**100.25 PERMIT APPLICATIONS; BASELINE MONITORING REPORTS.** Users applying for a wastewater discharge permit or submitting a baseline monitoring report shall submit the following information as required by 40 CFR 403.12 or by the WRA Director:

1. Users applying for a wastewater discharge permit must submit an application form prescribed by the WRA and accompanied by the application fee. All new significant users must submit such application 180 days prior to the date of any wastewater discharge. Existing users subject to new National Categorical Pretreatment Standards must, within 180 days after the effective date of the standard, submit such an application. The following information is required:
  - A. Name, address, and location of the facility, if different from the mailing address.
  - B. The name of a person or agent authorized to accept legal service of process.
  - C. Standard industrial classification (SIC) code of both the industry as a whole and any processes for which National Categorical Pretreatment Standards have been promulgated and a list of any environmental control permits held by or for the facility.
  - D. Wastewater constituents and characteristics including any pollutants in the discharge which are limited by any federal, state, or local standards with sampling and analysis performed in accordance with Environmental Protection Agency approved methods, and meeting the following requirements:
    - (1) The user shall identify the pretreatment standards applicable to each regulated process if the user is a categorical user.
    - (2) All samples shall be representative of daily operations.

- (3) A minimum of four grab samples, if required, must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organics. For all other pollutants required, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The WRA Director may waive flow-proportional composite sampling for any user who demonstrates that flow-proportional sampling is not feasible. In such cases, samples may be obtained through time-proportional techniques or through a minimum of four grab samples where the user demonstrates that such sampling will provide a representative sample of the effluent being discharged.
- (4) Where the flow of the stream being sampled is less than or equal to 250,000 gallons per day, the user must analyze three samples within a two-week period. Where the flow of the stream being sampled is greater than 250,000 gallons per day, the user must analyze six samples within a two-week period.
- (5) Samples must be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists and prior to mixing with other waste. If non-regulated wastewater is mixed with regulated wastewater prior to pretreatment, the user must measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 CFR 403.6(e) in order to evaluate compliance with pretreatment standards. Where an alternate concentrations or mass limit has been calculated in accordance with 40 CFR 403.6(e), this adjusted limit along with supporting data shall be submitted to the WRA Director. Users not subject to categorical standards shall submit analysis of wastewater representative of the effluent discharged to the POTW.
- (6) The WRA Director may allow the submission of an application which utilizes only historical data so long as the data provides information sufficient to determine the need for pretreatment.
- (7) A statement indicating the time, date and place of sampling, methods of analysis, and certifying that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW shall accompany each application/baseline monitoring report unless such sampling and analysis was performed by WRF.
- E. Time and duration of all discharges.
- F. Daily maximum, daily average, and monthly average wastewater flow rates, including daily, monthly, and seasonal variations, if any.
- G. Description of activities, facilities, and plant processes at the site, including a list of all raw materials and chemicals used at the facility which are or could accidentally or intentionally be discharged to the POTW.
- H. The site plans, floor plans and mechanical and plumbing plans and details to show all sewers, floor drains, and appurtenances by size, location and elevation. The plans shall include a schematic process diagram which indicates all points of discharge to the POTW. All plans must be certified for accuracy by a professional engineer registered in the state.

I. Each product produced by type, amount, process and rate of production.

J. Type and amount of raw materials processed (average and maximum per day).

K. Number and type of employees and hours of operation and proposed or actual hours of operation of the pretreatment facility.

L. A statement, reviewed by an authorized representative of the user, as defined in Section 100.35 of this division, and certified to by a professional engineer registered in the state, indicating whether pretreatment standards are being met on a consistent basis and if not whether additional operation and maintenance or additional pretreatment is required for the user to meet pretreatment standards and requirements.

M. If additional pretreatment or O&M will be required to meet pretreatment standards or requirements, the user shall supply a compliance schedule indicating the shortest time schedule necessary to accomplish installation or adoption of such additional pretreatment or O&M. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. Such schedule shall include, where applicable, but shall not be limited to dates for the hiring of an engineer, completing preliminary plans, executing contracts for major components, commencing construction, beginning operation, and conducting routine operations.

(2) No increment referred to in Subsection 1(M)(1) of this section shall exceed nine months, nor shall the total compliance period exceed 18 months.

(3) No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the WRA Director, including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between such progress reports to the WRA Director.

N. If additional pretreatment and/or operation and maintenance will be required to meet the limits on discharge into the POTW set forth in Section 100.11, 100.12 or 100.13 of this chapter, or any other limits set by the WRA Director, a plan shall be provided by the user giving the shortest schedule by which the user will provide the needed equipment, operation, or maintenance changes and additions to meet such limits. The completion date in this schedule shall not be later than the compliance date established for the National Categorical Pretreatment Standards. For a compliance schedule for meeting National Categorical Pretreatment Standards the following condition shall apply:

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required to meet the applicable National Categorical Pretreatment Standards. Such schedule shall include, where applicable, but not be limited to dates for the hiring of an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction and completing construction.

(2) No time increment in the schedule may exceed nine months.

(3) No later than 14 days after each date in the schedule and the final date for compliance, the user shall submit a progress report to the WRA Director stating whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return to the schedule established. In no case shall more than nine months elapse between such progress reports to the WRA.

O. Any additional information required by the WRA Director to evaluate a permit application.

2. All applications and reports must contain the certification statement and be signed in accordance with Section 100.35 of this division.

**100.26 REPORT ON COMPLIANCE BY CATEGORICAL INDUSTRIES.** Users subject to National Categorical Pretreatment Standards shall submit a report to the WRA Director containing the information described in Subsections 100.25(1)(C), (1)(D), (1)(E) and (1)(K) of this division within 90 days following the date for final compliance with applicable National Categorical Pretreatment Standards or, if a new source, following commencement of discharge. Users subject to equivalent mass or concentration limits shall provide a reasonable measure of the user's longterm production rate. For all other users subject to National Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production or other measure of operation, this report shall include the user's actual production during the appropriate sampling period. All reports must contain the certification statement and be signed in accordance with Section 100.35 of this division.

**100.27 PERMIT CONTENTS.** Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the WRA Director to prevent pass through or interference; protect the quality of the water body receiving effluent from the POTW; protect worker health and safety; facilitate the WRA's sludge management and disposal program; protect ambient air quality; and protect against damage to the POTW. The WRA Director may include the following items in the permit, and such additional items as the director determines necessary or prudent:

1. Limits on the average or maximum rate of discharge, time of discharge, or requirements for flow regulation and equalization.
2. Limits on the average or maximum concentration, mass, or other measure of identified wastewater constituents or properties.

3. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW.
4. Development and implementation of spill control plans or other special conditions including additional management practices necessary to adequately prevent accidental, unanticipated, or prohibited discharges.
5. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.
6. Requirements for installation and maintenance of inspection, sampling, and flow monitoring facilities and equipment for each separate discharge into the POTW.
7. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
8. Compliance schedules.
9. Requirements for submission of technical reports or discharge reports and which may include production data.
10. Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the WRA Director and affording the director or the director's representatives access thereto.
11. Requirements for the notification of any substantial change in the manufacturing processes, pretreatment processes, quantity or quality of waste discharged to the POTW 90 days prior to such change. The WRA Director shall approve, deny or condition a changed discharge prior to a change occurring in accordance with Subsection 100.10(1)(D) of this chapter.
12. Requirements for notification of excessive, accidental, or slug discharges.
13. Other conditions as deemed appropriate by the WRA Director to ensure compliance with this chapter, and state and federal laws, rules, and regulations.
14. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal pretreatment standards, including those which become effective during the term of the permit.

**100.28 PERMIT DURATION AND RENEWAL.** Permits required under this division shall be issued for a specified time period, not to exceed five years. Permit fees shall be due annually to the WRA regardless of the term of the permit. Permitted users shall apply for a new permit by submitting a completed permit application a minimum of 90 days prior to the expiration of the user's existing permit.

**100.29 CONTINUATION OF EXPIRED PERMITS.** Expired permits issued pursuant to this division shall remain effective and enforceable until the permit is reissued unless the user is notified of permit termination by the WRA Director.

**100.30 PERMIT MODIFICATIONS.**

1. The WRA Director may modify the permit issued pursuant to this division for good cause, including but not limited to the following:

- A. To incorporate any new or revised federal, state, or local pretreatment standard or requirement. After becoming aware of more stringent standards or requirements, the WRA will, as necessary, update permits within 90 days;
  - B. To make material or substantial alterations or additions to the discharger's operation processes, or discharge volume or character which were not considered in drafting the effective permit;
  - C. To make a change in any condition in either the industrial user or the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
  - D. Upon receipt of information indicating that the permitted discharge poses a threat to the POTW, to the City, sanitary district, the WRA or operating contractor personnel, or to the receiving water;
  - E. Upon occurrence of a violation of any terms or conditions of the permit;
  - F. Misrepresentation of, or grant of variance from, such categorical standards pursuant to 40 CFR 403.13;
  - G. To correct typographical or other errors in the permit;
  - H. To reflect transfer of ownership or operation of the permitted facility to a new owner or operator; or
  - I. Upon request of the permittee, provided such request does not create a violation of any applicable requirements, standards, laws, or rules and regulations.
2. The filing of a request by the permittee for permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance shall not have the effect of staying or delaying the implementation or effective date of any permit condition.

**100.31 PERMIT TRANSFER.** An industrial wastewater discharge permit is not transferable to any other person or entity. A new owner or operator must apply for a new wastewater discharge permit 60 days prior to taking ownership or undertaking operation of a permitted facility.

**100.32 DENIAL OF PERMIT.** The WRA Director may deny a wastewater discharge permit to any user whose discharge of material to the POTW, whether shown upon application, including test results submitted by the applicant, or determined after inspection or testing conducted by the WRA or its operating contractor, is not in conformity with this chapter or whose application is incomplete or does not comply with the requirements of Section 100.25 of this division.

**100.33 PERMIT VIOLATIONS.** Any violation of the terms, conditions, or limits of a user's wastewater discharge permit shall be deemed a violation of this chapter and shall subject the user to all enforcement procedures outlined in this chapter.

**100.34 PERIODIC COMPLIANCE REPORTS.** Under this division, periodic compliance reports are required as follows:

- 1. Significant users shall submit to the WRA Director, during the months of January and July, a report indicating the nature, concentration, and flow of pollutants in



the effluent which are limited by permit or pretreatment standards for the preceding six-month period. This report shall include a record of the monthly average flows and the daily flow for each analysis date during the reporting period. At the discretion of the WRA Director and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the WRA Director may agree to alter the months during which the reports are to be submitted. More frequent reports may be required by the WRA Director.

2. The WRA Director may impose mass limitations on users. In such cases, the report required by Subsection 1 of this section shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. All analyses shall be performed using Environmental Protection Agency approved methods using sampling techniques approved by the Iowa Department of Natural Resources.

3. Users shall meet the certification and signatory requirements in Section 100.35 of this division for each report submitted under this section. Where the WRA itself collects all the information required for the report, including flow data, the industrial user will not be required to submit a periodic compliance report.

4. A user must notify the WRA Director of all violations identified as a result of self-monitoring to the POTW by telephone, during normal business hours, within 24 hours of the time the user becomes aware of such violation. The user must also submit the results of repeat analyses to the WRA within 30 days after becoming aware of the violation, together with a complete report on all steps taken to resolve the violation. The user need not repeat the analyses if:

A. The WRA performs sampling of the industrial user at a frequency of at least once per month; or

B. The WRA performs sampling of the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

5. A user who monitors any pollutant more frequently than required by the WRA or who self-monitors in addition to WRA monitoring, using Environmental Protection Agency methods or standard methods, shall report the monitoring results to the WRA Director in accordance with Subsections 1, 3 and 4 of this section.

### **100.35 CERTIFICATION AND SIGNATORY REQUIREMENTS.**

1. All applications or reports submitted by a user pursuant to this division shall contain the following certification statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

2. All applications and reports shall be signed by an authorized representative of the user as defined in Section 100.01 of this chapter. A user shall maintain a current and accurate authorization on file with the WRA Director.

**100.36 MONITORING FACILITIES.**

1. When required by the WRA Director pursuant to this division, each permitted user shall at its expense provide and operate monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer or internal drainage systems. The WRA Director may require the placement of such monitoring facilities at the end of each process where pollutants are used, produced, or treated. The monitoring facility should normally be situated on the user's premises and located so that it will not be obstructed by landscaping or parked vehicles.

2. When required by the wastewater discharge permit and within 90 days of written notification, a user shall install a sampling chamber for each separate discharge of the building sewer in accordance with plans and specification approved by the WRA Director. A user shall provide ample room in or near such sampling chamber to allow accurate sampling and preparation of samples for analysis. Each user shall at its expense maintain all sampling and measuring equipment in a safe and proper operating condition at all times, which equipment shall be safely, easily and independently accessible to authorized representatives of the WRA. Users shall certify all flow measuring devices to be in proper working condition at a frequency specified in the permit or in writing by the WRA Director, using a qualified technician acceptable to the WRA Director. Sampling shall be in accordance with the following:

A. Each sampling chamber shall contain a flume unless another device is approved by the WRA Director, with a recording and totalizing device for measurement of the liquid quantity.

B. At the discretion of the WRA Director, metered water supply to a user may be used as the volume quantity where it is substantiated that the metered water supply and waste quantities are approximately the same, or where a measurable adjustment agreed to by the director is made in the metered water supply to determine the liquid waste quantity. Separate meters may be used to subtract water which is not discharged to the POTW or is discharged to a sewer other than the sampled location.

C. Samples shall be taken at a frequency and volume determined by the WRA Director and shall be properly refrigerated and preserved in accordance with Environmental Protection Agency approved methods. The sample shall be composited in proportion to the flow for a representative 24-hour sample. A time proportioned 24-hour sample may be used if flow proportioned sampling is determined by the WRA Director to be impractical. Grab samples shall be used where appropriate.

3. A user must inform the WRA Director prior to breaking a sampler seal, used by the WRA to detect sample tampering, unless necessary to prevent loss of life, personal injury, or severe property damage. A user shall not place additional seals or locks upon a sampler which may be used by the WRA without first obtaining approval from the WRA Director.

**100.37 INSPECTION, SAMPLING, AND RECORD KEEPING AUTHORITY.** Under this division, users shall be deemed to have given the following authorities to the WRA and its operating contractor:

1. Users shall permit authorized representatives or agents of the WRA to enter upon all properties and all parts of the premises, or upon properties of users with

wastewater discharge permits, for the purposes of inspection, sampling, records examination, records copying, or the performance of any of their duties. This shall include the right to set up, on the user's property, such devices as are necessary to conduct sampling, inspection, compliance monitoring, or metering operations as may be required in pursuance of the implementation and enforcement of this chapter.

A. Where a user has security measures in force which would require proper identification and clearance before entry into the premises, the user shall make necessary arrangements in the security measures so that, upon presentation of suitable identification, WRA or operating contractor personnel will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

B. All users subject to any of the reporting requirements of this chapter shall maintain copies of reports and records of all information as required in 40 CFR 403.12(o) resulting from any monitoring activities required by this chapter for a minimum of three years and shall make such records available for inspection and copying by the WRA and its operating contractor. This period of retention shall be extended until the completion of any unresolved negotiation, hearing, or litigation involving a purported violation.

#### **100.38 CONFIDENTIAL DOCUMENTS, DATA, AND INFORMATION.**

1. Except as provided in this section, documents, data and information obtained from user reports, questionnaires, permit applications and inspections pursuant to this division shall be made available to the public or other governmental agencies without restriction. If the user specifically requests and is able to demonstrate that the release of such information would divulge information concerning processes or methods of production entitled to protection under law as trade secrets of the user or would give advantage to competitors and serve no public purpose, the WRA Director may determine that such information should be kept confidential and not made available for public examination, but such information shall be available to the U.S. Environmental Protection Agency or the Iowa Department of Natural Resources.
2. Decisions by the WRA Director to deny confidential status for information may be appealed using the procedures in Section 100.39 of this division. In determining whether information is confidential, the provisions of Iowa Code Chapter 22 shall prevail.
3. Effluent data and enforcement actions by the WRA or its operating contractor will not be considered confidential records of information.

#### **100.39 APPEAL OF DENIAL OF CONFIDENTIAL STATUS.**

1. Any person aggrieved by the WRA Director's decision to release information or data obtained as provided in Subsection 100.38(1) of this division and who can demonstrate a direct and substantial interest in the information or data sought to be kept confidential may appeal the WRA Director's decision. A request for appeal shall be filed in writing with the WRA Director not less than five days after the WRA Director's decision to deny confidential status to such information or data. The appeal request shall include a statement of the basis upon which the request for confidential status is made, as well as the appealing party's interest in the information or data sought to be kept confidential. The WRA Director may request additional information from the appealing party.

2. Based upon the information provided by the appealing party, the WRA Director shall make a determination with respect to the confidentiality of the information or data at issue. The WRA Director shall notify the parties, in writing, of the WRA Director's decision within 7 days after receipt of the appeal.
3. If still aggrieved by the WRA Director's determination on appeal, a party may file an action in Polk County district court, seeking a declaratory ruling with respect to the confidentiality of such documents, data and information, or seeking an injunction to prevent the disclosure of same.
4. During the pendency of an appeal to the WRA Director, the documents, data or information at issue shall be kept confidential. However, if during the pendency of such appeal, a request for examination or copying of such documents, data or information is made of the WRA or its operating contractor pursuant to Iowa Code Chapter 22, the WRA or its operating contractor will notify the appealing party of such request for disclosure and will keep confidential the requested documents, data or information, pending action by the appealing party to defend its confidentiality request. In that notification, the appealing party requesting confidentiality will be given not more than 5 calendar days within which to file suit in Polk County district court seeking the entry of a declaratory order and/or injunction to protect and keep confidential such documents, data or information. If the appealing party fails to initiate suit within the time requested, the WRA Director shall release the documents, data or information at issue for public examination.
5. If during the pendency of such appeal, a lawsuit is initiated pursuant to Iowa Code Chapter 22 seeking the release of such documents, data or information, the appealing party shall take action to defend its confidentiality request in said lawsuit. If the appealing party fails to defend its confidentiality request in said suit, the WRA Director shall release the documents, data or information at issue for public examination.

#### **100.40 RESERVED.**

#### **DIVISION 4. ENFORCEMENT OF INDUSTRIAL WASTEWATER REGULATIONS.**

**100.41 PUBLIC NOTIFICATION OF SIGNIFICANT NONCOMPLIANCE.** The WRA will annually publish, in the largest daily newspaper published in the WRA community, a list of users who at any time during the previous 12 months were in significant noncompliance as defined in Section 100.42 of this division.

#### **100.42 SIGNIFICANT NONCOMPLIANCE.**

1. Any violation of pretreatment requirements under this chapter (i.e. including but not limited to those relating to limits, sampling, analysis, reporting, meeting compliance schedules, and regulatory deadlines) is an instance of noncompliance for which the user is liable for enforcement, including penalties and injunctive relief. Instances of significant noncompliance are user violations which meet one or more of the following criteria:
  - A. Violations of wastewater discharge limits as follows:
    - (1) Chronic violations. Sixty-six percent or more of the measurements exceed the same daily maximum limit or the same average limit in a six-month period (any magnitude of exceedance).

(2) Technical review criteria (TRC) violations. Thirty-three percent or more of the measurements exceed the same daily maximum limit or the same average limit by more than the TRC in a six-month period. (e.g., limit x TRC = the point at which a violation becomes a TRC violation). There are two groups of TRCs as follow:

Group I for conventional pollutants (BOD, TSS, FOG)	TRC = 1.4
Group II for all other pollutants	TRC = 1.2

(3) Any other violation of a wastewater discharge permit limit (average or daily maximum) that the WRA Director believes has caused, alone or in combination with other discharges, interference, including slug loads, or pass through or which endangers the health of City, sanitary district, WRA or operating contractor personnel or the public.

(4) Any discharge of a pollutant that has caused imminent endangerment to human health/welfare or to the environment and has resulted in the WRA's exercise of its emergency authority to halt or prevent such a discharge.

B. Violations of compliance schedule milestones, contained in a wastewater discharge permit or enforcement order, for starting construction, completing construction, or attaining final compliance by 90 days or more after the schedule date.

C. Failure to provide reports for compliance schedules, self-monitoring data, or any other report required by the WRA within 45 days from the due date.

D. Failure to accurately report noncompliance.

E. Any other violation or group of violations, which may include a violation of Best Management Practices, that the WRA Director considers to be significant.

2. When a user is in significant noncompliance, the WRA Director is directed to:

A. Report the information to the Iowa Department of Natural Resources as part of the annual pretreatment performance summary of permitted user noncompliance.

B. Include the user in the annual public notification according to Section 100.41 of this division.

C. Address significant noncompliance through appropriate enforcement actions or document in a timely manner the reasons for withholding enforcement.

**100.43 ADMINISTRATIVE ACTIONS.**

1. The WRA Director may issue a written notice to the user giving the specific nature of violations which shall include the frequency, magnitude and impact of the violation upon the POTW. The notice may also include the following:

A. An order requiring a plan of action for preventing reoccurrence of the violation.

- B. An order requiring specific action for accomplishing remediation.
  - C. An order requiring the user to respond in writing within 30 days.
2. The WRA Director is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the user responsible for any noncompliance. Such orders will include specific action to be taken by the user to correct noncompliance within a time period specified by the order.
  3. The WRA Director may issue enforceable orders or schedules to require compliance with pretreatment standards including appropriate interim limits. Such orders and schedules may be incorporated as a revision to an existing wastewater discharge permit and shall not require the consent of the user.

#### **100.44 ACTIONS AUTHORIZED.**

1. Where there has been noncompliance with any section of this chapter, the WRA Director may request the WRA operating contractor's attorney, or the attorney retained by the WRA for that purpose, to bring an action in equity or at law to seek the issuance of a preliminary or permanent injunction, or both, or such other relief as may be appropriate, to compel the user's compliance with this chapter.
2. In addition to other remedies provided under this section or other sections of this chapter, in any action brought at the request of the WRA Director to enforce this chapter, the WRA operating contractor's attorney or the attorney retained by the WRA is authorized to seek to recover all actual damages suffered by the City, sanitary district, or the WRA, including all actual damages and losses related to costs of repair and remediation of the POTW, costs of investigation and administration reasonably related to any particular violation and attorneys' fees.

#### **100.45 CIVIL PENALTIES.**

1. Each violation of any section of this chapter or of a permit issued under this chapter is declared to be a municipal infraction. Each day that a violation of a section of this chapter continues, and each day that a violation of a permit issued under this chapter continues, shall be considered a separate municipal infraction.
2. Any person who knowingly makes a false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or a wastewater discharge permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this chapter, commits a municipal infraction punishable by a civil penalty as provided in Subsection 4 hereof.
3. Any person who fails to perform an act required by the provisions of this chapter, or who commits an act prohibited by the provisions of this chapter, commits an environmental violation and shall be guilty of a municipal infraction, punishable by a civil penalty. Violation of a pretreatment standard or requirement referred to in 40 CFR 403.8 is an environmental violation punishable by a civil penalty as hereafter provided in Subsection 4 hereof.
4. Whenever in this division any act is prohibited and is declared to be a municipal infraction or whenever in in this division the doing of any act is required and the failure to do that act is declared to be a municipal infraction, the violation of any such provision shall be punishable by a civil penalty of not more than \$750.00 for each violation or, if

the infraction is a repeat offense, \$1,000.00 for each repeat offense. However, a municipal infraction which is classified as an environmental violation or which arises from noncompliance with a pretreatment standard or requirement referred to in 40 CFR 403.8, by an industrial user may be punishable by a civil penalty of not more than \$1,000 for each day a violation exists or continues. Each day a violation of a provision of this division continues shall be considered a separate of a provision of this division continues shall be considered a separate municipal infraction.

**100.46 PERFORMANCE BONDS.** The WRA Director may decline to reissue a permit to any user who has failed to comply with this chapter or any order or previous permit issued under this chapter unless such user first files a satisfactory bond payable to the WRA in a sum not to exceed the value determined by the WRA Director to be necessary to achieve compliance giving due consideration to the number and magnitude of previous violations, potential need for remediation and stating the reasons which support the amount of bond in a written order directed to the user, but in no case shall the bond be required to be greater than \$100,000.00. The user shall use a bond form prescribed by the WRA.

**100.47 REVOCATION OF DISCHARGE PERMIT; TERMINATION OF SEWER SERVICE.**

1. Grounds for revocation of discharge permit and/or for termination of sewer service. Any user who violates this chapter, any condition of its wastewater discharge permit, or any of the following is subject to having its discharge permit revoked and/or its sewer service terminated in accordance with the procedures of this section:
  - A. Failure to accurately report the wastewater constituents and characteristics of its discharge.
  - B. Failure of the user to report substantial changes in process activity or in volume or character of pollutants being discharged into the POTW at least 90 days prior to such change.
  - C. Tampering with monitoring equipment.
  - D. Refusal to allow reasonable access by WRA or operating contractor personnel to the user's premises for the purpose of inspection, monitoring, or sampling.
  - E. Violation of permit conditions.
  - F. Failure to report an upset, failure, or bypass of the user's pretreatment facilities.
  - G. Failure to pay fines, fees, or sewer user charges.
  - H. Failure to follow enforcement orders or compliance schedules.
  - I. Failure to correct a condition that impedes or alters the WRA's ability to monitor the user's discharge or has the potential to cause interference or pass through.
  - J. Failure to obtain a wastewater discharge permit as required by this chapter after notification by the WRA Director that such permit is required.
2. Procedure for revocation of discharge permit and for termination of sewer service. The procedure for revocation of a discharge permit and termination of sewer service shall be as follows:

A. Any permit issued to a user pursuant to this chapter may be revoked, and sewer service terminated, by written order of the WRA Director, specifying the grounds for such revocation and termination as outlined in Subsection 1 of this section, which order shall not take effect until hearing thereon as hereafter provided. Upon determining that grounds exist for an order to revoke a user's discharge permit and terminate sewer service, the WRA Director shall cause a notice of hearing to be prepared, specifying the violations of Subsection 1 of this section which are deemed to have occurred, and the time, date and place that such hearing will be held. The notice shall be sent to the user by regular mail addressed to the user's address listed on the wastewater discharge permit a minimum of ten days prior to the date set for hearing, and shall be deemed delivered when placed in the mail.

B. Sewer service may be terminated by written order of the WRA Director, specifying the grounds for such revocation and termination as outlined in Subsection 1(J) of this section, which order shall not take effect until hearing thereon as hereafter provided. Upon determining that grounds exist for an order to terminate sewer service, the WRA Director shall cause a notice of hearing to be prepared, specifying the violation of Subsection 1(J) of this section which is deemed to have occurred, and the time, date and place that such hearing will be held. The notice shall be sent to the user by regular mail addressed to the user's address a minimum of ten days prior to the date set for hearing, and shall be deemed delivered when placed in the mail.

C. If after such a hearing the WRA Director makes a finding based on substantial evidence that violations under Subsection 1 of this section have occurred as alleged, the director may issue an order immediately revoking the permit, if a permit had previously been issued, and terminating sewer service to the user's premises. The determination to revoke such permit and terminate service, shall be in the discretion of WRA Director and shall be dependent upon the circumstances surrounding the user's violations of Subsection 1 of this section and the severity of those violations. If the user does not appear for the hearing, the WRA Director shall issue the order revoking the discharge permit and/or terminating sewer service, which shall take effect immediately.

D. The decision and order of the WRA Director to revoke the permit of a user may be appealed to the WRA appeal committee. Such appeal request shall be in writing, shall include the grounds for appeal including any factual findings which are disputed, and shall be delivered to WRA not less than 10 days after the director's entry of the order of revocation of permit and/or termination of sewer service. Such appeal request shall be considered delivered when placed in the mail, return receipt requested, addressed to:

WRA Appeal Committee  
% Des Moines Metropolitan Wastewater Reclamation Authority  
3000 Vandalia Road  
Des Moines, IA 50317

The chair of the appeal committee shall schedule the appeal and shall cause notice of the time, date and place of the hearing to be mailed to the appealing user. Such appeal shall be decided by majority vote of the appeal committee. If the appeal committee affirms the order of the WRA Director revoking the



permit and/or terminating sewer service, the appeal committee shall so state and order in its written decision.

E. A user whose permit has been revoked shall not be eligible for another permit until 30 days after the violating conditions have been corrected to the satisfaction of the WRA Director.

F. Upon determination by the WRA Director that the user's sewer service connection to the POTW be terminated, the director's written order shall be sent to the City Public Works Department, City Building Official, or sanitary district who shall cause the user's connection to the sewer to be severed or plugged. The manner of severance and procedure for disconnection shall be determined by the City Public Works Department or sanitary district. Upon completion of the disconnection, the City Public Works Department or sanitary district shall certify to the WRA Director the City's or sanitary district's cost to disconnect the user's sewer service. Upon receipt of such certification of costs, the WRA Director shall forward to the user whose service was disconnected by registered mail return receipt requested, certified mail, or personal service a bill for the cost of making the disconnection, including all costs for labor and materials, and a service charge of \$100.00 for WRA supervision.

G. Any building at which sewer service is disconnected as herein provided shall be inspected by the City Building Official and if appropriate shall be red-tagged as unfit for human occupancy.

**100.48 RESERVED.**

**100.49 REINSTATEMENT OF SERVICE.** If service is severed pursuant to this division, the service may be reinstated in the following manner:

1. Upon payment to the WRA of any delinquency in full, supervision fee of \$100.00, and an inspection by the WRA Director to determine whether the original cause for termination has been corrected, the WRA will issue a permit for reconnection of the building service line to the POTW. Such reconnection costs, plus inspection fees for the City or sanitary district in accordance with this code, shall be at the sole expense of the user.

2. Upon reconnection and payment of all costs described in Subsection 1 of this section, the City or sanitary district, through its agents, shall remove the red tag from the building, and the building shall, so far as the City or sanitary district is concerned, be fit for human occupancy.

**100.50 EMERGENCY DISCONNECTION OF SERVICE.**

1. Conditions for immediate disconnection of service. The WRA Director may, after informal notice, suspend the wastewater discharge permit of, and sewer service to, a user whenever such suspension is necessary in order to stop an actual or threatened discharge presenting or causing an imminent or substantial endangerment to the health or welfare of persons, the POTW, or the environment.

2. Procedure for immediate disconnection. The procedure for immediate disconnection shall be as follows:

A. When the WRA Director determines that a discharge as described in Subsection 1 of this section exists, an oral order shall be issued, followed

immediately by a written order, to the user stating the problem and requiring immediate cessation of the discharge. A user orally notified of a suspension of its wastewater permit or sewer service shall immediately stop or eliminate all discharges. If a user fails to immediately and voluntarily comply with the suspension order, the WRA Director shall take immediate action to eliminate the discharge, including disconnection from the POTW. Methods of informal notice to a user shall include but not be limited to any of the following: personal conversations between user and personnel or the WRA or its operating contractor, telephone calls, letters, hand-delivered messages or notices posted at the user's premises or point of discharge.

B. A user responsible, in whole or in part, for imminent endangerment shall submit to the WRA Director, prior to the hearing described in Subsection 100.47(2) of this division, a detailed written report describing the causes of the endangerment and the measures taken to prevent any future occurrence.

**100.51 ELIMINATION OF DISCHARGE; REINSTATEMENT OF PERMIT.** A user notified by the WRA Director of revocation of its discharge permit and/or disconnection of its sewer service under Section 100.47 or 100.50 of this division shall immediately cease discharging wastewater to the POTW. If the user fails to comply voluntarily with the revocation and/or disconnection order, the City or sanitary district shall take such steps as are deemed necessary by the WRA, including immediate severance of the sewer connection. The WRA Director shall reinstate the wastewater discharge permit or the sewer service upon proof of the elimination of the non-complying discharge.

**100.52 ADDITIONAL REMEDIES.**

1. In addition to remedies available to the WRA set forth elsewhere in this chapter, if the WRA is fined by the Iowa Department of Natural Resources or the U.S. Environmental Protection Agency for violations of the National Pollutant Discharge Elimination System permit for the WRF, or for violations of water quality standards as the result of a discharge of pollutants by an identifiable user, the fine, and all legal, sampling, analytical testing costs and any other related costs, shall be charged to the responsible user. Such charge shall be in addition to any other remedies the WRA may have under this chapter at law or in equity.

2. If the discharge from any user results in a deposit, obstruction, damage or other impairment to the POTW, the user shall become liable to the City or sanitary district and/or the WRA for any expense, loss, or damage caused by the violations or discharge. The WRA may add to the user's charges and fees the costs incurred by the WRA and by the City or sanitary district for any cleaning, repair, or replacement work caused by the violations or discharge.

3. The remedies provided in this chapter shall not be exclusive, and the WRA may seek whatever other remedies are authorized by statute, at law or in equity against any persons violating this chapter.

4. In addition to any other remedies provided in this chapter, the City or the sanitary district and/or the WRA may initiate an action, either in law or in equity, to obtain an injunction against further violations of this chapter and for judgment for all costs incurred by the City, sanitary district and/or the WRA occasioned by the user's violation of any requirements of this chapter.

**100.53 NOTICES TO THE WRA, THE WRA BOARD, THE WRA DIRECTOR OR THE WRA STEERING COMMITTEE.** Notices which are required to be given or which may be given to the WRA, the WRA Board, the WRA Director or the WRA appeal committee, as provided in this chapter, shall be mailed to such entity, body or person at the following address:

Des Moines Metropolitan Wastewater Reclamation Authority  
Des Moines Wastewater Reclamation Facility  
3000 Vandalia Road  
Des Moines, IA 50317

**100.54 RESERVED.**

DIVISION 5. REGULATIONS OF FAT, OIL AND GREASE DISCHARGE BY FOOD SERVICE ESTABLISHMENTS.

**100.55 PURPOSE.** The purpose of this section shall be to aid in the prevention of sanitary sewer blockages and obstructions from contribution and accumulation of fat, oil, and grease (FOG) into the POTW. Such discharges from commercial kitchens, restaurants, food processing facilities and all other establishments, where fat, oil, and grease of vegetable or animal origin are discharged directly or indirectly into the POTW, can contribute to line blockages and/or spills in violation of Title 40, Code of Federal Regulations 40 CFR, Part 403.

**100.56 DEFINITIONS.** The definitions found in Section 100.01 shall apply to the provisions of this division, provided however that the following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Best management practices" or "BMPs" means and includes schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. For purposes of this division, "best management practices" include procedures and practices that reduce the discharge of FOG to the building sewer, to the City sanitary sewer system and to the POTW.
2. "Design liquid depth" means the maximum depth of liquid when the tank is filled with water.
3. "Effective date" means the date set forth in Section 100.57 upon which the regulatory provisions of this division take place.
4. "Food Service Establishment" or "FSE" means an operation or enterprise that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. Such facilities may include, but are not limited to, those that process meat or other food ingredients as an intermediate step or for final human consumption, food service operations in a summer camp, residential substance abuse treatment facility, halfway house, correctional facility, school, restaurant, commercial kitchen, caterer, church, hotel, bars, hospital, prison, care institution or similar facility.
5. "Grease interceptor" means a tank that serves one or more fixtures and is remotely located. Grease interceptors include, but are not limited to, tanks that capture wastewater from dishwashers, garbage disposals, floor drains, pot and pan sinks and trenches as allowed by local plumbing codes. For purposes of this ordinance, a grease

interceptor is a multi-compartment tank located underground outside of a building that reduces the amount of FOG in wastewater prior to its discharge into the POTW.

6. “Grease trap” means a device designed to retain grease from one to a maximum of four fixtures. Not all grease traps are approved by the manufacturer for use on heated water (e.g., dishwasher) or in-line to a waste disposal unit (e.g., garbage disposal and grinders). For purposes of this ordinance, a grease trap is a small device located within a building.

7. “Minimum design capability” means the design features of a grease interceptor and its ability or volume required to effectively intercept and retain greases from grease-laden wastewaters discharged to the POTW.

8. “Non-routine inspection” means an impromptu, unscheduled inspection of an FSE made without prior notification or arrangement.

9. “Routine inspection” means an inspection of an FSE which is scheduled in advance or according to a pre-arranged schedule.

10. “User” as used in this division has the same meaning as the definition in Section 100.01, but also includes persons who discharge wastewater to the POTW from mobile sources, such as mobile food vendors.

**100.57 EFFECTIVE DATE OF FOG REGULATIONS.** The provisions of this division shall be effective upon passage by the City Council and publication.

**100.58 GREASE INTERCEPTOR INSTALLATION REQUIRED AND EFFECTIVE DATE.** The owner of a building or facility in which as FSE is located, and the owner or operator of an FSE shall be required to install an approved grease interceptor, and to thereafter operate and maintain same as provided in this division.

**100.59 EXEMPTION FROM GREASE INTERCEPTOR INSTALLATION REQUIREMENT FOR EXISTING FACILITIES.** The requirements of Section 100.58 shall not apply to that portion of a building or facility within which an FSE is in existence on the effective date if:

1. The FSE has an existing grease interceptor or grease trap in place as of the effective date and provided that (1) the owner or occupant of the FSE continues to use the interceptor or trap, (2) the interceptor or trap is of sufficient capacity and design, and (3) the interceptor or trap is operated and maintained so as to comply with FOG discharge limits; and
2. Any repair, remodeling or renovation of the wastewater plumbing system in the existing FSE involves only (1) the repair of leaks or the clearing of stoppages in drains, soil, waste or vent piping, or (2) the removal and reinstallation of a sink, toilet or hot water heater; provided that such work does not involve replacement, rearrangement or moving of wastewater pipes floor sinks, drainage fixtures or grease traps; and
3. None of the following conditions are present:
  - A. A building or facility exists on the effective date and is thereafter expanded or renovated, or a portion thereof, to include an FSE where such FSE did not previously exist; or
  - B. An FSE exists on the effective date within a building or facility, or portion of a building or facility, and application is thereafter made for a building

permit(s) for such building or facility with valuation of \$50,000 or more within a twelve (12) month period; or

C. A building or facility, or portion thereof, that contained an FSE on the effective date but in which an FSE ceases to operate for one year or more, as determined by Iowa Department of Inspections & Appeals, Food and Consumer Safety Bureau records.

#### **100.60 COMPLIANCE PROCEDURES.**

1. After the effective date, any permitted construction under Section 100.58 shall be deemed compliant upon issuance of a certificate of compliance or certificate of occupancy for such construction by the City Building Official or designee.

2. An FSE shall be deemed compliant, unless the WRA Director or local building official or designee determines that an existing grease trap or grease interceptor is incapable of adequately retaining FOG. In such cases, the Director may order the FSE to install an adequate grease interceptor within a specified time period if:

A. The FSE is found to contribute FOG in quantities above FOG discharge limits; or

B. The FSE discharges necessitate increased maintenance on the publicly owned treatment works (POTW) in order to keep stoppages from occurring therein; or

C. The FSE's discharge to the POTW is at anytime determined to exceed four hundred (400) mg/l total FOG.

3. An order directing an existing FSE or the owner or operator of the FSE or the owner of the building or facility in which the FSE is located to install a grease interceptor shall be in writing from the WRA Director in the form of a notice of violation including a corrective action order, as provided in Section 100.67 of this division.

4. FSEs or owners of buildings or facilities within which an FSE is located which are unable to install or replace a grease interceptor due to exceptional physical constraints or economic hardship may appeal to the WRA Director for approval of an alternative grease control technology by requesting a hearing in accordance with the provisions of this division. Such requests shall be submitted in writing and shall include detailed descriptions of the FSE's physical or financial constraints and the alternative grease control technology which it proposes to install and utilize.

A. In order to demonstrate exceptional economic hardship, the owner or operator of the FSE shall submit to the WRA Director balance sheets and profit and loss statements for FSE for the preceding three (3) years. A new FSE shall submit profit/loss projections or a detailed business plan with projections for twenty-four (24) months. Each request shall be evaluated on a case-by-case basis.

B. Notwithstanding approval of alternative grease control technology, when the WRA Director determines that such alternative is not performing adequately, the FSE or owner of the building or facility in which the FSE is located shall be required to take additional grease control measures, which may include the installation of a grease interceptor.

C. In order to demonstrate exceptional physical site constraints preventing the installation of a grease interceptor, the owner or operator of the FSE or owner of the building or facility in which the FSE is located shall submit to the WRA Director documentation and plats showing the location of City sanitary sewer and any private easements in relation to the building sewer for the building housing the FSE, and showing available space inside or outside the building and drawings of existing plumbing at or in a site that uses common plumbing for all services at that site.

D. An FSE that is given an exemption from installing a properly sized grease interceptor is prohibited from installing or using a dishwasher or garbage disposal without approval of the director and must comply with the conditions of such approval, if any.

**100.61 INSTALLATION OF GREASE INTERCEPTORS AND GREASE TRAPS.**

Grease interceptors and grease traps, when required, shall be installed as follows:

1. Grease interceptors and grease traps shall be installed at the expense of the owner or operator of the FSE or owner of the building or facility in which the FSE is located which is contributing wastewater to the POTW.
2. All wastewater streams containing FOG or reasonably likely to contain FOG within FSEs or other FOG generating operations shall be directed into one or more appropriately sized grease interceptor before discharge to the POTW. Grease interceptors shall be either sized by adding the peak design flow rates for all fixtures leading to the grease interceptor and allowing a minimum retention time of thirty (30) minutes or as follows:

Grease Interceptor Sizing								
1. Peak meals per hour								
	a.	Seating capacity of FSE						
	b.	Occupancy of FSE						
	c.	Seating or occupancy x meal factor of 1.3 (45-minute meal) or 1.0 (intermittent-use FSEs) = Peak meals per hour						
	*	Church: include all area(s) used for meal service						
	*	Assisted Living / nursing facility: equal to maximum number of residents (per State license)						
2. Waste flow rate, gallons of flow								
	a.	Commercial, equipped kitchen with dishwasher & one garbage disposal*			7			
	b.	Commercial, equipped kitchen with dishwasher, no garbage disposal			6			
	c.	Commercial, equipped kitchen with no dishwasher, one garbage disposal*			6			
	d.	Commercial, equipped kitchen with no dishwasher, no garbage disposal			5			
	e.	Single service kitchen**			2			
	*	Each additional garbage disposal, add one (1) gallon						
	**	Single service kitchen = no garbage disposal, no dishwasher and all service is single use						
3. Retention time, hours								
	a.	Commercial kitchen			2.5			
	b.	Single service kitchen			1.5			
4. Storage factor								
	a.	Commercial kitchen up to 8 hours of operation			1			
	b.	Commercial kitchen up to 12 hours of operation			1.5			
	c.	Commercial kitchen up to 16 hours of operation			2			
	d.	Commercial kitchen up to 20 hours of operation			2.5			
	e.	Commercial kitchen up to 24 hours of operation			3			
	f.	Single service kitchen			1.5			
Peak Meals per Hour	X	Waste Flow Rate	X	Retention Time	X	Storage Factor	=	Calculated Interceptor Size

3. Concrete grease interceptors whether precast or poured in place, shall be designed and manufactured in accordance with ASTM C 1613-08 Standard Specification for Precast Concrete Grease Interceptor Tanks or IAPMO/ANSI Z1001 Grease Interceptors and shall be installed in accordance with the codes adopted by the jurisdiction in which the FSE is located. Where no code is adopted, the construction and installation shall be in accordance with the Iowa State Plumbing Code and this division. Grease interceptors using materials other than concrete require approval by the Director, and shall comply with the conditions of such approval, if any.

4. The Building Official or other designated official of the governmental subdivision within which the FSE is located shall inspect each grease interceptor installation made pursuant to this division, shall review all relevant information regarding the rated performance of the grease interceptor, and the building plan and facility site plan for the building and site where the grease interceptor has been installed, and shall approve such grease interceptor installation upon determination that the grease interceptor meets all applicable standards and requirements.

5. Grease interceptors shall have a minimum capacity of one thousand (1000) gallons and shall not exceed five thousand (5000) gallons for a single unit. Where a capacity greater than five thousand (5000) gallons is required, several smaller units shall be installed in series, however the capacity shall not exceed ten thousand (10,000) gallons for any single series of interceptors without approval of the Director.

6. Grease interceptors shall be installed outside the building housing the FSE and below surface grade, and shall have access manholes, with a minimum diameter of twenty-four (24) inches, over each chamber and sanitary tee. Access manholes shall extend from the grease interceptor to at least the finished surface grade and be designed and maintained to prevent storm or surface water inflow and groundwater infiltration. The manholes shall also have readily removable covers to facilitate inspection and grease removal.
7. Sewer lines which are not grease laden, which are not likely to contain FOG, or which contain sanitary wastes shall not be connected to a grease interceptor.
8. Grease interceptors shall be equipped with an accessible discharge sampling port with a minimum six (6) inch diameter, which shall extend from the grease interceptor to at least the finished surface grade.
9. Where grease interceptors are shared by more than one FSE, the building owner shall be the responsible party for record keeping and cleaning of the interceptor.

#### **100.62 OPERATION, MAINTENANCE AND CLEANING OF GREASE INTERCEPTORS AND GREASE TRAPS AND GREASE HAULER CERTIFICATION.**

1. The owner or operator of an FSE which is required to pass wastewater through a grease interceptor or trap shall operate and maintain the grease interceptor or trap so that wastewater exiting the grease interceptor or trap shall not exceed four hundred (400) milligrams per liter of FOG.
2. The owner or operator of the FSE shall cause the grease interceptor or trap to be cleaned as hereinafter required when FOG and solids reach 25% of the design liquid level of the grease interceptor or trap, or sooner if necessary, to prevent carry over of FOG from the grease interceptor or trap into the City sanitary sewer system. Interceptors and traps shall be cleaned at three (3) month intervals or less. A longer cleaning interval must be approved by the WRA Director. If the owner or operator of the FSE, or an employee of the owner or operator, has a current grease hauler certification from the WRA indicating satisfactory completion of the course of training offered by the WRA on the cleaning of grease interceptors and traps, such person or persons may clean the grease trap in the facility included in such grease hauler's certification. Failure to adequately clean the grease trap, properly dispose of all grease trap waste, or maintain clean out records and measurements may result in revocation of a grease hauler certification pursuant to Sec. 100.86. Alternatively, the owner or operator of an FSE may employ a waste hauler licensed by the WRA pursuant to Division 6 of Chapter III of this chapter to clean the grease interceptor or trap, provided that the waste hauler personnel performing the cleaning has a current grease hauler certification from the WRA indicating satisfactory completion of the course of training offered by the WRA on the cleaning of grease interceptors and traps.
3. Any person who cleans a grease interceptor or trap shall do so in accordance with the following procedures and requirements. The person cleaning the grease interceptor or trap shall:
  - A. Completely empty and remove the contents (liquids and sludge) of all vaults of the grease interceptor or trap, and remove the grease mat and scrapings from the interior walls. As part of each cleaning of a grease interceptor or trap, the owner or operator of the FSE, or the licensed waste hauler employed by the FSE owner or operator, shall perform the following maintenance activities:



- (1) Check that the sanitary “tees” on the inlet and outlet sides of the grease interceptor are not obstructed, loose, or missing.
  - (2) Verify that the baffle is secure and in place.
  - (3) Inspect the grease interceptor or trap for any cracks or other defects.
  - (4) Check that lids are securely and properly seated after completion of cleaning.
- B. Not deposit waste and wastewater removed from a grease interceptor/trap back into the grease interceptor/trap from which the waste or wastewater was removed or into any other grease interceptor/trap, for the purpose of reducing the volume of waste and wastewater to be disposed of.
- C. Not introduce enzymes, emulsifying chemicals, hot water or other agents into a grease interceptor or trap to dissolve or emulsify grease or as a grease abatement method. Introduction of bacteria as a grease degradation agent is permitted with prior written approval by the WRA Director.
- D. Dispose of waste and wastewater removed from a grease interceptor or trap at the WRF or at a facility approved for disposal of such waste by the WRA Director. Waste and wastewater removed from a grease interceptor or trap shall not be discharged to any private sanitary or storm sewer or to the City sanitary or storm sewer system. The waste hauler shall provide a copy of the disposal receipt for all waste and wastewater removed from a grease interceptor or trap to the owner or operator of the FSE.
- E. Not use an automatic grease removal system to clean a grease interceptor without prior written approval of the WRA Director, and if, the use of an automatic grease removal system is approved, shall operate same in a manner that the grease wastewater discharge limit, as measured from the system’s outlet, is consistently achieved.
4. The WRA Director may make exceptions to the above requirements, or may approve alternative operational requirements or cleaning and maintenance methods, provided that such exceptions or approvals shall be made in writing by the WRA Director.
5. The WRA Director may issue a grease hauler certification upon satisfactory completion of the course of training offered by the WRA on the proper maintenance and cleaning of grease interceptors and traps, disposal procedures and record keeping. Such certification shall be for a period of 5 years and shall be in effect for the person receiving such training and for the FSE site for which such person is the owner, operator or employee thereof.

#### **100.63 RECORDS AND RECORD KEEPING.**

1. Required Records. The owner or operator of an FSE which is required to pass wastewater through a grease interceptor or trap shall maintain a written record of grease interceptor or trap maintenance, including a log showing the dates upon which the grease interceptor or trap was inspected and the estimated amount of FOG present in the grease interceptor or trap at each inspection, the date upon which waste and wastewater was removed from the grease interceptor or trap and disposed of, and the

location and means of such disposal of waste and wastewater, and the name and employer or the person or persons performing each of said tasks. The log shall further include a record of the placement of any approved or unapproved additive into the grease interceptor, grease trap or building sewer on a constant, regular or scheduled basis, including the type and amount of additive placed on each such occasion. Only additives approved by the WRA Director pursuant to Section 100.62(3)(C) may be used in a grease interceptor.

2. Record Keeping. The log shall at all times be kept and maintained on a day-to-day basis, so as to show a record of waste and wastewater removal, waste and wastewater disposal and approved additive placement for a continuous period of three (3) years. All such records shall be kept secure at the premises of the FSE for a continuous period of three years and shall be made available for non-routine inspection by the City, the sanitary district, the WRA and its operating contractor, or the employees and agents of any of them at any time during normal business hours.

**100.64 INSPECTION OF GREASE INTERCEPTORS AND RELATED SEWERS AND EQUIPMENT.** The owner or operator of an FSE shall:

1. Provide, operate and maintain, at its expense, safe and accessible monitoring facilities (such as a suitable manhole), and shall make such monitoring facilities available for inspection, and for sampling and flow measurement of the building sewer or internal drainage systems. There shall be ample room in or near such monitoring facility to allow accurate sampling and preparation of samples for analysis.

2. Shall allow personnel authorized by the WRA Director or by the City Building Official or designee, bearing proper credentials and identification, to enter upon or into any building, facility or property housing an FSE at any reasonable time and without prior notification, for the purpose of inspection, observation, measurement, sampling, testing or record review, in accordance with this division.

3. Shall, upon request by the WRA Director's authorized representative, open any grease interceptor or grease trap for the purpose of confirming that maintenance frequency is appropriate, that all necessary parts of the installation are in place including, but not limited to, baffles, and effluent tees, and that all grease interceptors, traps, and related equipment and piping is maintained in efficient operating condition.

4. Shall accommodate compliance inspections and sampling events by the authorized representatives of the WRA Director or of the City building official. Staff may conduct routine inspections and sampling events of any food service establishment. Non-routine inspection and sampling events shall occur more frequently when there is a history of non-compliance with this division and when blockages occur in the City's sanitary sewer system downstream of the FSE.

**100.65 INSPECTION FEES.** The fees for inspection of an FSE shall be as provided in Section 100.21 and shall be paid within thirty (30) days of the date of the invoice for such fees.

**100.66 ENFORCEMENT.** The WRA Director is authorized to enforce this division as hereinafter provided. The City Building Official or designee, or such other governmental official hereafter designated by the WRA, is also authorized to enforce this division.

**100.67 NOTICE OF VIOLATION – ADMINISTRATIVE PENALTIES –  
CORRECTIVE ACTION ORDER.**

1. The director, or such other designated officers or officials with enforcement authority as provided in Section 100.66, are authorized to issue a notice of violation imposing an administrative penalty upon any person who fails to perform an act required by this division or who commits an act prohibited by this division. Such notice may include a corrective action order requiring the user to take one or more of the following corrective actions within thirty (30) days:
  - A. Conform to best management practices;
  - B. Submit copies of the grease interceptor or trap maintenance log;
  - C. Develop, submit and implement a FOG compliance plan to be approved by the Director or designated enforcement official; or
  - D. Install a compliant grease interceptor.
2. The administrative penalty for such violations shall be as provided in the schedule of administrative penalties adopted by the City Council by resolution.
3. Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to and served upon the violator. Service of the notice may be by regular mail or by delivery in person.
4. Penalties assessed pursuant to notice of violation shall be paid by the violator in full as directed in the notice within thirty (30) days of its issuance.
5. The administrative penalties set out in the schedule of administrative penalties shall be charged in lieu of the fines and penalties provided for in Section 100.68, unless the violator refuses to correct the violation and pay the scheduled administrative penalty, or the WRA Director determines that immediate enforcement action by misdemeanor or municipal infraction prosecution is, in view of the particular circumstances of the case, necessary to achieve compliance with the requirements of this chapter. A record of all violations, administrative penalties charged or other enforcement actions taken shall be maintained by the WRA for a period of three years.

**100.68 PENALTIES.**

1. Any person who fails to perform an act required by this division or who commits an act prohibited by this division shall be guilty of a misdemeanor punishable by fine or imprisonment or shall be guilty of a municipal infraction punishable by a civil penalty.
2. Any person who fails to comply with a pretreatment standard applicable to an FSE shall be guilty of a municipal infraction punishable by a civil penalty of not more than one thousand dollars for each day the violation exists or continues, as provided by Section 364.22 or 331.307 of the Iowa Code.
3. When enforcement is sought through a municipal infraction proceeding, the Director, or such other designated officers or officials with enforcement authority as provided in Section 100.66, may enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with the user

responsible for noncompliance. Such orders will include specific action to be taken by the user to correct the noncompliance within a time period specified by the order.

**100.69 ORDER TO CEASE OPERATION OF FSE.**

1. Where a violation of this division has not been timely corrected, and results in or threatens interference or pass through as herein defined, the WRA Director, or such other designated officers or officials with enforcement authority as provided in Section 100.66, shall have the authority to issue an order in writing to the owner or operator of the FSE, ordering such person or persons to cease and desist from further operation of the FSE and from further discharge of wastewater to the sanitary sewer system. The order shall be delivered by personal service unless the owner or operator cannot be found within the City or sanitary district, in which event notice shall be by ordinary mail addressed to the owner's or operator's last known address and by posting a copy of the notice in a conspicuous place upon the premises of the FSE.
2. Operation of the FSE shall cease on the date stated in the order and shall not recommence without the prior written approval of the WRA Director.
3. The applicant may make a written request to the director for a reconsideration and hearing on the cease and desist order within ten (10) days from the issuance of the order, provided, however, that operation of the FSE shall cease pending the outcome of the hearing.
4. The owner's or operator's request for hearing shall identify the appealing party, include the address of the person requesting the hearing and to which all further notices shall be mailed or served, and shall state the basis for the appeal.
5. The hearing shall be scheduled to be held as soon as practicable and no later than fourteen (14) days after the request for hearing was filed with the WRA Director. The person requesting the hearing shall be notified in writing or by telephone of the date and place of such hearing at least three (3) days in advance thereof. At such hearing the Director and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.
6. The determination by the Director or by that the violation occurred shall be considered a final administrative decision, unless appealed to the WRA.

**100.70 APPEAL OF CORRECTIVE ACTION ORDER OR CEASE AND DESIST ORDER.**

1. Any person aggrieved by a corrective action order or a cease and desist order issued by the WRA Director or by such other designated officers or officials with enforcement authority as provided in Section 100.66, may, file an appeal and request a ruling that such order be modified or rescinded.
2. Such appeal request shall be in writing, shall include the grounds for appeal including any factual findings which are disputed, and shall be delivered to the WRA within ten (10) days after the WRA Director's issuance of the order. Such appeal request shall be considered delivered when placed in the mail, return receipt requested, addressed to:

WRA Appeal Committee  
Des Moines Metropolitan Wastewater Reclamation Authority  
3000 Vandalia Road

Des Moines, IA 50317

3. The chair of the appeal committee shall schedule the appeal and shall cause notice of the time, date and place of the hearing to be mailed to the appealing party. Such appeal shall be decided by majority vote of the appeal committee. The appeal committee may affirm, modify or rescind the order of the Director and shall so state and order in its written decision.

**100.71 ADDITIONAL REMEDIES.** The WRA or the City or the sanitary district is not precluded from seeking alternative relief from the court, including an order for abatement or injunctive relief or for recovery of investigational or remedial costs resulting from a non-complying discharge, in the event that the WRA or the City files a misdemeanor citation, notice of administrative penalty, and/or files a municipal infraction for the same violation of this division.

**100.72 RESERVED.**

#### DIVISION 6. REGULATION OF HAULED WASTE

**100.73 DEFINITIONS.** The definitions found in Sections 100.01 and 100.56 shall apply to the provisions of this division, provided however that the following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Vehicle" means a commercial device equipped with a tank and used to remove or transport waste.
2. "Waste" means human excreta, water, scum, sludge, septage, FOG, food waste or grease solids, and non-hazardous industrial wastewaters and solids removed from public and private wastewater disposal systems, holding tanks, impervious vaults, portable or chemical toilets, or from devices used to trap grease resulting from food preparation. Waste also means liquid wastes resulting from spill clean-up.

**100.74 LICENSE.** No waste hauler shall remove waste from within the City or sanitary district or shall dispose of waste, whether from a source inside or outside the City or sanitary district, into the POTW without first obtaining a waste hauler license from the WRA, with the following exceptions:

1. WRA participating communities that operate vehicles to remove waste from their sewer systems.
2. Waste haulers hired by WRA participating communities to remove waste from their sewer systems and which bring no other wastes to the WRF.
3. Waste haulers utilized by industrial users issued a wastewater discharge permit by the WRA.
4. Waste haulers granted temporary authorization by the WRA Director in order to deal with an emergency.

**100.75 ISSUANCE OF LICENSE.** The waste hauler's license shall be issued by the WRA Director upon written application that shall consist of the following minimum requirements:

1. Inspection. The WRA Director, upon application, shall inspect the trucks, hoses, valves, and associated equipment of the applicant for a waste hauler's license and

determine if they meet the minimum qualifications for complying with the conditions of this division.

2. License fee and bond. An application shall require the payment of a fee of \$60.00 for each vehicle used by the applicant and the posting of a bond with reasonable surety in the penal sum of \$10,000.00 for the faithful compliance with this division, including prompt payment of fees, fines and damages. WRA participating communities that contract with waste haulers in order to clean and rehabilitate storm and sanitary sewers owned by the community or that own and operate waste hauling vehicles may provide proof of self-insurance or provide a letter guaranteeing payment of up to \$10,000.00 in lieu of providing a surety bond.

3. Renewal. A waste hauler license shall expire on June 30 next after its issuance. The renewal application must be made in the same manner as the initial application and must be received by the Director 30 days prior to expiration. Failure to apply 30 days prior to expiration may result in an interruption in the license and the privileges of such license.

4. Transferability. Waste hauler licenses are not transferable.

**100.76 STANDARDS FOR VEHICLES AND EQUIPMENT.** As to all vehicles and equipment used by a waste hauler, the licensee shall:

1. Prevent waste and wastewater from leaking, spilling, or discharging onto roads or rights-of-way.
2. Ensure proper construction and repair of the equipment to allow cleaning.
3. Maintain vehicles and equipment in an essentially rust free and sanitary condition and appearance.
4. Display the business name as it appears on the waste hauler license in three-inch or larger letters on the left and right sides of the vehicle.

**100.77 DISPOSAL.** Hauled waste shall only be disposed at the WRF at the designated disposal station or as authorized by the Iowa Department of Natural Resources for land application. Waste haulers shall maintain the WRF designated disposal location in a clean and orderly condition to avoid noxious odors and unsanitary conditions. Hours of operation at the WRF disposal station shall be set by the WRA Director. In the event of emergency situations, special arrangements between the waste hauler and the WRA Director regarding disposal at an alternative disposal site shall be allowed to permit response to such emergency. Any violation of an Iowa Department of Natural Resources rule or regulation for land disposal of hauled wastes by a waste hauler shall be grounds for rejection of a hauled waste load in Section 100.81 by such waste hauler or shall be grounds for denial, suspension and revocation of such waste hauler's license in Section 100.86.

**100.78 IDENTIFICATION OF SOURCE.** Waste haulers must document the nature and origin of wastes collected and the site and method of disposal for wastes that are removed from any locations or are delivered to the WRF. Such information shall be provided on a manifest form provided by the WRA Director. The manifest shall also include: (i) the name, address and phone number of the waste generator, (ii) the type of waste collected, (iii) the approximate volume of the load, (iv) any other information consistent with identification and tracking of wastes. The WRA Director or his or her designee shall have the right to verify all information required by this section, including the right to measure, sample and analyze any waste regulated

by this division. The waste hauler shall obtain approval from the WRA Director or his or her designee prior to loading wastes originating from an industrial/commercial source unless prior approval is on record with the WRA.

**100.79 MIXING WASTES.**

1. For the purposes of this division, wastes from residential and nonresidential sources shall not be mixed. Wastes from an industrial/commercial source shall not be mixed with wastes of any type from another location. Portable toilet and FSE grease trap wastes may be mixed with similar wastes from different locations. Residential wastes from several sources may be mixed as long as each source is identified.
2. Any tanks or equipment used for hauling waste to the WRF shall not be used for hauling hazardous wastes or hazardous substances, as defined in Iowa Code §567.1 et seq., Chapter 131 of the Iowa Administrative Code and in 40 CFR 261, or other wastes detrimental to the WRF.

**100.80 STANDARDS OF DISPOSAL AT WRF.** Under this division, disposal of wastes at the WRF shall be carried out in accordance with pretreatment standards and requirements established by federal, state, county and city governments including categorical standards developed for the waste generator's industrial category. The WRA Director may reject wastes from waste haulers who do not comply with this section or with any other section of this division. Waste haulers shall not deliver wastes to the WRF, or to any other disposal location approved by the WRA Director which are:

1. Prohibited by Section 100.11 or exceed the limits found in Subsection 100.12(3)(D), Sections 100.13 and 100.14 of this chapter.
2. Hazardous wastes or hazardous substances as defined in 40 CFR Part 261 or 567 I.A.C., Chapter 131.
3. Originate from mineral oil unless first treated to remove the oil and grease.
4. Not completely identified or are from industrial/ commercial sources that are not approved by the Director as required in Section 100.78.
5. Mixed in a manner prohibited in Section 100.79.
6. Wastes other than residential from outside the WRA, except through requests to the Director.

**100.81 REJECTION OF WASTE LOADS.**

1. The WRA Director may reject any hauled waste load that violates or is suspected of violating the requirements of this division or that fails to meet any other guidelines established by the WRA Director to protect personnel, equipment, and the WRF. Waste haulers must:
  - A. Remove rejected waste from the WRF.
  - B. Immediately remove any additional wastes contaminated by the rejected waste while contained at the WRF prior to introduction into the sewer.
  - C. Properly dispose of all rejected wastes in accordance with state and federal law.

- D. Provide the WRA Director with a written statement, signed by the waste hauler license holder, stating the location, date, and time the rejected load was disposed of. The statement is due within five calendar days after the waste is rejected.
2. A vehicle used to haul rejected wastes shall not thereafter be allowed to dispose of additional wastes at the WRF until the statement required by this section is delivered to the WRA Director.

#### **100.82 TREATMENT FEES FOR HAULED WASTES.**

1. A treatment fee shall be charged per pound of hauled waste received at the WRF for all wastes originating within WRA participating communities which are treated through the headworks at the WRF using all treatment processes at the WRF, which fee shall be equal to the cost of disposal and treatment of an equivalent volume and mass of pollutants otherwise delivered into the POTW. The treatment fee shall include: (1) the volume charge component, (2) a treatment surcharge component for each pollutant as found in Section 100.21 of this division, and (3) a program cost component. The program cost component shall be calculated by dividing the annual administrative costs of the waste hauler program by the total gallons of hauled waste treated in the previous calendar year. The surcharge component shall be calculated using the average concentration of pollutants found in hauled wastes delivered to the wastewater reclamation facility. The treatment surcharge and program cost components shall be reviewed and updated annually based on the most recent data collected by the operating agency. The treatment fee for loads originating outside of the WRA participating communities shall be 1.5 times the fee for loads originating within the WRA participating communities.
2. A treatment fee shall be charged for hauled wastes originating within the WRA participating communities which are treated using only a portion of the treatment processes at the WRF, which fee shall be calculated to recover the cost of treatment. The cost of treatment shall include electrical, chemical, personnel, and any capital costs associated with the treatment processes utilized, and a program cost component which shall be calculated by dividing the annual administrative costs of the waste hauler program associated with partial process treatment by the total gallons of hauled waste treated using only a portion of the treatment processes in the previous calendar year. Treatment costs shall be reviewed and updated annually based on the most recent data collected by the operating agency. The treatment fee for loads originating outside of the WRA participating communities shall be 1.5 times the fee for loads originating within the WRA participating communities.
3. Fees shall be computed and recorded at the disposal station and shall be paid by the waste hauler on the basis of monthly billings by the operating contractor. Limits of credit shall not exceed 60 days. Abuse of such credit shall be grounds for liability on the waste hauler's bond and for refusal of disposal services to any waste hauler under this division.
4. Waste haulers may elect to have their loads tested for actual concentration at their expense as set out in Section 100.21. When a waste hauler has elected to have loads tested for actual concentration, the treatment fee will be based on the actual concentration whether it be higher or lower than the average concentration treatment fee. Said testing will be done at least once a month or more often as required by the WRA Director.



**100.83 ENFORCEMENT.** The WRA Director, the City Building Official, or such other governmental official hereafter designated by the WRA, shall be authorized to enforce this division as hereinafter provided.

**100.84 NOTICE OF VIOLATION – ADMINISTRATIVE PENALTIES – CORRECTIVE ACTION ORDER.**

1. The director, or such other designated officers or officials with enforcement authority as provided in Section 100.83, are authorized to issue a notice of violation imposing an administrative penalty upon any person who fails to perform an act required by this division or who commits an act prohibited by this division.
2. The administrative penalty for such violations shall be as provided in the schedule of administrative penalties adopted by the City Council by resolution.
3. Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to and served upon the violator. Service of the notice may be by regular mail or by delivery in person.
4. Penalties assessed pursuant to notice of violation shall be paid by the violator in full as directed in the notice within thirty (30) days of its issuance.
5. The administrative penalties set out in the schedule of administrative penalties shall be charged in lieu of the fines and penalties provided for in Section 100.85, unless the violator refuses to correct the violation and pay the scheduled administrative penalty, or the WRA Director determines that immediate enforcement action by misdemeanor or municipal infraction prosecution is, in view of the particular circumstances of the case, necessary to achieve compliance with the requirements of this chapter. The WRA shall maintain a record of all violations, administrative penalties charged or other enforcement actions taken.

**100.85 PENALTIES.**

1. Any person who fails to perform an act required by this division or who commits an act prohibited by this division shall be guilty of a misdemeanor punishable by fine or imprisonment or shall be guilty of a municipal infraction punishable by a civil penalty.
2. Any person who violates a discharge prohibition set forth in Section 100.11, or discharges in excess of local limits as set forth in Section 100.12, shall be guilty of an environmental violation punishable as provided by Section 364.22 of the Iowa Code.

**100.86 DENIAL, SUSPENSION AND REVOCATION OF LICENSE.**

1. Grounds for denial, suspension or revocation of waste haulers license. The WRA Director may deny, suspend or revoke the waste hauler license and/or grease hauler certification of any wastehauler who violates any provision of this division or any condition of its license, or who commits any of the following violations, or who does not meet the following requirements:
  - A. Violation of any term, condition or requirement of this division, the license, or applicable state of Iowa or federal laws or regulations.
  - B. Obtaining a license by misrepresentation.

- C. Falsification of, failure to complete or failure to fully disclose all relevant facts in a license application.
  - D. Failure to pay fees, administrative penalties or fines.
  - E. Failure to report a spill to the WRA.
  - F. Using wash down water or otherwise diluting the permitted waste for the purpose of meeting discharge limitations or requirements.
  - G. Falsification of, failure to complete or failure to fully disclose all relevant facts in any report, manifest information or record required by the license or this division.
  - H. Tampering with samples or sampling equipment intended to accurately reflect the contents of each hauled waste load.
  - I. Refusing to allow WRA personnel timely access to the wastehauler's facility premises, vehicles, or records.
  - J. Failure to perform as required under a corrective action order or compliance schedule issued by the WRA Director.
  - K. Failure to correct any violation of this division within 30 days after notice by the WRA Director.
  - L. Failure to immediately correct any violation of this division if the condition constituting the violation is declared a threat to public health, safety or welfare by the WRA Director and the Director orders immediate correction.
2. Procedure for denial, suspension or revocation of wastehauler's license. The procedure for denial, suspension or revocation of a wastehauler's license shall be as follows:
- A. Any license issued to a wastehauler pursuant to this division may be denied, suspended or revoked by written order of the WRA Director specifying the grounds for such action as outlined in Subsection A of this section, which order shall not take effect until hearing thereon as hereafter provided. Upon determining that grounds exist for an order to deny, suspend or revoke a wastehauler's license, the WRA Director shall cause a notice of hearing to be prepared, specifying the violations of Subsection A of this section which are deemed to have occurred, and the time, date and place that such hearing will be held. The notice shall be sent to the wastehauler by regular mail addressed to the wastehauler's address listed on the wastehauler's license a minimum of ten days prior to the date set for hearing, and shall be deemed delivered when placed in the mail.
  - B. If after such a hearing the WRA Director makes a finding based on substantial evidence that one or more violations under Subsection A of this section have occurred as alleged, the Director may deny issuance of the license, suspend the license for a fixed period, or may issue an order immediately revoking the license and ordering the wastehauler to discontinue hauling waste to the WRF or any other disposal locations approved by the Director. The determination whether to deny issuance of a license, to suspend a license, or to revoke a license, shall be in the discretion of the Director and shall be dependent upon the circumstances surrounding the violations of Subsection A of this

section and the severity of those violations. If the wastehauler does not appear for the hearing, the Director shall issue the order revoking the wastehauler's license and ordering the cessation of delivery of hauled waste at the WRF or any other disposal locations approved by the Director, which order shall take effect immediately.

C. The decision and order of the WRA Director to deny issuance, to suspend or to revoke the license of a wastehauler may be appealed to the WRA appeal committee. Such appeal request shall be in writing, shall include the grounds for appeal including any factual findings which are disputed, and shall be delivered to WRA not less than 10 days after the Director's entry of the order of denial, suspension or revocation. Such appeal request shall be considered delivered when placed in the mail, return receipt requested, addressed to:

WRA Appeal Committee  
Des Moines Metropolitan Wastewater  
Reclamation Authority  
3000 Vandalia Road  
Des Moines, Iowa 50317

The chair of the appeal committee shall schedule the appeal and shall cause notice of the time, date and place of the hearing to be mailed to the appealing wastehauler. Such appeal shall be decided by majority vote of the appeal committee. If the appeal committee affirms the order of the WRA Director denying issuance, suspending or revoking the license and ordering the cessation of waste deliveries at the WRF or other approved locations, the appeal committee shall so state and order in its written decision.

D. A wastehauler whose license has been denied or revoked shall not be eligible for issuance or reinstatement of its license until 30 days after the violating conditions have been corrected to the satisfaction of the Director.

**100.87 ALTERNATIVE RELIEF.** Neither the WRA nor the City or sanitary district is precluded from seeking alternative relief from the court, including an order for abatement or injunctive relief, in the event that the WRA or the City files a misdemeanor citation, notice of administrative penalty, and/or files a municipal infraction for the same violation of this division, or in the event the WRA seeks to deny, suspend or revoke the wastehauler's license.

**100.88 RESERVED.**

*(Ch. 100 – Ord. 19-02 – Mar. 19 Supp.)*

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## CHAPTER 101

# STORM WATER DRAINAGE UTILITY

**101.01 Purpose**

**101.02 Storm Water Drainage Utility Established**

**101.03 Rate Categories**

**101.04 Rates**

**101.05 Use of Fund**

**101.06 Governing Board**

**101.07 Storm Water Site Plan Review Required**

**101.01 PURPOSE.** The purpose of this chapter is to establish a Storm Water Drainage Utility and provide a means of funding the construction, operation, and maintenance of storm water management facilities, including (but not limited to) detention and retention basins, storm water sewers, inlets, ditches and drains, and cleaning of streets. The Council finds that the construction, operation, and maintenance of the City's storm and surface water drainage system should be funded through charging users of property which may connect or discharge directly, or indirectly, into the storm and surface water drainage system or properties receiving the indirect benefit of drainage diverted into the City's system.

**101.02 STORM WATER DRAINAGE UTILITY ESTABLISHED.** It is found and determined to be necessary and conducive to the protection of the public health, safety, welfare, and convenience that a storm water drainage utility is created for all of the City of Windsor Heights, Iowa, and for the purpose authorized by Section 384.84(1) *Code of Iowa*; that is, to establish and collect rates for a storm water drainage system.

**101.03 RATE CATEGORIES.** The billing rates are divided into categories, as follows:

1. Residential: Parcels as defined by the County Assessor data base; Use Class R and Use Class F parcels.
2. Commercial: Non-residential

*(Ord. 18-11 – Jun. 18 Supp.)*

**101.04 RATES.** The billing rates for the categories as defined in Section 101.03 are as follows:

Category	Monthly Rate
Residential	\$5.50 per union per month
Non-Residential	\$5.50 per unit per month

*(Ord. 19-03 – Jul. 19 Supp.)*

**101.05 USE OF FUND.** The money paid and collected pursuant to this chapter shall be held by the City in a special fund to be expended only for the purpose of constructing, operating, managing, repairing, and maintaining all kinds of conduits, drains, storm water detention devices, flow impediments, ponds, ditches, sloughs, filter strips, rip-raps, erosion control devices, and any other things and activities useful to the proper control management, collection, drainage, and disposition of storm water in the City.

**101.06 GOVERNING BOARD.** The governing board of the Storm Water Drainage Utility is the City Council. The Storm Water Drainage Utility shall be under the direction, management, and control of the City Administrator, who functions as its director. In that capacity, the City Administrator shall supervise the day-to-day operation of the Storm Water

Drainage Utility, shall enforce this chapter and the provisions of all ordinances and regulations adopted pursuant to this chapter and shall carry out the policy directives of the Council acting in its role as governing body of the Storm Water Drainage Utility.

**101.07 STORM WATER SITE PLAN REVIEW REQUIRED.** A storm water site plan review shall be required for projects in order to ensure that the goals of the City's storm water program are met. Storm water site plan requirements and associated fees are adopted by resolution and available for review from the City Clerk or the City Building Inspector.

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## CHAPTER 102

# ILLICIT DISCHARGE TO STORM SEWER SYSTEM

102.01 Findings

102.02 Illicit Discharges Prohibited

102.03 Illicit Connections Prohibited

102.04 Industrial Discharges

102.05 Illicit Discharge Detection and Reporting;  
Cost Recovery

102.06 Suspension of Access to the City's Storm  
Sewer System

102.07 Watercourse Protection

102.08 Enforcement

102.09 Appeal

### 102.01 FINDINGS.

1. The U.S. EPA's National Pollutant Discharge Elimination System ("NPDES") permit program ("Program") administered by the Iowa Department of Natural Resources ("IDNR") requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System ("MS4") ("MS4 Permit"). The City of Windsor Heights is subject to the Program and is required to obtain, and has obtained, an MS4 Permit; the City's MS4 Permit is on file at the office of the City Clerk and is available for public inspection during regular office hours.
2. As a condition of the City's MS4 Permit, the City is obliged to adopt and enforce an ILLICIT DISCHARGE TO STORM SEWER SYSTEM ordinance.
3. No State or federal funds have been made available to assist the City in administering and enforcing the Program. Accordingly, the City shall fund its operations under this chapter entirely by charges imposed on the owners of properties which are made subject to the Program by virtue of State and federal law, and/or other sources of funding established by a separate ordinance.
4. Terms used in this chapter shall have the meanings specified in the Program.

### 102.02 ILLICIT DISCHARGES PROHIBITED.

1. For purposes of this chapter, a "responsible party" is one or more persons that control or are in possession of or own property. Responsible parties shall be jointly and severally responsible for compliance with this chapter and jointly and severally liable for any illicit discharge from the property controlled, possessed, or owned. For purposes of this chapter, "property" includes but is not limited to real estate, fixtures, facilities, and premises of any kind located upon, under or above the real estate.
2. Nothing in this chapter shall be deemed to relieve a responsible party subject to an IDNR-issued industrial discharge permit or any other federal, State, or City permit, statute, ordinance, or rule from any obligation imposed by such permit, statute, ordinance or rule if any such obligation is greater than any obligation imposed by this chapter.
3. Any discharge into the City's storm sewer system prohibited by the City's MS4 Permit, the terms of which are hereby incorporated by reference, shall be deemed an "illicit discharge" in violation of this chapter.
4. Sediment pollution originating from excessive erosion rates on a construction site not otherwise subject to the City's COSESCO ordinance or sediment pollution

entering a municipal storm sewer that causes a water quality violation as determined by the DNR shall be deemed an illicit discharge in violation of this chapter.

### **102.03 ILLICIT CONNECTIONS PROHIBITED.**

1. For purposes of this chapter, an “illicit connection” to the City’s storm sewer system is any physical connection or other topographical or other condition, natural or artificial, which is not specifically authorized by ordinance or written rule of the City, which causes or facilitates, directly or indirectly, an illicit discharge.
2. The construction, use, maintenance or continued existence of any illicit connection shall constitute a violation of this chapter.
3. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

### **102.04 INDUSTRIAL DISCHARGES.**

1. Any responsible party subject an industrial NPDES discharge permit issued by the IDNR shall comply with all provisions of such permit.
2. Proof of compliance with said permit may be required in a form acceptable to the enforcement officer prior to discharges to the storm sewer system authorized by said permit.

### **102.05 ILLICIT DISCHARGE DETECTION AND REPORTING; COST RECOVERY.**

1. All detection activities permitted under this chapter shall be conducted by the City Public Works Director, City Engineer, Building Inspector, a subcontractor credentialed in a manner satisfactory to the City, or other appropriate designee, hereinbefore and after referred to as the “enforcement officer.”
2. The City shall not be responsible for the direct or indirect consequences to persons or property of an illicit discharge, or circumstances which may cause an illicit discharge, undetected by the City.
3. Every responsible party has an absolute duty to monitor conditions on property owned or controlled by them, to prevent all illicit discharges, and to report to the enforcement officer illicit discharges which the responsible party knows or should have known to have occurred. Failure to comply with any provision of this chapter is a violation of this chapter.
  - A. Notwithstanding other requirements of law, as soon as any responsible party has information of any known or suspected illicit discharge, the responsible party shall immediately take all necessary steps to ensure the discovery, containment, and cleanup of such discharge at the responsible party’s sole cost.
  - B. If the illicit discharge consists of hazardous materials, the responsible party shall also immediately notify emergency response agencies of the occurrence via emergency dispatch services.
  - C. If the illicit discharge emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an



on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

D. A report of an illicit discharge shall be made in person or by phone or facsimile or email to the enforcement officer immediately, but in any event within twenty-four (24) hours after the illicit discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed or emailed to the enforcement officer within twenty-four (24) hours after the personal or phone notice.

4. Any person or entity shall also report to the City any illicit discharge or circumstances which such person or entity reasonably believes pose a risk of an illicit discharge.

5. Upon receiving a report pursuant to the previous subsections, or otherwise coming into possession of information indicating an actual or imminent illicit discharge, the enforcement officer shall conduct an inspection of the site as soon as reasonably possible and thereafter shall provide to the responsible party, and any third party reporter, a written report of the conditions which may cause or which have already caused an illicit discharge. The responsible party shall immediately commence corrective action or remediation and shall complete such corrective action or remediation within twenty-four (24) hours.

6. The enforcement officer shall be permitted to enter and inspect property subject to regulation under this section as often as is necessary to determine compliance with this section. If a responsible party has security measures that require identification and clearance before entry to its property or premises, the responsible party shall make the necessary arrangements to allow access by the enforcement officer. By way of specification but not limitation:

A. A responsible party shall allow the enforcement officer ready access to all parts of the property for purposes of inspection, sampling, examination and copying of records related to a suspected, actual, or imminent illicit discharge, and for the performance of any additional duties as defined by State and federal law.

B. The enforcement officer shall have the right to set up on any property such devices as are necessary in the opinion of the enforcement officer to conduct monitoring and/or sampling related to a suspected, actual or imminent illicit discharge.

C. The enforcement officer shall have the right to require any responsible party at responsible party's sole expense to install monitoring equipment and deliver monitoring data or reports to the enforcement officer as the enforcement officer directs. The sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the responsible party at responsible party's sole expense. All devices shall be calibrated to ensure their accuracy.

D. Any temporary or permanent obstruction to safe and easy access to property to be inspected and/or sampled shall be promptly removed by the responsible party at the written or oral order of the enforcement officer and shall not be replaced. The costs of clearing such access shall be borne by the responsible party.

- E. An unreasonable delay in allowing the enforcement officer access to a property is a violation of this chapter.
- F. If the enforcement officer has been refused access to any part of the property from an illicit connection and/or illicit discharge to a municipal storm sewer is occurring, suspected or imminent, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the enforcement officer may seek issuance of a search warrant from any court of competent jurisdiction.
7. If it is determined that an illicit discharge is imminent or has occurred, the actual administrative costs incurred by the City in the enforcement of this chapter shall be recovered from the responsible party. The enforcement officer shall submit an invoice to the responsible party reflecting the actual costs and wages and expenses incurred by the City for the enforcement activities undertaken. Failure to pay charges invoiced under this chapter within thirty (30) days of billing shall constitute a violation of this chapter.

#### **102.06 SUSPENSION OF ACCESS TO THE CITY'S STORM SEWER SYSTEM.**

1. **Emergency Suspension.** The enforcement officer may, without prior notice, suspend storm sewer system access to a property when such emergency suspension is necessary to stop an ongoing or imminent illicit discharge. If the responsible party fails to immediately comply with an emergency suspension order, the enforcement officer shall take such steps as deemed necessary to prevent or minimize the illicit discharge. All costs of such action shall be recovered from the responsible party for the property identified as the source of the illicit discharge.
2. **Non-Emergency Suspension.** If the enforcement officer detects or is informed of circumstances which could cause an illicit discharge, but such illicit discharge is not ongoing or imminent, and if the suspension of storm sewer system access would reasonably be expected to prevent or reduce the potential illicit discharge, the enforcement officer shall notify the responsible party of the proposed suspension of storm sewer system access and the time and date of such suspension. Notice to one responsible party for the property shall be sufficient notice to all. Remediation of the circumstances shall avoid a violation of this chapter, provided that no illicit discharge occurs. In the alternative, the responsible party may request a meeting with the enforcement officer for the purpose of presenting information which the responsible party believes will show that remediation is unnecessary; and if the enforcement officer finds such information is satisfactory, the enforcement officer may rescind or modify the notice of suspension. If the enforcement officer finds such information unsatisfactory, the enforcement officer shall issue a final written order of suspension including the date and time of suspension and such order may be appealed as provided herein. Any physical action to reinstate storm sewer system access to property subject to such order prior to obtaining a court order of relief shall be deemed a violation of this chapter. An order of suspension shall not preclude charging the responsible party with a municipal infraction as provided herein or taking any other enforcement action permitted by statute or ordinance.

**102.07 WATERCOURSE PROTECTION.** Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property below the elevation of the 100-year flood free of trash, debris, grass clippings or other organic wastes and other obstacles that would pollute, contaminate, or significantly alter the quality of water flowing through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

**102.08 ENFORCEMENT.**

1. Violation of any provision of this chapter may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.
2. Violation of any provision of this chapter may also be enforced as a municipal infraction within the meaning of Section 364.22 of the *Code of Iowa*, pursuant to Chapter 4 of this Code of Ordinances.
3. Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

**102.09 APPEAL.** Administrative decisions by City staff and enforcement actions of the enforcement officer may be appealed by the applicant to the City Council pursuant to the following rules:

1. The appeal must be filed in writing with the City Clerk within five (5) business days of the decision or enforcement action.
2. The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.
3. The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and copies of all documents the enforcement officer intends to introduce at the hearing.
4. The City Clerk shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice, in accordance with Chapter 21 of the *Code of Iowa*, of the date, time, and place for the regular or special meeting of the City Council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four (4) or more than twenty (20) days after the filing of the appeal. The rules of evidence and procedure, and the standard of proof to be applied, shall be the same as provided by Chapter 17A, *Code of Iowa*. The applicant may be represented by counsel at the applicant's expense. The enforcement officer may be represented by the City Attorney or by an attorney designated by the City Council at City expense.

The decision of the City Council shall be rendered in writing and may be appealed to the Iowa District Court.

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## CHAPTER 105

# SOLID WASTE CONTROL AND RECYCLING

105.01 Purpose  
105.02 Definitions  
105.03 Sanitary Disposal Required  
105.04 Health and Fire Hazard  
105.05 Open Burning Restricted  
105.06 Toxic and Hazardous Waste

105.07 Treatment Pending Collection  
105.08 Waste Storage Containers  
105.09 Prohibited Practices  
105.10 Recyclable Collection Program  
105.11 Yard Wastes

**105.01 PURPOSE.** The purpose of the chapters in this Code of Ordinances pertaining to Solid Waste Control and Collection is to provide for the sanitary storage, collection, and disposal of solid waste, yard waste, and recyclables and, thereby, to protect the citizens of the City from such hazards to their health, safety, and welfare as may result from the uncontrolled disposal of solid waste.

**105.02 DEFINITIONS.** For use in these chapters the following terms are defined:

1. “Agency” means the Metropolitan Waste Authority.
2. “Bags” means any untreated paper bags acceptable to the composting station used by the licensed yard waste collection hauler.
3. “Bundle” means a stack of brush and/or tree branches that are tied or bound together and do not exceed four (4) feet in length and twelve (12) inches in diameter.
4. “Collector” means any person authorized to gather solid waste from public and private places.
5. “Composting” means a controlled microbial degradation of organic waste to produce a relatively nuisance-free product of potential value as soil conditioner.
6. “Container” means a reusable receptacle constructed of plastic or metal materials.
7. “Discard” means to place, cause to be placed, throw, deposit, or drop.  
*(Code of Iowa, Sec. 455B.361[2])*
8. “Dwelling unit” means any room or group of rooms located within a structure and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating.
9. “Eligible residence” means a residence of not more than four dwelling units.
10. “Facility” means the facility or facilities designated by the City to which the hauler shall deliver all recyclable material collected by the hauler.
11. “Garbage” means all solid and semisolid, putrescible animal and vegetable waste resulting from the handling, preparing, cooking, storing, serving and consuming of food or of material intended for use as food, and all offal, excluding useful industrial by-products, and includes all such substances from all public and private establishments and from all residences.

*(IAC, 567-100.2)*

12. “Litter” means any garbage, rubbish, trash, refuse, waste materials, or debris.  
*(Code of Iowa, Sec. 455B.361[1])*
13. “Non-recyclable material” means any material not defined as “recyclable material.”
14. “Owner” means, in addition to the record titleholder, any person residing in, renting, leasing, occupying, operating or transacting business in any premises, and as between such parties the duties, responsibilities, liabilities and obligations hereinafter imposed shall be joint and several.
15. “Recyclable material” means material accepted by the Agency as recyclable. The Agency will provide the parameters on which material will be accepted through its recycling operations. This information will be provided to the public on a regular basis and will also be available at City Hall.
16. “Refuse” means putrescible and non-putrescible waste, including but not limited to garbage, rubbish, ashes, incinerator residues, street cleanings, market and industrial solid waste and sewage treatment waste in dry or semisolid form.  
*(IAC, 567-100.2)*
17. “Residential waste” means any refuse generated on the premises as a result of residential activities. The term includes landscape waste grown on the premises or deposited thereon by the elements, but excludes garbage, tires, trade wastes and any locally recyclable goods or plastics.  
*(IAC, 567-20.2[455B])*
18. “Rubbish” means non-putrescible solid waste consisting of combustible and non-combustible waste, such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind.  
*(IAC, 567-100.2)*
19. “Sanitary disposal” means a method of treating solid waste so that it does not produce a hazard to the public health or safety or create a nuisance.  
*(IAC, 567-100.2)*
20. “Sanitary disposal project” means all facilities and appurtenances, including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, and/or operated by the Agency to facilitate the final disposition of solid waste. The term includes any sanitary landfill, transfer station, or resource recovery system owned or operated by the Agency.  
*(Code of Iowa, Sec. 455B.301)*
21. “Set out” means the action event or instance comprised of the proper placement of the home storage containers of recyclable material for collection at the eligible residence.
22. “Solid waste” means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include motor vehicles, if approved by the Agency. The term excludes yard waste and may exclude other materials as defined by the Agency. Solid waste does not include any of the following:  
*(Code of Iowa, Sec. 455B.301)*

- A. Hazardous waste regulated under the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6921-6934.
  - B. Hazardous waste as defined in Section 455B.411 of the *Code of Iowa*, except to the extent that rules allowing for the disposal of specific wastes have been adopted by the State Environmental Protection Commission.
  - C. Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.
  - D. Petroleum contaminated soil that has been remediated to acceptable State or federal standards.
  - E. Steel slag which is a product resulting from the steel manufacturing process and is managed as an item of value in a controlled manner and not as a discarded material.
23. “Yard waste” means organic debris such as grass clippings, leaves, garden waste, prunings, weeds, brush, and tree branches produced as a part of yard and garden development and maintenance. Yard waste does not include tree stumps.

**105.03 SANITARY DISPOSAL REQUIRED.** It is the duty of each owner to provide for the sanitary disposal of all refuse accumulating on the owner’s premises before it becomes a nuisance. Any such accumulation remaining on any premises for a period of more than fourteen (14) days shall be deemed a nuisance and the City may proceed to abate such nuisances in accordance with the provisions of Chapter 50 or by initiating proper action in district court.

*(Code of Iowa, Ch. 657)*

**105.04 HEALTH AND FIRE HAZARD.** It is unlawful for any person to permit to accumulate on any premises, improved or vacant, or on any public place, such quantities of solid waste that constitute a health, sanitation or fire hazard.

**105.05 OPEN BURNING RESTRICTED.** No person shall allow, cause or permit open burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack without first obtaining a permit and conducting such burning in accordance with the *Fire Code* adopted by the City.

**105.06 TOXIC AND HAZARDOUS WASTE.** No person shall deposit in a solid waste container or otherwise offer for collection any toxic or hazardous waste. Such materials shall be transported and disposed of as prescribed by the Director of the State Department of Natural Resources. As used in this section, “toxic and hazardous waste” means waste materials, including but not limited to, poisons, pesticides, herbicides, acids, caustics, pathological waste, flammable or explosive materials and similar harmful waste which requires special handling and which must be disposed of in such a manner as to conserve the environment and protect the public health and safety.

*(IAC, 567-100.2)*

*(IAC, 567-102.13[2] and 400-27.14[2])*

**105.07 TREATMENT PENDING COLLECTION.** All solid waste consisting of waste animal and vegetable matter, which may attract flies, dogs, or rodents, shall be drained of all excess liquid, wrapped in paper or disposable containers, and placed or stored, until collection, in covered suitable containers.

**105.08 WASTE STORAGE CONTAINERS.** Every person owning, managing, operating, leasing, or renting any premises, dwelling unit or any place where refuse accumulates shall utilize and at all times maintain in good order and repair portable containers for solid waste and refuse provided by the City or the City's solid waste contractor.

1. Commercial Container Specifications. Every person owning, managing, operating, leasing, or renting any commercial premises where an excessive amount of refuse accumulates and where its storage in portable containers as required above is impractical, shall maintain metal bulk storage containers approved by the City.
2. Storage of Containers. Residential solid waste containers shall be stored upon the residential premises. Commercial solid waste containers shall be stored upon private property, unless the owner has been granted written permission from the City to use public property for such purposes. The storage site shall be well drained and fully accessible to collection equipment, public health personnel, and fire inspection personnel. All owners of residential and commercial premises shall be responsible for proper storage of all garbage and yard waste to prevent materials from being blown or scattered around neighboring yards and streets.
3. Location of Containers for Collection. Containers for the storage of solid waste awaiting collection shall be placed outdoors at some easily accessible place by the owner or occupant of the premises served. Containers for solid waste placed at the curb line shall not be so placed more than twelve (12) hours in advance of the regularly scheduled collection day and shall be promptly removed from the curb line following collection. No solid waste or solid waste containers shall be deposited by any person upon any sidewalk, crosswalk, roadway, or upon any alley right-of-way so as to obstruct or block pedestrian movement or vehicular traffic.
4. Nonconforming Containers. Solid waste placed in containers which are not in compliance with the provisions of this section will not be collected.

**105.09 PROHIBITED PRACTICES.** It is unlawful for any person to:

1. Unlawful Use of Containers. Deposit refuse in any solid waste containers not owned by such person without the written consent of the owner of such containers or to deposit any refuse in nonconforming containers.
2. Interfere with Collectors. Interfere in any manner with solid waste collection equipment or with solid waste collectors in the lawful performance of their duties as such, whether such equipment or collectors be those of the City, or those of any other authorized waste collection service.
3. Unlawful Disposal. Dispose of solid waste at any facility or location which is not an approved sanitary disposal project.
4. Incinerators. Burn rubbish or garbage except in incinerators designed for high temperature operation, in which solid, semisolid, liquid, or gaseous combustible refuse is ignited and burned efficiently, and from which the solid residues contain little or no combustible material, as acceptable to the Environmental Protection Commission.
5. Unlawful Collection. Engage in the business of collecting, transporting, processing or disposing of solid waste or yard waste within the City without a contract therefor with the City or a valid permit therefor.



**105.10 RECYCLABLE COLLECTION PROGRAM.**

1. Establishment. The City has previously entered into an Agreement with the Metro Waste Authority. This Agreement authorizes and directs the Metro Waste Authority to contract on behalf of the City for the collection of recyclable materials under the Metro Waste Authority's "Curb-It" program. The costs for the purchase of recyclable bins, the costs of educational programs instructing citizens as to the program, and the costs for processing the recyclables collected will be paid for by Metro Waste Authority. The hauler designated by Metro Waste Authority as the Recyclable Collection Hauler will provide collection of recyclable materials once per week to all eligible residents, under the terms and conditions of the contract executed between Metro Waste Authority and the designated hauler.
2. Nonexclusive Agreement. Nothing in the Agreement between the Metro Waste Authority and the City and/or Metro Waste Authority and the designated hauler for recyclable material within the City shall be construed or interpreted to constitute the grant of a franchise or exclusive right to the designated hauler to collect all recyclable material within the City.
3. Collection of Recyclable Fees. Charges for the collection of recyclable materials shall be included in each eligible residence's water bill. Such charges are set forth in Section 106.08 of this Code of Ordinances.
4. Discontinuance of Service. Any resident who fails to remit the total amount of the charges set out in the water bill, including the fees for collection of recyclable materials, shall be sent a notice on the first day following the delinquent date. Such notice shall contain a statement explaining to the customer the availability of informal consultation with designated personnel empowered to correct mistakes and billing. If payment is tendered to the City within ten (10) days of notice being sent, all services to the residence shall continue uninterrupted. In the event payment is not received, the City shall have the right to discontinue utility services to the residence.
5. Responsibility for Payment of Bill. The owner of a property receiving collection of recyclables shall be responsible for the payment of all charges for such services.

**105.11 YARD WASTES.**

1. Disposal of Yard Waste. The collection, storage, and disposal of yard waste shall be subject to the following:
  - A. Separation of Yard Waste Required. All yard waste shall be separated by the owner or occupant from all other solid waste accumulated on the premises. The owner or occupant may either compost the yard waste on the premises or contain it in bags, containers, or bundles for collection and disposal. All bags or containers must be clearly marked "Yard Waste."
  - B. Yard Waste Containers. Persons choosing not to manage yard waste on their own property shall place yard waste in bags, containers, or bundles for collection and disposal. Bags shall be any untreated paper bags acceptable to the composting station used by the licensed yard waste collection hauler. Tree limbs less than four (4) inches in diameter and brush shall be securely tied in bundles not larger than forty-eight (48) inches long and eighteen (18) inches in diameter when not placed in containers. The weight of any individual bag, container, or bundle shall not exceed seventy-five (75) pounds.

C. Composting. Back yard composting of yard waste is encouraged. Information about this process is available to all residents and may be obtained from the office of the City Administrator located at the City Hall. Owners and occupants are encouraged to accumulate upon property under their respective control such quantities of yard waste as can be properly composted without creating offensive odors, litter, fire, or vector problems. Such composting so carried out shall be deemed to be an acceptable, alternative disposition of yard waste and shall satisfy any requirement to separate yard waste contained in this Code.

D. Frequency of Collection. All yard waste not composted shall be collected from residential, commercial, industrial, and institutional premises at least once per week. Yard waste shall be collected on a City-wide basis between March 1 and November 30. City residents may arrange for individual yard waste pickup with the City, or its agent, between December 1 and February 28.

E. Location of Containers. Containers for the storage of yard waste awaiting collection shall be placed at the curb by the owner or occupant of the premise served. Yard waste must be placed a minimum of three feet from other solid waste.

F. Number of Bags or Containers. The number of bags, containers, or bundles containing yard waste which persons may place out for collection shall be unlimited.

G. Time Limit. Bags, containers, or bundles of yard waste shall not be placed for collection more than forty-eight (48) hours in advance of the regularly scheduled collection day.

2. Licensing of Yard Waste Collection Hauler. No person shall collect, transport, process, or dispose of yard waste generated within the jurisdiction of the City for compensation unless such person holds a valid license issued in accordance with the provisions of this section. In addition to meeting the requirements under this chapter for solid waste collectors, each licensed collector of yard waste shall provide the City a detailed description of the manner in which the collector intends to collect and haul away yard waste. Each such licensed collector shall haul yard waste to a compost site approved pursuant to State or local law or regulation and shall keep an accurate accounting of the amount of such yard waste. Each licensed collector shall submit an annual written report to the City detailing the amount of such yard waste that has been collected and delivered for composting during each month of the reporting year. Any collector licensed under the provisions of this section shall not mix yard waste and solid waste together. The license of any hauler who delivers for disposal yard waste and solid waste mixed together shall be subject to revocation.

3. Containers and Charges. Containers and charges for yard waste collection and disposal shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such containers and corresponding charges may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective containers and corresponding charges shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours. Residents shall purchase their own bags, which are in addition to these charges. No additional charge will be imposed upon a resident for the collection of holiday trees and wreaths.

4. Owner May Transport. Nothing in this section is intended to prevent an owner from transporting yard waste accumulating on the premises of the owner, provided such yard waste is disposed of at composting stations approved pursuant to State or local law or regulation and in accordance with policies established by the composting station.
5. Violations. No person shall place or cause to be placed any yard waste into the solid waste collection system of the City. Any person violating any of the provisions of this chapter concerning yard waste shall be guilty of a misdemeanor.

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## CHAPTER 106

# COLLECTION OF SOLID WASTE

**106.01** Collection Service  
**106.02** Collection Vehicles  
**106.03** Loading  
**106.04** Frequency of Collection  
**106.05** Bulky Rubbish

**106.06** Right of Entry  
**106.07** License Required  
**106.08** Authorization for Charges  
**106.09** Billing and Collection Procedures

**106.01 COLLECTION SERVICE.** The City shall provide by contract, with a licensed collector, for the collection of solid waste, except bulky rubbish as provided in Section 106.05, from residential premises only. The owners or operators of commercial, industrial, or institutional premises shall provide for the collection of solid waste produced upon such premises.

**106.02 COLLECTION VEHICLES.** Vehicles or containers used for the collection and transportation of garbage and similar putrescible waste or solid waste containing such materials shall be leak-proof, durable and of easily cleanable construction. They shall be cleaned to prevent nuisances, pollution, or insect breeding and shall be maintained in good repair.

*(IAC, 567-104.9[455B])*

**106.03 LOADING.** Vehicles or containers used for the collection and transportation of any solid waste shall be loaded and moved in such a manner that the contents will not fall, leak, or spill therefrom, and shall be covered to prevent blowing or loss of material. Where spillage does occur, the material shall be picked up immediately by the collector or transporter and returned to the vehicle or container and the area properly cleaned.

**106.04 FREQUENCY OF COLLECTION.** All solid waste shall be collected from residential premises at least once each week and from commercial, industrial and institutional premises as frequently as may be necessary, but not less than once each week.

**106.05 BULKY RUBBISH.** Bulky rubbish which is too large or heavy to be collected in the normal manner of other solid waste may be collected by the collector upon request in accordance with procedures therefor established by the Council.

**106.06 RIGHT OF ENTRY.** Solid waste collectors are hereby authorized to enter upon private property for the purpose of collecting solid waste therefrom as required by this chapter; however, solid waste collectors shall not enter dwelling units or other residential buildings.

**106.07 LICENSE REQUIRED.** No person shall collect, transport, process or dispose of any solid waste generated within the jurisdiction of the City for compensation unless such person holds a valid license issued in accordance with the provisions of this chapter.

1. Application Contents. Application for a license under this chapter shall be addressed to the Council and filed with the Clerk and shall contain the following:

A. Name and Address. The full name, business address, and business telephone number of the applicant.

- B. Nature of Business. A description of the nature and extent of the business of the applicant.
  - C. Customers Served. A description of the types or classes of customers which the applicant proposes to serve.
  - D. Waste Transported. A description of the types of solid waste which the applicant proposes to transport.
  - E. Equipment. A description of the vehicles and equipment which the applicant proposes to use.
  - F. Disposal Project. The location of the sanitary disposal project which the applicant proposes to use.
  - G. Compliance Assurance. A statement that the applicant shall faithfully observe all of the applicable provisions of this chapter.
2. Accompanying Material. In addition to the foregoing, such application shall be accompanied by the following:
- A. Financial Statements. Financial statements for the applicant covering its last two fiscal or calendar years, which shall include balance sheets and operating statements.
  - B. Rate Schedules. Copies of current rates and fees charged by applicant for transportation of solid waste.
  - C. Rules and Regulations. Copies of current rules and regulations of the applicant applicable to the transportation of solid waste.
  - D. Affirmation. The application shall be sworn to under oath.
  - E. Insurance. Applicants shall provide proof of liability insurance in the amounts of \$250,000 per person and \$1,000,000 per occurrence for bodily injury and \$500,000 per occurrence for property damages.
3. Action by Council. The Council shall act on all applications for licenses within 45 days following receipt of the application by the Clerk. If the Council finds that all of the prescribed conditions for the issuance of a license have been satisfied, and that no grounds for revocation exist, the Council may, by resolution, authorize the issuance of the license.
4. License Fee. Before any solid waste collector's license is issued, the applicant shall pay to the Clerk an annual license fee. Payment of such license fee shall be by cash or by certified or cashier's check payable to the City. All license fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such license fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective license fees shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours.
5. Issuance of License. When authorized by the Council, and after payment of the license fee, the Clerk shall issue the license to the applicant.
6. Form of License. The license shall be signed by the Mayor and the Clerk and shall show the name of the licensee, the address of the licensee, the purpose of the license, the date of the issuance of the license, and the date of expiration of the license.

7. Expiration Date. Each license issued under the provisions of this chapter shall expire at 11:59 p.m. on December 31 in the calendar year of issuance.
8. Rebates Prohibited. No licensee shall be entitled to a rebate of any kind by reason of the surrender of a license prior to the expiration date.
9. Transfer Prohibited. Each license issued hereunder shall be personal to the licensee and shall be void upon transfer or assignment to another person.
10. Grounds for Revocation. The following reasons shall be grounds for the revocation of any license issued under the provisions of this chapter:
  - A. Fraud. The licensee has made fraudulent or untrue statements in the application for a license.
  - B. Violations. The licensee has violated any of the provisions of this chapter.
  - C. Improper Operation. The licensee has conducted the licensee's business in such a manner as to endanger the public welfare, health, safety, order, or morals.
11. Revocation Procedure. When it shall appear to the Council that grounds for the revocation of a license may exist, the following procedure shall be followed:
  - A. Investigation. The Council shall direct the Chief of Police to make an investigation concerning the alleged grounds for revocation.
  - B. Report. The Chief of Police shall make such investigation and report findings in writing to the Council.
  - C. Council Determination. The Council shall make a determination as to whether probable cause for revocation exists.
  - D. Hearing. If the Council finds that probable cause for revocation exists, it shall set a date, time, and place for a hearing on the matter and shall direct the City Attorney to prepare the complaint against the licensee. The complaint shall state the alleged grounds for the revocation and the date, time, and place for a hearing on the matter.
  - E. Service of Complaint. The complaint shall be served upon the licensee in the manner provided for by the Iowa Rules of Civil Procedure not less than ten (10) days prior to the date set for a hearing on the matter.
  - F. Conduct of Hearing. The Council shall conduct the hearing at which the licensee shall be present. The purpose of the hearing shall be to determine the truth of the facts alleged in the complaint. Should the licensee or an authorized representative fail to appear without good cause, the Council may proceed to a determination on the complaint.
  - G. Rights of Licensee. The licensee shall have the right to be represented by counsel, to testify and present witnesses in the licensee's own behalf and to cross-examine adverse witnesses.
  - H. Evidence. The Council shall admit only reliable and substantial evidence into the revocation proceeding and shall give all admitted evidence its natural probative value.

- I. Findings; Revocation. The Council shall make and record findings of fact and conclusions of law and shall revoke a license under this section only when, upon review of the entire record, it finds substantial evidence of a violation of this chapter.
- 12. Effect of Revocation. Revocation of a license shall bar the licensee from being eligible for any license under this chapter for a period of one year from the date of revocation.
- 13. Owner May Transport. Nothing herein is to be construed so as to prevent the owner from transporting solid waste accumulating upon premises owned, occupied or used by such owner, provided such refuse is disposed of properly in an approved sanitary disposal project.
- 14. Grading or Excavation Excepted. No license is required for the removal, hauling, or disposal of earth and rock material from grading or excavation activities; however, all such materials shall be conveyed in tight vehicles, trucks or receptacles so constructed and maintained that none of the material being transported spills upon any public right-of-way.

**106.08 AUTHORIZATION FOR CHARGES.**

- 1. Authority to Establish Rates. The City will fix, establish, maintain – and revise from time to time whenever necessary – such rates, fees, rentals, or other charges for the use and services of the disposal facilities operated by the Agency, as more fully described in the Solid Waste Disposal Service Contract, to always provide in each year revenues sufficient to pay the proportionate share of the City for: (i) operation and maintenance expenses for said disposal facilities; (ii) the principal of and interest on the Solid Waste Disposal Revenue Bonds; and (iii) all reserves, renewal and replacement funds and other funds provided for in the Resolution authorizing the issuance of such Solid Waste Disposal Revenue Bonds.
- 2. Initial Schedule of Rates. An initial schedule of such rates, fees, tolls, and other charges to be levied and collected from the residents of the City for the use and services of said disposal facilities shall be established and put into effect whenever necessary in order for the City to comply with the provisions of its Solid Waste Disposal Service Contract; provided, however, the City may in its discretion apply such other lawfully available moneys it has on hand for such purpose. The applicable monthly rates are identified in the following table:

Authorized Contractor Charges:

Consolidated Flat Rate .....	\$ 10.57
Consolidated House-Side Service .....	\$ 17.16
Extra Bagged Collection Sticker .....	\$ 1.00
Large Item Sticker .....	\$ 5.00
Appliances With or Without Freon .....	\$ 35.00
Recycling.....	\$ 3.15
Storm Debris/Brush Waste Collection .....	\$ 0.32

**106.09 BILLING AND COLLECTION PROCEDURES.**

- 1. The collector contracted by the City for collection and disposal of solid waste shall be responsible for all billings and collection of fees for its services rendered for



collection and disposal. Said collector shall bill City residents on a quarterly basis. The collector shall provide at least 90 days for payment of a delinquent account prior to termination of service and shall not discontinue collection service at any residential unit prior to a written notice sent to the unit. This notice shall state substantially as follows:

Dear Customer:

It has become necessary for us to discontinue your service because of nonpayment. Please contact our office immediately so we can make arrangements to reinstate your service. Thank you.

The collector shall employ reasonable procedures to collect delinquent accounts and shall not harass or exert undue pressure on residents with delinquent accounts.

2. Each delinquent account which is transmitted to the City by the licensed collector shall thereafter be processed for imposition of a lien upon the property benefited as provided by Section 384.84 of the *Code of Iowa*, in the amount of the delinquent account, plus a Polk County administrative fee for each lien certified as provided in Section 384.84 of the *Code of Iowa*, plus a City delinquency fee in the amount of \$5.00 to recoup the City's administrative processing costs and lost investment on the unpaid amount. The lien herein provided shall apply only to that property or those properties benefited for which the account is delinquent.

3. The City shall prepare an assessment schedule listing all delinquent solid waste collection accounts transmitted to the City. Such schedule shall show each delinquent account by name of the tenant and/or record title holder of the benefited property, shall identify each property for which the solid waste collection account is delinquent, and shall show the delinquent amount and delinquency fee to be assessed against each such benefited property. The assessment schedule shall be presented to the City Council and upon Council approval thereof the City Clerk shall certify and file same with the Polk County Treasurer for filing of liens against the properties shown thereon in the amounts shown thereon; provided, however, if the record title holder of a rental property subject to billing for solid waste collection requests notice as provided in Section 384.84 of the *Code of Iowa*, the City Clerk shall give notice of delinquency to said record title holder not less than ten (10) days prior to certifying delinquent charges for said property to the County Treasurer.

4. Such lien shall be enforced until payment in full of the delinquent amount and delinquency fees shown on the assessment schedule is satisfied by payment of said amounts at the office of the County Treasurer.

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## CHAPTER 107

# SOLID WASTE DISPOSAL

107.01 Definitions	107.07 Optional Methods of Providing for Payment of Contract Payment
107.02 Disposal of Solid Waste	107.08 Assessment Schedule for Contract Payment
107.03 Exceptions	107.09 Approval of Assessment Schedule
107.04 Method of Disposal of Solid Waste	107.10 Certification of Assessment Schedule
107.05 Declaration of Benefit	107.11 Proceeds of Special Assessment
107.06 Notice of Contract Payment	

**107.01 DEFINITIONS.** The following words and phrases, when used in this chapter, for the purpose of this chapter, have the meaning ascribed to them in this section:

1. “Actual value” means actual value as that term is or may be defined by *Code of Iowa* Section 441.21. It refers to actual value as most recently determined according to law.
2. “Agreement” means the Amended and Substituted Intergovernmental Agreement Creating the Des Moines Metropolitan Area Solid Waste Agency dated December 18, 1969.
3. “Contract” means the Solid Waste Disposal Service Contract between the Agency and the City dated May 1, 1972.
4. “Contract payment” means the amounts paid or required to be paid from time to time by the City to the Agency pursuant to the contract.
5. “Disposal project” means a sanitary disposal project as that term is or may be defined by *Code of Iowa* Chapter 455B owned, operated or used by the Agency pursuant to the contract.
6. “Real estate” means real estate as that term is or may be defined by *Code of Iowa*, Section 4.1(13).

**107.02 DISPOSAL OF SOLID WASTE.** All solid waste generated within the jurisdiction of the City shall be disposed of at the sanitary disposal project.

**107.03 EXCEPTIONS.** The provisions of Section 107.02 of this chapter do not apply to: (i) the disposal of organic material which is not potentially injurious to public health or welfare and which has been gathered and suitably contained for purposes of composting or fertilizing agricultural or flora plots when permission to dispose of such material has been obtained from the owner of the plots where such material is to be deposited; or (ii) the filling or grading of property with earth, sand, mud, or other similar materials which are not potentially injurious to public health or welfare when permission for such filling or grading has been obtained from the owner of the property on which such filling or grading is done and when such filling or grading is done in accordance with the provisions of other applicable statutes and ordinances.

**107.04 METHOD OF DISPOSAL OF SOLID WASTE.** The disposal project owned, operated, and used by the Agency is hereby declared to be available to persons who are owners of real estate within the corporate limits of the City as a method for the disposition of solid waste generated within the corporate limits of the City pursuant to the agreement and the contract in accordance with the provisions of *Code of Iowa*, Chapter 455B.

**107.05 DECLARATION OF BENEFIT.** The benefits derived by each individual parcel of real estate subject to taxation within the corporate limits of the City from the agreement and the contract are hereby declared to be at least equal to the ratio which the actual value of each individual parcel of real estate subject to taxation within the corporate limits of the City bears to the aggregate actual value of all parcels of real estate subject to taxation within the corporate limits of the City.

**107.06 NOTICE OF CONTRACT PAYMENT.** In the event that the budget of the Agency for any calendar or fiscal year shall provide for a contract payment from the City to the Agency pursuant to the contract during the calendar or fiscal year, the Agency shall, at least thirty (30) days prior to the date fixed by law for the final certification of the budget of the City, notify the City in writing that a contract payment shall be due from the City pursuant to the contract and the amount thereof.

**107.07 OPTIONAL METHODS OF PROVIDING FOR PAYMENT OF CONTRACT PAYMENT.** Upon receipt by the City of the notice referred to in Section 107.06 hereof, the City shall determine, by resolution, whether it will: (i) pay said contract payment from funds legally available to pay the same (hereinafter "Option A"); or (ii) assess said contract payment against the real estate subject to taxation within the corporate limits of the City benefited thereby as aforesaid in the manner provided by and for special assessments as hereinafter provided (hereinafter "Option B"). In the event that the City elects Option "A," provision shall be made therefor in the budget of the City.

**107.08 ASSESSMENT SCHEDULE FOR CONTRACT PAYMENT.** In the event that the City elects Option "B," the Clerk shall prepare an assessment schedule on the following basis:

1. Assessment Rate. The amount of the contract payment shall be divided by aggregate actual value of all parcels of real estate subject to taxation within the corporate limits of the City to determine the contract payment assessment rate (hereinafter "assessment rate").
2. Assessment. The assessment rate shall be multiplied by the actual value of each individual parcel of real estate subject to taxation within the corporate limits of the City to determine the contract payment assessment (hereinafter "assessment") for each such parcel. Assessments shall be expressed in dollars and cents and cents shall be carried to three digits. If the last digit of the cents of any assessment is less than five, the assessment shall be lowered to the next even cent. If the last digit of the cents of any assessment is five or more, the assessment shall be raised to the next even cent. No assessment shall be less than one cent.
3. Assessment Schedule. The assessments shall be shown on an assessment schedule which shall state a description of the parcel of real estate involved, the name and address of the owner thereof and the amount of the assessment.
4. Certification. The assessment schedule shall be certified to the Council for approval.

**107.09 APPROVAL OF ASSESSMENT SCHEDULE.** Upon receipt of the assessment schedule, the Council shall approve the same by resolution.

**107.10 CERTIFICATION OF ASSESSMENT SCHEDULE.** Upon approval of the assessment schedule by the Council, the Clerk shall certify the assessments to the County

Treasurer for collection with, and in the same manner as, general property taxes. Said certification shall be made on or before the last date fixed by law for certification of special assessments for collection in the year in which the contract payment is due.

**107.11 PROCEEDS OF SPECIAL ASSESSMENT.** The Clerk shall receive, deposit, and account for all funds received by the City from said special assessment. Said funds shall be handled as trust and agency funds and shall be expended only upon order of the Council to satisfy contract payments due from the City to the Agency pursuant to the contract. Balances, if any, remaining at the end of any calendar or fiscal year of the City shall be carried over from year to year.

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## CHAPTER 110

### NATURAL GAS FRANCHISE

110.01 Franchise Granted	110.11 Exemption from Payment of Franchise Fee
110.02 Term of Franchise	110.12 Remittance of Franchise Fee
110.03 Representations of Company	110.13 Forfeiture of Franchise; Cure of Defaults
110.04 Location of Facilities	110.14 Reservation of Home Rule Powers
110.05 Excavations and Other Work	110.15 Maps of Distribution System
110.06 Rates	110.16 Customer Satisfaction Surveys
110.07 Annual Report	110.17 Exercise of Eminent Domain Powers
110.08 Inspection of Company Facilities	110.18 Indemnity
110.09 Compliance With City Ordinances	110.19 Lease or Assignment of Franchise
110.10 Franchise Fee	

**110.01 FRANCHISE GRANTED.** There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the “Company,” and its successors and assigns, the nonexclusive right and franchise to acquire, construct, erect, maintain, and operate in the City a system for the transmission and distribution of natural gas along, under, over, and upon the streets, avenues, alleys, and public places to serve customers within and outside the City, and to furnish and sell natural gas to the City and its inhabitants. This franchise grants no rights for communications signals other than signals necessary for the operation and maintenance of the Company’s natural gas system described herein. Pursuant to Section 364.2(4)(e) of the *Code of Iowa*, the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa*, as subsequently amended or changed.

**110.02 TERM OF FRANCHISE.** This franchise shall remain in effect for a period of twenty-five (25) years after the effective date of the ordinance codified in this chapter.<sup>†</sup> The City may request amendments to the franchise by providing to the Company written notice of the City’s desire to amend said franchise. Such notice shall be given at least one hundred eighty (180) days prior to the expiration of the fifteenth (15<sup>th</sup>) or twentieth (20<sup>th</sup>) year of the agreement. If the parties are unable to agree to amend this franchise within ninety (90) days after such notice is given, the City may terminate this franchise agreement. Failure to amend or terminate the franchise at the first option does not render invalid the City’s second option to amend or terminate the franchise.

**110.03 REPRESENTATIONS OF COMPANY.** The Company agrees to provide, construct, install, and maintain its entire system pursuant to Iowa Utilities Board rules and regulations in such condition that it will furnish safe, adequate, efficient, and continuous service. The Company’s system shall be of sufficient capacity to supply all reasonable demands of the City and consumers within the City and to provide a reasonable reserve for emergencies. All natural gas service shall be supplied through a meter or other means that shall accurately measure the amount of natural gas supplied to a consumer. All gas pipes, mains, conduits, and other gas facilities shall be placed and maintained so as not to interfere unnecessarily with travel on the City’s streets, alleys, and public places or with the proper use of the same, including

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<sup>†</sup> **EDITOR’S NOTE:** Ordinance No. 05-02, adopting a natural gas franchise for the City, was passed and adopted on February 7, 2005, and became effective on March 28, 2005.

ordinary drainage, or with the construction or use of the sewers, pipes, drains, and other property of the City, or the flow of water therefrom.

**110.04 LOCATION OF FACILITIES.** The Company shall not locate any new natural gas mains, pipes, or conduits within the City in the public right-of-way without the prior approval of the City; however, the City shall not unreasonably withhold approval of Company's location of Company facilities within public right-of-way. The City reserves to itself the power to impose reasonable regulations on the Company's use of streets. The City reserves the right, by resolution or otherwise, to designate the location of any new natural gas distribution facilities, which designation shall not conflict with Company's adherence to its design standards and such utility regulation as governs its construction of facilities. The City shall work with the Company to ensure, to the extent practicable, that the Company may locate its facilities in the least-cost manner consistent with its design standards and utility regulation and consistent with the City's desire to promote the public safety and welfare and protect public property. The Company shall, at its cost and expense, locate and relocate its installations in, on, over, or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance, or repair of the street or alley or any public improvement of, in, or about any such street or alley or reasonably promoting the efficient operation of any such improvement.

**110.05 EXCAVATIONS AND OTHER WORK.** In making excavations or performing other work in the City, the Company shall proceed with such work so as to cause the least possible inconvenience to the public. The Company shall properly protect, according to safety standards generally accepted at the time of placement, all excavations and obstructions by proper shoring, surface plates, barricades, warning lights, and such other or additional devices as circumstances may warrant. The Company shall provide the City with twenty-four (24) hours' notice to the City prior to commencing work that requires the excavation of the traveled portion of the streets, avenues, or alleys. Emergency repairs are exempted from this notification requirement. The Company shall notify the City of the emergency repair following the completion of said emergency repairs. If, in the opinion of the City's Public Works Department, such excavation or obstruction is not properly and safely protected, the City's Public Works Department shall notify the Company and the Company shall immediately comply with such reasonable instructions not in conflict with accepted utility safety rules and practices. Company excavations within the public rights-of-way, public areas, and private property within the City shall be refilled within a reasonable time thereafter consistent with accepted utility safety rules and practices. Pavements, sidewalks, curbs, gutters, vegetation, or landscape opened, disturbed, or damaged by the Company shall be promptly restored and replaced with like materials by the Company at its own expense and left in a condition as good as or better than before. In the event that the Company fails to comply with this section, the City may do such work as may be needed to properly prepare such pavements, sidewalks, curbs, gutters, vegetation, or landscape, and the cost of such repairs shall be repaid to the City by the Company.

**110.06 RATES.** The Company shall supply natural gas to consumers within the City at just and reasonable rates. It is recognized that under the statutes of the State of Iowa, the Iowa Utilities Board of the Iowa Department of Commerce is vested with legal authority to supervise, fix, or change rates and charges authorized to be charged by the Company to natural gas consumers. In the event rates or charges in general, or any class or type of rate or charge shall, during the term of this franchise, cease to be regulated by any State or federal agency, the City Council reserves the right to regulate such rates within the City with the costs of such regulation to be borne by the Company, as a part of the Company's cost of doing business and reflected in its rates.



**110.07 ANNUAL REPORT.** Upon request by the City, the Company shall file with the City Council a true copy of the annual report of the Company pertaining to the operation or conduct of the business of the Company under this franchise. The report may be the same as the Company shall have prepared for such year in the ordinary course of business of the Company and filed with the Iowa Utilities Board. In the event the City Council is authorized by State law and undertakes to regulate rates for service within the City, the Company shall provide all information necessary to permit the City Council to set just and reasonable rates.

**110.08 INSPECTION OF COMPANY FACILITIES.** The Company shall inspect its natural gas facilities used to provide natural gas service under this franchise in compliance with standards established by federal and State laws, rules, and regulations. The replacement or repair of natural gas facilities resulting from these inspections shall be completed within a reasonable period of time thereafter. Hazardous conditions shall be corrected promptly.

**110.09 COMPLIANCE WITH CITY ORDINANCES.** The Company shall at all times during the term of this franchise conform with, submit to, and carry out the provisions of any and all valid ordinances in effect during the term of this franchise, to the full extent allowed by law and to the extent such provisions are not in conflict with this franchise agreement: (i) relating to any person, firm, or corporation supplying and distributing natural gas to the City or consumers within the City that are now in force or may hereafter be lawfully enacted; (ii) relating to the use of City right-of-way; or (iii) relating to the City's exercise of its police or regulatory powers.

**110.10 FRANCHISE FEE.** In consideration of the right to construct and maintain such facilities and equipment along, upon, across and under the streets, highways, avenues, alleys, bridges and public places of the City, there is hereby imposed upon the Company by the City, and the Company agrees that there shall be collected from Company's retail customers, in accordance with Company tariffs on file with and approved by the Iowa Utilities Board, and remitted by the Company to the City, a franchise fee in an amount up to and including five percent (5%) of the gross receipts derived by the Company from the transmission, distribution, transportation or sale of natural gas to retail customers within the corporate limits of the City (excluding, however, the sale of natural gas to the City for its own use), commencing with gross receipts received on or after the effective date of this franchise. The specific percentage levels for the franchise fee shall be established by separate ordinance, and may be different for diverse customer classes. The obligation to pay the fee imposed by this section is modified if: (i) the City permits any other person to sell natural gas to City consumers and pay a franchise fee or its lawful equivalent at a lesser rate than provided in this section, in which case the Company shall collect from its customers and pay at the lesser rate; or (ii) if the City adds additional territory by annexation or consolidation and is unable lawfully to impose the franchise fee upon any person selling natural gas to consumers within the additional territory, in which case the franchise fee on the revenue from sales by the Company in the additional territory shall be equal to that of the lowest fee being paid by any other person selling or transmitting natural gas within the additional territory.

**110.11 EXEMPTION FROM PAYMENT OF FRANCHISE FEE.** If the franchise fee or the Company's ability to collect the fee from its customers is adjudged to be unlawful, invalid, or unconstitutional by final non-appealable regulatory or judicial action, the Company shall be relieved of its obligation to collect from its customers and to remit to the City the franchise fee, the franchise fee shall be deemed to be of no further force and effect as of the date of such adjudication, and the City may request amendments to the franchise. If a refund to customers by the Company is ordered by such final non-appealable adjudication, the City agrees to repay

to the Company such fees as are ordered to be refunded. If the parties are unable to agree to amend the franchise within a reasonable time after the City requests amendments thereto, the City may terminate the franchise.

**110.12 REMITTANCE OF FRANCHISE FEE.** The Company shall remit the franchise fee to the City Treasurer quarterly on or before May 1, August 1, November 1, and February 1 of each year for the three-month periods ending March 31, June 30, September 30, and December 31, respectively.

**110.13 FORFEITURE OF FRANCHISE; CURE OF DEFAULTS.** The violation of any material portion of this franchise by the Company or its successors or assigns, or its failure to promptly perform any of the provisions of this franchise, shall be cause for forfeiture of this franchise and the termination of all rights under this franchise. Such forfeiture shall be accomplished after written notice to the Company by the City, and a continuation of the violation, failure, or default specified in the notice, for at least sixty (60) days from the date the notice was served upon the Company. If either party determines that there is a default under this franchise, the other party shall be given a written notice describing the default, stating whether a forfeiture or termination of the franchise will be sought, and where the default is curable, providing a reasonable time to cure the default, which shall be not less than thirty (30) or more than one hundred eighty (180) days.

**110.14 RESERVATION OF HOME RULE POWERS.** This chapter is intended to be and shall be construed as consistent with the reservation of local authority contained in the Twenty-Fifth Amendment to the Iowa Constitution granting home rule powers to municipalities. To such end, any limitation on the power of the City is to be strictly construed, and the City reserves to itself the right to exercise all power and authority to regulate and control its local affairs, and all ordinances and regulations of the City shall be enforceable against the Company unless, and only to the extent, they are irreconcilable with any rights granted to the Company under this chapter.

**110.15 MAPS OF DISTRIBUTION SYSTEM.** Upon reasonable request, Company shall provide to the City Engineer, on a project specific basis, information indicating the horizontal location, in compliance with One-Call regulation, relative to the boundaries of the right-of-way, of all natural gas equipment which it owns or over which it has control and which is located in the project right-of-way. Project-specific mapping data shall be provided with the specificity and if reasonably possible in the format requested by the City Engineer. Mapping information provided to the City by the Company shall be for the exclusive use of the City in administering the use and occupancy of the public rights-of-way within the City and shall not be provided to or relied on by any person for any other purpose. At the request of the Company, any information requested with respect to the location or type of equipment the Company maintains or plans to install in the right-of-way that qualifies or is designated by the Company as proprietary information or as a trade-secret information under Chapter 550 of the *Code of Iowa* or qualifies to be kept confidential under *Code of Iowa* Section 22.1 *et seq.*, shall be treated as confidential information or a trade secret and shall not be released to any party by the City.

**110.16 CUSTOMER SATISFACTION SURVEYS.** At the request of the City, the Company shall provide the City with summaries of the findings of its annual and other periodic customer satisfaction surveys and research. The Company also agrees to respond promptly and fully to the City's concerns and questions about specific service quality and customer satisfaction matters as and when they are communicated to the Company.

**110.17 EXERCISE OF EMINENT DOMAIN POWERS.** The Company shall have the power to condemn private property for the purpose of providing natural gas utilities to the extent necessary to serve a public use and in a reasonable relationship to an overall plan of transmitting or delivering natural gas in the public interest upon approval of the City Council. The Company must establish the necessity for each taking of private property, and when so established, the City Council may approve the condemnation of the private property by resolution. Any such exercise of the eminent domain powers shall be conducted in accordance with this Code of Ordinances.

**110.18 INDEMNITY.** The Company shall indemnify and hold the City, and its officers, agents, and employees, free and harmless from any and all claims, demands, lawsuits, liability, and damages whatsoever, including all costs and expenses incident thereto, for any and all loss, damage, injury, or death caused or occasioned, in whole or in part, by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the natural gas facilities authorized by this franchise; provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees or agents.

**110.19 LEASE OR ASSIGNMENT OF FRANCHISE.** This franchise shall apply to, inure to, and bind the parties hereto and their successors.

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## CHAPTER 111

# ELECTRIC FRANCHISE

111.01 Franchise Granted	111.11 Exemption from Payment of Franchise Fee
111.02 Term of Franchise	111.12 Remittance of Franchise Fee
111.03 Representations of Company	111.13 Forfeiture of Franchise; Cure of Defaults
111.04 Location of Facilities	111.14 Reservation of Home Rule Powers
111.05 Excavations and Other Work	111.15 Maps of Distribution System
111.06 Rates	111.16 Customer Satisfaction Surveys
111.07 Annual Report	111.17 Exercise of Eminent Domain Powers
111.08 Inspection of Company Facilities	111.18 Indemnity
111.09 Compliance With City Ordinances	111.19 Lease or Assignment of Franchise
111.10 Franchise Fee	

**111.01 FRANCHISE GRANTED.** There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the “Company,” and its successors and assigns, the nonexclusive right and franchise to acquire, construct, erect, maintain, and operate in the City a system for the transmission and distribution of electric energy along, under, over, and upon the streets, avenues, alleys, and public places to serve customers within and outside the City, and to furnish and sell electric energy to the City and its inhabitants. This franchise grants no rights for communications signals other than signals necessary for the operation and maintenance of the Company’s electric system described herein. Pursuant to Section 364.2(4)(e) of the *Code of Iowa*, the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa*, as subsequently amended or changed.

**111.02 TERM OF FRANCHISE.** This franchise shall remain in effect for a period of twenty-five (25) years from the effective date of the ordinance codified in this chapter.<sup>†</sup> The City may request amendments to the franchise by providing to the Company written notice of the City’s desire to amend said franchise. Such notice shall be given at least one hundred eighty (180) days prior to the expiration of the fifteenth (15<sup>th</sup>) or twentieth (20<sup>th</sup>) year of the agreement. If the parties are unable to agree to amend this franchise within ninety (90) days after such notice is given, the City may terminate this franchise agreement. Failure to amend or terminate the franchise at the first option does not render invalid the City’s second option to amend or terminate the franchise.

**111.03 REPRESENTATIONS OF COMPANY.** The Company agrees to provide, construct, install, and maintain its entire system pursuant to Iowa Utilities Board rules and regulations in such condition that it will furnish safe, adequate, efficient, and continuous service. The Company’s system shall be of sufficient capacity to supply all reasonable demands of the City and consumers within the City and to provide a reasonable reserve for emergencies. All electric energy service shall be supplied through a meter or other means that shall accurately measure the amount of electric energy supplied to a consumer. All poles, wires, conduits, and appliances shall be placed and maintained so as not to interfere unnecessarily with travel on the City’s streets, alleys, and public places or with the proper use of the same, including ordinary

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<sup>†</sup> **EDITOR’S NOTE:** Ordinance No. 05-01, adopting an electric franchise for the City, was passed and adopted on February 22, 2005, and became effective on March 28, 2005.

drainage, or with the construction or use of the sewers, pipes, drains, and other property of the City, or the flow of water therefrom.

**111.04 LOCATION OF FACILITIES.** The Company shall not locate any new electrical distribution or service line, including poles or other facilities, within the City in the public right-of-way without the prior approval of the City; however, the City shall not unreasonably withhold approval of Company's location of Company facilities within public right-of-way. The City reserves to itself the power to impose reasonable regulations on the Company's use of streets. The City reserves the right, by resolution or otherwise, to designate the location of any new electric distribution or service line, including poles and other facilities, which designation shall not conflict with Company's adherence to its design standards and such utility regulation as governs its construction of facilities. The City shall work with the Company to ensure, to the extent practicable, that the Company may locate its facilities in the least-cost manner consistent with its design standards and utility regulation and consistent with the City's desire to promote the public safety and welfare and protect public property. The Company shall, at its cost and expense, locate and relocate its installations in, on, over, or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance, or repair of the street or alley or any public improvement of, in, or about any such street or alley or reasonably promoting the efficient operation of any such improvement.

**111.05 EXCAVATIONS AND OTHER WORK.** In making excavations or performing other work in the City, the Company shall proceed with such work so as to cause the least possible inconvenience to the public. The Company shall properly protect, according to safety standards generally accepted at the time of placement, all excavations and obstructions by proper shoring, surface plates, barricades, warning lights, and such other or additional devices as circumstances may warrant. The Company shall provide the City with twenty-four (24) hours' notice to the City prior to commencing work that requires the excavation of the traveled portion of the streets, avenues, or alleys. Emergency repairs are exempted from this notification requirement. The Company shall notify the City of the emergency repair following the completion of said emergency repairs. If, in the opinion of the City's Public Works Department, such excavation or obstruction is not properly and safely protected, the City's Public Works Department shall notify the Company and the Company shall immediately comply with such reasonable instructions not in conflict with accepted utility safety rules and practices. Company excavations within the public rights-of-way, public areas, and private property within the City shall be refilled within a reasonable time thereafter consistent with accepted utility safety rules and practices. Pavements, sidewalks, curbs, gutters, vegetation, or landscape opened, disturbed, or damaged by the Company shall be promptly restored and replaced with like materials by the Company at its own expense and left in a condition as good as or better than before. In the event that the Company fails to comply with this section, the City may do such work as may be needed to properly prepare such pavements, sidewalks, curbs, gutters, vegetation, or landscape, and the cost of such repairs shall be repaid to the City by the Company. The Company is authorized and empowered to prune or remove, at Company expense, any tree extending into any street, alley, or public grounds in order to maintain electric reliability and safety, to restore utility service, and to prevent limbs, branches, or trunks from interfering with the wires and facilities of the Company. The pruning and removal of trees, as well as all other vegetation management activities undertaken by the Company, shall be in compliance with standards established in Chapter 151 of this Code of Ordinances, the Company's Electric Facility Inspection and Vegetation Management Plan on file with the Iowa Utilities Board, and the rules and regulations of the Iowa Utilities Board or its successor.

**111.06 RATES.** The Company shall supply electric energy to consumers within the City at just and reasonable rates. It is recognized that under the statutes of the State of Iowa, the Iowa Utilities Board of the Iowa Department of Commerce is vested with legal authority to supervise, fix or change rates and charges authorized to be charged by the Company to electric energy consumers. In the event rates or charges in general, or any class or type of rate or charge shall, during the term of this franchise, cease to be regulated by any State or federal agency, the City Council reserves the right to regulate such rates within the City with the costs of such regulation to be borne by the Company, as a part of the Company's cost of doing business and reflected in its rates.

**111.07 ANNUAL REPORT.** Upon request by the City, the Company shall file with the City Council a true copy of the annual report of the Company pertaining to the operation or conduct of the business of the Company under this franchise. The report may be the same as the Company shall have prepared for such year in the ordinary course of business of the Company and filed with the Iowa Utilities Board. In the event the City Council is authorized by State law and undertakes to regulate rates for service within the City, the Company shall provide all information necessary to permit the City Council to set just and reasonable rates.

**111.08 INSPECTION OF COMPANY FACILITIES.** The Company shall inspect its electric lines and other facilities used to provide electric service under this franchise in compliance with standards established by the Company's Electric Facility Inspection and Vegetation Management Plan on file with the Iowa Utilities Board and the rules and regulations of the Iowa Utilities Board or its successor. The replacement or repair of electric facilities resulting from these inspections shall be completed within a reasonable period of time thereafter. Hazardous conditions shall be corrected promptly.

**111.09 COMPLIANCE WITH CITY ORDINANCES.** The Company shall at all times during the term of this franchise conform with, submit to, and carry out the provisions of any and all valid ordinances in effect during the term of this franchise, to the full extent allowed by law and to the extent such provisions are not in conflict with this franchise agreement: (i) relating to any person, firm or corporation supplying and distributing electric energy to the City or consumers within the City that are now in force or may hereafter be lawfully enacted; (ii) relating to the use of City right-of-way; or (iii) relating to the City's exercise of its police or regulatory powers.

**111.10 FRANCHISE FEE.** In consideration of the right to construct and maintain such facilities and equipment along, upon, across and under the streets, highways, avenues, alleys, bridges, and public places of the City, there is hereby imposed upon the Company by the City, and the Company agrees that there shall be collected from Company's retail customers, in accordance with Company tariffs on file with and approved by the Iowa Utilities Board, and remitted by the Company to the City, a franchise fee in an amount up to and including five percent (5%) of the gross receipts derived by the Company from the transmission, distribution or sale of electric energy to retail customers within the corporate limits of the City (excluding, however, the sale of electric energy to the City for its own use), commencing with gross receipts received on or after the effective date of this franchise. The specific percentage levels for the franchise fee shall be established by separate ordinance, and may be different for diverse customer classes. The obligation to pay the fee imposed by this section is modified if: (i) the City permits any other person to sell electrical energy to City consumers and pay a franchise fee or its lawful equivalent at a lesser rate than provided in this section, in which case the Company shall collect from its customers and pay at the lesser rate; or (ii) the City adds additional territory by annexation or consolidation and is unable lawfully to impose the franchise fee upon any

person selling electrical energy to consumers within the additional territory, in which case the franchise fee on the revenue from sales by the Company in the additional territory shall be equal to that of the lowest fee being paid by any other person selling or transmitting electrical energy within the additional territory.

**111.11 EXEMPTION FROM PAYMENT OF FRANCHISE FEE.** If the franchise fee or the Company's ability to collect the fee from its customers is adjudged to be unlawful, invalid, or unconstitutional by final non-appealable regulatory or judicial action, the Company shall be relieved of its obligation to collect from its customers and to remit to the City the franchise fee, the franchise fee shall be deemed to be of no further force and effect as of the date of such adjudication, and the City may request amendments to the franchise. If a refund to customers by the Company is ordered by such final non-appealable adjudication, the City agrees to repay to the Company such fees as are ordered to be refunded. If the parties are unable to agree to amend the franchise within a reasonable time after the City requests amendments thereto, the City may terminate the franchise.

**111.12 REMITTANCE OF FRANCHISE FEE.** The Company shall remit the franchise fee to the City Treasurer quarterly on or before May 1, August 1, November 1, and February 1 of each year for the three-month periods ending March 31, June 30, September 30, and December 31, respectively.

**111.13 FORFEITURE OF FRANCHISE; CURE OF DEFAULTS.** The violation of any material portion of this franchise by the Company or its successors or assigns, or its failure to promptly perform any of the provisions of this franchise, shall be cause for forfeiture of this franchise and the termination of all rights under this franchise. Such forfeiture shall be accomplished after written notice to the Company by the City, and a continuation of the violation, failure, or default specified in the notice, for at least sixty (60) days from the date the notice was served upon the Company. If either party determines that there is a default under this franchise, the other party shall be given a written notice describing the default, stating whether a forfeiture or termination of the franchise will be sought, and where the default is curable, providing a reasonable time to cure the default, which shall be not less than thirty (30) or more than one hundred eighty (180) days.

**111.14 RESERVATION OF HOME RULE POWERS.** This chapter is intended to be and shall be construed as consistent with the reservation of local authority contained in the Twenty-Fifth Amendment to the Iowa Constitution granting home rule powers to municipalities. To such end, any limitation on the power of the City is to be strictly construed, and the City reserves to itself the right to exercise all power and authority to regulate and control its local affairs, and all ordinances and regulations of the City shall be enforceable against the Company unless, and only to the extent, they are irreconcilable with any rights granted to the Company under this chapter.

**111.15 MAPS OF DISTRIBUTION SYSTEM.** Upon reasonable request, Company shall provide to the City Engineer, on a project specific basis, information indicating the horizontal location, in compliance with One-Call regulation, relative to the boundaries of the right-of-way, of all equipment which it owns or over which it has control and which is located in the project right-of-way. Project-specific mapping data shall be provided with the specificity and if reasonably possible in the format requested by the City Engineer. Mapping information provided to the City by the Company shall be for the exclusive use of the City in administering the use and occupancy of the public rights of way within the City and shall not be provided to or relied on by any person for any other purpose. At the request of the Company, any



information requested with respect to the location or type of equipment the Company maintains or plans to install in the right-of-way that qualifies or is designated by the Company as proprietary information or as a trade-secret information under Chapter 550 of the *Code of Iowa* or qualifies to be kept confidential under *Code of Iowa* Section 22.1 *et seq.*, shall be treated as confidential information or a trade secret and shall not be released to any party by the City.

**111.16 CUSTOMER SATISFACTION SURVEYS.** At the request of the City, the Company shall provide the City with summaries of the findings of its annual and other periodic customer satisfaction surveys and research. The Company also agrees to respond promptly and fully to the City's concerns and questions about specific service quality and customer satisfaction matters as and when they are communicated to the Company.

**111.17 EXERCISE OF EMINENT DOMAIN POWERS.** The Company shall have the power to condemn private property for the purpose of providing electric utilities to the extent necessary to serve a public use and in a reasonable relationship to an overall plan of transmitting electricity in the public interest upon approval of the City Council. The Company must establish the necessity for each taking of private property, and when so established, the City Council may approve the condemnation of the private property by resolution. Any such exercise of the eminent domain powers shall be conducted in accordance with this Code of Ordinances.

**111.18 INDEMNITY.** The Company shall indemnify and hold the City and its officers, agents, and employees free and harmless from any and all claims, demands, lawsuits, liability, and damages whatsoever, including all costs and expenses incident thereto, for any and all loss, damage, injury, or death caused or occasioned, in whole or in part, by the Company's negligence in construction, reconstruction, excavation, operation, or maintenance of the electric facilities authorized by this franchise; provided, however, the Company shall not be obligated to defend, indemnify, and save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees, or agents.

**111.19 LEASE OR ASSIGNMENT OF FRANCHISE.** This franchise shall apply to, inure to, and bind the parties hereto and their successors.

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## CHAPTER 112

# FRANCHISE FEES

112.01 Electric Franchise Fee  
112.02 Gas Franchise Fee

112.03 Gas Sold by Third-Party Suppliers  
112.04 Exemptions

**112.01 ELECTRIC FRANCHISE FEE.** Commencing with electric bills rendered by MidAmerican Energy Company (the “Company”) to utility customers within the corporate limits of the City on or after May 1, 2005, and for so long as the franchise granted by Ordinance No. 05-01 is in effect, there is hereby imposed on the Company, and it shall be the Company’s obligation to collect from its customers and remit to the City, a franchise fee in an amount equal to a percentage of the gross receipts, minus uncollectible amounts, derived by the Company from the transmission, distribution, and sale of electric energy to retail customers within the corporate limits of the City at the following percentage levels:

1. Residential Customers – five percent (5%)
2. Commercial Customers – three percent (3%)
3. Public Authority Customers (other than the City and public schools) – three percent (3%)

**112.02 GAS FRANCHISE FEE.** Commencing with natural gas bills rendered by the Company to its customers within the corporate limits of the City on or after May 1, 2005, and for so long as the franchise granted by Ordinance No. 05-02 is in effect, there is hereby imposed on the Company, and it shall be the Company’s obligation to collect from its customers and remit to the City, a franchise fee in an amount equal to a percentage of the gross receipts, minus uncollectible amounts, derived by the Company from the transmission, distribution, transportation and sale of natural gas to retail customers within the corporate limits of the City at the following percentage levels:

1. Residential Customers – five percent (5%)
2. Commercial Customers – three percent (3%)
3. Public Authority Customers (other than the City and public schools) – three percent (3%)

**112.03 GAS SOLD BY THIRD-PARTY SUPPLIERS.** With respect to the distribution or transportation by the Company of natural gas sold to the customer by a third-party supplier of the commodity, the percentage of gross receipts shall be applied to the customer’s full cost of gas delivered within the City, including all costs of acquisition, ownership, and transportation whereof, wherever incurred. In determining the amount of the fee, the Company may presume that the customer’s commodity cost of gas is the same as if the gas were sold by the Company, unless a different cost is provided.

**112.04 EXEMPTIONS.** Gross receipts derived from the transmission, distribution, transportation, and sale of natural gas and the transmission, distribution, and sale of electric energy to public schools and to the City for its own use are exempt from the franchise fee, and the franchise fee shall not be assessed to such customers.

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## CHAPTER 113

# CABLE TELEVISION REGULATIONS

113.01 Compliance with Applicable Laws	113.18 Color Cablecasting
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113.03 Interference	113.20 Subscriber Rates and Charges
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113.05 City Use of Existing Poles	113.22 Service Agreements
113.06 Prior Approval of Underground Installations	113.23 Office of Cable Operator
113.07 Restoration of Ground Surface	113.24 Procedure to Handle Complaints and Grievances
113.08 Alteration of Grade	113.25 Injury to Property of the Cable Operator
113.09 Temporary Removal of Cables	113.26 Intercepting Signals of the Cable Operator
113.10 Tree Trimming	113.27 Filing of Reports
113.11 Service Requirements	113.28 Filing of Audit
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113.13 Channel Capacity and Performance	113.30 Filing of Communications with Regulatory Agencies
113.14 Subscriber Terminals in City Buildings and Schools	113.31 Access
113.15 Use of Education and Local Government Access Channels	113.32 Discrimination Prohibited
113.16 Emergency Warning System	113.33 Other Business Activities Prohibited
113.17 Telecast of Educational Activities	113.34 Franchise Fee

**113.01 COMPLIANCE WITH APPLICABLE LAWS.** The cable operator shall comply with all governmental laws, ordinances, rules, or regulations as may now or hereafter be applicable to the construction, operation, maintenance, repair, replacement, renewal, reconstruction, and removal of a cable television system, the sale and supply of audio and video communications services, the use of public property and private property, and the engagement in such further activities as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system.

**113.02 INSTALLATION AND MAINTENANCE OF PROPERTY.** The property of the cable operator shall be constructed, operated, maintained, repaired, replaced, renewed, reconstructed, and removed in accordance with generally accepted engineering principles so as not to endanger or interfere with the lives of persons or to interfere with improvements which the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic or use of public property or private property.

**113.03 INTERFERENCE.** The cable operator's cable television system shall be so designed, engineered, and maintained so as not to interfere with the radio and television reception of persons who are not subscribers of the cable operator.

**113.04 INSTALLATION OF CABLES.** The cable operator shall have the right, privilege, and authority to lease, rent, or in any other manner obtain the use of wooden poles with overhead lines, conduits, trenches, ducts, lines, cable, and other equipment and facilities from any and all holders of public licenses and franchises within the City, and to use such poles, conduits, trenches, ducts, lines, and cable in the course of its business. The cable operator shall install its cable on existing poles owned by other holders of public licenses and franchises with the City whenever possible for the installation of its cable. When installation of cable on poles is insufficient, or when the holder of another public license or franchise has installed underground cable, then in that event, the cable used by the cable operator shall be installed underground.

**113.05 CITY USE OF EXISTING POLES.** The City shall and does hereby retain the right to utilize the existing poles for future City use, and to require the removal of the cable by the cable operator where existing poles are not sufficient to adequately handle the proposed City use and the cable operator's cable.

**113.06 PRIOR APPROVAL OF UNDERGROUND INSTALLATIONS.** The cable operator shall submit detailed drawings of all proposed underground cable installations to the City for approval prior to commencement of construction and shall not deviate therefrom without approval of the City.

**113.07 RESTORATION OF GROUND SURFACE.** In case of any disturbance of pavement, sidewalk, driveway, or other surfacing, the cable operator shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, or surface of any street or alley disturbed in as good a condition as before said work was commenced.

**113.08 ALTERATION OF GRADE.** In the event that the City shall elect to alter or change the grade of any street, alley, or public way, the cable operator, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

**113.09 TEMPORARY REMOVAL OF CABLES.** The cable operator shall, on the request of any person holding a building permit issued by the City, temporarily raise or lower its cables to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of cables shall be paid by the person requesting the same and the cable operator shall have the authority to require such payment in advance. The cable operator shall be given not less than five (5) days' advance notice to arrange for such temporary cable changes.

**113.10 TREE TRIMMING.** The cable operator shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the cable of the cable operator. All trimming shall be done under the supervision and direction of the City and at the expense of the cable operator.

**113.11 SERVICE REQUIREMENTS.** The cable operator shall furnish reasonable, adequate, and efficient cable television service to subscriber terminals. The foregoing requirement may be temporarily suspended due to circumstances beyond the reasonable control of the cable operator.

**113.12 PERFORMANCE STANDARDS.** The cable operator shall produce a picture in black and white or in color that is undistorted, free from ghost images, and accompanied by proper sound on typical standard television sets in good repair. The cable operator shall also transmit signals of adequate strength to produce good pictures with good sound at all subscriber terminals throughout the City without causing cross modulation in the cables or interfering with other electrical or electronic systems.

**113.13 CHANNEL CAPACITY AND PERFORMANCE.** The cable television system of the cable operator shall conform to the channel capacity and performance requirements contained in the then current regulations of the FCC.

**113.14 SUBSCRIBER TERMINALS IN CITY BUILDINGS AND SCHOOLS.** The cable operator shall, at its sole cost, install and maintain subscriber terminals in such buildings owned or used by the City, and in such buildings owned or used by recognized educational authorities within the City, both public and private, as may be designated by the governing body having jurisdiction thereof. Such subscriber terminals shall be placed in such location or locations within such buildings as may be designated by the governing body having jurisdiction thereof.

**113.15 USE OF EDUCATION AND LOCAL GOVERNMENT ACCESS CHANNELS.** The cable operator shall, at its sole cost, make available to the City, or its assigns, at least one channel to be used by the City, or its assigns, for any purpose. The cable operator shall, at its sole cost, make available to recognized educational authorities within the City, both public and private, at least one channel to be used by them for any purpose. The cable operator shall, at its sole cost, make available to the City and recognized educational authorities within the City, both public and private, at reasonable times and on reasonable notice, the use of its studio, other production facilities, and related equipment for origination cablecasting. In addition thereto, the cable operator shall provide, at its sole cost, such technical assistance as may be reasonably necessary to produce such origination cablecasting.

**113.16 EMERGENCY WARNING SYSTEM.** The cable operator shall equip its cable television system with an emergency warning override so that emergency information can be given simultaneously on all channels of the system. During an emergency, the cable operator shall allow the City the complete use of the system.

**113.17 TELECAST OF EDUCATIONAL ACTIVITIES.** The cable operator shall not cablecast, tape, reproduce, or otherwise convey to its subscribers the activities of any recognized educational authority, public or private, without the written consent of the governing body of such authority.

**113.18 COLOR CABLECASTING.** The cable television system of the cable operator shall be capable of color cablecasting. Any signal received by the cable operator in color shall be cablecast in color.

**113.19 PROGRAM ALTERATION.** Any signal received by the cable operator from a television broadcast station shall be cablecast by the cable operator in its entirety, as received, without alteration.

**113.20 SUBSCRIBER RATES AND CHARGES.** All rates for service shall be reasonable, compensatory, and nondiscriminatory.

**113.21 SERVICE RULES AND REGULATIONS.** The cable operator shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business. The cable operator shall file such rules and regulations, and all amendments thereto, with the City.

**113.22 SERVICE AGREEMENTS.** The cable operator shall have the right to prescribe a reasonable form of service agreement for use between the cable operator and its subscribers. The cable operator shall submit its proposed form of service agreement, and all proposed amendments thereto, to the City for approval.

**113.23 OFFICE OF CABLE OPERATOR.** The cable operator shall maintain an office within Polk County, Iowa, for the purpose of receiving, investigating, and responding to complaints and grievances with respect to the quality of the service rendered by the cable operator, equipment malfunctions, and other similar matters pertaining to the cable television system of the cable operator.

**113.24 PROCEDURE TO HANDLE COMPLAINTS AND GRIEVANCES.** The procedure to handle complaints and grievances with respect to the quality of the services rendered by the cable operator, equipment malfunctions and other similar matters pertaining to the cable television system of the cable operator shall be as follows:

1. Filing of Complaint. Within thirty (30) days after the occurrence of the facts and circumstances giving rise to a complaint or grievance, and not thereafter, the complainant shall state the complaint or grievance to the cable operator in writing. In the event that a complaint or grievance is received by the City, the City shall forward such complaint or grievance to the cable operator in writing.
2. Response by Cable Operator. Within five (5) days after the receipt of a complaint or grievance by the cable operator, the cable operator shall state to the complainant its intentions with respect to the complaint or grievance in writing.
3. Arbitration. In the event that the complaint or grievance is not resolved to the satisfaction of the complainant within fifteen (15) days after the receipt thereof by the cable operator, the complaint or grievance shall be settled by arbitration. Such arbitration shall be before three disinterested arbitrators, one named by the complainant, one named by the cable operator, and one named by the two thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State of Iowa.

On or before the tenth day of each calendar month, the cable operator shall file a report in writing with the City stating the date and substance of each complaint or grievance received by it during the preceding calendar month, the date and nature of the action taken by the cable operator with respect thereto, and, if still pending, the status thereof.

**113.25 INJURY TO PROPERTY OF THE CABLE OPERATOR.** No person shall wrongfully or unlawfully injure the property of the cable operator.

**113.26 INTERCEPTING SIGNALS OF THE CABLE OPERATOR.** No person shall wrongfully or unlawfully intercept the signals of the cable operator.

**113.27 FILING OF REPORTS.** On or before April 1 of each year, the cable operator shall file with the City copies of FCC Form 325 and FCC Form 326 for the preceding calendar year.

**113.28 FILING OF AUDIT.** On or before April 1 of each year, the cable operator shall file with the City an audit of its operations within the City during the preceding calendar year.

**113.29 FILING OF MAPS AND PLATS.** On or before April 1 of each year, the cable operator shall file with the City maps and plats showing the location and nature of all property of the cable operator within the City as of the end of the preceding calendar year.

**113.30 FILING OF COMMUNICATIONS WITH REGULATORY AGENCIES.** The cable operator shall file with the City copies of all petitions, applications, and communications



submitted by the cable operator to any regulatory agency having jurisdiction over the cable operator.

**113.31 ACCESS.** The cable operator shall and does hereby grant to the City the right to enter upon the property of the cable operator, upon reasonable notice, at any and all reasonable times to inspect the same for purposes pertaining to the rights of the City.

**113.32 DISCRIMINATION PROHIBITED.** The cable operator shall not grant any undue preference or advantage to any person or subject any person to prejudice or disadvantage with respect to rates, charges, services, service facilities, rules, regulations, or in any other respect.

**113.33 OTHER BUSINESS ACTIVITIES PROHIBITED.** The cable operator shall not engage in the business of selling, leasing, renting, or servicing television or radio receivers, or their parts and accessories, and the cable operator shall not require or attempt to direct its subscribers to deal with any particular person or firm with respect to said activities.

**113.34 FRANCHISE FEE.** On or before April 1 of each year the cable operator shall pay to the City, at the office of the City, in lawful money of the United States, a franchise fee based upon a percentage of the gross subscriber receipts received by the cable operator from the operation of its cable television system within the City during the preceding calendar year. Such fee shall be based on such percentage of said gross receipts as may be approved by the FCC, but in no event shall the same be less than five percent of said gross receipts. Any franchise fee not paid when due shall bear interest at the rate of nine percent per annum from the date due. The franchise fee shall not be considered to be in the nature of a tax.

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## CHAPTER 120

# LIQUOR LICENSES AND WINE AND BEER PERMITS

120.01 License or Permit Required  
120.02 General Prohibition  
120.03 Investigation

120.04 Action by Council  
120.05 Prohibited Sales and Acts  
120.06 Amusement Devices

**120.01 LICENSE OR PERMIT REQUIRED.** No person shall manufacture for sale, import, sell, or offer or keep for sale, alcoholic liquor, wine, or beer without first securing a liquor control license, wine permit, or beer permit in accordance with the provisions of Chapter 123 of the *Code of Iowa*.

*(Code of Iowa, Sec. 123.22, 123.122 & 123.171)*

**120.02 GENERAL PROHIBITION.** It is unlawful to manufacture for sale, sell, offer or keep for sale, possess or transport alcoholic liquor, wine or beer except upon the terms, conditions, limitations, and restrictions enumerated in Chapter 123 of the *Code of Iowa*, and a license or permit may be suspended or revoked or a civil penalty may be imposed for a violation thereof.

*(Code of Iowa, Sec. 123.2, 123.39 & 123.50)*

**120.03 INVESTIGATION.** Upon receipt of an application for a liquor license, wine or beer permit, the Clerk may forward it to the Chief of Police, who shall then conduct an investigation and submit a written report as to the truth of the facts averred in the application. The Fire Chief may also inspect the premises to determine if they conform to the requirements of the City. The Council shall not approve an application for a license or permit for any premises which does not conform to the applicable law and ordinances, resolutions and regulations of the City.

*(Code of Iowa, Sec. 123.30)*

**120.04 ACTION BY COUNCIL.** The Council shall either approve or disapprove the issuance of the liquor control license or retail wine or beer permit and shall endorse its approval or disapproval on the application, and thereafter the application, necessary fee and bond, if required, shall be forwarded to the Alcoholic Beverages Division of the State Department of Commerce for such further action as is provided by law.

*(Code of Iowa, Sec. 123.32[2])*

**120.05 PROHIBITED SALES AND ACTS.** A person or club holding a liquor license or retail wine or beer permit and the person's or club's agents or employees shall not do any of the following:

1. Sell, dispense, or give to any intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.

*(Code of Iowa, Sec. 123.49[1])*

2. Sell or dispense any alcoholic beverage, wine, or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of 2:00 a.m. and 6:00 a.m. on a weekday, and between the hours of 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday; however, a holder of a license or permit granted the privilege of selling alcoholic liquor, beer, or wine on Sunday may sell or dispense alcoholic liquor, beer, or wine between the hours of 8:00 a.m. on Sunday and 2:00 a.m.

of the following Monday, and further provided that a holder of any class of liquor control license or the holder of a class "B" beer permit may sell or dispense alcoholic liquor, wine, or beer for consumption on the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on Monday when that Monday is New Year's Day and beer for consumption off the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday when that Sunday is the day before New Year's Day.

*(Code of Iowa, Sec. 123.49[2b and 2k] & 123.150)*

3. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members, to sales by a hotel or motel to bona fide registered guests or to retail sales by the managing entity of a convention center, civic center, or events center.

*(Code of Iowa, Sec. 123.49[2c])*

4. Employ a person under eighteen (18) years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.

*(Code of Iowa, Sec. 123.49[2f])*

5. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, or any other beverage in or about the permittee's place of business.

*(Code of Iowa, Sec. 123.49[2i])*

6. Knowingly permit any gambling, except in accordance with Iowa law, or knowingly permit any solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

*(Code of Iowa, Sec. 123.49[2a])*

7. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

*(Code of Iowa, Sec. 123.49[2j])*

8. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the Alcoholic Beverages Division of the State Department of Commerce and except mixed drinks or cocktails mixed on the premises for immediate consumption. However, mixed drinks or cocktails that are mixed on the premises and are not for immediate consumption may be consumed on the licensed premises, subject to rules adopted by the Alcoholic Beverages Division.

*(Code of Iowa, Sec. 123.49[2d])*

9. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been reused or adulterated.

*(Code of Iowa, Sec. 123.49[2e])*

10. Allow any person other than the licensee, permittee, or employees of the licensee or permittee to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as allowed by State law.

*(Code of Iowa, Sec. 123.49[2g])*

11. Sell, give, possess, or otherwise supply a machine which is used to vaporize an alcoholic beverage for the purpose of being consumed in a vaporized form.

*(Code of Iowa, Sec. 123.49[21])*

12. Sell, offer to sell, dispense, or serve for on-premises consumption an unlimited number of servings of alcoholic liquor, wine, or beer for a fixed price. Nothing in this subsection 12 shall be construed to prohibit a holder of an on-premises liquor control license or wine or beer permit, or its employees or agents, from:

A. Including drinks containing an alcoholic beverage or beer as part of a hotel or motel package which includes overnight accommodations; or

B. Providing a fixed price for an unlimited number or indefinite quantity of drinks containing an alcoholic beverage or beer for a private event. A private event is defined as an event restricted to a particular group or persons, provided that the licensee or permittee shall provide means or method by which to identify persons participating in the private event, such as the use of a separate room or an identification tag or badge; or

C. As otherwise permitted for a special event by the City Council (provided, however, that no license or permit holder shall be allowed to hold such a special event under this paragraph C more than twice per calendar year).

**120.06 AMUSEMENT DEVICES.** The following provisions pertain to electronic or mechanical amusement devices, which are allowed only in premises with a liquor control license or beer permit as specifically authorized in Section 99B.10 of the *Code of Iowa*.

*(Code of Iowa, Sec. 99B.10C)*

1. As used in this section an “electronic or mechanical amusement device” means a device that awards a prize redeemable for merchandise on the premises where the device is located and which is required to be registered with the Iowa Department of Inspection and Appeals.

2. It is unlawful for any person under the age of twenty-one (21) to participate in the operation of an electrical or mechanical amusement device.

3. It is unlawful for any person owning or leasing an electrical or mechanical amusement device, or an employee of a person owning or leasing an electrical or mechanical amusement device, to knowingly allow a person under the age of 21 to participate in the operation of an electrical or mechanical amusement device.

4. It is unlawful for any person to knowingly participate in the operation of an electrical or mechanical amusement device with a person under the age of 21.

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## CHAPTER 121

# CIGARETTE AND TOBACCO PERMITS

121.01 Definitions  
121.02 Permit Required  
121.03 Application  
121.04 Fees  
121.05 Issuance and Expiration

121.06 Refunds  
121.07 Persons Under Legal Age  
121.08 Self-Service Sales Prohibited  
121.09 Permit Revocation

### 121.01 DEFINITIONS. For use in this chapter the following terms are defined:

*(Code of Iowa, Sec. 453A.1)*

1. “Alternative nicotine product” means a product, not consisting of or containing tobacco, that provides for the ingestion into the body of nicotine, whether by chewing, absorbing, dissolving, inhaling, snorting, or sniffing, or by any other means. “Alternative nicotine product” does not include cigarettes, tobacco products, or vapor products, or a product that is regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.
2. “Cigarette” means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. However, this definition is not to be construed to include cigars.
3. “Place of business” means any place where cigarettes or tobacco products are sold, stored or kept for the purpose of sale or consumption by a retailer.
4. “Retailer” means every person who sells, distributes or offers for sale for consumption, or possesses for the purpose of sale for consumption, cigarettes, alternative nicotine products, or vapor products, irrespective of the quantity or amount or the number of sales, or who engages in the business of selling tobacco, tobacco products, alternative nicotine products, or vapor products to ultimate consumers.
5. “Self-service display” means any manner of product display, placement, or storage from which a person purchasing the product may take possession of the product, prior to purchase, without assistance from the retailer or employee of the retailer, in removing the product from a restricted access location.
6. “Tobacco products” means the following: cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts or refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or for both chewing and smoking, but does not mean cigarettes.
7. “Vapor product” means any noncombustible product, which may or may not contain nicotine, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from a solution or other substance. “Vapor product” includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar

product or device, and any cartridge or other container of a solution or other substance, which may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. “Vapor product” does not include a product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

**121.02 PERMIT REQUIRED.**

1. Retail Cigarette Permits. It is unlawful for any person, other than a holder of a retail permit, to sell cigarettes, alternative nicotine products, or vapor products at retail and no retailer shall distribute, sell, or solicit the sale of any cigarettes, alternative nicotine products, or vapor products within the City without a valid permit for each place of business. The permit shall, at all times, be publicly displayed at the place of business so as to be easily seen by the public and the persons authorized to inspect the place of business.

*(Code of Iowa, Sec. 453A.13)*

2. Retail Tobacco Permits. It is unlawful for any person to engage in the business of a retailer of tobacco, tobacco products, alternative nicotine products, or vapor products at any place of business without first having received a permit as a retailer for each place of business owned or operated by the retailer.

*(Code of Iowa, Sec. 453A.47A)*

A retailer who holds a retail cigarette permit is not required to also obtain a retail tobacco permit. However, if a retailer only holds a retail cigarette permit and that permit is suspended, revoked, or expired, the retailer shall not sell any tobacco, tobacco products, alternative nicotine products, or vapor products, during such time.

**121.03 APPLICATION.** A completed application on forms furnished by the State Department of Revenue or on forms made available or approved by the Department and accompanied by the required fee shall be filed with the Clerk. Renewal applications shall be filed at least five (5) days prior to the last regular meeting of the Council in June. If a renewal application is not timely filed, and a special Council meeting is called to act on the application, the costs of such special meeting shall be paid by the applicant.

*(Code of Iowa, Sec. 453A.13 & 453A.47A)*

**121.04 FEES.** The fee for a retail cigarette or tobacco permit shall be as follows:

*(Code of Iowa, Sec. 453A.13 & 453A.47A)*

<b>FOR PERMITS GRANTED DURING:</b>	<b>FEE:</b>
July, August or September	\$ 75.00
October, November or December	\$ 56.25
January, February or March	\$ 37.50
April, May or June	\$ 18.75

**121.05 ISSUANCE AND EXPIRATION.** Upon proper application and payment of the required fee, a permit shall be issued. Each permit issued shall describe clearly the place of business for which it is issued and shall be nonassignable. All permits expire on June 30 of each year. The Clerk shall submit a duplicate of any application for a permit, and any permit issued, to the Alcoholic Beverages Division of the Department of Commerce within thirty (30) days of issuance.



**121.06 REFUNDS.** A retailer may surrender an unrevoked permit and receive a refund from the City, except during April, May, or June, in accordance with the schedule of refunds as provided in Section 453A.13 or 453A.47A of the *Code of Iowa*.

*(Code of Iowa, 453A.13 & 453A.47A)*

**121.07 PERSONS UNDER LEGAL AGE.** No person shall sell, give, or otherwise supply any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes to any person under eighteen (18) years of age. The provision of this section includes prohibiting a minor from purchasing tobacco, tobacco products, alternative nicotine products, vapor products, and cigarettes from a vending machine. If a retailer or employee of a retailer violates the provisions of this section, the Council shall, after written notice and hearing, and in addition to the other penalties fixed for such violation, assess the following:

1. For a first violation, the retailer shall be assessed a civil penalty in the amount of three hundred dollars (\$300.00). Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of fourteen (14) days.
2. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00) or the retailer's permit shall be suspended for a period of thirty (30) days. The retailer may select its preference in the penalty to be applied under this subsection.
3. For a third violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of \$1,500.00 and the retailer's permit shall be suspended for a period of 30 days.
4. For a fourth violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of \$1,500.00 and the retailer's permit shall be suspended for a period of sixty (60) days.
5. For a fifth violation within a period of four years, the retailer's permit shall be revoked.

The Clerk shall give ten (10) days' written notice to the retailer by mailing a copy of the notice to the place of business as it appears on the application for a permit. The notice shall state the reason for the contemplated action and the time and place at which the retailer may appear and be heard.

*(Code of Iowa, Sec. 453A.2, 453A.22 and 453A.36[6])*

**121.08 SELF-SERVICE SALES PROHIBITED.** Except for the sale of cigarettes through a cigarette vending machine as provided in Section 453A.36[6] of the *Code of Iowa*, a retailer shall not sell or offer for sale tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes through the use of a self-service display.

*(Code of Iowa, Sec. 453A.36A)*

**121.09 PERMIT REVOCATION.** Following a written notice and an opportunity for a hearing, as provided by the *Code of Iowa*, the Council may also revoke a permit issued pursuant to this chapter for a violation of Division I of Chapter 453A of the *Code of Iowa* or any rule adopted thereunder. If a permit is revoked, a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the Council. The Clerk shall report the revocation or suspension of a retail

permit to the Alcoholic Beverages Division of the Department of Commerce within thirty (30) days of the revocation or suspension.

*(Code of Iowa, Sec. 453A.22)*

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**CHAPTER 122**  
**PEDDLERS, SOLICITORS AND TRANSIENT**  
**MERCHANTS**

122.01 Definitions	122.10 Revocation of Permit
122.02 Permit Required	122.11 Notice
122.03 Application for Permit	122.12 Hearing
122.04 Permit Fees	122.13 Record and Determination
122.05 Bonds Required	122.14 Appeal
122.06 Permit Issued	122.15 Effect of Revocation
122.07 Display of Permit	122.16 Rebates
122.08 Permit Not Transferable	122.17 Permit Exemptions
122.09 Time Restriction	122.18 Prohibited Acts

**122.01 DEFINITIONS.** For use in this chapter the following terms are defined:

1. “Peddler” means any person carrying goods or merchandise or offering services who sells or offers for sale for immediate delivery such goods, merchandise, or services from house to house or upon the public street or right-of-way.
2. “Solicitor” means any person who solicits or attempts to solicit from house to house or upon the public street or right-of-way any contribution or donation or any order for goods, services, subscriptions, or merchandise to be delivered at a future date.
3. “Panhandler” means any solicitation made in person requesting an immediate donation of money or other thing of value. Purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, is a donation for the purpose of this section. Panhandling does not include passively standing or sitting, without addressing any solicitation to any specific person; however, holding a sign, prop, or other visual aid that a reasonable person would understand to be a request for assistance while passively standing or sitting is solicitation.
4. “Transient merchant” means any person who engages in a temporary or itinerant merchandising business and in the course of such business hires, leases, or occupies any building or structure whatsoever, or who operates out of a vehicle which is parked anywhere within the City limits. Temporary association with a local merchant, dealer, trader or auctioneer, or conduct of such transient business in connection with, as a part of, or in the name of any local merchant, dealer, trader, or auctioneer does not exempt any person from being considered a transient merchant.

**122.02 PERMIT REQUIRED.** Any person engaging in peddling, soliciting, or panhandling or in the business of a transient merchant in the City without first obtaining a permit as herein provided is in violation of this chapter.

**122.03 APPLICATION FOR PERMIT.** An application in writing shall be filed with the Chief of Police for a permit under this chapter. The applicant shall provide the following information. :

1. Applicant’s name;
2. Permanent and local address and contact information;

3. Business address, if any;
4. Physical description and a government-issued photo I.D.;
5. Applicant's employer, if any, and the employer's address;
6. The nature of the applicant's business;
7. The last three places of such business;
8. The length of time sought to be covered by the permit;
9. Whether applicant has been listed on any sex offender registry within the last five (5) years; and
10. Whether applicant has had a peddler, solicitor, panhandling, or transient merchant permit suspended, revoked, or denied by this or any other city in the last five (5) years and the reasons therefor.

An application fee in an amount fixed by resolution of the Council shall be paid at the time of filing such application to cover the cost of investigating the facts stated therein. There is no application fee for permits in conjunction with City sponsored events or activities.

*(Ord. 16-04 – Aug. 16 Supp.)*

**122.04 PERMIT FEES.** Permit fees in amounts fixed by resolution of the Council shall be paid to the Chief of Police or his/her designee prior to the issuance of any permit. There is no permit fee in conjunction with City sponsored events or activities.

*(Ord. 16-04 – Aug. 16 Supp.)*

**122.05 BONDS REQUIRED.**

1. Before a permit under this chapter is issued to a transient merchant, an applicant shall provide to the Chief of Police evidence that the applicant has filed a bond with the Secretary of State in accordance with Chapter 9C of the *Code of Iowa*.
2. At the time of filing of the application and as a part thereof, any applicant without a place of residence or place of business in the State of Iowa shall file with the Chief of Police a bond, with sureties to be approved by the Chief of Police, in a penal sum of \$5,000.00 running to the City, for the use and benefit of any purchaser of any merchandise from such transient merchant who might have a cause of action of any nature arising from or out of such sale against the applicant or applicant's employer. The bond is to be further conditioned for the payment of any fines that may be assessed by any court against the applicant for a violation of this chapter, and further conditioned for the payment and satisfaction of any and all causes of action against the applicant commenced within one year from the date of sale of any merchandise. The aggregate liability of the surety for all fines and causes of action shall not exceed the principal sum of the bond.

**122.06 PERMIT ISSUED.** The Chief of Police, upon review of the permit application with the police department and any other appropriate department or agency, shall determine whether a permit will be issued to the applicant. A waiting period of not less than three (3) business days from the date of the application shall be in effect to provide sufficient time for the fact-gathering process to be completed in a reasonable period. In making his/her decision, the following factors shall be considered:

1. The information in the application is found to be correct.
2. All information required has been provided and the application is complete.
3. The required bond is paid.
4. Prior peddler, solicitor, panhandler, or transient merchant permits issued to applicant and whether any such permits were suspended or revoked.

If the determination is made that the application satisfies the above factors and the applicant is not a risk to public safety, a permit shall be issued upon payment of the bond and any other fees set forth in the schedule of fees adopted by the City Council by resolution. A denial of a permit may be appealed in the same manner and under the same procedures stated at Section 122.14 of this chapter.

**122.07 DISPLAY OF PERMIT.** Each peddler, solicitor, and panhandler shall keep such permit in possession at all times while doing business in the City and shall, upon the request of prospective customers, exhibit the permit as evidence of compliance with all requirements of this chapter. Each transient merchant shall display publicly such merchant's permit in the merchant's place of business.

**122.08 PERMIT NOT TRANSFERABLE.** Permits issued under the provisions of this chapter are not transferable in any situation and are to be applicable only to the person filing the application.

**122.09 TIME RESTRICTION.** All peddler, solicitor, and panhandler permits shall provide that said permits are in force and effect only between the hours of 9:00 a.m. and 9:00 p.m.

**122.10 REVOCATION OF PERMIT.** After notice and hearing, the Chief of Police may revoke any permit issued under this chapter for the following reasons:

1. **Fraudulent Statements.** The permit holder has made fraudulent statements in the application for the permit or in the conduct of the business.
2. **Violation of Law.** The permit holder has violated this chapter or has otherwise conducted the business in an unlawful manner.
3. **Endangered Public Welfare, Health, or Safety.** The permit holder has conducted the business in such manner as to endanger the public welfare, safety, order, or morals.

**122.11 NOTICE.** The permit holder shall be served with written notice containing particulars of any complaint against the permit holder, the ordinance provisions or State statutes allegedly violated, and the date, time, and place for hearing on the matter.

**122.12 HEARING.** The Chief of Police, with assistance of the City Attorney, shall conduct a hearing at which the permit holder shall be present to determine the truth of the acts alleged in the complaint and notice. Should the permit holder, or authorized representative, fail to appear without good cause, the Chief of Police may use the failure to appear as evidence in support of revocation of the permit.

**122.13 RECORD AND DETERMINATION.** The Chief of Police, with advice of the City Attorney, shall make and record findings of fact and conclusions of law, and shall revoke a permit when the record establishes evidence of a violation of this chapter and/or State law.

**122.14 APPEAL.** If the Chief of Police revokes or refuses to issue a permit, there shall be a record setting forth the reasons for said decision. The permit holder or applicant shall have a right to a hearing before the Council at one of the next two regular meetings. The Council may reverse, modify, or affirm the decision of the Chief of Police, or his/her designee, by a majority vote of the Council members present.

**122.15 EFFECT OF REVOCATION.** Revocation of any permit shall bar the permit holder from being eligible for any permit under this chapter for a period of at least one year from the date of the revocation.

**122.16 REBATES.** No permit holder shall be entitled to a rebate of part of the fee paid if the permit is revoked or surrendered before it expires.

**122.17 PERMIT EXEMPTIONS.** The following are excluded from the application of this chapter.

1. Newspapers. Persons delivering, collecting for, or selling subscriptions to newspapers.
2. Club Members. Members of local civic and service clubs, Boy Scout, Girl Scout, 4-H Clubs, Future Farmers of America, and similar organizations.
3. Local Residents and Farmers. Local residents and farmers who offer for sale their own products.
4. Students. Students representing area schools or school districts conducting projects sponsored by organizations recognized by the school.
5. Route Sales. Route delivery persons who only incidentally solicit additional business or make special sales.
6. Resale or Institutional Use. Persons customarily calling on businesses or institutions for the purposes of selling products for resale or institutional use.
7. Charitable and Nonprofit Organizations. Authorized representatives of charitable or nonprofit organizations operating under the provisions of Chapter 504 of the *Code of Iowa*. All such organizations seeking to act as a peddler, solicitor, panhandler, and/or transient merchant are required to submit in writing to the Chief of Police the name and purpose of the cause for which such activities are sought, names and addresses of the officers and directors of the organization, the period during which such activities are to be carried on, and whether any commissions, fees or wages are to be charged by the solicitor and the amount thereof. If it is found that the organization is a bona fide charity or nonprofit organization, such charity or organization shall be issued, free of charge, a permit. In the event the permit is denied, the authorized representatives of such charity or organization may appeal the decision to the Council, as provided in Section 122.14 of this chapter.
8. City Employees acting in an extension of their job duties and with the written authorization of their employer. Permits are required for each type of permit use, however individual City employees are not required to complete individual permits.
9. Temporary Food and Beverage Facilities. Persons who have a valid temporary food and beverage facility permit as defined by City ordinance.

10. Community Event Center Lessee. Persons who possess or are authorized merchants of the Community Event Center lessee while on the physical property or immediately adjacent to the Community Event Center.

*(Subsections 9-10 – Ord. 18-01 – Apr. 18 Supp.)*

**122.18 PROHIBITED ACTS.** It is unlawful for any person, with or without a permit under this chapter, to conduct peddling, solicitation, panhandling or transient merchant business:

1. With any person situated in a motor vehicle upon any public street, alley, driveway access or public way.
2. Upon any part of the public right-of-way and/or along a parade route on the day of any permitted parade.
3. By blocking the path of the person solicited along a street.
4. By doing business or attempting to do business upon any property on which has a posted notice prohibiting peddling, solicitation or panhandling.
5. By using profane or abusive language, either during the solicitation or following a refusal.
6. By panhandling in a group of three or more persons.
7. While under the influence of alcohol or any illegal narcotic or controlled substance.
8. By any statement, gesture or other communication, which a reasonable person in the situation of the person solicited, would perceive to be a threat, harassment, intimidation or coercion.

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## CHAPTER 123

# HOUSE MOVERS

123.01 House Mover Defined  
123.02 Permit Required  
123.03 Application  
123.04 Bond Required  
123.05 Insurance Required  
123.06 Permit Fee

123.07 Permit Issued  
123.08 Public Safety  
123.09 Time Limit  
123.10 Removal by City  
123.11 Protect Pavement  
123.12 Overhead Wires

**123.01 HOUSE MOVER DEFINED.** A “house mover” means any person who undertakes to move a building or similar structure upon, over or across public streets or property when the building or structure is of such size that it requires the use of skids, jacks, dollies, or any other specialized moving equipment.

**123.02 PERMIT REQUIRED.** It is unlawful for any person to engage in the activity of house mover as herein defined without a valid permit from the City for each house, building or similar structure to be moved.

**123.03 APPLICATION.** An application for a house mover’s permit shall be made in writing to the Clerk. The application shall include:

1. Name and Address. The applicant’s full name and address and if a corporation the names and addresses of its principal officers.
2. Building Location. An accurate description of the present location and future site of the building or similar structure to be moved.
3. Routing Plan. A routing plan approved by the Chief of Police, Public Works Director, and public utility officials. The route approved shall be the shortest route compatible with the greatest public convenience and safety.

**123.04 BOND REQUIRED.** The applicant shall post with the Clerk a penal bond in the minimum sum of five thousand dollars (\$5,000.00) issued by a surety company authorized to issue such bonds in the State. The bond shall guarantee the permittee’s payment for any damage done to the City or to public property, and payment of all costs incurred by the City in the course of moving the building or structure.

**123.05 INSURANCE REQUIRED.** Each applicant shall also file a certificate of insurance indicating that the applicant is carrying public liability insurance in effect for the duration of the permit covering the applicant and all agents and employees for the following minimum amounts:

1. Bodily Injury – \$250,000 per person; \$1,000,000 per accident.
2. Property Damage – \$50,000 per accident.

**123.06 PERMIT FEE.** A permit fee in an amount fixed by resolution of the Council shall be payable at the time of filing the application with the Clerk. A separate permit shall be required for each house, building or similar structure to be moved.

**123.07 PERMIT ISSUED.** Upon approval of the application, filing of bond and insurance certificate, and payment of the required fee, the Clerk shall issue a permit.

**123.08 PUBLIC SAFETY.** At all times when a building or similar structure is in motion upon any street, alley, sidewalk or public property, the permittee shall maintain flag persons at the closest intersections or other possible channels of traffic to the sides, behind and ahead of the building or structure. At all times when the building or structure is at rest upon any street, alley, sidewalk or public property the permittee shall maintain adequate warning signs or lights at the intersections or channels of traffic to the sides, behind and ahead of the building or structure.

**123.09 TIME LIMIT.** No house mover shall permit or allow a building or similar structure to remain upon any street or other public way for a period of more than twelve (12) hours without having first secured the written approval of the City.

**123.10 REMOVAL BY CITY.** In the event any building or similar structure is found to be in violation of Section 123.09 the City is authorized to remove such building or structure and assess the costs thereof against the permit holder and the surety on the permit holder's bond.

**123.11 PROTECT PAVEMENT.** It is unlawful to move any house or building of any kind over any pavement, unless the wheels or rollers upon which the house or building is moved are at least one inch in width for each 1,000 pounds of weight of such building. If there is any question as to the weight of a house or building, the estimate of the City Engineer or Mayor as to such weight shall be final.

**123.12 OVERHEAD WIRES.** The holder of any permit to move a building shall see that all telephone, cable television and electric wires and poles are removed when necessary and replaced in good order, and shall be liable for the costs of the same.

## CHAPTER 124

# PAWNBROKERS

124.01 Definitions	124.12 Articles of Clothing
124.02 Location of Pawnbroker Businesses	124.13 Searching for Stolen Property
124.03 Compliance with Chapter Provisions	124.14 Examination of Premises by Officers
124.04 License Fees	124.15 Hours of Operation
124.05 License	124.16 Disposing of Stolen Goods or Goods for Which There Is an Adverse Claim
124.06 Expiration Date of License	124.17 Grounds for Revocation of License
124.07 Separate License for Each Place of Business	124.18 Revocation Procedure
124.08 Nonpayment of License Fee Misdemeanor	124.19 Effect of Revocation
124.09 Records	124.20 Summary Suspension
124.10 Daily Reports to Chief of Police	
124.11 Prohibited Acts	

**124.01 DEFINITIONS.** Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms, for the purpose of this chapter, have the meanings given in this section:

1. “Negative police report” means a report or review compiled by the Chief of Police, which discloses a criminal record of a felony or any conviction under this chapter two or more times in a calendar year or a conviction under Chapter 714 of the *Code of Iowa*.
2. “Pawnbroker” means every person who makes loans or advancements upon pawn, pledge, or deposit of personal property or who receives actual possession of personal property as security for loans, with or without a mortgage or bill of sale therein, or who, by advertisement, sign, or otherwise, holds himself or herself out as a pawnbroker.
3. “Positive police report” means a report or review compiled by the Chief of Police, which does not disclose a criminal record of a felony or any conviction under this chapter two or more times in a calendar year or a conviction under Chapter 714 of the *Code of Iowa*.

**124.02 LOCATION OF PAWNBROKER BUSINESSES.**

1. Locations. No person, whether as principal or agent, clerk or employee, either for such person or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any pawn shop businesses in the following locations.
  - A. In any residential area in the City, including upon any sidewalk abutting upon such residential area;
  - B. Within 1,000 feet of any residentially zoned or used property or any property designated on the City’s Comprehensive Plan as residentially oriented.
  - C. Within 1,000 feet of any parcel of real property upon which is located any of the following facilities:
    - (1) An elementary school, junior high school, or senior high school;
    - (2) A church which conducts religious programs;

- (3) Park or recreational facilities operated and approved by the City, County, the Polk County Conservation Board, the State of Iowa, or a not-for-profit institution;
- (4) Federal, State, County, City, or special district governmental offices;
- (5) Supermarket or convenience market primarily engaged in the sale of food;
- (6) Restaurant, fast-food, or food establishment catering to family trade.

D. Within 1,000 feet of any other pawn shop or delayed deposit service business, as defined in Section 124.01 and 167.06(4).

2. **Measurement of Distance.** The distance between any two pawn shops and/or delayed deposit services businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any pawn shop and delayed services businesses and any religious institution, school or public park, government office, supermarket, restaurant, or any property designated for residential use or used for residential purposes shall be measured in a straight line without regard to intervening structures, from the closest property line of the pawn shop or delayed deposit service business to the closest property line of the religious institution, school, public park, government office, supermarket, restaurant, or the property designated for residential use or used for residential purposes.

3. **Restrictions.** Visibility into the store shall be maintained by utilizing clear, transparent glass on all windows and doors and by keeping all windows free of obstructions for at least three (3) feet into the store. Products may be displayed for sale in the window provided that the display, including signage, does not occupy more than 30 percent of the window area. Interior and exterior bars, grills, mesh, or similar obstructions, whether permanently or temporarily affixed, shall not cover any exterior door or window.

### **124.03 COMPLIANCE WITH CHAPTER PROVISIONS.**

1. No person shall engage in or carry on the business of pawnbroker in the City without first paying the fee and procuring the license provided for in this chapter, nor shall any person carry on such business in any manner contrary to the provisions of this chapter.

2. Every clerk, servant, agent, or employee of any pawnbroker must be at least 18 years old and shall be subject to and bound by all provisions of this chapter and liable for the same penalties and to the same extent as such person's employer or principal for any violation thereof.

**124.04 LICENSE FEES.** Any person desiring a pawnbroker license under this chapter shall make a written, signed application to the Clerk on forms provided by the Clerk. All annual fees for licenses under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such license fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective license fees shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours.

**124.05 LICENSE.**

1. Criteria Considered. Upon receipt of a pawnbroker license application, the Clerk shall forward a copy of the application to the Chief of Police, who shall review the application. The applicant shall furnish such evidence as may reasonably be required in support of the statements set forth in the application. The Chief of Police shall report to the Clerk within thirty (30) days of receipt of the application considering (but not limited to) the following criteria:

A. The Chief of Police shall determine whether the applicant or any of the applicant's agents or employees who will be charged with receiving or distributing property have been convicted of a felony. However, if the conviction of a felony occurred more than five years before the application for a pawnbroker license, and if such person's rights of citizenship have been restored by the Governor, such conviction shall not be a bar to obtaining a pawnbroker license.

B. The Chief of Police shall determine whether the applicant has truthfully reported all relevant facts within the pawnbroker application.

C. The Chief of Police shall determine if the applicant has such financial standing and good reputation to indicate that he or she will comply with all the laws of the State and City.

2. Issuance.

A. Upon receipt of a positive police report and the appropriate fees, the Clerk shall approve the application if the applicant has fully complied with all of the requirements of this chapter, and the Clerk shall thereupon issue a pawnbroker license to the applicant and forward a copy of such to the Chief of Police. The license shall state the name and place of residence of the person licensed, the business to be transacted and the place where it is to be carried on, and the date of issuance and expiration of the license.

B. In the event that the Clerk determines that any applicant for a new license or any person seeking a renewal license has not fully complied with all of the requirements of this chapter, or that the Chief of Police returns a negative report, or that the applicant has falsified his or her application, then the Clerk shall, after consultation with the City Attorney, advise the City Council of the basis for questioning the applicant's qualifications, and the procedures for notice and hearing.

**124.06 EXPIRATION DATE OF LICENSE.** All pawnbrokers' licenses shall expire one year after the date of issue.

**124.07 SEPARATE LICENSE FOR EACH PLACE OF BUSINESS.** Any person conducting several or separate places of business shall pay the license fee and procure a license for each place of business. The license shall be sufficient for all clerks, agents, servants, or employees engaged or employed at the place named in the license.

**124.08 NONPAYMENT OF LICENSE FEE MISDEMEANOR.** When any person shall engage in business as a pawnbroker without paying the fee provided therefor and imposed in this chapter, such person shall be guilty of a misdemeanor. Each day said violation continues shall be considered a separate offense.

**124.09 RECORDS.**

1. Every pawnbroker shall keep a book in which he or she shall accurately and legibly enter, in ink, in the English language, at the time of purchasing or receiving any personal property:
  - A. The name of the person from whom the property is purchased or received, the person's place of residence, the person's date of birth, a photo identification of the person, the person's driver's license number, the state of issue of the driver's license, and the expiration date of the driver's license;
  - B. A particular, detailed, and accurate description of each article, including any serial number;
  - C. The estimated value of each article;
  - D. The amount paid, advanced, or loaned for the article;
  - E. The date and hour of transaction;
  - F. The date and hour when the article is to be redeemed or bought back;
  - G. Any mortgage or bill of sale taken, or receipt or pawn ticket given;
  - H. When, and by whom, an article was brought back or redeemed;
  - I. When, to whom, and how an article was disposed of, if not redeemed.
2. The license and the book shall, at all times, be open to examination or inspection by any police officer.
3. When the pawn log sheets are complete, or upon demand from the Chief of Police, the licensee shall surrender the original sheets to the Chief of Police, who shall provide a copy of the sheets to the licensee; the originals shall remain the property of the City. The licensee shall also maintain a record of the name and residential address of any person redeeming an article of property, the date of such transaction and a description of the article redeemed. In the event property is disposed of other than by redemption, the licensee shall record a description of the property, how disposed, and the name and address to whom the article was transferred. Such redemption and purchase records shall be maintained by the licensee for one year from the date of transaction and shall be at all times open to examination and recordation by the Chief of Police.
4. Every pawnbroker shall require each person from whom any property is purchased or received to print and sign his or her name on any inventory sheet provided by the Chief of Police. The inventory sheet shall be the property of the City.
5. Any person is guilty of a misdemeanor who:
  - A. Fails to keep or maintain such records as required by this chapter;
  - B. Fails to make the required entries in such records;
  - C. Intentionally or knowingly makes any false or unintelligible entry, or any entry which he or she has reason to believe is untrue, or deletes any entry;
  - D. Fails to make the inquiries necessary to enable the person to make such entries or any of them;
  - E. Fails to produce the license, book, or log sheets when requested by a police officer;

- F. Destroys, alters, or negligently permits such book, records, or log sheets to be destroyed, damaged, altered, rendered unintelligible, or lost;
- G. Fails to require any person to show physical proof of that person's identification.

**124.10 DAILY REPORTS TO CHIEF OF POLICE.** Every pawnbroker who purchases or receives from a person any article of jewelry or precious stones; any sheet copper or brass; copper or brass wire; lead (sheet or pipe); zinc (sheet or pipe); Citizens Band radio, car radio, stereo, or electronic accessory; nickel or nickel-plated articles; silver or silver-plated articles; car or railroad brasses; any guns, pistols, or rifles; any motorcycle, bicycle, automobile, or automobile tire, part, or accessory thereto; shall within 24 hours after purchasing or receiving such articles report the same in writing to the Chief of Police, stating fully and correctly:

1. The name, driver's license number and state of issuance, and residence of the person from whom the article was purchased or received;
2. A full and accurate description of each article, including any serial numbers;
3. The value or amount paid for each article.

**124.11 PROHIBITED ACTS.** No licensee or any agent or employee purchasing or receiving any article or property shall:

1. Receive any property without first viewing a form of identification containing a photograph of the person identified.
2. Melt, alter, destroy, dismantle, redeem, remove from the licensed premises, or otherwise dispose of such article, without making the report required in Section 124.10, or within 15 days after the receipt and report of any property is made, except upon written permission from the Chief of Police. Every bicycle, motorcycle, or automobile purchased or received shall be kept intact for a period of 15 days. All articles must remain within the City at the place of business during the 15-day period provided for herein.
3. Purchase or receive any property from any person under the age of eighteen without his or her parent or guardian being present at the time of the transaction and without receiving their written consent, a copy of which must be submitted along with the records required by Section 124.09 of this chapter.
4. Purchase or receive any property or surrender any property from 6:00 p.m. to 8:00 a.m. Monday through Saturday, and 6:00 p.m. Saturday through 8:00 a.m. Monday.
5. Conceal, secrete, or destroy for the purpose of concealing, any article purchased or received for the purpose of preventing identification.
6. Deface, alter, or remove any serial number or identifying marks from an article in his or her possession.
7. Take possession of defaced or altered property as described in subsection 6 above.
8. Sell, dispose of, change in its form, alter, or mutilate in any way any article of jewelry within the time fixed for sale or redemption.
9. Purchase or receive any personal property from any intoxicated person or person who appears to be under the influence of any drug.

10. Sell or otherwise dispose of any article during the time any person has the right to buy back or redeem the article.

**124.12 ARTICLES OF CLOTHING.** All articles of clothing taken in pawn or purchased outright shall be held in the same condition in which they were received for fifteen (15) days following and during this period shall not be cleaned, repaired, dyed, or altered in any manner.

**124.13 SEARCHING FOR STOLEN PROPERTY.** Whenever any police officer has reason to believe that any pawnbroker has in his or her possession or on his or her premises any stolen property, the officer shall have the right and duty to enter and search the premises of such person for the purpose of discovering stolen property.

**124.14 EXAMINATION OF PREMISES BY OFFICERS.** No pawnbroker or any other person shall refuse, resist, or attempt to prevent any police officer, with or without warrant, from examining the premises occupied by the pawnbroker for the purpose of discovering stolen property.

**124.15 HOURS OF OPERATION.** No pawnbroker or any person shall conduct business on Sunday or at any hour other than between 6:00 a.m. and 6:00 p.m.

**124.16 DISPOSING OF STOLEN GOODS OR GOODS FOR WHICH THERE IS AN ADVERSE CLAIM.** No pawnbroker shall sell, or permit to be redeemed, or otherwise dispose of any article which he or she has reason to believe has been stolen, or which is adversely claimed by any person, or which he or she has been notified not to sell, release, or otherwise dispose of by any police officer without first obtaining written permission to do so from the Chief of Police.

**124.17 GROUNDS FOR REVOCATION OF LICENSE.** The following reasons shall be grounds for the revocation of any license issued under the provisions of this chapter:

1. Fraud. The licensee has made fraudulent or untrue statements in the application for a license.
2. Violation. The licensee has violated any of the provisions of this chapter.
3. Operation. The licensee has conducted the business in such a manner as to endanger the public welfare, health, safety, order, or morals.

**124.18 REVOCATION PROCEDURE.** When it appears to the Clerk or the Council that grounds for the revocation of a license may exist, the following procedure shall be followed:

1. Investigation. The Council or the Clerk shall direct the Chief of Police to make an investigation concerning the alleged grounds for revocation.
2. Report to Council. The Chief of Police shall make such investigation and report the findings in writing to the Council.
3. Determination. The Council shall make a determination as to whether probable cause for revocation exists.
4. Hearing. If the Council finds that probable cause for revocation exists, it shall set a date, time, and place for a hearing on the matter and shall direct the City Attorney to prepare the complaint against the licensee. The complaint shall state the alleged grounds for the revocation and the date, time, and place for a hearing on the matter.



5. Service of Complaint. The complaint shall be served upon the licensee by certified mail, return receipt requested, not less than ten (10) days prior to the date set for a hearing on the matter.
6. Conduct of Hearing. The Council shall conduct the hearing at which the licensee shall be present. The purpose of the hearing shall be to determine the truth of the facts alleged in the complaint. Should the licensee or the licensee's authorized representative fail to appear without good cause, the Council may proceed to a determination on the complaint.
7. Rights of Licensee. The licensee shall have the right to be represented by counsel, to testify and present witnesses in his or her own behalf and to cross-examine adverse witnesses.
8. Evidence. The Council shall admit only reliable and substantial evidence into the revocation proceeding and shall give all admitted evidence its natural probative value.
9. Findings. The Council shall make and record findings of fact and conclusions of law and shall revoke a license under this section only when, upon review of the entire record, it finds substantial evidence of a violation of this chapter.

**124.19 EFFECT OF REVOCATION.** Revocation of a license shall bar the licensee from being eligible for any license under this chapter for a period of three (3) years from the date of revocation.

**124.20 SUMMARY SUSPENSION.** The Chief of Police may summarily suspend any license issued under this chapter if, after investigation, the Chief of Police finds reasonable grounds to believe that the licensee's establishment poses an immediate hazard to the health or safety of the community. Such suspension shall be effective upon the service of a written notice of suspension upon the licensee. Such service may be accomplished by personal service or by certified mail, return receipt requested. The Chief of Police shall forthwith report such suspension to the Council and the Council shall forthwith commence revocation proceedings in accordance with the provisions of Section 124.18 of this chapter. Such suspension shall remain effective until the completion of said revocation proceedings.

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## CHAPTER 125

# ADULT ENTERTAINMENT FACILITIES

125.01 Purpose

125.02 Definitions

125.03 Location of Adult Bookstores, Movie Theaters,  
Nightclubs, Motels, Adult Businesses

125.04 Adult Magazines and Publications to be Covered

125.05 Enforcement

125.06 Permitted Areas

**125.01 PURPOSE.** It is recognized that adult entertainment facilities have certain objectionable side effects which render these adult facilities incompatible with residential and family-oriented uses, when the adult facilities are located directly adjacent to such uses. This chapter seeks to ensure that residential or family-oriented uses and adult entertainment facilities will be located in separate and compatible locations. It is a subject of legitimate concern for the City to use its zoning power to preserve the quality of life, preserve the City's neighborhoods, and to meet effectively the increasing encroachments of urbanization upon the quality of life within the City.

**125.02 DEFINITIONS.** As used in this chapter, the following terms have the following meanings:

1. "Adult entertainment facilities" include but are not limited to the following:
  - A. "Adult bookstore" means an establishment having as the primary portion of its stock in trade, books, magazines, and other periodicals which are substantially devoted to the depiction of specified sexual activities and specified anatomical areas.
  - B. "Adult movie theater" means any theater, arcade, or similar establishment where an enclosed building or open-air facility is used for presenting material in the form of motion picture film, video tape, or other similar means which is substantially devoted to the depiction of specified sexual activities and specified anatomical areas for observation by persons therein.
  - C. "Adult nightclub" means any club, cabaret, nightclub, bar, restaurant, or similar establishment where an enclosed building or open-air facility is used for live performance which is characterized by the exposure of specified sexual activities and specified anatomical areas for observation by persons therein.
  - D. "Adult motel" means a motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
  - E. "Adult business" means any business or establishment where a specified sexual activity or a specified anatomical area is displayed.
2. "Specified anatomical areas" means:
  - A. Less than completely and opaquely covered:

- (1) Human genitals;
  - (2) Human buttocks;
  - (3) Human female breast below a point immediately above the top of the areola; and
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
3. “Specified sexual activities” means:
- A. Human genitals in a state of sexual stimulation or arousal;
  - B. Acts of human masturbation, sexual intercourse, or sodomy;
  - C. Fondling or other touching of human genitals, pubic region, buttock, or female breast; and
  - D. Minors engaged in a prohibited sexual act or simulation of a prohibited sexual act.

**125.03 LOCATION OF ADULT BOOKSTORES, MOVIE THEATERS, NIGHTCLUBS, MOTELS, ADULT BUSINESSES.**

1. Locations. No person, whether as principal or agent, clerk or employee, either for such person or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any adult bookstore, adult movie theater, adult nightclub, adult motel, or adult business in the following locations.
- A. In any residential area in the City, including upon any sidewalk abutting upon such residential area;
  - B. Within 2,000 feet of any residentially zoned or used property, or any property designated on the City’s Comprehensive Plan as residentially oriented.
  - C. Within 2,000 feet of any parcel of real property upon which is located any of the following facilities:
    - (1) An elementary school, junior high school, or senior high school;
    - (2) A church which conducts religious programs;
    - (3) Park or recreational facilities operated and approved by the City, County, the Polk County Conservation Board, the State of Iowa, or a not-for-profit institution;
    - (4) Federal, State, County, City, or special district governmental offices;
    - (5) Supermarket or convenience market primarily engaged in the sale of food;
    - (6) Restaurant, fast-food, or food establishment catering to family trade.
  - D. Within 2,000 feet of any other adult entertainment facility, as defined in Section 125.02.

2. Measurement of Distance. The distance between any two adult entertainment facilities shall be measured in a straight line, without regard to intervening structures from the closest exterior structural wall of each business. The distance between any adult entertainment facilities and any religious institution, school or public park, government office, supermarket, restaurant or any property designated for residential use or used for residential purposes shall be measured in a straight line without regard to intervening structures, from the closest property line of the adult entertainment facilities to the closest property line of the religious institution, school, public park, government office, supermarket, restaurant, or the property designated for residential use or used for residential purposes.

3. Viewing Area.

A. It is unlawful to maintain, operate or manage or permit to be maintained, operated or managed any adult theater or arcade in which the viewing areas are not visible from a continuous main aisle or are obscured by a curtain, door, wall, or other enclosure. For purposes of this section, "viewing area" means the area where a patron or customer would ordinarily be positioned while watching the performance, picture, show, or film.

B. It is unlawful for more than one person at a time to occupy any individually partitioned viewing area or booth.

C. It is unlawful to create, maintain, or permit to be maintained any holes or other openings between any two booths or individual viewing areas for the purpose of providing viewing or physical access between the booth or individual viewing area.

D. The opening to the viewing area shall be from the main aisle.

**125.04 ADULT MAGAZINES AND PUBLICATIONS TO BE COVERED.** The display of adult magazines and publications in a public place, other than a public place from which minors are excluded, is prohibited unless a device commonly known as a blinder rack is placed in front of such material, so that the lower two-thirds of the material is not exposed to view. As used herein, "public place" includes grocery stores, convenience stores, drug stores, supermarkets, and other retail establishments unless minors are excluded therefrom by law.

**125.05 ENFORCEMENT.** In case any building, structure, or sign is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building structure, sign, or land is used in violation of this chapter, the City Attorney, in addition to other remedies, shall institute any proper action or proceedings in the name of the City to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of the building, structure or land, or to prevent any illegal act, conduct business or use in or about the premises.

**125.06 PERMITTED AREAS.** The areas in the City in which adult entertainment facilities are permitted are defined in Section 125.03.

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## CHAPTER 126

# PUBLIC DANCE HALLS

126.01 Definitions	126.11 Display of License
126.02 License Required	126.12 Expiration Date of License
126.03 Application for License	126.13 Rebates Prohibited
126.04 Material to Accompany Application	126.14 Transfer Prohibited
126.05 Application for License; Building Requirements	126.15 Rules and Regulations
126.06 Inspection Fee	126.16 Hours of Operation
126.07 Investigation	126.17 Grounds for Revocation
126.08 License; Action by Clerk	126.18 Revocation Procedure
126.09 License Fee	126.19 Effect of Revocation
126.10 Form of License	126.20 Summary Suspension

**126.01 DEFINITIONS.** The following words and phrases, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

1. “Application” means a formal written request for the issuance of a license, supported by a verified statement of facts.
2. “Good moral character” means a person who meets all of the following requirements:
  - A. Such person shall have such financial standing and be of such good reputation as will satisfy the Clerk that such person will comply with the provisions of this chapter and all other laws and ordinances applicable to such person’s operations.
  - B. Such person shall not possess a federal gambling stamp.
  - C. Such person shall not have been convicted of a felony or an indictable misdemeanor. However, such conviction shall not prevent the issuance of a license if: (i) the conviction occurred more than five years prior to the date of application for a license; (ii) the rights of citizenship have been restored to such person; and (iii) the Clerk determines that such person is of good moral character notwithstanding such conviction.

If such person is a corporation, firm, co-partnership, or association, the foregoing requirements shall apply to each of the officers, directors, partners, and general managers thereof and to any person who owns or controls ten percent or more of the ownership or profits thereof.

3. “License” means a license by the Clerk authorizing the holding of the license to operate a public dance hall.
4. “Licensee” means the person to whom a license has been issued in accordance with the provisions of this chapter.
5. “Open to the public” means a place in or at which a public dance is conducted for, engaged in, or performed by the general public and to which the general public is admitted or in attendance. The term “open to the public” does not include the following:
  - A. A place that the general public is not free to enter and to which admission is restricted by reason of and to members of a club, fraternal organization, or religious or educational group;

- B. A place where dancing is conducted for the primary purpose of instruction, where no one is permitted to dance except regularly enrolled students and employed instructors and where no beer is sold or available on or about the premises where the dancing is conducted.
6. “Premises,” when applied to locations where public dancing is authorized by license, means all rooms or enclosures encompassed by such license.
7. “Public dance hall” means a place which is open to the public in or at which public dancing is conducted for, engaged in, or performed by the general public and to which the general public is admitted or in attendance. The term “public dance hall” may include the following:
- A. A place whose operator holds a license issued in accordance with the provisions of *Code of Iowa* Chapter 137F.
- B. A place whose operator holds a license or permit issued in accordance with Chapter 120 of this Code and the provisions of *Code of Iowa* Chapter 123.

**126.02 LICENSE REQUIRED.** No person shall either operate a public dance hall or permit or allow a public dance to be conducted within the City unless such person holds a valid license issued in accordance with the provisions of this chapter.

**126.03 APPLICATION FOR LICENSE.** An application for a license shall be filed with the Clerk and shall contain the following:

1. Name of Applicant. The full name of the applicant, other names by which the applicant has been known, and the name of applicant’s spouse, if any.
2. Residence of Applicant. A list of the residences at which the applicant has resided in the five (5) years immediately preceding the date of the application and the length of time at each such residence.
3. Citizenship. A statement that the applicant is a citizen of the State of Iowa.
4. Birth/Naturalization Date. The place and date of birth of the applicant and, if the applicant is a naturalized citizen, the time and place of such naturalization.
5. Location. The location of the place or building where the applicant intends to operate.
6. Building Owner. The name of the owner of the place or building where the applicant intends to operate and, if the applicant is not the owner thereof, a statement that the applicant is the actual lessee thereof.
7. Code Compliance. A statement that the place or building where the applicant intends to operate conforms with all of the requirements of the *Code of Iowa* and of this Code of Ordinances applicable thereto and that the same is a safe and proper place or building.
8. Seating Available. A statement that the place or building where the applicant intends to operate is and will continue to be equipped with sufficient tables and seats to accommodate 25 persons at one time.

If the applicant is a corporation, firm, co-partnership, or association, the requirements of subsections 1 through 4, inclusive, shall apply to each of the officers, directors, partners, and general managers thereof and to any person who owns or controls ten percent or more of the ownership or profits thereof. If the applicant is a corporation, the application shall contain a



statement showing that the applicant is incorporated under the laws of the State of Iowa and is in good standing as of the date of the application.

**126.04 MATERIAL TO ACCOMPANY APPLICATION.** In addition to the foregoing, each application shall be accompanied by the following:

1. Plot Diagram. A diagram of the lot on which the place or building where the applicant intends to operate is located which shall show: (i) the dimensions of the lot; (ii) the location and identification of adjacent streets; (iii) the location of adjacent sidewalks; (iv) the location of access driveways; (v) front yard, side yard, and rear yard dimensions as computed in accordance with the provisions of the Zoning Ordinance; (vi) the location of any off-street parking facilities available to the applicant; and (vii) the location and dimensions of all buildings and accessory structures located on the lot.
2. Interior Diagram. A diagram of the interior of the place or building where the applicant intends to operate which shall show: (i) the location and dimensions of all rooms and enclosures in which the applicant intends to conduct public dances; (ii) the location and dimensions of any restroom, kitchen, storage area, or other room or enclosure owned or leased by the applicant which will be used in conjunction with the premises for which the license is sought; and (iii) the location of all exits available for use by the general public.
3. When Required. The foregoing requirements shall apply to all applications for new licenses and to all applications for renewal of licenses whenever any changes have been made in the place or building for which the renewal is sought which would require the issuance of a building permit under the provisions of the Building Code.

**126.05 APPLICATION FOR LICENSE; BUILDING REQUIREMENTS.** At the time an application for a license is filed, the place or building where the applicant intends to operate shall meet the following requirements:

1. Safety. The same shall conform to all of the requirements of the *Code of Iowa* and ordinances of the City applicable thereto and the same shall be a safe and proper place or building.
2. Church or School. If the place or building where the applicant intends to operate fronts on the same street as a church or school, said place or building shall be at least 300 feet from said church or school. If the place or building where the applicant intends to operate fronts on a different street than a church or school, said place or building shall be at least 150 feet from said church or school. In determining the distances set forth herein, measurements shall be taken on a direct line from the nearest part of the place or building where the applicant intends to operate to the nearest part of the church or school.
3. Seating. The same shall be equipped with sufficient tables and seats to accommodate 25 persons at one time.
4. Booths. All booths therein shall be entirely open at one side in a manner which will afford a full view of the interior thereof, and the occupants therein, from any place in the room in which they are located. No booth structure shall exceed 40 inches in height.
5. Lighting. All premises on which beer is sold at retail or served shall be lighted so that all objects therein are plainly visible at all times. Minimum compliance with

this section shall be an illumination of two foot-candles as measured by a foot-candle meter at a plane of 30 inches above the floor line.

**126.06 INSPECTION FEE.** Any person applying for a license shall pay to the Clerk, at the time the application is filed, an inspection fee. Such inspection fee shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such inspection fee may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective inspection fee shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours. Payment of such inspection fee shall be by cash or by certified or cashier's check payable to the City. In the event that a license is granted to the applicant, such inspection fee shall be credited to the license fee. In the event that a license is not granted to the applicant, such inspection fee shall not be refunded, but the same shall be credited to the General Fund of the City to defray the cost of the inspections required hereunder.

**126.07 INVESTIGATION.** Before any application for a license is approved by the Clerk, the Clerk shall cause a thorough investigation to be made of the applicant, the statements made in the application and the place or building where the applicant intends to operate. Such investigation shall include, but not be limited to, the following:

1. Chief of Police. A written report by the Chief of Police to the Clerk as to the background and reputation of the applicant, the truth of the statements made in the application, and the effect which the granting of a license would have on the welfare and morals of the City as a whole.
2. Fire Chief. A written report by the Fire Chief to the Clerk as to the results of an inspection of the place or building where the applicant intends to operate for compliance with the Fire Prevention Code.
3. Building Official. A written report by the Building Official to the Clerk as to the results of an inspection of the place or building where the applicant intends to operate for compliance with the provisions of the Building Code, Zoning Ordinance, and this chapter.
4. Plumbing Inspector. A written report by the Plumbing Inspector to the Clerk as to the results of an inspection of the place or building where the applicant intends to operate for compliance with the provisions of the Plumbing Code.
5. Electrical Inspector. A written report by the Electrical Inspector to the Clerk as to the results of an inspection of the place or building where the applicant intends to operate for compliance with the provisions of the Electrical Code.
6. Referred to Clerk. Such reports shall be furnished to the Clerk within fifteen (15) days following the filing of the application. The Clerk may order such further or supplemental reports, as the Clerk deems necessary.

**126.08 LICENSE; ACTION BY CLERK.** The Clerk shall act on all applications for licenses within 45 days following receipt of the application. If the Clerk finds that all of the prescribed conditions for the issuance of a license have been satisfied and that no grounds for revocation exist, the Clerk shall authorize the issuance of the license.

**126.09 LICENSE FEE.** Before any license is issued, the applicant shall pay to the Clerk a license fee, subject, however, to credit for the inspection fee herein before provided. Payment of such license fee shall be by cash or by certified cashier's check payable to the City. All

license fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such license fee may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective license fee shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours.

**126.10 FORM OF LICENSE.** The license shall be signed by the Mayor and the Clerk and shall show the name of the licensee, the address of the licensed premises, the purpose of the license, the date of issuance of the license, and the date of expiration of the license.

**126.11 DISPLAY OF LICENSE.** Every licensee shall display the license in a conspicuous place on the licensed premises.

**126.12 EXPIRATION DATE OF LICENSE.** Each license issued under the provisions of this chapter shall expire at 11:59 p.m. on December 31 in the calendar year of issuance.

**126.13 REBATES PROHIBITED.** No licensee shall be entitled to a rebate of any kind by reason of the surrender of a license prior to the expiration date.

**126.14 TRANSFER PROHIBITED.** Each license issued hereunder shall be personal to the licensee, shall be restricted to the licensed premises and shall be void upon transfer or assignment to another person or transfer to other premises.

**126.15 RULES AND REGULATIONS.** Every licensee shall observe the following rules and regulations:

1. Intoxicated Persons. No intoxicated person or person simulating intoxication shall enter or remain on the licensed premises.
2. Profanity. No person shall use profane, obscene, or threatening language on the licensed premises.
3. Lewd and Lascivious Acts. No person shall commit any lewd or lascivious acts on the licensed premises.
4. Indecent Dances. No person shall engage in any indecent exposure on the licensed premises.
5. Fighting and Quarreling. No person shall engage in any fighting or quarreling on the licensed premises.
6. Enforcement. It shall be the duty of the licensee to inform all persons present at a public dance of the foregoing regulations and to cause the same to be enforced.

**126.16 HOURS OF OPERATION.** No person shall permit any public dancing between the hours of 2:00 a.m. and 6:00 a.m.

**126.17 GROUNDS FOR REVOCATION.** The following reasons shall be grounds for the revocation of any license issued under the provisions of this chapter:

1. Fraud. The licensee has made fraudulent or untrue statements in the application for a license.
2. Violation. The licensee has violated any of the provisions of this chapter.

3. Operation. The licensee has conducted the business in such a manner as to endanger the public welfare, health, safety, order, or morals.

**126.18 REVOCATION PROCEDURE.** When it appears to the Clerk or the Council that grounds for the revocation of a license may exist, the following procedure shall be followed:

1. Investigation. The Council or the Clerk shall direct the Chief of Police to make an investigation concerning the alleged grounds for revocation.
2. Report to Council. The Chief of Police shall make such investigation and report the findings in writing to the Council.
3. Determination. The Council shall make a determination as to whether probable cause for revocation exists.
4. Hearing. If the Council finds that probable cause for revocation exists, it shall set a date, time, and place for a hearing on the matter and shall direct the City Attorney to prepare the complaint against the licensee. The complaint shall state the alleged grounds for the revocation and the date, time and place for a hearing on the matter.
5. Service of Complaint. The complaint shall be served upon the licensee by certified mail, return receipt requested, not less than ten (10) days prior to the date set for a hearing on the matter.
6. Conduct of Hearing. The Council shall conduct the hearing at which the licensee shall be present. The purpose of the hearing shall be to determine the truth of the facts alleged in the complaint. Should the licensee or the licensee's authorized representative fail to appear without good cause, the Council may proceed to a determination on the complaint.
7. Rights of Licensee. The licensee shall have the right to be represented by counsel, to testify and present witnesses in his or her own behalf, and to cross-examine adverse witnesses.
8. Evidence. The Council shall admit only reliable and substantial evidence into the revocation proceeding and shall give all admitted evidence its natural probative value.
9. Findings. The Council shall make and record findings of fact and conclusions of law and shall revoke a license under this section only when, upon review of the entire record, it finds substantial evidence of a violation of this chapter.

**126.19 EFFECT OF REVOCATION.** Revocation of a license shall bar the licensee from being eligible for any license under this chapter for a period of three years from the date of revocation.

**126.20 SUMMARY SUSPENSION.** The Chief of Police may summarily suspend any license issued under this chapter if, after investigation, the Chief finds reasonable grounds to believe that the continuation of public dancing at the licensee's establishment would pose an immediate hazard to the health or safety of the community. Such suspension shall be effective upon the service of a written notice of suspension upon the licensee. Such service may be accomplished by personal service or by certified mail, return receipt requested. The Chief of Police shall forthwith report such suspension to the Council and the Council shall forthwith

commence revocation proceedings in accordance with the provisions of Section 126.18 of this chapter. Such suspension shall remain effective until the completion of said revocation proceedings.

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## CHAPTER 135

# EXCAVATIONS OF PUBLIC PROPERTY

135.01 Definitions	135.07 Emergencies
135.02 Reservations	135.08 Work By Others
135.03 Permits, Fee, Inspection and Requirements	135.09 Utility Business Contractors
135.04 Utility Map, Plan and Specification	135.10 Powers of the City
135.05 Conditions, Construction and Repair	135.11 Violations
135.06 Restoration	135.12 Liability, Indemnification and Insurance

**135.01 DEFINITIONS.** For use in this chapter the following terms are defined:

1. “Applicant” means any person making written application to the Clerk for an excavation permit under this chapter.
2. “City” means the City of Windsor Heights, Iowa, and where appropriate, shall include its officers, employees and agents.
3. “Excavation work” means the excavation and other work permitted under an excavation permit and required to be performed under this chapter.
4. “Permittee” means any person who has been granted and has in full force and effect an excavation permit issued under this chapter.
5. “Public Improvements” means any improvements on public property, including, but not limited to, paving, sidewalks, grass, vegetation, trees, street lights, traffic signals, water mains, sewers, electric transmission lines and equipment related thereto.
6. “Public Property” means City owned property or City controlled easements.
7. “Public Rights-of-Way” means the area on, below or above a public roadway, highway, street, bridge, cart-way, bicycle lane or public sidewalk in which the local government has an interest, including other dedicated rights-of-way for travel purposes and public easements. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcasts service.
8. “Street” means any street, highway, sidewalk, alley, avenue or other public right-of-way or public grounds in the City.
9. “Licensee” means a company providing utility services by wire, or through conduit, pipe or similar structure, device or apparatus, and all equipment owned, operated, leased or subleased in connection with the operation of the utility business, and shall include, but is not limited to, poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables and other structures or appurtenances.

**135.02 RESERVATIONS.** A licensee or permittee shall construct, maintain, inspect, protect, repair, replace, retain a system in, under, upon, along and across the public rights-of-way or public property, subject to the federal, state and city regulatory powers, and subject to the conditions hereinafter set forth.

**135.03 PERMITS, FEE, INSPECTIONS AND REQUIREMENTS.**

1. No person shall make any excavation or fill any excavation in any city street, avenue, alley, sidewalk, public right-of-way and other similar property dedicated to public use without first obtaining a permit from the City. The application for a permit shall be in writing and completed by the applicant or their agent. A permit shall not be required for a single commercial or residential service connection within a public right-of-way for a franchise licensee. However, a permit shall be required if such connection requires a street cut, curb or sidewalk. A permit shall not be required for a single pole or single transformer change out, or a single street light change out.

2. After the City reviews, approves and issues a permit, the permittee shall provide the City with forty-eight (48) hour's notice, excluding Saturdays, Sundays and legal holidays, prior to the actual commencement of the work; shall not unnecessarily obstruct the use of streets, avenues, alleys or public places; shall not endanger the safety of workers or passerby; shall prevent traffic backup during construction; and shall comply with all provisions, requirements and regulations in performing such work. An applicant's installation shall not interfere with the reasonable and proper use, construction, reconstruction and maintenance of any public improvements or any existing or future public utility system component, or other structure upon or under public property.

3. The licensee or applicant shall submit its permit application and, maps, plans and/or specifications for a proposed utility plan, and other notices as may be appropriate, to the following city office for the initial permit review, permit findings (approval, denial, resubmission), fee assessment and other activities as may be appropriate:

Director of Public Services  
 City of Windsor Heights  
 6800 School Street  
 Windsor Heights, IA 50324  
 Phone: (515) 279-3662

4. The licensee or applicant shall pay the City the following rates:

A. A per permit fee, as set by resolution as approved by the City Council, for the review of the applications and proposed plans and specifications, is due at the time the permit application is submitted. Franchise licensees will only be required to pay if a hard surface is being cut such as a curb, street or sidewalk.

B. An hourly rate for any inspection services will be required in connection with the applicants work, including, but not limited to, the personnel cost of an inspector's salary and benefits, vehicle and mileage, administrative overhead, with payment due within 30 days of the City's submittal of an invoice to the applicant.

5. The applicants permit will show the exact location of the work including street or house number and the direction and length the trench will run.

6. If the applicant plans to do extensive digging, a blanket permit may be issued, however, the party performing the work must notify all other utilities concerned as to the location and time that work will take place so that the others may locate their property.



7. The applicant shall post with the City a surety bond in the amount of ten thousand dollars (\$10,000.00) or one and a half times the estimated cost of the excavation and restoration, whichever is greater, issued by a surety company authorized to issue such bonds in the State before excavating or opening any public street, sidewalk, ditch, alley or public right-of-way. The bond shall guarantee the permittee's payment for any damage done to the City or to public property, and payment of all costs incurred by the City in the course of administration of this section. In lieu of a surety bond, a cash deposit of \$10,000.00, or one and a half times the estimated cost of the excavation and restoration, whichever is greater, may be deposited with the City. Duration of the bond or cash deposit shall be for a period of one (1) year commencing with the completion of the excavation and restoration. Upon approved completions of the excavation the cash deposit may be substituted for a one-year maintenance bond and upon satisfactory completion of a one (1) year period, the City shall release any and all bonds and deposit requirements.

8. The applicant shall file a certificate of insurance indicating that the applicant is carrying public liability insurance in effect for the duration of the permit covering the applicant and all agents and employees for the following minimum amounts:

- A. Bodily Injury - \$1,000,000.00 per person; \$1,000,000.00 per accident.
- B. Property Damage - \$2,000,000.00 per accident.

9. All work shall be subject to inspection by the City. Backfill of openings shall not be deemed completed, and no resurfacing of any improved street or alley surface shall begin, until such backfill is inspected and approved by the City. The permit holder/property owner shall provide the City with notice at least twenty-four (24) hours prior to the time when inspection of backfill is desired.

10. Should any excavation in any street or alley be discontinued or left open and unfinished for a period of twenty-four (24) hours or in the event the work is improperly done, the City has the right to finish or correct the excavation work, keep an account of the expense thereof, and charge such expenses to the permit holder/property owner. Thereafter, after completion of the work and the invoicing of the costs thereof, the City shall issue no further or new permits to the permit holder/property owner until it receives full payment for all outstanding amounts owed.

11. All work by permittee shall be performed in accordance with the current standard specifications adopted by the City at the time. Any damaged curb, gutter, sidewalk or grass covered area shall be restored to the same or better condition prior to damage.

12. All costs and expenses incident to the excavation shall be borne by the permit holder and/or property owner. The permittee and owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by such excavation. The applicant will fill up and place in good and safe condition all excavations and openings made in the street, and will replace and restore the pavement over any opening they may make to the same or better condition than it was prior to excavation to the satisfaction of the Director of Public Services for a period of one (1) year.

13. The applicant will pay all fines or forfeitures imposed upon them for any violation of any rule, regulation or ordinance governing street openings or drain laying adopted by the Council and will repair any damage done to existing improvements during progress of the excavation in accordance with the ordinances, rules and regulations of the City. Such bond shall also guarantee that, if the City shall elect to

make the street repair, the applicant opening the street will pay all costs of making such repair and of maintaining the same for one (1) year, recovery on such bond for any accident, injury, violation of law, ordinance, rule or regulation shall not exhaust the bond but it shall cover any and all accidents, injuries or violation of law during the period of excavation for which it is given.

14. Faulty work or materials shall be immediately replaced by the permittee upon notice by the City. Failure to correct deficiencies in a timely manner shall result in a minimum one (1) year revocation of the right to obtain a street opening permit. The Director of Public Services shall repair the deficiencies and bill the permittee for all labor, materials and equipment used plus administration costs.

15. The permittee who does such restoration shall be responsible therefor for one (1) year from the date of the completion of the work and shall file a written guarantee from a banking institution or surety bond to that effect with the City.

16. If the Council shall find that any such work has become defective within one (1) year of the date of completion of the said project, it shall give written notice thereof to the applicant or to their surety stating the defect, the work to be done, the cost thereof and the period of time deemed by the Council to be reasonably necessary to complete said work. After receipt of such notice, the applicant or the surety must, within the time specified, repair the defect or indemnify the City for the cost of doing the work as set forth in the notice.

17. All excavation and restoration shall be completed in a prompt manner as determined by the Director of Public Services.

#### **135.04 UTILITY MAP, PLAN AND SPECIFICATION.**

1. Before commencing any extension or expansion of its Utility system, or any major repair work, or the installation of any new system in the City's public rights-of-way or public property, the applicant shall file with the City a written statement verifying the public rights-of-way or public property under which or upon which it proposes to extend, expand, install or repair its system. The City shall require that the statement be accompanied by a map, plan or specifications showing the proposed location of the system components with reference to streets and alleys, the size and dimensions of all public utilities, and the distance beneath the surface of the ground.

2. All existing public utilities must be shown on the map, plan or specifications. If the proposed locations of any facilities shall interfere with the reasonable and proper use, construction, reconstruction and maintenance of any public improvements or any existing or future public utility system component, or other structure upon or under public property, the City shall within a reasonable time after the filing of such plan, map or specifications, note the changes necessary, eliminate all interference with a public improvement or existing City owned public utility system facility and refer the same back to the utility business for amendment.

3. Maps, plans or specifications, when properly changed and corrected, shall be filed with the City and, after the approval of the same by the City, a permit shall be issued authorizing utility business to proceed in accordance with the approved maps, plans or specifications.

4. No such excavation, construction or erection shall be commenced before the issuance of the permit herein provided for, unless it is an emergency as described in

section 135.07, and all work shall be in accordance with the approved maps, plans or specifications, or work being performed by a licensed franchise not requiring a permit.

### **135.05 CONDITIONS, CONSTRUCTION AND REPAIR.**

1. No openings in the streets, alleys, sidewalks or public ways shall be permitted between November 15th and April 15th except where it is determined by the Director of Public Services or their designee to be an emergency excavation.
2. In the process of location, construction, reconstruction, replacement or repair of any system component, the excavation or obstruction made or placed in public property at any time or for any purpose by the utility business or permittee shall, protect the public and to assure the safe and efficient movement of traffic, be properly barricaded to comply, at a minimum, with requirements set forth in the *Uniform Manual for Traffic Control*. Sufficient warning lights shall be kept on from sunrise to sunset. No open flame warning devices shall be used. Except by special permission for the Director of Public Services, no trench shall be excavated more than two hundred fifty (250) feet in advance of pipe or conduit laying nor left unfilled more than five hundred (500) feet from where pipe or conduit has been laid. All pavement removed or damaged shall be properly and speedily replaced in accordance with the City's specifications, which may be obtained at the Public Works Department.
3. Upon request, a licensee agrees to assist in locating underground facilities which are part of its system prior to excavation. As a condition of this chapter, a licensee shall enroll as a member of the "Iowa One-Call System" and shall respond to all requests and notifications placed to the toll free "One-Call" number.
4. All necessary precautions shall be taken to guard the public effectively from accidents or damage to persons or property through the period of work. Each permittee making such openings shall be held liable for all damages, including costs incurred by the City in defending any action brought against it for damages, as well as cost of any appeal, that may result from the neglect by such person or their employees of any necessary precaution against injury or damage to persons, vehicles or property of any kind.
5. Unless otherwise approved, a minimum of one (1) lane of traffic in each direction shall be provided. Every effort shall be made on the part of the permittee to provide reasonable access to all properties adjacent to their project. In the event traffic is limited to less than one (1) lane in each direction, a flagman or temporary traffic control signal shall be provided so as to safely cycle traffic in each direction past the work area and the City must be notified regarding the dates/times applicable.
6. Removal of existing pavement shall be to neat, straight lines. The permittee shall make a final saw cut in the existing pavement after backfilling. Excavations shall be kept to the minimum possible and acceptable for the convenience and safe performance of the permittee's work and in accordance with all applicable codes and regulations.
7. If the pavement is damaged during excavation beyond the original saw cut lines, it shall be saw cut again along neat, straight lines. The finished saw cut shall leave a regular rectangular section for pavement replacement. Should the street opening occur within adjacent or close to an existing patch or require more than one (1) opening within a short distance, the permittee shall identify and locate the existing patches or additional openings on the permit application form. The Director of Public Services or their

designee shall, on the basis of an on-site inspection, approximate the boundaries of the pavement replacement area.

8. Pavement replacement areas with the long dimension in the direction of travel shall have the long dimension parallel with the curb line or the direction of travel. Pavement replacement areas in concrete pavements shall be parallel with or at right angles to the direction of travel.

9. The Director of Public Services or their designee may order the permittee to remove and replace up to one (1) full lane width of pavement along the patched or excavated area. Special care shall be taken with concrete pavement to produce a vertical face on the existing concrete at the point of the saw cut to insure a full depth of concrete at the joint.

10. All excavated material shall be piled in a manner such that pedestrian and motor traffic is not unnecessarily disrupted. Gutters shall be kept clear or other satisfactory provisions made for street drainage, and natural watercourses shall not be obstructed. As little as possible of the trench must be dug until the slant of junction-piece of the sewer, water, gas main, electric cables, telephone lines or fuel line is found. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the City shall have the authority to require the permittee to haul the excavated material to a storage site and then re-haul it to the trench site at the time of backfilling.

11. All conduits, sewers, pipes, wires or other means of transmission of utility services within the City, if to be placed underground, shall, in addition to all of the requirements of this Section, be dug at least thirty (30) inches below the normal ground level whenever said utility service will cross under a highway, City street, sidewalk, alley or other public right-of-way within the City of Windsor Heights.

12. Excavated material to be used for backfilling of the trench must be so handled and placed as to be of as little inconvenience as practical to public travel and adjoining tenants.

13. All backfill material shall be free from cinders, hot mix fragments, ashes, refuse, vegetable or organic matter, boulders, rocks or stones greater than eight (8) inches in their greatest dimension, frozen lumps or other material which in, in the opinion of the Director of Public Services or their designee, is unsuitable. All non-compactable material will be placed, upon excavation, in an area where removal from site will be made readily possible.

14. In refilling the excavation, if there is not sufficient material excavated suitable for refilling, the deficiency shall be made up with material, approved prior to use by the Director of Public Services or their designee, hauled in, or refilled by the City.

15. Wherever an excavation crosses an existing utility, pipe or other structure, backfill shall be carefully compacted in stages from the bottom of the excavation. Any sanitary sewer, storm sewer, water, telephone, natural gas or other service shall not be interrupted by the permittee. It shall be the permittee's responsibility to have the various utilities locate and mark their facilities prior to excavation.

16. Mechanical compaction or puddling shall be used on all materials used for trench backfill. Each layer (12-inch maximum) shall be uniformly compacted. Compaction or consolidation by flooding shall not be permitted. Earth must be puddled or laid in layers not more than twelve (12) inches in depth and each layer rammed and

tamped to prevent settling. The Public Works Department will test the fill to meet the City's specifications. Contractors will be instructed by the City's inspector, if they meet the specifications, to proceed to fill the opening.

17. All excavations shall be subject to testing by the City. Backfilled material not achieving the above compaction requirements shall be removed and re-compacted by the permittee. The cost of any retesting shall be paid by the permittee.

18. When the sides of the trench will not stand perpendicular, sheathing and braces shall be used to prevent caving. No timber, bracing, lagging, sheathing or other lumber shall be left in any trench. At no time shall any street pavements, be permitted to overhang the excavation. When caving occurs, all the street support thus disturbed must be restored to the same or better condition prior as though it was an excavation or a trench.

19. Concrete pavement shall be placed to the full depth of the existing pavement or seven (7) inches, whichever is greater. Concrete used shall not contain calcium chloride. The surface shall be given a light broom finish. The edges shall be tooled to prevent spalling at the saw cut edge. The surface shall be evenly and completely sealed with a white pigmented curing compound. The surface shall be protected from traffic for a minimum of three (3) days. Tie bars shall be installed as directed by the Director of Public Services or their designee.

20. All permanent restoration of street, curb and gutter shall be of the same type and thickness as the curb and gutter which abuts. The grade of the restored curb and gutter shall conform with the grade of the existing adjacent curb and gutter.

21. All permanent restoration of driveways and sidewalks shall conform to the manner of construction as originally placed and to the lines and grades as given by the City Engineer. No patching of concrete driveway areas will be allowed between joints or dummy joints.

#### **135.06 RESTORATION.**

1. As a condition of the permit, the permittee shall at its own expense, repair or cause repair to any private property, public utility system component, public improvement, vegetation, public rights-of-way or public property damaged by such location, construction, reconstruction, replacement or repair work, to the same or better condition than it was prior to the excavation.

2. The permittee shall restore with sod (unless seed is approved by the City) all such property to its previous condition at its expense. If multiple utilities are involved in the restoration, the City Engineer or Director of Public Services shall assess the restoration cost equally or proportionately to the parties involved.

3. If the permittee fails to repair or arrange with the City for the proper repair of any public property after excavations or damage to the surface has been made, and after 30 days' notice in writing to do so given to its designated representative, then the City may make such repairs at the expense of the permittee. The City shall keep an account of all such expenses and invoice the permittee for the same. Thereafter, after completion of the work and the invoicing of the costs thereof, the City shall issue no further or new permits to the permit holder/property owner until it receives full payment for all outstanding amounts owed.

**135.07 EMERGENCIES.**

1. In the event of any emergency, the permittee shall remove or relocate its installations within forty-eight (48) hours of notification from the City.
2. In emergencies which require immediate excavation to remedy dangerous conditions for the protection of property, life, health or safety, a licensee may proceed with the work without first applying for or obtaining the permit, provided, however, that the utility business shall apply for and obtain the permit within forty-eight (48) hours after commencing such emergency work.

**135.08 WORK BY OTHERS.**

1. The City reserves the right to lay, and permit to be laid, wires, pipes, cables, conduits, ducts, manholes and other appurtenances, and to do, or permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in, across, along, over or under any public property occupied by utility business, and to change any curb or sidewalk or the grade of any street.
2. In permitting others to do such work, the City shall not be liable to utility business for any damages arising out of the performance of such work by other parties, except those arising out of or resulting from negligence of the City.
3. Nothing in this chapter shall be construed as to relieve any other person or corporation from liability for damage to utility business' facilities.

**135.09 UTILITY BUSINESS CONTRACTORS.** The requirements of this chapter shall apply to all persons, firms or corporations performing work for a utility business under a contract, subcontract or other type of work order.

**135.10 POWERS OF THE CITY.** Nothing in this chapter shall be construed to abridge the right or power of the City to make further regulations relative to the use of the streets, alley and public grounds by anyone using the same for the erection and maintenance of utility systems.

**135.11 VIOLATIONS.**

1. Upon evidence being received or observed by the City that a violation or breach of this chapter or codes lawfully regulating utility business in the operation of its facilities, or in the use of public property therefore, is occurring, or has occurred, the City shall cause an investigation to be made.
2. If the City finds that a violation exists or has occurred, the City may take appropriate steps to secure compliance with the terms of this chapter.
3. The City shall notify the utility business or permittee of the violation and the utility business or permittee shall cure such violation within 30 days after receipt of such notice.
4. If a permittee fails to cure a violation within the time allowed, the City shall have the right to:
  - A. Revoke the permit;
  - B. Seek specific performance;
  - C. Seek damages for such default; and/or
  - D. Any combination of division (4)(A) and (4)(C) above.

**135.12 LIABILITY, INDEMNIFICATION AND INSURANCE.** The permittee covenants to indemnify, defend and save the City and its officers, agents and employees, harmless from any and all damages arising directly from the exercise of the rights granted herein, except those arising out of or resulting from negligence of the City. The permittee agrees to require contractors and subcontractors engaged in work for the permittee with the public rights-of-way or on public property to maintain in effect during the term of work liability insurance in comprehensive form and in the amounts to be set by the City.

*(Ch. 135 – Ord. 15-05 – Oct. 15 Supp.)*

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## CHAPTER 136

# SIDEWALK REGULATIONS

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**136.01 PURPOSE.** The purpose of this ordinance is to promote the health, safety and general welfare of the City of Windsor Heights, and to ensure compliance with the following goals in accordance with the City of Windsor Heights Complete Street Policy passed on July 6, 2015:

1. Promoting the safety of pedestrian access, movement, and protection for the physically able, physically challenged, children or seniors (or variously-abled) within the community;
2. Ensuring that the ADA guidelines are met for all sidewalk or pathway installations, existing and proposed;
3. Promoting attractive and well-constructed sidewalks or pathways that correspond to the character, aesthetic qualities, natural, environmental, and historical features of developing or existing neighborhoods;
4. Connecting to existing and projected sidewalks or pathways whenever the opportunity arises to insure an interconnected pedestrian system;
5. Ensuring that all development actively implements the building of sidewalks or pathways for new construction, reconstruction, or rehabilitation.

**136.02 DEFINITIONS.** For use in this chapter the following terms are defined:

1. "Pedestrian Friendly" or "walkability" means the presence of facilities and design features that make an environment safe and attractive to pedestrians. These include: walkable distances between uses, (i.e. under ¼ mile); sidewalks, paths and walkways; continuous visual interest (i.e. uninterrupted line of buildings, attractive barrier in front of parking lots, murals on blank walls, infill development, pocket parks, etc.); consumer uses (i.e. restaurants, shops, cinemas, housing); trees for shade; awnings for shelter; buildings and landscaping elements sited to avoid wind tunnel effect, and to provide sheltered areas; visual texture in the streetscape (i.e. interesting storefronts, public art, plantings, pavement patterns, etc.); people presence (i.e. sidewalk cafes, street vendors, late business hours, residents using front porches and yards); good maintenance and inclusion of site amenities; buffers between cars and pedestrians (i.e. planted medians, on-street parking, grade separation); paths connecting adjacent uses; crosswalks and ramps; traffic calming devices; traffic lights.

2. “Crosswalk” means any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian crossing. If there is no marking, a sidewalk crossing is implied at each leg of every intersection by the extension of the lateral lines of the sidewalk on each side, or where the sidewalk would be if there is none.
3. “Broom finish” means a sidewalk finish that is made by sweeping the sidewalk when it is hardening.
4. “Wood float finish” means a sidewalk finish that is made by smoothing the surface of the sidewalk with a wooden trowel.
5. “Defective sidewalk” means any public sidewalk exhibiting one or more of the following characteristics (Appendix “B”):
  - A. Sidewalk faulted at joint or crack with 1 inch or more deflection;
  - B. Sidewalk raised more than 2 inches in 8 feet from normal profile line of sidewalk;
  - C. Sidewalk sunken more than 2 inches in 8 feet from normal profile line of sidewalk;
  - D. Sidewalk cracked into 3 or more pieces per panel, or any single crack with ½ inch or greater openings;
  - E. Sidewalk cracked and/or spalled (small crater line holes deeper than 3/8 inch with part of sidewalk missing, forming holes deeper than 3/8 inch;
  - F. Sidewalk cross slope is incorrect, greater than 1 inch in 1 foot; and,
  - G. Sidewalk is missing panels.
6. “Established grade” means that grade established by the City for the particular area in which a sidewalk is to be constructed.
7. “One-course construction” means that the full thickness of the concrete is placed at one time, using the same mixture throughout.
8. “Owner” means the person owning the fee title to property abutting any sidewalk and includes any contract purchaser for purposes of notification required herein. For all other purposes, “owner” includes the lessee, if any
9. “Portland cement” means any type of cement except bituminous cement.
10. “Sidewalk” means all permanent public walks in business, residential or suburban areas. Sidewalks should be a minimum of 4 feet (5 feet recommended) in residential areas and a minimum of 8 feet in commercial areas.
11. “Sidewalk improvements” means the construction, reconstruction, repair, replacement, or removal, of a public sidewalk and/or the excavating, filling or depositing of material in the public right-of-way in connection therewith.
12. “Shared use path” means a paved pathway, typically from eight (8) to twelve (12) feet in width, physically separated from motorized vehicular traffic within the roadway right-of-way or within an easement adjacent to the roadway right of way. Primarily used by pedestrians and bicyclists, shared use paths are also used by joggers, skaters, wheelchair users (both nonmotorized and motorized). A shared use path's primary purpose is to provide pedestrians with connections to trails, other neighborhoods, shopping centers, businesses and other venues of interest. In addition, the shared use path may be used for recreational purposes.

13. “Bicycle/recreational trail” means a PCC, blacktop or gravel bicycle/recreational route developed primarily for outdoor recreational purposes. Trails are largely designed for pedestrians and other users to "experience" the outdoors and may be used by a variety of users, but they are not primarily designed for transportation purposes. Bicycle trails within the city of Windsor Heights should be constructed at a minimum of ten (10) feet in width with a preferred width of twelve (12) feet whenever possible.

14. “Trailhead” means an outdoor system developed to serve as an access point to a bicycle/recreational trail which generally includes an area to park vehicles and typically is a beginning or ending point of a bicycle/recreational trail. The junction of two or more trails, where no other access point is provided to the trails, is not a trailhead.

15. “Mature tree” means any tree with a diameter at breast height of 10 inches or greater.

**136.03 REMOVAL OF SNOW, ICE, AND ACCUMULATIONS.** The abutting property owner shall remove snow, ice, and accumulations promptly from sidewalks. If a property owner does not remove snow, ice, or accumulations within 48-hours following the conclusion of the weather event, the Public Works Director will provide a 24-hour notice in the door. Following the 24-hour notice the Public Works Director may have the natural accumulations of snow or ice removed and shall give the Council an itemized and verified statement of the costs and a legal description of the property. The costs shall be assessed against the property as taxes. The abutting property owner may be liable for damages caused by failure to remove snow, ice, and accumulations promptly from the sidewalk. Under extreme weather conditions, the Public Works Director may provide additional time for abutting property owners to remove snow, ice, and accumulations from the sidewalk.

*(Code of Iowa, Sec. 364.12[2b & e])*

**136.04 PROPERTY OWNER’S RESPONSIBILITY FOR MAINTENANCE.** The abutting property owner shall repair, replace, or reconstruct, or cause to be repaired, replaced, or reconstructed, all broken or defective sidewalks and maintain in a safe and hazard-free condition any sidewalk outside the lot and property lines and inside the curb lines or, in the absence of a curb, any sidewalk between the property line and that portion of the public street used or improved for vehicular purposes (Appendix “C”); provided, however, that this section shall not be construed to require a property owner to take any action with respect to a public sidewalk or shared use path when said action is made necessary by the excavation or other activity of the city or a public utility. The abutting property owner may be liable for damages caused by failure to maintain the sidewalk.

The abutting property owner will not be responsible for the cost of installing ADA ramps. In situations where ADA ramps are required the portion of the cost associated with the ramp is the economic responsibility of the City.

**136.05 ANNUAL INSPECTION ZONES.** The City will be responsible for inspecting the public sidewalks on a five (5) year cycle within the city. These inspections shall be made to determine if any of the public sidewalks within a particular zone of the city are defective as defined. The City will be divided into five zones as designated in (Appendix “A”). When a sidewalk defect is found to exist outside of the annual inspection zone, the City will initiate appropriate action as directed by this policy to have the sidewalk reconstructed. The annual inspections will occur on the following timeline:

1. August – designated zone sidewalk inspections completed

2. August 31 - Notifications mailed to property owners
3. October – April – property owner requests bids for repairs and selects contractor
4. May 1 – seventy-five day initiated from May 1.
5. July 15 – deadline for property owners to complete sidewalk repair.
6. July - October – three months for city to coordinate and schedule uncompleted repairs

*(Code of Iowa, Sec. 364.12[2c])*

**136.06 CITY SHALL ORDER REPAIRS.** If the abutting property owner does not maintain sidewalks as required, the Public Works Director shall serve notice on such owner, by certified mail, requiring the owner to repair, replace or reconstruct sidewalks within seventy-five (75) days from the date the notice is mailed. If, upon expiration of the 75 days as provided in said notice, the required work has not been done or is not in the process of completion, the Public Works Director Shall require the work to be done and assess the costs against the abutting property for collection in the same manner as a property tax. No such assessment shall be made for the repair, reconstruction or replacement of a public sidewalk unless the city has served upon the person shown by the records of the Polk County recorder to be the owner of the abutting property, by certified mail, a notice requiring said person to repair, reconstruct or replace the public sidewalk within seventy five (75) days from the date said notice is mailed. All sidewalk improvements shall be performed under the supervision and inspection of the Public Works Director.

If work has not commenced following the 75 day notice, the sidewalk will be placed on a list for repair and the City's contractor notified to proceed with the repairs. Upon completion of the repair the property owner will be sent by regular mail an invoice of the actual cost of the repair with no administration fee. The property owner will have 30 days to pay the invoice. If the invoice is not paid within 30 days, the amount will be certified to the County Auditor to be added to the owner's property taxes.

Any unpaid costs for said repairs over \$500 will be assessed and collected in the same manner as property taxes. There shall be returned to the City Council an itemized assessment schedule, verifying expenditures used in doing such work, and the legal description of the lots, or tract of ground abutting the sidewalk on which such work has been performed. Assessments may be spread over a ten-year period at an interest rate of 2% over current bank rates. Any costs less than \$500 will be assessed in one installment. There will also be a \$50 administrative fee if costs are assessed against the property.

The Public Works Director does not have the authority to assess property owners in cases where there is not an existing sidewalk. New sidewalk installation is the sole discretion of the Council. No openings in the streets, alleys, sidewalks or public ways shall be permitted between November 15th and April 15th except where it is determined by the Director of Public Services or their designee to be an emergency excavation.

*(Code of Iowa, Sec. 364.12[2d & e])*

**136.07 NOTICE OF INABILITY TO REPAIR OR BARRICADE.** It is the duty of the owner of the property abutting the sidewalk (or of the contractor or agent of the owner) to notify the City immediately in the event the owner is unable to make necessary sidewalk improvements or to install or erect warnings and barricades as required by this chapter.

**136.08 ECONOMIC HARDSHIP PROCESS.** To be eligible for an economic hardship waiver, the applicant must have a recorded legal or equitable title to the parcel and have an adjusted annual income that is at or below 80 percent of the median income guidelines for the Des Moines Metropolitan Statistical Area as established by the U.S. Department of Housing and Urban Development Block Grant (CDBG) programs (called median income guidelines) for the year in which the resolution of necessity for construction, reconstruction, or repair of the public improvement is approved by the city council. Any residential property owner seeking to qualify for economic hardship of sidewalk repair must meet the defined criteria as illustrated in (Appendix “E”).

**136.09 SIDEWALK CONSTRUCTION ORDERED.** Based on Iowa Law, the Council may order the construction of permanent sidewalks upon any street or court in the City and may specially assess the cost of such improvement to abutting property owners in accordance with the provisions of Chapter 384 of the Code of Iowa. The abutting property owner will not be responsible for the cost of installing ADA ramps. In situations where ADA ramps are required the portion of the cost associated with the ramp is the economic responsibility of the City.

*(Code of Iowa, Sec. 384.38)*

**136.10 STANDARD SIDEWALK SPECIFICATIONS.** The City Engineer shall prepare complete plans and specifications for the construction, reconstruction, and repair of sidewalks and driveway crossings in sidewalks, which, upon approval of the Council, shall be kept on file in the office of the Clerk. The specifications shall include descriptions and location of barricades and warning lights. All sidewalk improvements on public property, whether performed by the owner of the abutting property or by the City, shall be performed under the supervision of and subject to inspection by the Public Works Director, and in accordance with the plans and specifications adopted in accordance with this chapter (Appendix “D”).

**136.11 PERMITS FOR CONSTRUCTION OR REPAIR.** No person shall make any sidewalk improvements unless such person shall obtain a permit from the Public Works Director. The permit shall state that the person will comply with the ordinances of the City and with the specification for sidewalks adopted by the City. The permit also shall state that the work will be done under the direction and approval of the Public Works Director. All such permits shall be issued upon payment of sidewalk construction or repair fee. A copy of such permit shall be filed and preserved in the office of the Public Works Director. The permit shall state when the work is to be commenced and when the work is to be completed. The time of completion for the sidewalk improvements may be extended by the City Engineer. All permits for sidewalk improvements not ordered by resolution of the City Council shall be issued in compliance with this chapter. The Public Works Director may withhold the issuance of any permit for any sidewalk improvements for a sufficient period to determine the necessity for the proposed improvements or when weather conditions will adversely affect the sidewalk improvements. The person who makes a sidewalk construction or repair permit application shall pay a permit fee to the Clerk to cover the cost of issuing the permit and supervising, regulating, and inspecting the work. All permit fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such permit fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective permit fees shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours.

**136.12 FAILURE TO OBTAIN PERMIT; REMEDIES.** Whenever any sidewalk improvements are made that do not conform to the provisions of this chapter and with the specifications, or when any sidewalk improvements are made without a permit, the Public

Works Director shall serve notice to obtain a permit upon the property owner and upon the contractor doing the work. If the sidewalk is in the course of construction, the notice shall order the work to stop until a permit is obtained and the work is corrected to comply with the specifications. If the sidewalk work has been completed, the owner shall obtain a permit immediately and perform any needed corrections within five days from receipt of the permit. If the owner fails to comply with this notice, the Public Works Director shall have the work completed and the costs assessed to the property owner.

**136.13 INSPECTION AND APPROVAL.** Upon final completion, the Public Works Director shall inspect the work. The Public Works Director may order corrections if the work does not meet specifications. When the work does meet all requirements of this chapter, the specifications, and the permit, the Public Works Director shall indicate this on both copies of the permit.

**136.14 BARRICADES AND WARNING LIGHTS.** Whenever any material of any kind is deposited on any street, avenue, highway, passageway or alley when sidewalk improvements are being made or when any sidewalk is in a dangerous condition, it shall be the duty of all persons having an interest therein, either as the contractor or the owner, agent, or lessee of the property in front of or along which such material may be deposited, or such dangerous condition exists, to put in conspicuous places at each end of such sidewalk and at each end of any pile of material deposited in the street, a sufficient number of approved warning lights or flares, and to keep them lighted during the entire night and to erect sufficient barricades both at night and in the daytime to secure the same. The party or parties using the street for any of the purposes specified in this chapter shall be liable for all injuries or damage to persons or property arising from any wrongful act or negligence of the party or parties, or their agents or employees or for any misuse of the privileges conferred by this chapter or of any failure to comply with provisions hereof.

**136.15 INTERFERENCE WITH SIDEWALK IMPROVEMENTS.** No person shall knowingly or willfully drive any vehicle upon any portion of any sidewalk or approach thereto while in the process of being improved or upon any portion of any completed sidewalk or approach thereto, or shall remove or destroy any part or all of any sidewalk or approach thereto, or shall remove, destroy, mar or deface any sidewalk at any time or destroy, mar, remove or deface any notice provided by this chapter.

**136.16 DETERMINING LOCATION OF NEW SIDEWALKS.** The decision as to where to place new sidewalks, including the side of the street and placement in relation to the curb, should be made at the recommendation of the city engineer and should be based on a number of factors including environmental constraints and costs considerations. The design of sidewalks, necessary retaining walls, and materials will be subject to discussion at a public meeting prior to council providing final approval.

When constructing new sidewalks every effort should be made to limit the number of mature trees removed during the construction process. If a property owner wishes to save a mature tree that otherwise would need to be removed to allow for the sidewalk, that property owner may choose to have the tree saved by providing an easement for the sidewalk to go around the tree. This easement would be provided at no cost to the city. The city is not responsible for replacing or compensating property owners for any landscaping located within the public right-of-way that is removed to allow for the installation of sidewalks.

**136.17 ENCROACHING STEPS.** It is unlawful for a person to erect or maintain any stairs or steps to any building upon any part of any sidewalk without permission by resolution of the Council.

**136.18 OPENINGS AND ENCLOSURES.** It is unlawful for a person to:

1. Stairs and Railings. Construct or build a stairway or passageway to any cellar or basement by occupying any part of the sidewalk, or to enclose any portion of a sidewalk with a railing without permission by resolution of the Council.
2. Openings. Keep open any cellar door, grating, or cover to any vault on any sidewalk except while in actual use with adequate guards to protect the public.
3. Protect Openings. Neglect to properly protect or barricade all openings on or within six (6) feet of any sidewalk.

**136.19 FIRES OR FUEL ON SIDEWALKS.** It is unlawful for a person to make a fire of any kind on any sidewalk or to place or allow any fuel to remain upon any sidewalk.

**136.20 DEFACING.** It is unlawful for a person to scatter or place any paste, paint, or writing on any sidewalk.

*(Code of Iowa, Sec. 716.1)*

**136.21 DEBRIS ON SIDEWALKS.** It is unlawful for a person to throw or deposit on any sidewalk any glass, nails, glass bottle, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris, or any substance likely to injure any person, animal, or vehicle.

*(Code of Iowa, Sec. 364.12[2])*

**136.22 VEGETATION OVERGROWTH ON SIDEWALK.** It is the responsibility of the abutting property owner to make sure that there is no vegetative overgrowth encroaching on the sidewalk. This includes grass encroaching onto the sidewalk thereby reducing the walkway width as well as keeping bushes and shrubs trimmed so that no part of the plant is encroaching on the sidewalk space. Tree branches should be a minimum of eight (8) feet above the level of the sidewalk.

**136.23 MERCHANDISE DISPLAY.** It is unlawful for a person to place upon or above any sidewalk, any goods or merchandise for sale or for display in such a manner as to interfere with the free and uninterrupted passage of pedestrians on the sidewalk; in no case shall more than three (3) feet of the sidewalk next to the building be occupied for such purposes.

**136.24 SALES STANDS.** It is unlawful for a person to erect or keep any vending machine or stand for the sale of fruit, vegetables or other substances or commodities on any sidewalk without first obtaining a written permit from the Council.

*(Ch. 136 – Ord. 16-07 – Oct. 16 Supp.)*

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## CHAPTER 137

# VACATION AND DISPOSAL OF STREETS

137.01 Power to Vacate  
137.02 Planning and Zoning Commission  
137.03 Notice of Vacation Hearing

137.04 Findings Required  
137.05 Disposal of Vacated Streets or Alleys  
137.06 Disposal by Gift Limited

**137.01 POWER TO VACATE.** When, in the judgment of the Council, it would be in the best interest of the City to vacate a street, alley, portion thereof, or any public grounds, the Council may do so by ordinance in accordance with the provisions of this chapter.

*(Code of Iowa, Sec. 364.12[2a])*

**137.02 PLANNING AND ZONING COMMISSION.** Any proposal to vacate a street, alley, portion thereof, or any public grounds shall be referred by the Council to the Planning and Zoning Commission for its study and recommendation prior to further consideration by the Council. The Commission shall submit a written report including recommendations to the Council within thirty (30) days after the date the proposed vacation is referred to the Commission.

*(Code of Iowa, Sec. 392.1)*

**137.03 NOTICE OF VACATION HEARING.** The Council shall cause to be published a notice of public hearing of the time at which the proposal to vacate shall be considered.

**137.04 FINDINGS REQUIRED.** No street, alley, portion thereof, or any public grounds shall be vacated unless the Council finds that:

1. Public Use. The street, alley, portion thereof, or any public ground proposed to be vacated is not needed for the use of the public, and therefore, its maintenance at public expense is no longer justified.
2. Abutting Property. The proposed vacation will not deny owners of property abutting on the street or alley reasonable access to their property.

**137.05 DISPOSAL OF VACATED STREETS OR ALLEYS.** When in the judgment of the Council it would be in the best interest of the City to dispose of a vacated street or alley, portion thereof or public ground, the Council may do so in accordance with the provisions of Section 364.7, *Code of Iowa*.

*(Code of Iowa, Sec. 364.7)*

**137.06 DISPOSAL BY GIFT LIMITED.** The City may not dispose of real property by gift except to a governmental body for a public purpose or to a fair.

*(Code of Iowa, Sec. 174.15[2] & 364.7[3])*

<b>EDITOR'S NOTE</b>			
The following ordinances, not codified herein and specifically saved from repeal, have been adopted vacating certain streets, alleys and/or public grounds and remain in full force and effect.			
<b>ORDINANCE NO.</b>	<b>ADOPTED</b>	<b>ORDINANCE NO.</b>	<b>ADOPTED</b>
66-7	October 21, 1966		
67-4	June 26, 1967		
71-2	June 21, 1971		
71-3	June 21, 1971		
71-4	June 21, 1971		
71-5	June 21, 1971		
71-6	June 21, 1971		
71-7	June 21, 1971		
80-2	May 19, 1980		
97-1	March 3, 1997		
97-6	April 21, 1997		



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## CHAPTER 139

# NAMING OF STREETS

139.01 Naming New Streets  
139.02 Changing Name of Street  
139.03 Recording Street Names

139.04 Official Street Name Map  
139.05 Revision of Street Name Map

**139.01 NAMING NEW STREETS.** New streets shall be assigned names in accordance with the following:

1. Extension of Existing Street. Streets added to the City that are natural extensions of existing streets shall be assigned the name of the existing street.
2. Resolution. All street names, except streets named as a part of a subdivision or platting procedure, shall be named by resolution.
3. Planning and Zoning Commission. Proposed street names shall be referred to the Planning and Zoning Commission for review and recommendation.

**139.02 CHANGING NAME OF STREET.** The Council may, by resolution, change the name of a street.

**139.03 RECORDING STREET NAMES.** Following official action naming or changing the name of a street, the Clerk shall file a copy thereof with the County Recorder, County Auditor and County Assessor.

*(Code of Iowa, Sec. 354.26)*

**139.04 OFFICIAL STREET NAME MAP.** Streets within the City are named as shown on the Official Street Name Map which is hereby adopted by reference and declared to be a part of this chapter. The Official Street Name Map shall be identified by the signature of the Mayor, and bearing the seal of the City under the following words: "This is to certify that this is the Official Street Name Map referred to in Section 139.04 of the Code of Ordinances of Windsor Heights, Iowa."

**139.05 REVISION OF STREET NAME MAP.** If in accordance with the provisions of this chapter, changes are made in street names, such changes shall be entered on the Official Street Name Map promptly after the change has been approved by the Council with an entry on the Official Street Name Map as follows: "On (date), by official action of the City Council, the following changes were made in the Official Street Name Map: (brief description)," which entry shall be signed by the Mayor and attested by the Clerk.

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## CHAPTER 140

# DRIVEWAY REGULATIONS

140.01 Definitions

140.02 Permit

140.03 Permit Fee

140.04 Standard Driveway Specifications

140.05 Driveway Requirements

140.06 Grade Variances

140.07 Failure to Obtain Permit; Remedies

140.08 Inspection and Approval

140.09 Repairing Defective Driveways

**140.01 DEFINITIONS.** As used in this chapter, the following terms have these meanings:

1. “Driveway” means that part of any approach for motor vehicles to private property that provides access to a public street, highway, or alley.
2. “Owner” means the person owning the fee title or the contract purchaser.
3. “Portland cement” means any type of cement except bituminous cement.

**140.02 PERMIT.** Before any person shall construct, repair, reconstruct, or replace a driveway, said person shall obtain a written permit from the City Administrator. A written application for the permit shall be filed with the City Administrator. The application shall include the street address or legal description of the property, the name of the owner, the name and address of the person performing the work, and the proposed plan of construction or repair. The plan of construction or repair must include the depth, width, and type of surface used. The City Administrator shall issue the permit if the proposed plan meets all the requirements of this chapter, including any specifications contained herein, if the fee is paid, and if the construction or repair as planned will not create any substantial hazard in the use of the street for public travel or drainage. A permit shall expire six (6) months after the date of issuance, if not constructed at that time.

**140.03 PERMIT FEE.** The applicant for a driveway construction or repair permit shall pay a permit fee to the Clerk to cover the cost of issuing the permit and supervising, regulating, and inspecting the work. All permit fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such permit fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective permit fees shall be kept on file in the office of the City Administrator and shall be open to inspection during regular business hours.

**140.04 STANDARD DRIVEWAY SPECIFICATIONS.** The Public Works Director shall prepare complete plans and specifications for the construction, reconstruction, and repair of driveways, which, upon approval of the Council, shall be kept on file in the office of the City Administrator. The specifications shall include descriptions in the use and placement of barricades and warning lights. All driveway repairs or construction on public property, whether performed by the owner of the abutting property or by the City, shall be performed under the supervision of and subject to inspection by the Public Works Director. All such work must be performed in accordance with the plans and specifications adopted by the City.

**140.05 DRIVEWAY REQUIREMENTS.** All driveways constructed at any place where no sidewalk exists shall conform to the appropriate standards or specifications adopted by the Public Works Director and approved by resolution of the City Council. All driveways shall be

constructed of Portland cement from the street to the property line. All driveways shall be constructed of Portland cement or asphalt at any location beyond the property line. All driveways shall be constructed so that the normal flow of drainage in the adjoining street will not be diverted or obstructed. In the event any person is unable to construct a driveway to grade, the owner must sign a waiver agreeing to indemnify the City from all liability arising from the maintenance and construction of the driveway.

**140.06 GRADE VARIANCES.** In any case where it appears that a steeper driveway grade than that specified in this section is necessary or desirable because of existing terrain conditions, a driveway may be constructed (in any place where no sidewalk exists) at such steeper grade. It shall be a condition to the granting of any permit to construct a driveway at a grade other than that specified that all rights acquired by virtue of such permit shall be subject to the right of the City to construct sidewalks at the established grade. In any place where sidewalks have, prior to July 28, 1958, been constructed at a different grade than that specified in this section, driveways may conform to the grade of the existing sidewalks. Nothing herein shall permit the construction of any driveway so as to divert or obstruct the normal flow of drainage in the adjoining street.

**140.07 FAILURE TO OBTAIN PERMIT; REMEDIES.** Whenever any driveway construction or repair is made that does not conform to the provisions of this chapter and with the specifications, or when any driveway construction, or repair is made without a permit, the City Administrator shall serve notice to the property owner and the contractor doing the work that a permit must be obtained. If the driveway is in the course of construction or repair, the notice shall order the work to stop until a permit is obtained and the work is corrected to comply with the specifications. If the driveway work has been completed, the owner shall obtain a permit immediately and perform any needed corrections within five (5) days after receipt of the permit. If the owner fails to comply with this notice, the City Administrator shall have the work completed by an outside contractor and assess the costs to the property owner as provided in Section 140.09 of this chapter.

**140.08 INSPECTION AND APPROVAL.** Upon final completion, the Public Works Director shall inspect the work. The Public Works Director may order corrections in the work if it does not meet specifications.

**140.09 REPAIRING DEFECTIVE DRIVEWAYS.** It shall be the duty of the abutting property owner at any time, or upon receipt of thirty (30) days' notice from the City, to repair, replace, or reconstruct all broken or defective driveways in the City right-of-way abutting said property owner's property. If, after the expiration of the thirty (30) days as provided in the notice, the required work has not been done or is not in the process of completion, the Public Works Director shall proceed to repair, replace, or reconstruct the driveway. Upon completion of work, the Public Works Director shall submit to the Council an itemized and verified statement of expenditures for material, labor, and the legal description of the property abutting the driveway on which work has been performed. These costs shall be assessed to the property as taxes.

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## CHAPTER 141

# FIBER OPTIC CABLE LICENSE

141.01 Definitions	141.07 Conditions of Public Property Occupancy
141.02 Basic Grant	141.08 Powers of City
141.03 Construction and Repair of Network	141.09 Plans and Coordination
141.04 Excavations	141.10 Removal of Licensee Facilities
141.05 Work by Others; Alteration to Conform with Public Improvements	141.11 Liability and Indemnification
141.06 Licensee Contractors	141.12 Notices to Licensee
	141.13 Assignment

**141.01 DEFINITIONS.** The following words and phrases, when used in this chapter, have the meanings ascribed to them in this section:

1. “Public improvements” means any improvements on public property, including (but not limited to) paving, sidewalks, grass, vegetation, trees; street lights, traffic signals, water mains, sewers, electric transmission lines, and equipment related thereto.
2. “Public property” means City-owned or controlled public rights-of-way, easements, bridges, squares, and commons.
3. “Licensee” means the applicant named in the application for fiber optic cable license and includes all equipment owned, operated, leased, or subleased in connection with the operation of the network, and includes (but is not limited to) poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, and other structures or appurtenances.

**141.02 BASIC GRANT.** Upon approval of an application hereunder by the City, and for a period of two years unless otherwise terminated, subject to the terms and conditions of this chapter, the licensee is hereby granted a license to construct, maintain, inspect, protect, repair, replace, retain a communications system in, under, upon, along and across the public property shown and identified in the plans and specifications submitted to the City with the licensee’s application, subject to the regulatory powers of the City and subject to the conditions hereinafter set forth, as may be amended from time to time by the City Council in its sole and absolute discretion. The licensee will be required to pay a license application submittal and annual license fee. Fees shall be established by the City Council by resolution, which is on file with the City Clerk.

**141.03 CONSTRUCTION AND REPAIR OF NETWORK.** In the process of location, construction, reconstruction, replacement, or repair of any system component, the excavation or obstruction made or placed in public property at any time or for any purpose by the licensee shall protect the public and, to assure the safe and efficient movement of traffic, be properly barricaded to comply, at a minimum, with requirements set forth in the *Manual on Uniform Traffic Control Devices*. All pavement taken up or damaged shall be properly and speedily replaced in accordance with the City’s regulations. As a condition to use of public property, the licensee shall at its own expense, repair any private property, public utility system component, public improvement, or public property damaged by such location, construction, reconstruction, replacement, or repair work in a manner reasonably acceptable to City. If the licensee fails to repair or arrange with the City for the proper repair of any public property after excavations

have been made, and after ten days' notice in writing to do so is given to its designated representative, then the City may make such repairs at the expense of the licensee.

**141.04 EXCAVATIONS.** The licensee is authorized to make excavations in City streets, avenues, alleys, and public places for purposes of routine repair, replacement, and maintenance of poles, wire, or other system components associated with the licensee. In making such excavations, the licensee shall obtain a permit pursuant to City ordinances and regulations, shall not unnecessarily obstruct the use of streets, avenues, alleys, or public places, shall provide the Public Works Director with 24 hours' notice prior to the actual commencement of the work, and shall comply with all provisions, requirements, and regulations in performing such work. In emergencies that require immediate excavation, the licensee may proceed with the work without first applying for or obtaining the permit; provided, however, the licensee shall apply for and obtain the permit as soon as possible after commencing such emergency work. If the licensee fails to comply with the provisions of this section, the City may repair or restore the public property to a condition at least as good as the condition of the property prior to the disturbance by the licensee. The licensee shall pay the costs of such repair or restoration. The licensee shall pay to the City its costs and charges for such work within 30 days after receipt of the City's billing.

**141.05 WORK BY OTHERS; ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS.** The City reserves the right to lay—and permit to be laid—wires, pipes, cables, conduits, ducts, manholes and other appurtenances, and to do—or permit to be done—any underground and overhead installation or improvement that may be deemed necessary or proper by the City in, across, along, over, or under any public property occupied by the licensee and to change any curb or sidewalk or the grade of any street. In permitting others to do such work the City shall not be liable to the licensee for any damages arising out of the performance of such work by other parties. Nothing in this chapter shall be construed as to relieve any other person or corporation from liability for damage to the licensee's facilities.

**141.06 LICENSEE CONTRACTORS.** The requirements of the licensee shall apply to all persons, firms, or corporations performing work for the licensee under a contract, subcontract, or other type of work order.

**141.07 CONDITIONS OF PUBLIC PROPERTY OCCUPANCY.** The fiber optic cable systems and other components of the facilities erected by the licensee within the City shall conform to established grades of streets, alleys, and sidewalks, and be so located as to cause minimum interference with other public utilities located in or upon public property, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin public property. The licensee shall conduct its work hereunder in such manner as to cause as little interference as possible with pedestrian and vehicular traffic, and shall abide by scheduling directions, if any, given by the Public Works Director. Prior to undertaking any work in the area licensed hereunder, in addition to consulting records maintained by the City, if any, the licensee shall be responsible for locating any and all existing facilities located at or near the site that may, in any way, be impacted by the licensee's work hereunder. The licensee shall indemnify and hold harmless the City for any and all damages in any way related to activities undertaken by the licensee hereunder, regardless of any alleged negligence by the City. The licensee shall, upon 60 days' notice and at its sole cost and expense, remove, locate, and relocate its facilities in, on, over or under public property in such manner as the City may at any time require for the purpose of facilitating the construction, reconstruction, maintenance, repair or change in grade of any public improvement on, in, or about any such public property, for the purpose of promoting the efficient operation of any such improvement, or for the purposes of

facilitating the vacation and/or redevelopment of public right-of-way by the City, as it deems appropriate in its sole discretion. In the event the licensee fails to act as directed hereunder within the time prescribed in the notice, the license issued to licensee shall be deemed terminated immediately, without further action of the City. The City may proceed as it so desires, including (but not limited to) removing, destroying, or burying the facilities, as the City deems appropriate. The licensee releases, indemnifies, and holds the City harmless for any and all actions undertaken by the City hereunder. The licensee shall not place its facilities in the public property where the same will interfere with the normal use or maintenance of any public improvement, including (but not limited to) streets, alleys, sidewalks, traffic control devices, sanitary sewers, storm sewers, storm drains, or water mains, or electrical transmission lines, or any public utility facility. Upon request, the licensee agrees to assist in locating underground facilities which are part of its system. Such assistance will be provided in a timely manner, but not more than 48 hours after the time of request. As a condition of the agreement, the licensee shall enroll as a member of the One-Call System and shall respond to all requests and notifications placed to the toll free One-Call number. Installation, repair, or replacement work completed by the licensee on any facilities requiring excavation of public property or public right-of-way shall require restoration and replacement of surface vegetation with sod in conformance with City ordinances and in accordance with standard local practices for placing sod.

**141.08 POWERS OF CITY.** Nothing in this chapter shall be construed to abridge the right or power of the City to make further regulations relative to the use of the streets, alleys, and public grounds by anyone using the same for the erection and maintenance of utility systems.

**141.09 PLANS AND COORDINATION.** The licensee shall keep complete and accurate maps and records on the locations and operations of its facilities in connection with license and provide a full, completed construction copy to the City.

**141.10 REMOVAL OF LICENSEE FACILITIES.** The license granted pursuant to this chapter shall expire upon the conclusion of the term specified in this chapter, unless previously terminated. At least seven days prior to the expiration or termination of the license granted hereunder, the licensee shall be responsible for removing its facilities and equipment from public property and restoration of public property affected as part of the removal in the manner set forth in this chapter, at its sole cost and expense. In the event licensee fails to remove its facilities and equipment prior to the expiration or termination date of the license, any facilities or equipment shall be deemed abandoned. Any facilities, equipment, or other property remaining anywhere on public property after the expiration or termination of the license may be destroyed, removed, or otherwise disposed of by the City in any manner whatsoever and the licensee shall hold harmless the City from any and all liability in any way occasioned by the actions of the City hereunder.

**141.11 LIABILITY AND INDEMNIFICATION.** The licensee covenants to indemnify, defend, and save the City and its officers, agents, and employees harmless from any and all damages arising directly from the exercise of the rights granted herein, including (but not limited to) attorney's fees. The licensee agrees to require contractors and subcontractors engaged in work for the licensee within the public rights-of-way or on public property to maintain in effect during the term of work liability insurance in comprehensive form and in the amounts to be set by the City. Licensee agrees to accept the risk of having its communications systems and equipment upon the public right-of-way, including the possible risk of damage or injury to its system or equipment, and agrees to release and discharge the City of any liability for damage or injury to the licensee's equipment. In no event shall the City be liable for any consequential

damages arising out of any damage or injury to the licensee's equipment placed in the right-of-way.

**141.12 NOTICES TO LICENSEE.** Licensee shall be responsible for keeping the City apprised of the address to which notices should be sent throughout effective term of the license. Notices sent by the City pursuant to this chapter shall be sent to the address of licensee identified on the application, or any address identified in writing addressed to the City Clerk's Office by the licensee thereafter. Notice shall be deemed given by the City by mailing notice to the address provided by licensee hereunder by ordinary mail.

**141.13 ASSIGNMENT.** Neither party shall assign or otherwise transfer the agreement or any of its rights and interest to any firm, corporation, or individual, without the prior written consent of the other party, except either party shall have the right to assign, convey, or otherwise transfer its rights, title, interest, and obligations under the agreement, in whole or in part, to any entity controlled by, controlling or under common control with a party thereto, or any entity into which a party may be merged or consolidated or which purchases all or substantially all of the assets of such party.

## CHAPTER 142

# PARKLETS

142.01 Intent and Purpose	142.08 Dates and Hours Of Operation
142.02 Permit Required	142.09 Taxes, Assessments; Operating Costs and Utility Charges
142.03 Definitions	142.10 Indemnity and Insurance Requirements
142.04 Permit Requirements and Associated Fees	142.11 Denial; Revocation or Suspension of Permit
142.05 Permit Application and Site Plan Approval	142.12 Appeals
142.06 Construction of Parklet Improvements	142.13 City-Owned Parklets
142.07 Parklet Operation and Conditions	

**142.01 INTENT AND PURPOSE.** The establishment of a program for the siting, installation, construction, operation, use, maintenance and repair of parklets is designed and intended to facilitate the conversion of inactive and often underutilized on-street parking spaces into publicly-accessible open space available for the general public to enjoy within a system of conditions. Parklets are located within a public right-of-way, and may include tables, seating, umbrellas, landscaping, food and beverage service and sun shade, all of which are intended to enhance the quality of the pedestrian experience. The program for parklets is designed to provide a path for merchants to take individual action in the development and beautification of the city's public realm and are further intended as an aesthetic enhancement to the streetscape, providing an economical solution to the need for increased public open space and encouraging of walking by providing amenities like seating, planting, bike parking, and art. Parklets may also be used as an extension of services for restaurants to offer seasonal outdoor patio services for patrons.

**142.02 PERMIT REQUIRED.** Operating a parklet within the public rights-of-way of the city without a permit and a parklet revocable license executed by the permittee and city, and paying the appropriate fees, costs and charges relating thereto in accordance with the provisions of this chapter is prohibited. A parklet, permitted and operated in accordance with this chapter shall not be considered an obstruction of a public right-of-way.

**142.03 DEFINITIONS.** As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meanings indicated:

1. "Applicant" means a person or entity that has applied for approval of a parklet site plan. The applicant shall include, jointly and severally, both (i) the owner or operator of the qualifying business and (ii) the fee simple owner of the real property upon which the qualifying business is situated. After approval of the permit for the parklet and the parklet site plan by the City and execution of a parklet revocable license authorizing the design, construction, installation, use, maintenance and removal of the parklet, the applicant shall be known as the "permittee".
2. "Leasing Applicant" means any person or entity that has applied to lease a City-owned parklet as set forth in Windsor Heights Code Section 142.13. The applicant shall include, jointly and severally, both (i) the owner or operator of the qualifying business and (ii) the fee simple owner of the real property upon which the qualifying business is situated. After approval of the parklet lease by the City and execution of a Parklet Use Agreement, the applicant shall be known as the "lessee".

3. “Lessee” means, jointly and severally, (i) the owner or operator of the qualifying business, and (ii) the fee simple owner of the real property upon which the qualifying business is situated, whom the City has approved to lease a City-owned parklet and have executed a Parklet Use Agreement.
4. “Parklet” means the platform installed by a permittee over parking spaces adjacent to a sidewalk area upon which tables, chairs, umbrellas, landscaping, benches and other accessory components may be placed to create an enhanced pedestrian experience for the general public and patrons of the permittee's adjacent business, providing an area within which the pedestrian experience along the public right-of-way may be amplified and enhanced by offering an area with which one might site, rest, recreate or indulge in open air dining and beverage experience. The term parklet, when permitted, also includes the ongoing obligation of maintenance, repair, operation and removal of the parklet improvements in accordance with the terms and conditions of this chapter. Parklets and the parklet revocable license must be undertaken at the sole cost and expense of the permittee. The parklet shall be located no farther than one hundred fifty (150) feet from any portion of the qualifying business.
5. “Parklet improvements” means the improvements identified on the approved parklet site plan, which such improvements may, but shall not necessarily include parklet platform, tables, chairs, umbrellas, and other accessory equipment to the project, railings, seating, landscape or streetscape elements, soft-hit poles, wheel stops, etc.
6. “Parklet license area” means the area described in the approved parklet site plan, such license area being within a public right-of-way, including the air space with which the parklet improvements identified in the parklet revocable license shall be constructed, and within which the parklet will be operated and maintained for the purpose of accommodating the general public and the patrons of permittee's adjacent business.
7. “Parklet revocable license” means the instrument that the permittee and City must execute after approval of the parklet location and parklet site plan. The parklet revocable license shall outline the terms and conditions required for the implementation of the construction, installation, use, operation, maintenance and removal of the parklet after approval by the department.
8. “Parklet site plan or site plan” means the site plan prepared by the applicant and approved by the City and incorporated into the parklet revocable license that authorizes the design, construction, installation, operation and maintenance of the parklet. Approval of the site plan does not relieve permittee of proceeding with all other governmental approvals otherwise applicable to the construction, installation, use, operation and maintenance of the parklet, including building permits under the City's Building Code and engineering permits under the City's regulations. A copy of the approved parklet site plan shall be attached to the parklet revocable license authorizing the parklet and shall be filed with the City.
9. “Permittee” means, jointly and severally, (i) the owner or operator of the qualifying business, and (ii) the fee simple owner of the real property upon which the qualifying business is situated, whom have been approved for a parklet permit and parklet site plan, and have received a parklet revocable license authorizing the design, construction, installation, use, maintenance and removal of a parklet.
10. “Qualifying business” means the business located no farther than one hundred fifty (150) feet from the parklet where the owner or operator of the qualifying business

is one of the two applicants for the permit to construct, install, operate, use, maintain, repair and remove the parklet.

**142.04 PERMIT REQUIREMENTS AND ASSOCIATED FEES.** The following are permit requirements and associated fees needed to obtain a parklet permit:

1. A permit for a parklet shall be issued only to the permittee who shall include, jointly and severally, (i) operator of the qualifying business and (ii) the fee simple owner of the real property upon which the qualifying business is located.
2. The application fee and annual permit fee for establishing, operating and maintaining a parklet shall be determined by the City Council and set forth in a resolution.

**142.05 PERMIT APPLICATION AND SITE PLAN APPROVAL.** The following are permit requirements and associated fees needed to obtain a parklet permit:

1. The application for a permit to construct, operate, use, maintain and repair a parklet shall be submitted to the City's planning and zoning department on a form provided by the department. The application shall include, but not be limited to the following information:
  - A. Name, postal address, e-mail address and phone number(s) of the applicant;
  - B. The application shall be executed by (i) the owner or operator of the qualifying business and (ii) the fee simple owner of the real property upon which the qualifying business is situated;
  - C. A copy of the valid certificate of occupancy for the qualifying business;
  - D. A copy of the current liability insurance for the applicant and fee simple owner of property underlying the qualifying business;
  - E. A drawing (minimum scale of one (1) inch equals twenty (20) feet) showing the layout and dimensions of the proposed parklet license area and parklet and adjacent property, including the structures and improvements to be located on the parklet, proposed location, size and number of tables, seating, umbrellas, location of entries, location of trees, parking meters, parking spaces utilized, vehicular travel lanes, bus shelters, sidewalk benches, trash receptacles, landscaping, utility boxes, pole, guidelines and other sidewalk obstruction either existing or proposed within seventy-five (75) feet of the license area for the parklet;
  - F. Photographs, drawings or manufacturer's brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects relating to the parklet improvements;
  - G. A plan for the maintenance and cleaning of the parklet license area; the tables and chairs located within the parklet area; any trash or food on or about the tables and chairs or sidewalk adjacent to the parklet improvements; and the disposal of any trash or debris generated from the operation and use of the parklet by the general public and patrons of the permittee;
  - H. Any permits or approvals required from any other governmental agency necessary to operate the parklet;

I. Applications shall be accompanied by a non-refundable application fee which shall be credited to the first year permit fee, should the application be approved.

J. Eligible locations for parklets shall be limited to the following unless otherwise approved by the City's Planning and Zoning Department:

(1) Parklets shall be sited along the curb line on streets where on-street parking spaces exist. The parklet can be considered on any location where there are, or would be, space(s) for on-street parallel, angled, or perpendicular parking, including spaces with metered or unmetered parking;

(2) Parklets are generally permitted on streets with a running slope (grade) of five (5) percent or less.

(3) Parklets shall be located on streets with traffic speeds of 25 mph or less;

(4) Parklets shall not block access to public utilities, hydrants, sidewalks, alleys or driveways.

2. The planning and zoning department shall review the materials in subparagraph (1) above and grant approval, approval with conditions or denial of the application for a parklet. Approval of the parklet site plan under this section shall not relieve the permittee of the obligation of securing all required governmental permits necessary for construction of the parklet improvements, to the extent required, which such permits may include, but are not necessarily limited to a building permit and engineering permits under the City's regulation. A copy of the approved parklet site plan shall be placed and remain on file with the City.

3. At all times the permit for the approved parklet, parklet site plan and parklet revocable license shall be subordinate and inferior to the City's superior interest in maintaining the public right-of-way underlying the parklet. In the event that any conflicts should ever arise between the City's superior interest as aforesaid and the operation, use, maintenance and repair of the parklet, then, in that event, the rights of the City's use and obligation of maintaining the public right-of-way for its superior intended purpose shall prevail over that of the permittee and the permittee shall not be entitled to any compensation for interference with the operation and use of the parklet. The permitted shall gain no property right or contract right to the continued operation and use of the parklet.

4. In the event the permittee desires to make modifications to the parklet site plan or parklet improvements after initial approval is granted under subsection (2) above, such proposed modifications shall be submitted to the planning and zoning department for review and approval following the processes set forth above. Approval of such modification shall be granted, granted with conditions or denied by the department.

#### **142.06 CONSTRUCTION OF PARKLET IMPROVEMENTS.**

1. The parklet license area shall be used as the site for the construction, maintenance and repair of the parklet improvements and the use and operation of the parklet and shall be used for no other purpose whatsoever, unless otherwise approved by the City. The permittee shall construct the parklet in accordance with the following terms and conditions:



A. The permittee shall prepare construction plans and specifications based on the parklet site plan approved by the planning and zoning department in accordance with the provisions set forth in section 142.05 above. The construction plans and specifications shall be in accordance with the City's engineering standards and shall be submitted to the planning and zoning department for approval prior to submission of same to the appropriate government officials for issuance of applicable permits in accordance with applicable governmental regulations, including, but not limited to the Iowa Building Code, applicable unified land development regulations, applicable City Codes, and city engineering regulations.

B. After approval by the planning and zoning department, the construction plans and specifications shall be submitted by the permittee to the appropriate governmental officials for review and issuance of all applicable building and engineering permits in accordance with the laws, regulations and rules of all governmental entities with jurisdiction over the construction of the project improvements. A copy of the approved plans and specifications shall be placed and remain on file with the City.

C. The permittee shall be responsible for all costs and fees associated with the planning, permitting and construction of the project. The permittee agrees that the location and finish grades of the improvements shown on the parklet site plan will be indicated on the site and approved by the planning and zoning department prior to commencement of construction.

D. Parklet construction and installation must be overseen by an insured, certified contractor.

E. The permittee is obligated to replace any and all landscaping and public improvements that are damaged as a result of the construction and installation of the parklet improvements utilizing the same quality of materials and workmanship as approved by the City.

#### **142.07 PARKLET OPERATION AND CONDITIONS.**

1. Depending on the nature of the permit requested and authorized, The parklet may be operated for the purpose of accommodating the public in general without charge or the patrons of the permittee, and may include providing open air dining and beverage service opportunities, provided, however, that nothing herein shall be construed as prohibiting the permittee from charging for the sale or service of food or beverage within the parklet license area for sales from the qualifying business.

2. Permittee shall preserve and protect all existing trees and plantings in the public right-of-way within the immediate vicinity of the parklet. Permittee shall be required to replace or mitigate entirely at permittee's expense, any damage to the public right-of-way or private property as a result of the parklet construction, installation, placement, operation, maintenance or removal.

3. General landscape maintenance attendant to the parklet should be performed on a regular basis at the permittee's sole cost and expense.

4. Awnings, umbrellas and other decorative material accessory to the parklet shall be fire retardant, pressure treated or manufactured of fire resistive material. Patio heaters or heat lamps shall be allowed on the parklet if pre-approved by the City's Fire Chief, or their designee.

5. Tables, chairs, umbrellas and any objects accessory to the parklet shall be maintained in a clean and attractive appearance, shall be in good state of repair at all times and shall be maintained in accordance with the approved maintenance plan and shall keep the landscaping and plants in a good, healthy and vibrant condition.
6. The parklet shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris on a periodic basis during the day, and again at the close of each business day in compliance with the approved maintenance plan.
7. No tables or chairs will be permitted within ten (10) feet of a pedestrian crosswalk. There must be a distance separation of no less than 2 feet separating the structure of the parklet and the adjacent travel lane.
8. The City may require the permittee to provide additional services beneath the parklet platform, including but not limited to pest abatement service and clearing of catch basin grates to allow proper storm drainage.
9. No portion of any object placed within the parklet boundary shall extend into an adjacent pedestrian sidewalk.
10. If the parklet includes planters, the planters must be placed within the parklet boundaries but must be secured to ensure that they do not move onto the adjacent un-level sidewalk. No planters with wheels are to be permitted.
11. Tables, seating, umbrellas and any other items accessory to the parklet shall be of a quality, design and lasting materials, and workmanship both to ensure the safety and convenience of the users and to be compatible with the uses in the immediate vicinity of the parklet.
12. A permittee may sell and serve alcohol beverages in a parklet only if the permittee complies with all the requirements for obtaining an alcohol beverage license, and the parklet is listed on the alcohol beverage license application as being a part of the licensed premises. In such cases, alcohol may be served at the parklet under the following conditions:
  - A. The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
  - B. The retail alcohol beverage license premises description includes the parklet in the description of the licensed premises as an extended area.
  - C. The retail alcohol beverage license permits the sale of the type of alcohol beverages to be served in the parklet.
  - D. Alcohol beverages are sold and served by the licensee or licensee's employees and sold or served only to patrons seated at tables in the parklet.
  - E. Alcohol beverages are served by the licensee or the licensee's employees in compliance with alcohol beverage laws, ordinances and regulations.
  - F. Alcohol beverages may only be served at the parklet when food service is available through the licensed establishment.
  - G. The permittee shall be responsible for policing the parklet area to prevent underage persons from entering or remaining in the parklet, except when underage persons are allowed to be present on the licensed premises under applicable laws.

- H. The area of the restaurant from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the parklet area, unless pre-approved by Police Chief, City Administration and City Council.
- I. At times of closing or during times when consumption of alcohol beverages is prohibited, permittee shall remove from the parklet area all containers used for or containing alcohol beverages. No container of alcohol beverages shall be present in the parklet between 12:00 a.m. and 8:00 a.m.
13. No smoking and/or use of tobacco of any kind shall be permitted within the parklet license area. The permittee shall purchase a minimum of two (2) "No Tobacco" signs for each entrance of the parklet.
14. No advertising signs or business identification signs shall be permitted within the parklet license area.
15. No food preparation, food or beverage station, refrigeration apparatus or equipment shall be allowed on the parklet unless authorized by the planning and zoning department as part of a special event.
16. No table or chair nor any other part of the parklet may be attached, chained, or in any manner affixed to any tree or city fixture, but may be affixed to the parklet structure.
17. If found necessary for the protection of health, safety and welfare of the public, the City Administrator or their designee may require the permittee to immediately remove or relocate all parts of the tables, chairs, umbrellas and equipment within the parklet license area. If the permittee fails to remove or relocate the tables, chairs and umbrellas as requested within a reasonable time as determined by the City Administrator, given the circumstances at hand, the city may remove or relocate same in emergency situations and the cost thereof shall be borne by the permittee.
18. Reflective elements are required at the outside corners of all parklets. Soft-hit posts are a standard solution deployed at the outside edges; however, the department will consider additional safety measures including bollards, reflective elements or other solutions incorporated into the parklet design if warranted.
19. For parklets in parallel parking spaces, a three-foot wheel stop or other appropriate "stops" such as planters must be installed one (1) foot from the curb at the edge of the front and back parking spaces. When parklets are installed adjacent to parallel parking spaces, wheel stops or other appropriate "stops" such as planters should be set back four (4) feet from the parklet improvements. For angled parking spaces adjacent to driveways, appropriate locations for wheel stops will be determined by the department. Wheel stops should be made of recycled rubber. Concrete wheel stops are discouraged.
20. Traffic safety devices, including but not limited to bollards may be required depending on existing conditions and site layout to properly protect the parklet and its patrons.
21. The permittee is responsible for the costs associated with removal of the parklet platform and accessories.
22. The city and its officers and employees shall not be responsible for parklet or parklet components relocated during emergencies.

23. Amplified or non-amplified music may be permitted within the parklet area, upon recommendation of the planning and zoning department and subject to the approval of the City Administrator, or their designee, as to the hours at which the music may be played, the volume settings, placement of speakers and any other facet of the projection of the music.

24. The permittee shall, at its sole cost and expense, remove the tables, chairs and umbrellas from the parklet area at the close of permittee's qualifying business each day, provided the tables, chairs and umbrellas are set back in the parklet license area by the opening of business (no later than 11:00 a.m.) the following day, except for inclement weather.

25. Parklets shall not be permitted in front of a fire hydrant, over a manhole, public utility valve or cover. A clearance of fifteen (15) feet shall separate parklets from fire hydrants.

26. Parklets shall be required to have soft-hit posts, wheel stops and barriers on all edges of the parklet platform.

27. The parklet shall be constructed and installed to conform to all applicable federal, state or county laws or regulations.

28. There shall be a minimum of two (2) feet wide clear path between the tables and/or seating within the parklet and any abutting sidewalks for pedestrians at all times.

29. The permittee shall keep on record with the department at all times, information on a contact person to be contacting during emergencies, such information on the contact person to include (i) name, (ii) mailing, (iii) e-mail address, (iv) telephone number both at work and residential.

30. The permittee shall have the continuing obligation of compliance with the Americans with Disabilities Act, as same may be amended from time to time.

31. The permittee shall, at its sole cost and expense, construct, operate, maintain and repair the parklet and parklet improvements and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the parklet, parklet improvements and parklet license area will be installed, constructed, operated, used, maintained and repaired in order to comply with health and sanitary requirements, fire hazard requirements, zoning requirements, building code requirements, city engineering standards, environmental requirements and other similar regulatory requirements.

#### **142.08 DATES AND HOURS OF OPERATION.**

1. Parklets shall be permitted from April 1<sup>st</sup> through October 31<sup>st</sup>, unless otherwise approved by the planning and zoning department. Parklets that have not been removed after October 31<sup>st</sup> may be removed by the City at the permittee's expenses.

2. The parklet shall only be open and available for serving permittee's patrons between the hours of 8:00 a.m. and 12:00 a.m.

#### **142.09 TAXES, ASSESSMENTS; OPERATING COSTS AND UTILITY CHARGES.**

1. The permittee shall pay or cause to be paid all applicable real estate taxes, assessments and other similar payments, usual or unusual, extraordinary as well as ordinary, which shall during the term be imposed upon, become due and payable, or become a lien upon the parklet or parklet license area or any part thereof, but

specifically limited to such taxes or assessments which accrue after the effective date of the parklet revocable license. Permittee shall, upon request, exhibit a receipt for such payments to the City. Further, permittee shall pay or cause to be paid all operating expenses, such as those for light, electricity, charges for water, and all costs attributable to the maintenance and operation of all parklet improvements to be erected within the license area for the parklet or landscaping related thereto.

2. The permittee shall be responsible for securing separate meters or billing for all utilities consumed within the parklet license area. Permittee shall promptly pay when due all operating, construction, maintenance and servicing charges, expenses and costs, including telephone, gas, electricity, cable, telecommunications, water, and all other expenses incurred in the use and operation of the parklet. The accrual of utilities and operating costs under this subparagraph prior to termination of the parklet revocable license shall survive the termination of the parklet revocable license and remain the obligation of the permittee.

#### **142.10 INDEMNITY AND INSURANCE REQUIREMENTS.**

1. By execution of the parklet revocable license as a condition precedent to the installation, construction, use, operation, maintenance and repair of a parklet, the permittee shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of permittee under the parklet revocable license, conditions contained therein, the location, construction, repair, maintenance, use or occupancy by permittee of the parklet license area, or the breach or default by permittee of any condition proscribed by this chapter or covenants or provisions of the parklet revocable license, except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the City, its officers, agents and employees.

2. At all times while the parklet revocable license is in effect, the permittee, at its expense, shall keep or cause to be kept in effect the following:

A. Commercial general liability.

- (1) Limits of liability:  
Bodily injury and property damage liability:  
Each occurrence-One million dollars (\$1,000,000.00)

B. Business automobile liability.

- (1) Limits of liability:  
Bodily injury and property damage:  
One million dollars (\$1,000,000.00) combined single limit,  
per occurrence;  
Including hired, borrowed or non-owned autos.

C. Employer's liability.

- (1) Limits of liability:  
One hundred thousand dollars (\$100,000.00) for bodily injury  
caused by an accident, each accident;  
One hundred thousand dollars (\$100,000.00) for bodily injury  
caused by disease, each employee;

Five hundred thousand dollars (\$500,000.00) for bodily injury caused by disease, policy limit.

The permittee shall deliver to the City copies of all insurance policies required hereunder and proof of full payment thereof on or before the effective date of the parklet revocable license. From time to time, the permittee shall procure and pay for renewals of insurance required herein before it expires. The permittee shall deliver to the planning and zoning department the renewal policy at least twenty (20) days before the existing policy expires.

3. If the permittee fails to obtain and maintain insurance as required herein and such failure shall continue for a period of fifteen (15) days after notice by the department, the City may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor, with the ultimate cost and expense thereof to be the responsibility of permittee.

#### **142.11 DENIAL; REVOCATION OR SUSPENSION OF PERMIT.**

1. The planning and zoning department may deny, revoke or suspend a permit for a parklet if it is found by the department that:

A. Any required business or health permit has been suspended, revoked or cancelled.

B. The permittee does not have the insurance that is correct and effective in the minimum amounts described in section 142.10.

C. Violation of any of the conditions set forth in section 142.07, Parklet Operation and Conditions, or any other provision of the Windsor Heights Code of Ordinances.

D. The permittee has failed to correct violations of this chapter or conditions of the permit within three (3) days of receipt of the planning and zoning department's notice of same delivered in writing to the permittee by registered mail, return receipt requested to the last address provided by the permittee to the City.

2. The permit for a parklet may be suspended under the following conditions:

A. In the event that the parklet revocable license granted herein shall (a) ever conflict with a superior municipal interest of the City or public, or (b) at any time the City requires the use of the parklet license area for a superior conflicting municipal purpose or (c) determines that continuation of the parklet revocable license granted herein is no longer in the best public interest, all as determined by the City Planning and Zoning Commission after at least fifteen (15) days advance notice to permittee that the matter will be considered by the City's Planning and Zoning Commission, then, in that event, the permit and parklet revocable license granted herein for the respective parklet license area shall be terminable, in whole or in part, at the will of the Planning and Zoning Commission.

B. In the event permittee is in violation of any material term or condition of this parklet revocable license, as reasonably determined by the City Administrator, or the permit granted herein or the actions of permittee or any of its agents, servants, employees, guests or invitees or the agents, servants, employees, or any of permittee's contractors, subcontractors or independent

contractors conflict with a superior municipal interest of the City or the public, then, upon advance written notice to permittee of not less than seventy-two (72) hours where permitted is given an opportunity to be heard on the matters by the City Administrator, the authority granted by the parklet revocable license or permit may be temporarily suspended by the City Administrator for a period not exceeding fourteen (14) days.

C. In the event that emergent conditions arise within the parklet license area that present an imminent threat to the health, safety or welfare of persons or property, the City Administrator may temporarily suspend this parklet revocable license, in whole or in part, for a period not to exceed fourteen (14) days. In such a circumstance, twenty-four (24) hour advanced written notice shall be provided to permittee by registered mail, return receipt requested to the last address provided by the permittee to the City. In the event the condition persists for a period of seven (7) days, then this revocable license may be temporarily suspended for a period in excess of fourteen (14) days by action of the City's Planning and Zoning Commission.

3. Upon denial or revocation, the director shall give notice of such action to the permittee in writing stating the action which has been taken and the reasons therefor.

#### **142.12 APPEALS.**

1. Appeal shall be initiated within ten (10) days of the effective date of the denial or revocation of the parklet permit by filing a written notice of appeal with the City Administrator.

2. The City Administrator shall place the appeal on the next available regularly scheduled City Planning and Zoning Commission agenda. At the hearing upon appeal, the City Planning and Zoning Commission shall hear and determine the appeal, and the decision of the City Planning and Zoning Commission shall be final and binding and effective immediately.

3. The filing of a notice of appeal by a permittee shall not stay an order by the planning and zoning director, or their designee, to remove a parklet or parts thereof. Vestiges of the parklet, such as tables, chairs, umbrellas and things of a like nature shall be removed immediately as set out in this article pending disposition of the appeal and final decision of the City Planning and Zoning Commission.

**142.13 CITY-OWNED PARKLETS.** In the event the City chooses to purchase parklets to be owned by the City, the City may choose to lease such parklets to eligible persons, under the following conditions:

1. The leasing applicant shall submit an application and proposed site plan for approval in accordance with the terms set forth in Section 142.05.

2. Upon approval of the permit and site plan by the planning and zoning department, the proposed permit shall be presented to the City Council for final approval by resolution.

3. The application fee and scheduled rental fee for leasing a City-owned parklet shall be determined by the City Council and established by resolution.

4. The leasing applicant shall be required to enter into a formal Parklet Use Agreement, in a form and pursuant to the terms as determined by the City Council and City's legal counsel.

5. The planning and zoning department, with final approval of the City Council and City's legal counsel, shall have full discretion to determine the parklet rental terms, including, *inter alia*, length of lease term, location of parklet placement, and terms of use.
6. The lessee must comply with all other obligations set forth in this Code Chapter, including parklet operation and conditions; dates and hours of operation; taxes, assessments, operating costs and utility charges; and indemnity and insurance requirements.
7. The City and/or an agent thereof shall be responsible for transporting the leased parklet to the approved location and providing for installation. The City and/or its agent shall invoice the lessee for the actual costs associated with transporting and installing the parklet, and the lessee shall be obligated to reimburse the City for such costs within thirty (30) days of receipt of the invoice.
8. The lessee shall be responsible for any damage to the parklet during the term of the lease.
9. The planning and zoning department may deny or revoke a parklet lease if it is found that:
  - A. Any required business or health permit has been suspended, revoked or cancelled.
  - B. The lessee does not have the insurance that is correct and effective in the minimum amounts described in section 142.10.
  - C. Violation of any of the conditions set forth in section 142.07, Parklet operation and conditions, or any other provision of the Windsor Heights Code of Ordinances.
  - D. The lessee has failed to correct violations of this chapter or conditions of the lease within three (3) days of receipt of the planning and zoning department's notice of same delivered in writing to the lessee by registered mail, return receipt requested to the last address provided by the lessee to the City.
  - E. In the event that the parklet lease granted herein shall (a) ever conflict with a superior municipal interest of the City or public, or (b) at any time the City requires the use of the parklet area for a superior conflicting municipal purpose or (c) determines that continuation of the parklet lease granted herein is no longer in the best public interest, all as determined by the City Council after at least fifteen (15) days advance notice to lessee that the matter will be considered by the City's Planning and Zoning Commission, then, in that event, the parklet lease granted herein shall be terminable, in whole or in part, at the will of the Planning and Zoning Commission.
  - F. In the event that emergent conditions arise within the parklet area that present an imminent threat to the health, safety or welfare of persons or property.
10. Upon denial or revocation, the planning and zoning director shall give notice of such action to the lessee in writing stating the action which has been taken and the reasons therefor. The lessee shall have appeal rights as set forth in Section 142.12.

***(Ch. 142 – Ord. 16-08 – Oct. 16 Supp.)***

[The next page is 851]



## CHAPTER 150

# BUILDING NUMBERING

### 150.01 Definitions

### 150.02 Owner Requirements

### 150.03 Building Numbering Plan

**150.01 DEFINITIONS.** For use in this chapter, the following terms are defined:

1. “Owner” means the owner of the principal building.
2. “Principal building” means the main building on any lot or subdivision thereof.

**150.02 OWNER REQUIREMENTS.** Every owner shall comply with the following numbering requirements:

1. Obtain Building Number. The owner shall obtain the assigned number to the principal building from the Clerk.

*(Code of Iowa, Sec. 364.12[3d])*

2. Display Building Number. The owner shall place or cause to be installed and maintained on the principal building the assigned number in a conspicuous place to the street in figures not less than two and one-half (2½) inches in height and of a contrasting color with their background.

*(Code of Iowa, Sec. 364.12[3d])*

3. Failure to Comply. If an owner refuses to number a building as herein provided, or fails to do so for a period of thirty (30) days after being notified in writing by the City to do so, the City may proceed to place the assigned number on the principal building and assess the costs against the property for collection in the same manner as a property tax.

*(Code of Iowa, Sec. 364.12[3h])*

**150.03 BUILDING NUMBERING PLAN.** Building numbers shall be assigned in accordance with the building numbering plan on file in the office of the Clerk.

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## CHAPTER 151

# TREES AND VEGETATION

151.01 Definitions	151.12 Obstruction of Enforcement
151.02 Planting Restrictions	151.13 Permit to Plant in Streets
151.03 Vision Clearance at Street Intersections	151.14 Assessment for Planting or Care of Trees
151.04 Assessment	151.15 Planting New Trees; Assessment
151.05 Unauthorized Interference with Trees or Shrubs	151.16 Schedule of Assessments
151.06 Hitching or Anchoring Articles to Trees	151.17 Filing Assessment Schedule for Public Inspection
151.07 Permission for Permanent Anchorage	151.18 Objections to Assessment Schedule
151.08 Guying Poles to Trees in Case of Emergency	151.19 Adoption of Assessment Schedule
151.09 Permit to Remove Trees for Construction Purposes	151.20 Certifying Assessment Schedule for Collection
151.10 Protection During Excavation or Construction	151.21 Dead and Diseased Trees
151.11 Tree Trim Specifications	

**151.01 DEFINITIONS.** For use in this chapter, the following terms are defined:

1. “Parking” means that part of the street, avenue, or highway in the City not covered by sidewalk and lying between the lot line and the curb line or, on unpaved streets, that part of the street, avenue, or highway lying between the lot line and that portion of the street usually traveled by vehicular traffic.
2. “Superintendent” means the Public Works Director or such other person as may be designated by the Council.
3. “Tree” means any woody perennial plant having a single, elongate main stem with few or no branches on its lower part and shrubs of arborescent form but does not include any shrub that is less than fifteen (15) feet in height.

**151.02 PLANTING RESTRICTIONS.** No tree shall be planted in any street or parking unless a permit is issued pursuant to Section 151.13 of this chapter.

**151.03 VISION CLEARANCE AT STREET INTERSECTIONS.** On a corner lot where setback or side yard exists, no fence, wall, shrubbery, ground, sign, billboard, marquee, or other obstruction to vision between a height of 2 feet and 10 feet above the centerline grade of intersecting streets shall be erected, placed, planted, allowed to grow, or maintained within the triangular yard space formed by the intersecting street lines and a line joining points on such street lines 25 feet from the point of intersection of the streets. Public utility poles and existing trees trimmed from the ground level to a height of 10 feet shall not be considered obstructions to vision.

**151.04 ASSESSMENT.** If the abutting property owner fails to trim the trees as required in this chapter, the City may serve notice on such property owner requiring said property owner to do so within five (5) days. If said owner fails to trim the trees within that time, the City may perform the required action and assess the costs against the abutting property for collection in the same manner as a property tax.

*(Code of Iowa, Sec. 364.12[2d & e])*

**151.05 UNAUTHORIZED INTERFERENCE WITH TREES OR SHRUBS.** No person shall remove, prune, cut, molest, break, deface, destroy, spray, repair, or do surgery work upon any tree or part thereof, or in any manner interfere with, disturb, or injure any tree, shrub, or plant, upon parking or the public property of the City. No person shall permit any chemical,

either solids or fluids, to seep, drain, or be emptied on or about any tree, shrub, or plant that is now or may hereafter be growing upon any public property of the City, without first obtaining a permit from the City Administrator.

**151.06 HITCHING OR ANCHORING ARTICLES TO TREES.** No person shall hitch or fasten any animal to any tree or shrub, or fasten to the same, for the purpose of anchorage, any wire, rope, chain or cable, nor shall any person nail, tie, or in any manner fasten any card, sign, poster, board, or any other article to any tree, shrub or plant that is now or may hereafter be growing upon any parking or public property of the City.

**151.07 PERMISSION FOR PERMANENT ANCHORAGE.** Permission may be granted by the City Administrator for permanent anchorage to trees if good practice in line construction indicates the desirability and the elimination of stubs or poles will result by so doing.

**151.08 GUYING POLES TO TREES IN CASE OF EMERGENCY.** In the event of storms or other emergencies, poles may be guyed temporarily to trees.

**151.09 PERMIT TO REMOVE TREES FOR CONSTRUCTION PURPOSES.** Any person desiring to remove a live tree standing on a street or parking thereof for construction of walks, drives, buildings, or any other structures for his or her own gain or purposes shall first obtain a permit from the City Administrator. If a permit is issued, the permittee must pay the cost of removal of such trees and shrubs, or the permittee may remove the same at permittee's own expense.

**151.10 PROTECTION DURING EXCAVATION OR CONSTRUCTION.** All trees, shrubs, or plants within the limits of any street, parking, or other property of the City near any excavation or construction of any building or structure shall be guarded with a good substantial frame or box not less than four feet square and six feet high. All building material or other debris shall be kept at least three feet from any tree, shrub, or plant.

**151.11 TREE TRIM SPECIFICATIONS.**

1. Any person trimming trees or causing trees, bushes, and other plants to be trimmed under the authority of this section or sections of this Code pertaining to utility franchises, if the entity wishing to trim is not itself the owner, shall:

A. Cause written notice to be given to the owner, occupant, or person in control of the property at least 15 days prior to any trimming; provided, however, notice shall not be required if trimming is necessary to restore electrical service or relieve a public emergency resulting from storm, accident, similar casualty, or other cause which immediately threatens electrical service or public safety. The notice shall state the nature of the trimming to be performed, the person's right to trim the tree, shrubbery, bush, or other plants, the date when such trimming must be completed if the owner desires to do the trimming, and whether an assessment or charge will be imposed by such person for trimming the tree, bush, or other plant.

B. Trim trees, bushes, and plants to the extent necessary to remove obstruction to protect lives and property.

C. Employ persons skilled in tree trimming so that the life and general aesthetic qualities of the tree are preserved.

2. The owner of any tree, shrub, or plant protruding into or overhanging a street or sidewalk shall trim the branches thereof to remove any obstruction of the view of any street lamp, street sign, traffic control device, or street intersection. A clear space of ten feet above the surface of a street or sidewalk must be maintained. All trimming shall conform to the specifications in subsection 1 of this section and to those required pursuant to the City's Traffic Code.

3. The City Administrator may order the removal of any tree, shrub, or plant or any part thereof which does not conform to the specification of subsection 2 of this section. Notice shall be given to the owner of the property as set forth in subsection 1 of this section. If the owner, occupant, or person in control fails to comply with the notice, the City Administrator shall cause the obstructing branches or foliage to be removed and shall submit the costs incident to the service of notice and removal to the City Council, which shall certify the same to the county auditor for collection with and in the same manner as general property taxes. Provided, however, in the event the City Administrator determines that a hazardous condition exists which constitutes an immediate danger to public safety because of the extensive nature or location of an obstruction caused by any tree, shrub, plant, or any part thereof, the City Administrator may cause the removal thereof forthwith without notice; and in such event, costs may be assessed in the same manner as provided above, after notice to the property owner and opportunity for hearing before the City Council is given.

4. Except as provided by subsection 3 of this section, no tree, bush, or shrub shall be removed without the written consent of the owner of the property upon which the tree, bush, or shrub is located.

5. Nothing in this section shall be construed to affect the rights of a landowner as against a neighboring landowner.

**151.12 OBSTRUCTION OF ENFORCEMENT.** No person shall hinder, obstruct, or otherwise interfere with the Superintendent or his/her representatives while engaged in carrying out the provisions of this chapter.

**151.13 PERMIT TO PLANT IN STREETS.**

1. No person shall plant or set out any tree, shrub, or plant in or on any parking, public highway, or street or other City property without first obtaining a permit from the City Administrator, which permit shall designate where such plantings may be done.

2. The permit shall be denied if such planting is likely to create a public danger or nuisance and shall not provide the permittee with any guarantee or assurance that the tree, shrub, or plant will be protected from subsequent trimming or destruction if such is required for health, welfare, or safety of the City's residents.

**151.14 ASSESSMENT FOR PLANTING OR CARE OF TREES.** The cost of planting, pruning, caring for, removing, or maintaining trees and shrubs, in whole or in part, upon the parking or public streets of the City may be assessed against the lots and parcels of land in front of which such trees or shrubs are planted and maintained.

**151.15 PLANTING NEW TREES; ASSESSMENT.** No plantings of new trees or shrubs shall be made and assessed against the abutting property owners except by action of the City Council. Notice of a proposal to plant new trees or shrubs must be made by publication in two newspapers of general circulation in the City 15 days prior to final action thereon.

**151.16 SCHEDULE OF ASSESSMENTS.** The cost of planting new trees and shrubs and the maintenance thereof, including removals and partial removal of trees and shrubs, shall be certified to the City Council by the Superintendent in a scheduled form setting forth the nature of the work done, the amount of the special assessment, the lots of specific portions thereof against which assessed, and the names of the owners thereof as far as practicable.

**151.17 FILING ASSESSMENT SCHEDULE FOR PUBLIC INSPECTION.** A schedule of assessments for planting of new trees and shrubs and maintenance, including removals and partial removal of trees and shrubs, shall be filed with the Clerk for public inspection.

**151.18 OBJECTIONS TO ASSESSMENT SCHEDULE.** Before final adoption of the schedule of assessments provided for in this chapter, the City Council shall give notice by two publications in each of two newspapers published in the City, stating that the schedule is on file in the office of the City Clerk and that within 20 days after the first publication all objections thereto or to the prior proceedings, on account of errors, irregularities or inequalities, must be made in writing and filed with the Clerk.

**151.19 ADOPTION OF ASSESSMENT SCHEDULE.** After the expiration of the 20-day period mentioned in Section 151.18 of this chapter, the City Council shall consider objections to the schedule of assessments, make the necessary corrections, and make, approve, and adopt the special assessments as shown in the schedule.

**151.20 CERTIFYING ASSESSMENT SCHEDULE FOR COLLECTION.** Upon final adoption of special assessments as shown in the schedule of assessments, the City Council shall cause the same to be certified to the County Treasurer with directions that the cost of the improvements or services as scheduled shall be assessed against the parcels of property designated therein, in the amounts set forth thereby, and that such amounts shall be collected as other special assessments.

**151.21 DEAD AND DISEASED TREES.**

1. Right to Enter, Test, and Inspect. The Public Works Director shall enforce the provisions of this section. To secure enforcement hereof, the Superintendent shall have the right and is hereby empowered to enter upon the property of any person within the City for the purpose of testing, inspecting, and obtaining samples of any trees, brush, wood, or debris thereon.
2. Permitting Dead or Diseased Trees or Plants to Stand.
  - A. No property owner shall maintain or permit to stand upon his or her property any tree, shrub, plant or part thereof which is dead, diseased, or so damaged as to be a menace to public safety.
  - B. When the Superintendent determines that any tree, shrub, plant or part thereof is dead, diseased, or so damaged as to be a menace to public safety, the Superintendent may request the City Council to direct the property owner to remove the same within thirty (30) days, or to appear before the City Council for hearing on the matter during said period to show cause why the tree, shrub, plant or the appropriate part thereof should not be removed by the City with the cost of removal assessed against the property owner. Such notice to show cause and notice of the proposed City Council action shall be by certified mail to the property owner of record.

- C. If, after hearing, the City Council approves removal, the Clerk shall send a copy of the resolution by certified mail to the property owner directing such removal within 30 days or the City shall remove and assess the cost of removal against the property owner.
3. Removal of Trees, Shrubs, and Plants. The Superintendent may remove or cause to be removed all trees, shrubs, plants or parts thereof upon the public streets or highways or other City property within the City when removal shall be beneficial to the public peace, health, and safety, or for public improvements or if such trees, shrubs, or plants constitute a public nuisance or are dead or diseased, or detrimental to the growth of adjacent trees, plants, or shrubs growing in the public streets or other City property.
4. Removal of Trees Infected with Dutch Elm Disease or Oak Wilt.
- A. In accordance with Section 364.12 of the *Code of Iowa*, any owner, occupant, or person in control of any property shall remove from such property, at his or her own expense, any tree, brush, wood, or debris infected with Dutch elm disease or oak wilt or any dead oak or elm which retains bark, when so notified by the Superintendent. The Superintendent shall cause to be mailed to such owner, occupant, or person in control written notice that said person may appear before the City Council at an appointed time not less than fourteen (14) days from the date of mailing to show cause why the infected tree, brush, wood, or debris should not be declared a public nuisance. At that meeting the City Council may resolve and declare the same to be a public nuisance and may order its removal by the owner, occupant, or person in control within thirty (30) days from the date of service of a copy of the resolution and order on the owner, occupant, or person in control; provided however, upon timely receipt of a request in writing from the property owner showing inability to perform, hardship, or other good cause, the City Administrator may grant an extension of time to a maximum of an additional thirty (30) days for said removal by the owner, occupant or other person. No extension of time exceeding sixty (60) days may be granted without prior approval by the City Council.
- B. If the owner, occupant, or person in control fails to comply with the resolution and order of the City Council to so remove previously specified public nuisance, the Superintendent shall cause that public nuisance to be removed and shall submit the costs incident to the service and removal to the City Council, which shall certify the same to the County Treasurer for collection with and in the same manner as general property taxes.
5. Diseased Tree Inspection Fees.
- A. Fees for the City inspection of a tree or trees shall be paid to the City Treasurer in an amount set by resolution of the City Council, provided fees for inspections not requested by the owner or the owner's representative shall be assessed only against those trees showing evidence of disease which requires removal of the tree.
- B. For the purpose of this section, "private property" is defined as property not owned by the City.

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## CHAPTER 152

# TEMPORARY STRUCTURES

### 152.01 Definition

### 152.02 Compliance with Chapter Provisions

### 152.03 Permit Required

### 152.04 Permit Application

### 152.05 Permit Fees

### 152.06 Compliance with Codes

### 152.07 Removal

**152.01 DEFINITION.** “Temporary structure” means any shed, structure, building, trailer, tent or enclosure of any kind used for storage, commercial or business or residential purposes which any person or business intends to place on the same lot with or on any lot immediately adjacent to, any permanent structure used for business or commercial or residential purposes. This term includes “temporary portable storage container,” which is defined as a large container designed and rented or leased for the temporary storage of commercial, industrial, or residential household goods and that does not contain a foundation or wheels for movement. All other words or phrases shall have the same meaning assigned to them in Chapter 166 of this Code of Ordinances.

**152.02 COMPLIANCE WITH CHAPTER PROVISIONS.** No temporary structure or accessory structure shall be erected, constructed, or placed except as hereinafter provided.

**152.03 PERMIT REQUIRED.** No temporary structure or accessory structure shall be erected, constructed, or placed upon any commercial or business or residential property without first obtaining a permit from the Clerk. All permits are subject to approval by the Zoning Administrator. Further, the Zoning Administrator may impose certain reasonable requirements as may be required to keep the temporary structure from becoming unsightly to the surrounding properties.

**152.04 PERMIT APPLICATION.** Prior to seeking approval, an applicant shall file a permit application with the Clerk stating:

1. The name and address of the person or business seeking the permit;
2. A particular description of where the proposed temporary structure or accessory structure will be erected, constructed or placed;
3. The need for such structure;
4. The period of time the proposed structure will be present on the property; and
5. A particular description, including the dimensions, of the temporary structure or accessory structure to be erected, constructed, or placed upon the property.

**152.05 PERMIT FEES.** Upon approval by the Clerk and payment of a permit fee, the Clerk shall issue a permit to the applicant. The permit for a business or commercial class permit shall be for a period of thirty (30) days and shall authorize the erection, construction, or placement of a temporary structure on the property described in the application. The fee shall be in the amount as established from time to time by resolution of the Council. Residential class permit fee is waived for the first 180 days with the start of a new building, plumbing, mechanical, or electrical permit. After 180 days, fees imposed shall be in the amount as established from time to time by resolution of the Council.

**152.06 COMPLIANCE WITH CODES.** Any such temporary structure erected, constructed, or placed upon property shall comply with all applicable provisions of this Code of Ordinances, including the fire, electrical, and building codes. Containers must be placed on a hard-surfaced area and shall be located on the owner's lot, and no part of any container shall be located on any public property or in the right-of-way.

**152.07 REMOVAL.** All such temporary structure or accessory use or structure shall be removed from the property at the expiration of the time period defined in the permit.

## CHAPTER 153

# TEMPORARY SIGNS

### 153.01 Definition

### 153.02 Compliance with Chapter Provisions

### 153.03 Permit Required

### 153.04 Permit Application

### 153.05 Maximum Duration of Permit

### 153.06 Permit Issuance

### 153.07 Renewal

**153.01 DEFINITION.** “Temporary sign” means any banner, pennant, valance, or advertising display constructed by cloth, canvas, light fabric, cardboard, wallboard, plastic, or other material, with or without frames, intended to be displayed for a short period of time advertising any sale, grand opening, or product. This term also includes any portable sign or portable sign display and any sign or sign display on a truck or motor vehicle that has not moved upon a street in the City within the preceding twelve (12) hours. This term does not include signs advertising real property for sale or rent.

**153.02 COMPLIANCE WITH CHAPTER PROVISIONS.** No temporary sign shall be erected, placed, or displayed upon the exterior of any commercial or business property except as hereinafter provided.

**153.03 PERMIT REQUIRED.** No temporary sign shall be erected, placed, or displayed without first obtaining a permit from the Clerk.

**153.04 PERMIT APPLICATION.** An applicant shall file a permit application with the Clerk stating:

1. The name and address of the person or business seeking the permit;
2. A description of the proposed temporary sign, including the location where the temporary sign will be placed and the manner of its placement; and
3. The period of time such temporary sign will be displayed.

**153.05 MAXIMUM DURATION OF PERMIT.** A permit issued under the provisions of this chapter shall be issued for a period of thirty (30) days.

**153.06 PERMIT ISSUANCE.** Upon approval by the Clerk and payment of a permit fee, the Clerk shall issue a permit to the applicant. The permit shall be for a definite period of time and shall authorize the erection, placement, or display of a temporary sign. All permit fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such permit fee may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective permit fee shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours.

**153.07 RENEWAL.** Once approved, a permit for the erection, construction, or placement of a temporary sign may be renewed for an additional period of thirty (30) days. Only two such renewals are authorized. All renewal fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such renewal fee may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the current renewal fee shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours.

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# CHAPTER 155

## BUILDING CODES

**155.01 Adoption of Building Codes**  
**155.02 Administrative Provisions**  
**155.03 Amendments, Modifications, Additions and Deletions**

**155.04 Permit Fees**  
**155.05 Fences**  
**155.06 Conversion to Horizontal Property Regime**  
**155.07 Installment Sale Transactions**

**155.01 ADOPTION OF BUILDING CODES.** Pursuant to published notice as required by law, the *International Building Code*, 2012 Edition (hereinafter known as the IBC), and the *International Residential Building Code*, 2012 Edition (hereinafter known as the IRC), published by the International Code Council, Inc., are adopted in full except for such portions as may be hereinafter deleted, modified, or amended, and the same are, by this reference, incorporated herein as fully and completely as if set forth in full herein. A copy of the IBC as adopted, a copy of the IRC as adopted, and a copy of this chapter are on file in the office of the Code Official.

**155.02 ADMINISTRATIVE PROVISIONS.** Administration of this chapter shall be as provided in this section and in the following sections of the several codes named, which are hereby adopted by reference, to provide procedures for local enforcement of the codes, constituting the Windsor Heights, Iowa, Building Codes. The Building Official is responsible for the enforcement of the Building, Plumbing, Mechanical, Fire, Housing, and Dangerous Building Codes, and such other ordinances as shall be assigned to such official, and the Building Official shall perform such other duties as may be required by the City Administrator. The Building Official shall be accountable for the issuance of all applicable permits under this chapter and shall have the power to render interpretations of this code and to adopt and enforce rules and regulations supplemental to this code, subject to approval of the Council, as he or she may deem necessary in order to clarify the application of the provisions of this code. Such rules, regulations, and interpretations shall be in conformity with the intent and purpose of this code.

**155.03 AMENDMENTS, MODIFICATIONS, ADDITIONS AND DELETIONS.** The IBC and the IRC are amended as hereinafter set out. In the event requirements of this code conflict with applicable State and federal requirements, the more stringent shall apply.

1. The following are deleted from the IRC and are of no force or effect in this chapter:

**501.3 Fire protection of floors**

**Part VIII - Electrical**

2. Subsection 101.1 of the IBC and R101.1 of the IRC are hereby deleted and there is enacted in lieu thereof the following subsections:

**101.1 Title.** These regulations shall be known as the Windsor Heights Building Code, hereinafter known as "this code."

**R101.1 Title.** These provisions shall be known as the Windsor Heights Residential Code for One- and Two-Family Dwellings, and shall be cited as such and will be referred to herein as "this code."

3. Subsection 101.4.6, *Energy*, of the IBC is hereby amended by deleting said subsection and inserting in lieu thereof the following subsection, and Subsection R101.3.1, *Intent*, of the IRC is hereby established by adding the following subsection:

**101.4.6 Energy and R101.3.1 Intent.** The provisions of the International Energy Code as currently adopted and amended by the Iowa State Building Code Bureau shall apply to all matters governing the design and construction of buildings for energy efficiency. Administration shall be as prescribed in this code and these regulations shall be known as the Windsor Heights Energy Code. Construction or work for which a permit is required shall be subject to inspections and the Building Official may make or cause to be made the requested inspections. The Building Official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability. Any portion that does not comply shall be corrected and such portion shall not be covered or concealed until authorized by the Building Official.

4. Subsection 103.1, *Creation of Enforcement Agency*, of the IBC and R103.1, *Creation of Enforcement Agency*, of the IRC are hereby amended by adding the following paragraph:

The term Building Official is intended also to mean the Building and Zoning Administrator, who shall be designated by the Planning and Building Director and shall hereinafter be referred to as Code Official and his or her representatives or designees, who are herewith delegated the same powers, authorities, duties and responsibilities as designated for the Code Official. The Code Official, when so appointed, shall be responsible for the enforcement of the Building Code, the Mechanical Code, the Housing Code, the Plumbing Code, the Gas Code, the Energy Code, the Electrical Code, the Zoning Code and the Fire Prevention Code of the City. The Code Official shall have authority to file a complaint in any court of competent jurisdiction charging a person with the violation of this title. The Code Official shall have whatever additional duties the Director of Planning and Building may prescribe.

5. Subsection 104.11, *Alternate Materials, Methods and Equipment*, of the IBC is hereby amended by adding the following subsection and exception:

**104.11.3 Iowa State Plumbing Code.** The *Iowa State Plumbing Code*, consisting of the *Uniform Plumbing Code*, as prepared and edited by the International Association of Plumbing and Mechanical Officials, as amended and currently adopted by the State of Iowa Department of Public Health, is hereby approved as an alternate equivalent method for complete plumbing and fuel gas systems.

Administration Exception 1. Administrative regulations shall be as prescribed in the *International Plumbing Code*, 2012 Edition, and *International Fuel Gas Code*, 2012 Edition, as adopted and amended.

6. Subsections 105.1, *Required*, of the IBC and R105.1, *Required*, of the IRC are hereby amended by adding the following to said subsections:

**105.1 and R105.1 Platting required.** A building permit shall not be issued unless the land upon which the proposed work is to be done is platted pursuant to the provisions of the subdivision regulations. A building permit shall not be issued permitting the construction of any building or other structure on any lot designated on any plat as an outlot, without such lot being replatted in accordance with the provisions of the subdivision regulations. Such platting may be waived by the City Council if that body determines that no portion of the land is needed for public purposes or if that portion needed for public purposes, as determined by the Council, is dedicated to the City; provided further, such platting may be waived by the Zoning Administrator if the requested building permit is for one of the following purposes:

1. Any accessory structure or addition for a one- or two-family residence;
2. The removal, repair, or alteration of a structure on unplatted premises, provided that there is no change in the use classifications of such structure;

3. The term “alteration” shall be deemed to mean any change or modification of a structure that does not serve to increase the size of the original structure by more than ten percent.

7. Subsections 105.2, *Work Exempt from Permit*, of the IBC and R105.2, *Work Exempt from Permit*, of the IRC are hereby amended by adding a sentence to said subsections as follows:

Exemption from permit requirements of this chapter shall not preclude requirements for permitting of plumbing, electrical, and mechanical installations and systems or compliance with Windsor Heights Code of Ordinances.

8. Subsections 105.5, *Expiration*, of the IBC and R105.5, *Expiration*, of the IRC are hereby amended by deleting said subsections and inserting in lieu thereof the following:

**105.5 and R105.5 12-month expiration.** Every permit issued under the provisions of this Code shall expire twelve (12) months from the date of issue, unless the application is accompanied by a construction schedule of specific longer duration, in which instance the permit may be issued for the term of the construction schedule, with approval of the Code Official. If the work has not been completed by the expiration date of the permit, the permit shall automatically cancel and no further work shall be done until the permit shall have been renewed by the owner or his or her agent and by payment of the renewal fee as established by Resolution of the City Council, and provided no changes have been made in plans or location. Upon approval, permits may be extended for no more than two periods not exceeding 180 days each. A building permit shall automatically cancel if for any reason work is not commenced within 120 days of the date issuing the building permit or if work is substantially stopped for a period of 120 days, prior to said cancellation, unless a written extension is granted by the Building Inspector upon good cause shown by the applicant for such extension.

9. Subsections 105.6.1, *Revocation of Permit*, of the IBC and R105.6.1, *Revocation of Permit*, of the IRC, are hereby established by adding the following subsections:

**105.6.1 and R105.6.1 Revocation of permit.** It is the responsibility of the permit holder to schedule the required inspections and obtain final approval. Failure to schedule the required inspections and receive approval of work authorized by the permit before covering said work or at completion shall result in revocation of the permit and void any associated approvals granted by the City. This failure shall also equate to working without a permit in violation of City ordinance and no future permits shall be issued to any person or company who has outstanding violations of this code or any other laws or ordinances of the City. Failure to contact the City for any inspection or follow-up prior to expiration of a permit shall be deemed a violation of this code section. Failure to contact the City for any inspection or follow-up prior to expiration of a temporary certificate of occupancy shall also be deemed a violation of this code section. Allowing occupancy of a structure, for which a person or company holds a building permit, prior to or without a valid certificate of occupancy (temporary or final) shall be deemed a violation of this code section and no future permits shall be issued to any person or company who has outstanding violations of this code or any other laws or ordinances of the City.

10. Subsections 109.2.1, *Plan Review Fees*, of the IBC, and R108.2.1, *Plan Review Fees*, of the IRC are hereby established by adding the following subsections:

**109.2.1 and R108.2.1 Plan review fees.** Fees for all plan reviews shall be as set forth and established by resolution of the City Council. All plan review fees shall be automatically adjusted on January 1 of each year based on the Consumer Price Index (CPI) for the previous year. All such fees shall be paid in accordance with the terms and requirements of such resolution or as the same may be amended by the City Council from time to time.

11. Subsections 109.4, *Work Commencing before Permit Issuance*, of the IBC and R108.6, *Work Commencing before Permit Issuance*, of the IRC are hereby established by adding the following sentence after said subsections:

**109.4 and R108.6 Work commencing before permit issuance.** If any construction requiring a permit by provision of the Building Code or City Code is undertaken without first obtaining a building permit, the permit fee shall be double the amount it would have been if granted prior to the commencement of construction. Further, if any additional professional services (for example engineering or architectural services) are required by the City in the review of the building permit request, those fees will be passed through and paid by the applicant.

12. Subsection R110.1, *Use and Occupancy*, of the IRC is hereby amended by deleting exception #2 - Accessory buildings or structures.

13. Subsections 112.4, *Service Utilities*, of the IBC, and R111.4, *Service Utilities*, of the IRC are hereby established by adding the following subsections:

**112.4 and R111.4 Underground utility installation.** All electrical service lines not exceeding 480 volts and all telephone and cablevision service lines, as well as other utility lines serving any new building or structure, including signs and billboards, requiring permanent electrical service shall be placed underground unless a waiver from such is approved by the City Engineer. The provisions of this section shall not apply to existing buildings or additions to such buildings. Nothing in this section shall be deemed to apply to temporary service when defined as such by the utility company.

14. Section 202, *Definitions*, of the IBC and Section R202 *Definitions*, of the IRC are hereby amended by deleting the definitions of accessory structure, swimming pool, and townhouse and inserting in lieu thereof the following:

**SWIMMING POOL.** Any structure intended for swimming, recreational bathing, or wading and which is capable of containing water over 24 inches deep. This includes in-ground, above-ground and on-ground pools; hot tubs; and spas and fixed-in-place wading pools, but excludes manmade lakes or ponds created through the collection of storm water or drainage runoff.

**ACCESSORY STRUCTURE.** Accessory structures shall be defined as and shall conform to applicable zoning requirements and shall include but not be limited to structures and equipment with a fixed location on the ground, including wind energy systems, generators, and equipment shelters.

**TOWNHOUSE.** A single-family dwelling unit constructed in groups of three or more attached units in which each unit extends from foundation to roof. Townhouse groups of more than twelve units shall have a yard or public way on at least two sides.

15. Table R301.2(1), *Climatic and Geographic Design Criteria*, of the IRC is hereby amended by modifying said table, as follows:

Table R301.2(1), Climatic and Geographic Design Criteria

Ground Snow Load	Wind Design		Seismic Design Category	Subject to Damage From			Winter		Flood Hazards NFIP Adoption	Air Freezing Index	Mean Annual Temp.
	Speed MPH	Topographic Effects		Weathering	Frost Line Depth	Termite	Design Temp.	Ice Barrier Required			
30 PSF	90	No	A	Severe	42"	No	-5°F	Yes	5/16/83	1833	48.6°

16. Subsection R302.1, *Exterior Walls*, of the IRC is hereby amended by deleting all exceptions and inserting in lieu thereof the following exception:



**R302.1 Exterior Walls.**

Exception 1. Accessory structures less than 10 feet from a dwelling and/or less than 3 feet from a property line shall be provided with 5/8-inch ‘X’ fire code sheetrock or equivalent throughout the interior, including the walls and ceiling. Any accessory structure openings in walls parallel to and less than 10 feet from the dwelling unit walls shall be fire rated in accordance with this code.

17. Table R302.1, *Exterior Walls*, of the IRC is hereby amended as follows:

Table R302.1(1), Exterior Walls

Exterior Wall Element		Minimum Fire-Resistance Rating	Minimum Fire Separation Distance
Walls	(Fire-resistance rated)	1 hour with exposure from both sides per ASTM E 119 or UL 263	< 3 feet
	(Not fire-resistance rated)	0 hours	≥ 3 feet
Projections	(Fire-resistance rated)	1 hour on the underside	2 feet
	(Not fire-resistance rated)	0 hours	≥ 2 feet
Openings	Not allowed	N/A	< 3 feet
	25% Maximum Wall Area	0 hours	3 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet

18. Subsection R302.2, *Townhouses*, of the IRC is hereby amended by deleting said subsection and inserting in lieu thereof the following (exception and subsequent subsections remain unchanged):

**R302.2 Townhouses.** Each sprinklered townhouse shall be considered a separate building and shall be separated by fire-resistance-rated wall assemblies meeting the requirements of Section R302.1 for exterior walls. All townhouse groups of more than 12 attached units in which each unit does not have a yard or public way on at least two sides shall be sprinklered.

19. Subsection R302.2, *Townhouses*, of the IRC is hereby amended by adding the following paragraph and exception:

Each non-sprinklered townhouse shall be considered a separate building and shall be separated by fire-resistance-rated wall assemblies meeting the requirements of Section R302.1 for exterior walls. All townhouse groups of more than 12 attached units in which each unit does not have a yard or public way on at least two sides shall be sprinklered.

Exception: A common 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Electrical installations shall be installed in accordance with the State Electrical Code. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4.

20. Subsection R302.3, *Two-Family Dwellings*, of the IRC is hereby amended by deleting said subsection and inserting in lieu thereof the following and deleting Exception 2:

**R302.3 Two-family dwellings.** For purposes of fire-resistive separation, two-family dwelling units shall be considered as townhouses and shall be constructed in accordance with R302.2.

Exception 2 deleted.

21. Subsection R302.6, *Dwelling/Garage Fire Separation*, of the IRC is hereby amended by deleting said subsection and inserting in lieu thereof the following subsection:

**R302.6 Dwelling/garage fire separation.** The garage shall be separated throughout as required by Table R302.6. Openings in garage walls shall comply with section R302.5.

22. Table R302.6, *Dwelling/Garage Separation*, of the IRC, is hereby amended by modifying said table as follows:

Table R302.6, Dwelling/garage separation

Separation	Material
From the residence and attics – common wall with garage	5/8" "X" fire code sheetrock or equivalent applied to the garage side
From all habitable rooms above the garage	5/8" "X" fire code sheetrock or equivalent – throughout garage
Structures supporting floor/ceiling assemblies used for separation required by this section	5/8" "X" fire code sheetrock or equivalent – throughout garage
Garages located less than 10 feet from a dwelling unit(s) on the same lot	5/8" "X" fire code sheetrock or equivalent – throughout garage

23. Subsection R303.3, *Bathrooms*, of the IRC, is hereby amended by deleting said subsection and inserting in lieu thereof the following subsection and also by adding the following exception:

**R303.3 Bathrooms.** Bathrooms shall be provided with a mechanical ventilation system. The minimum ventilation rates shall be 50 cfm for intermittent ventilation or 20 cfm for continuous ventilation. Ventilation air from the space shall be exhausted directly to the outside.

Exception: Toilet rooms containing only a water closet and/or lavatory may be provided with a recirculating fan.

24. Subsection 406.3.4, *Separation*, of the IBC is hereby amended by deleting subsection 1 and inserting in lieu thereof the following:

1. The private garage shall be separated from the dwelling unit and its attic area by means of minimum 5/8-inch type "X" fire code gypsum board or equivalent applied to the garage side. Where the separation is a floor-ceiling assembly, the structure supporting the separation shall also be protected by not less than 5/8-inch type "X" fire code gypsum board or equivalent throughout. Garages beneath habitable rooms shall be separated by not less than 5/8-inch type "X" fire code gypsum board or equivalent throughout. Door openings between a private garage and the dwelling unit shall be equipped with either solid wood doors or solid or honeycomb core steel doors not less than 1 3/8-inch thick, or doors in compliance with 716.5.3. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Doors shall be self-closing and self-latching.

25. Subsection R310.1, *Emergency Escape And Rescue Required*, of the IRC, is hereby amended by deleting the first paragraph of said section and inserting in lieu thereof the following:

Basements, habitable attics and every sleeping room shall have at least one openable emergency escape and rescue window or exterior door opening for emergency escape and rescue. Where basements contain one or more sleeping rooms, emergency egress and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Where a window is provided as a means of escape and rescue opening from a basement, it shall have a sill height of not more than 44 inches above the floor or landing. Where a landing is provided, the landing shall be not less than 36 inches wide, not less than 18 inches out from the exterior wall, and not more than 24 inches in height. The landing shall be permanently affixed to the floor below and the wall under the openable area of the window it serves. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with Section 310.3. Escape and rescue window openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with Section R310.2.

26. Subsections 1029.4, *Operational Constraints*, of the IBC and R310.1.4, *Operational Constraints*, of the IRC are hereby amended by adding a new sentence and exception following these subsections:

The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside and shall not require the removal of a sash or other component of the emergency escape and rescue opening.

Exception: Existing required emergency escape openings shall be maintained in accordance with the Windsor Heights Property Maintenance Code and may be replaced with the same size and type of window.

27. Subsection R310.5, *Emergency Escape Windows under Decks and Porches*, of the IRC is hereby amended by adding a new sentence following this section:

Cantilever areas of all construction elements shall be regulated in accordance with this section.

28. Subsection R311.7.5.1, *Riser Height*, of the IRC is hereby amended by adding the following exceptions:

Exception 2: The maximum riser height shall be 7¾ inches. The riser height shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than ¾ inch, except at the top or bottom riser of any interior stair where this dimension may deviate by a maximum of 1 inch. In no case shall the risers exceed the maximum height of 7¾ inches.

Exception 3: The opening between adjacent treads is not limited on exterior stairs serving individual dwelling units.

29. Subsection R311.7.8.2, *Continuity*, of the IRC is hereby amended by adding the following exception:

Exception 3: Handrails within a dwelling unit or serving an individual dwelling unit shall be permitted to be interrupted at one location in a straight stair when the rail terminates into a wall or ledge and is offset and immediately continues.

30. Subsection R313.1, *Townhouse Automatic Fire Sprinkler System*, of the IRC is hereby amended by deleting said subsection and inserting the following in lieu thereof (exception remains unchanged):

**R313.1 Townhouse automatic fire sprinkler systems.** An automatic residential fire sprinkler system shall be installed in townhouses containing more than twelve (12) dwelling units.

31. Subsection R313.2, *One- and Two-Family Automatic Fire Sprinkler Systems*, of the IRC is hereby amended by adding the following exception:

Exception 2: Dwelling units in which the gross square footage of the dwelling spaces, including all floor levels whether finished or unfinished and all basement areas whether finished or unfinished (exclusive of attached garage area), does not exceed 8,000 square feet.

32. Subsection R403.1.4.1, *Frost Protection*, of the IRC is hereby amended by deleting all existing exceptions and inserting in lieu thereof the following:

Exception 1: Detached garages of light frame wood construction of 1,010 square feet or less in size and detached garages of 400 square feet or less in size of other than light frame wood construction and more than 10 feet from a dwelling or attached garage may be provided with a floating slab which shall include a thickened slab edge of a minimum 8 inches thick and tapered or squared from a width of 6 inches to 12 inches and have floors of Portland cement concrete not less than 4 inches thick. Garages areas shall have all sod and/or debris removed prior to installation of said floor.

33. Subsection R404.1, *Concrete and Masonry Foundation Walls*, of the IRC is hereby amended by adding the following paragraph:

**R404.1 Concrete and masonry foundation walls lateral support.** Prior to backfill and prior to a poured-in-place floor slab to provide bottom lateral support, the following may be provided: (1) a full depth (minimum 1½") nominal 2" x 4" keyway may be formed into the footings to secure the bottom of the foundation wall; or (2) 36" long vertical #4 rebar may be embedded a minimum of 6" into the footings, not to exceed 7' on center spacing.

34. Subsections 1807.1.5.1, *Foundation Walls For Conventional Light Frame Wood Construction*, of the IBC and R404.1.2.2.3, *Foundation Walls For Conventional*

*Light Frame Wood Construction*, of the IRC are hereby established by adding the following subsections and table:

As an alternate to the requirements of respective codes the following Table, *Foundation Walls for Conventional Light Frame Construction* may be used:

**Foundation Walls for Conventional Light Frame Construction**

Height of Foundation Wall (Net measured from top of basement slab to top of foundation wall)*		Thickness of Foundation Walls		Reinforcement Type and Placement within Foundation Wall**	Reinforcement Type and Placement within Foundation Wall** (Maximum 12' span between corners and supporting cross walls.)	Type of Mortar
		<u>Unit</u>				
<i>Gross</i>	<i>Net</i>	<i>Concrete</i>	<i>Masonry</i>	<i>Concrete</i>	<i>Masonry</i>	<i>Masonry</i>
8'	7'8"	7½"	8"	½" horizontal bars, placement in the middle, and near the top & bottom – ½" bars @ 6' max. vertically	0.075 square inch bar 8' o.c. vertically in fully grouted cells. If block is 12" nominal thickness, may be unreinforced	Type M or S. Grout and mortar shall meet provisions of Chapter 21 IBC
9'	8' 8"	8"	See Chapter 18 IBC	½" bars 2' o.c. horizontally and 20" vertically o.c.	See Chapter 18 IBC	Same as above
10'	9' 8"	8"	See Chapter 18 IBC	(⅝" bars 2' o.c. horizontally and 30" vertically o.c.)	See Chapter 18 IBC	Same as above
*Concrete floor slab to be nominal 4". If such floor slab is not provided prior to backfill, provide: (1) 36" vertical #4 rebar embedded in the footing @ maximum 7' o.c. spacing; and/or (2) full depth nominal 2" depth x 4" width keyway in footing.						
** All reinforcement bars shall meet ASTM A6175 grade 40 minimum and be deformed. Placement of bars shall be in center of wall and meet the provisions of 18, 19, and 21 of the <i>International Building Code</i> .						
NOTE: Cast in place concrete shall have a compressive strength of 3,000 lbs @ 28 days. Footings shall contain continuous reinforcement of 2½" diameter rebar throughout. Placement of reinforcement and concrete shall meet the requirements of Chapter 19 of the <i>International Building Code</i> .						
NOTE: Material used for backfilling shall be carefully placed granular soil of average or high permeability and shall be drained with an approved drainage system as prescribed in Section 1805.4 of the <i>International Building Code</i> . Where soils containing a high percentage of clay, fine silt or similar materials of low permeability or expansive soils are encountered or where backfill materials are not drained or an unusually high surcharge is to be placed adjacent to the wall, a specially designed wall shall be required.						
Note: Foundation plate or sill anchorage may be installed in accordance with the respective codes as applicable.						

35. Section R405, *Foundation Drainage*, of the IRC is hereby amended by adding a new subsection as follows:

**R405.3 Sump pumps.** Footing drains and drainage systems shall be discharged to a sump pump plumbed to a discharge system separated from the sanitary sewer and in accordance with the standard specifications adopted by the City Council. Exceptions may be granted by the Code Official in accordance with said engineering standards.

36. Subsection R506.2.4, *Reinforcement Support*, of the IRC is hereby amended by addition of the following exception:

Exception 1: Non-structural slabs.

37. Subsection 907.2.11, *Single- and Multiple-Station Smoke Alarms*, of the IBC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**907.2.11 Single- and multiple-station smoke alarms.** Listed single- and multiple-station smoke alarms complying with UL 217 shall be installed in accordance with provisions of this code and the household fire warning equipment provision of NFPA 72. Smoke alarms shall be addressable with sounder bases and tied into the building fire alarm system as a supervisory signal only. Mini horns are not required if notification from a building fire alarm system is through the smoke alarms with sounder bases.

38. Subsection M1403.2, *Foundations and Supports*, of the IRC is hereby amended by deleting said section and inserting in lieu thereof the following:

**M1403.2 Foundation and supports.** Foundations and supports for outdoor mechanical systems shall be raised at least 1½ inches above the finished grade and shall also conform to the manufacturer's installation instructions.

39. Subsection P2603.5, *Freezing*, of the IRC is hereby amended by deleting the last sentence of said subsection and inserting in lieu thereof the following:

Exterior water supply system piping shall be installed not less than sixty (60) inches below grade.

40. Subsection P2603.5.1, *Sewer Depth*, of the IRC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**P2603.5.1 Sewer depth.** Building sewers shall be a minimum of forty-eight (48) inches below grade.

41. Subsection 1007.2, *Continuity and Components*, of the IBC is hereby amended by adding the following #11 to said subsection:

11. Components of exterior walking surfaces shall be hard surfaced.

42. Section 1008, *Doors, Gates and Turnstiles*, of the IBC is hereby amended by adding the following subsection:

**1008.1.6.1 Frost protection.** Exterior landings at doors shall be provided with frost protection.

43. Subsection 1012.4, *Continuity*, of the IBC is hereby amended by adding the following exception:

Exception 5: Handrails within a dwelling unit or serving an individual dwelling unit of Groups R-2 and R-3 shall be permitted to be interrupted at one location in a straight stair when the rail terminates into a wall or ledge and is offset and immediately continues.

44. Subsection 1027.5, *Access to a Public Way*, of the IBC is hereby amended by adding the following subsection:

**1027.5.1 Access to a public way.** Components of exterior walking surfaces shall be hard surfaced.

45. Subsection 1029.3, *Maximum Height From Floor*, of the IBC is hereby amended by adding the following exception:

Exception 1: Within individual units of Group R-2 and R-3 occupancies where a window is provided as a means of escape and rescue opening from a basement it shall have a sill height of not more than 44 inches above the floor or landing. Where a landing is provided, the landing shall be not less than 36 inches wide, not less than 18 inches out from the exterior wall, and not more than 24 inches in height. The landing

shall be permanently affixed to the floor below and the wall under the openable area of the window it serves.

46. Subsection 1029.5, *Window Wells*, of the IBC is hereby amended by adding the following subsection:

**1029.5.3 Window well drainage.** All window wells shall be provided with approved drainage.

47. Chapter 13, *Energy Efficiency*, of the IBC and Chapter 11 [RE], *Energy Efficiency*, of the IRC are hereby amended by deleting said chapters and inserting in lieu thereof the following:

**Chapter 13 Energy Efficiency and Chapter 11 Energy Efficiency.**

The provisions of the *International Energy Code* as currently adopted and amended by the Iowa State Building Code Bureau shall apply to all matters governing the design and construction of buildings for energy efficiency. Administration shall be as prescribed in this code and these regulations shall be known as the Windsor Heights Energy Code.

48. Table 1405.2, *Minimum Thickness of Weather Coverings*, of the IBC is hereby amended by adding the following footnote:

Footnote f: Vinyl siding shall be provided with a weather-resistant sheathing paper.

49. Subsection 1405.14, *Vinyl Siding*, of the IBC is hereby amended by adding a new subsection as follows:

**1405.14.2 Water-resistive barrier required.** An approved water-resistive barrier shall be provided under all vinyl siding.

50. Subsection 1608.2, *Ground Snow Loads*, of the IBC is hereby amended by deleting said section and inserting in lieu thereof the following:

**1608.2 Ground snow load.** The ground snow load to be used in determining the design snow load for roofs is hereby established at 30 pounds per square foot. Subsequent increases or decreases shall be allowed as otherwise provided in the Building Code, except that the minimum allowable flat roof snow load may be reduced to not less than 80 percent of the ground snow load.

51. Section 1612, *Flood Loads*, of the IBC is hereby amended by deleting said section and inserting in lieu thereof the following section:

**1612.1 General floodplain construction standards.** The following standards are established for construction occurring within the 100-year flood elevation:

**1612.1.1 All structures.** All structures shall:

1. Be adequately anchored to prevent flotation, collapse or lateral movement of the structure;
- 1.1 Be constructed with materials and utility equipment resistant to flood damage; and
- 1.2 Be constructed by methods and practices that minimize flood damage.

**1612.1.2 Residential buildings.** All new or substantially improved residential structures shall have the lowest floor, including basement, elevated a minimum of one foot above the 100-year flood level. Construction shall be upon compacted fill which shall, at all points, be no lower than one foot above the 100-year flood level and extend at such elevation at least 18 feet beyond the limits of any structure erected thereon. Alternate methods of elevating (such as piers) may be allowed, subject to favorable consideration by the Code Official where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstand the various forces and hazards associated with flooding.

**1612.1.3 Nonresidential buildings.** All new or substantially improved nonresidential buildings shall have the first floor (including basement) elevated a minimum of one foot above the 100-year flood level or, together with attendant utility and sanitary systems, be flood proofed to such a level. When flood proofing is utilized, a professional engineer registered in the State of Iowa shall certify that the flood proofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 100-year flood; that the structure, below the 100-year flood level, is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to mean sea level) to which any structures are flood proofed shall be maintained by the Code Official.

**612.1.4 Anchoring of mobile homes.** Mobile homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements are that:

1. Over-the-top ties be provided at each of the four corners of the mobile home with two additional ties per side at intermediate locations for mobile homes 50 feet or more in length or one such tie for mobile homes less than 50 feet in length.

1.1 Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points for mobile homes 50 feet in length.

1.2 All components of the anchoring system be capable of carrying a force of 4,800 pounds.

1.3 Any additions to the mobile home shall be similarly anchored.

**612.1.5 Placement of mobile homes.** Mobile homes shall be placed on lots or pads elevated by means of compacted fill so that the lowest floor of the mobile home will be a minimum of one foot above the 100-year flood level. In addition, the tie-down specification of Subsection 612.1.4 must be met, and adequate surface drainage and access for a hauler must be provided.

**612.1.6 New or expanded mobile homes.** New mobile homes, expansions to existing mobile homes, and mobile home lots where the repair, reconstruction, or improvement of the streets, utilities, and pads equals or exceeds 50 percent before the repair, reconstruction, or improvement has commenced shall provide:

1. Lots or pads that have been elevated by means of compacted fill so that the lowest floor of mobile homes will be a minimum of one foot above the 100-year flood level.

1.1 Ground anchors for mobile homes.

**612.1.7 Storage of flammable materials and equipment.** Storage of equipment and materials that are flammable, explosive, or injurious to human, animal, or plant life is prohibited unless elevated a minimum of one foot above the 100-year flood level. Other material and equipment must either be similarly elevated or: (i) not subject to major flood damage and anchored to prevent movement due to floodwaters; or (ii) readily removable from the area within the time available after flood warning.

**1612.2 Special floodway standards.** The following standards are established for construction occurring within a designated floodway: Structures, buildings, and sanitary and utility systems, if permitted, shall meet the applicable general floodplain standards and shall be constructed or aligned to present the minimum possible resistance to flood flows. Buildings, if permitted, shall have a low flood damage potential and shall not be for human habitation.

52. Subsection 1809.5, *Frost Protection*, of the IBC is hereby amended by adding the following exception 4:

Exception 4. Detached garages, accessory to Group R-2 and R-3 occupancies, 1,010 square feet or less in size of light frame wood construction and detached garages of 400 square feet or less in size of other than light frame wood construction and more



than 10 feet from a dwelling or attached garage may be provided with a floating slab, which shall include a thickened slab edge of a minimum 8 inches thick and tapered or squared from a width of 6 inches to 12 inches and have floors of Portland cement concrete not less than 4 inches thick. Garage areas shall have all sod and/or debris removed prior to installation of said floor.

53. Appendix G, *Swimming Pools, Spas and Hot Tubs*, of the IRC is hereby adopted by reference and shall be in full force and effect in this chapter.

54. Subsections 3109.2, *Definition*, of the IBC and AG102, *Definitions*, of the IRC are hereby amended by deleting said definition and inserting in lieu thereof the following:

**SWIMMING POOL.** Any structure intended for swimming, recreational bathing or wading that is capable of containing water over 24 inches deep. This includes in-ground, above-ground, and on-ground pools; hot tubs; spas and fixed-in-place wading pools, but excludes manmade lakes or ponds created through the collection of storm water or drainage runoff.

55. Section 3401.3, *Compliance*, of the IBC is hereby amended by deleting said section and inserting in lieu thereof the following:

**3401.3 Compliance.** Alterations, repairs, additions and changes of occupancy to existing structures shall comply with the provisions for alterations, repairs, additions, and changes of occupancy in the Windsor Heights Fire Code, Windsor Heights Plumbing Code, Windsor Heights Fuel Gas Code, Windsor Heights Property Maintenance and Housing Code, Windsor Heights Mechanical Code, Windsor Heights Electrical Code, Windsor Heights Energy Code, Windsor Heights Residential Code and the Windsor Heights Zoning Code. The provisions of this code shall not be deemed to nullify or lessen any provisions of local, State or federal law.

**155.04 PERMIT FEES.** The various permit fees under the Building, Mechanical, and Plumbing Codes shall be as set forth and established by resolution of the Council. All permit fees for the above disciplines shall be adjusted on January 1 of each year based on the Consumer Price Index (CPI) for the previous year.

**155.05** (*Repealed by Ord. 15-06 – Nov. 15 Supp.*)

**155.06 CONVERSION TO HORIZONTAL PROPERTY REGIME.**

1. It is the intent of the City Council to provide for the health, welfare, and safety of citizens and the orderly development of the City by establishing standards for property which is to be subjected to residential horizontal property regimes (condominiums). It is the Council's intent to assure that all property to be used for residential purposes must at the time a horizontal property regime is established meet currently adopted Building Code standards. It is the intent of the City Council in regard to the conversion of apartments to horizontal property regimes (condominiums) that such change in form of ownership should not result in the residents of such units living in buildings which do not meet current health, welfare, and safety standards and this section is in part enacted to assure residents that standards herein provided will be maintained. This section is to be liberally construed to meet the purposes and intent of the City Council as herein stated.

2. Any person or other entity seeking to establish a horizontal property regime (condominiums) for residential purposes, including a person or other entity seeking to convert an existing structure to condominiums by establishing a horizontal property regime pursuant to Section 499B of the *Code of Iowa* shall establish and document compliance with all Building Code requirements of the City applicable upon the date

the City receives the declaration of the horizontal property regime. Such compliance shall include documentation of the following.

- A. All materials, manner, and means of construction in the building proposed meet currently adopted Building Codes for new residential construction, including current fire, building, plumbing, electrical, and mechanical codes.
  - B. All plumbing in the building meets current standards for water conservation including low flow toilets and similar devices.
  - C. The building(s) have fire sprinklers, required separation (1 or 2 hour wall separation) and all other life safety systems required for new construction.
  - D. The building(s) meet all State and federal requirements for handicapped accessibility which would be required of new construction.
  - E. The building(s) meet all State energy efficiency standards that are required for new construction.
3. Any person or other entity seeking to convert an existing structure to condominiums by establishing a horizontal property regime pursuant to Section 499B of the *Code of Iowa* shall comply with all current provisions for on-site parking and storm water detention and retention that apply to new construction.
  4. Any person or other entity seeking to convert an existing structure to condominiums by establishing a horizontal property regime pursuant to Section 499B of the *Code of Iowa* shall comply with all requirements of the Des Moines Water Works concerning condominiums and each unit should have a separate water meter.
  5. Any person or other entity seeking to convert an existing structure to condominiums by establishing a horizontal property regime pursuant to Section 499B.3 of the *Code of Iowa* shall, at least 30 days before filing any declaration, file with the City Clerk, the Public Works Director, and the City Inspector a written analysis by a licensed professional engineer or other appropriate licensed professional, based upon personal inspection of the building sought to be converted. The written analysis shall certify that the building meets all current City building codes that would apply to new construction. The certification will separately itemize and describe in a manner sufficient to show the factual basis of any certification that the fire, energy, life safety, structural, plumbing, electrical, and mechanical systems meet current standards. The certification shall further certify compliance with current on-site parking and storm water detention and retention requirements and separately certify the building meets current standards for materials and that acceptable means and methods of construction were used that meet current standards for new construction. Appropriate City staff will review the certification and report to the City Building Official whether said certification is sufficient to meet the requirements of this section.
  6. Any person or other entity seeking to convert an existing structure to condominiums shall comply with all requirements of Windsor Heights Zoning Code prior to conversion in the same manner as an applicant for new construction, including (but not limited to) filing a site plan for review, which shall show compliance with all setback, parking, signage, open space and all other requirements which would apply to new construction.
  7. No conversion of property to horizontal property regime under Section 499B.3 of the *Code of Iowa* shall be completed nor shall a declaration be filed until there has

been full compliance with this section. Upon showing of full compliance with this section, the City Building Official shall by written notice so inform the County Recorder of the County in which any property subject to this section is located and state in said written notice that the property meets the requirements of Section 499B.20 of the *Code of Iowa*

8. If any section, provision, sentence, clause, phrase or part of this section shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the section as a whole or any provision, section, subsection, sentence, clause, phrase, or part hereof not adjudged invalid or unconstitutional.

#### **155.07 INSTALLMENT SALE TRANSACTIONS.**

1. Definitions. For the purpose of this section, the following definitions shall apply:

A. “Contract” means a real estate installment purchase agreement for the intended transfer of residential real estate between a buyer and seller. A real estate installment purchase agreement is one which is payable in more than four (4) installments, not including the down payment, in which the contract buyer takes possession of the property immediately but does not receive the deed and title until all installment payments have been made. This does not apply to contracts for commercial property or vacant lots.

B. “Contract buyer” means the person or entity purchasing or acquiring the real property.

C. “Contract seller” means the person or entity offering or transferring the real property for sale, or anyone acting on behalf of the contract seller.

D. “Director” means the building enforcement director of the City or his/her designee.

E. “Inspection” means a physical examination of the real estate, which shall include (but not be limited to) a review of the structural components, exterior, roofing, plumbing, heating, cooling, electrical, insulation and ventilation, interior, fireplace, and solid fuel burning appliances of the real estate.

F. “Inspection report” means a report in a form approved by the City and prepared by an inspector to describe an inspection.

G. “Inspector” means the individual who performs the examination of the real estate.

H. “Person” means an individual, a corporation, a limited liability company, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership or an association, or any other legal entity.

I. “Transfer” means the conveyance by sale, exchange, contract or by any other method by which real property is purchased. For the purpose of this section, transfer does not mean the conveyance of real estate interests as detailed under Chapter 558A of the *Code of Iowa*.

2. Inspector Certification and Disqualification.

A. All inspectors who perform the inspections of real estate pursuant to a contract shall be members in good standing of an eligible professional

association for home inspectors. An eligible professional association must have the following attributes:

- (1) Not-for-profit status;
- (2) Standards for Practice for its members;
- (3) Code of Ethics for its members;
- (4) Requires examinations for membership; and
- (5) Requires annual continuing education.

No inspector shall be employed by an entity that is owned by a contract seller or an affiliate. The term affiliate means a parent, brother, or sister entity (meaning its parent entity has an ownership interest in each entity or shares a common manager), or a subsidiary entity or any other entity in which the contract seller, its parent, brother, sister, or subsidiary entity owns five percent (5%) or more of such entity.

B. Members of professional associations who are otherwise eligible to perform inspections shall obtain prior approval from the City to perform said inspections. The City shall have the discretion to approve or deny any inspector and shall maintain a current list of all inspectors who are eligible to perform inspections under this section.

C. The City shall have sole discretion to grant, suspend, or revoke an inspector's certification based upon any of the following:

- (1) Malfeasance;
- (2) Neglect of duty;
- (3) Incapacity;
- (4) Disqualification, suspension, or debarment from any activity related to the construction or real estate industry by an agency of any government;
- (5) Offering or giving gifts or gratuities to employees of the City in violation of State law; and/or
- (6) Failure to comply with any other requirements of this section.

D. If the Director determines that cause exists to disqualify an inspector from performing inspections for any of the reasons set forth above, the Director shall notify said inspector. The notice shall set forth the reason(s) for disqualification and shall be sent to the inspector by certified mail.

E. Upon written request of the inspector filed within ten (10) days of the mailing of the above-referenced notice, the Director shall schedule a hearing at which the inspector may present evidence why he or she should not be disqualified. The Director's recommendation shall be issued within thirty (30) days of the conclusion of the hearing and shall be mailed to the inspector via certified mail. The Director's recommendation shall be forwarded to the City Council.

### 3. Procedures and Fees.

- A. A person seeking to transfer real property by contract, or a broker, salesperson, or agent acting on behalf of such person, shall obtain or update an inspection of the subject real estate not more than sixty (60) days prior to the execution of the contract.
- B. The inspector shall prepare an inspection report of the physical examination of the real estate. The inspection report shall also include written certification that the Inspector is a member of good standing in an eligible professional association, as detailed above.
- C. The inspection report shall be delivered to the contract buyer and the City at least fourteen (14) days prior to the execution of the contract. The inspection report may be delivered to the contract buyer via personal delivery and/or certified or registered mail. Proof of delivery of the inspection report along with a filing fee of \$75.00 shall be filed with the City at least fourteen (14) days prior to the execution of the contract. Subsequent inspection reports and updates for the same property involving the same contract buyer may be filed by the same contract seller without requiring an additional filing fee.
- D. Within seven (7) days following execution of the contract, the contract seller shall file with the City copies of all instruments transferring the real estate.
- E. The City shall have the right to annually—or on an “as needed basis”—inspect any property for which an inspection is allowed under this section. All persons with ownership or management interests in the property shall allow inspection upon reasonable notice provided by the City.
- F. Any person who fails to perform an act required by this section or who commits an act prohibited by this section shall be guilty of a municipal infraction.
4. Ordinance not Limiting. The responsibilities imposed under this section shall not limit or abridge any duty, requirement, obligation, or liability for disclosure created by another provision of law, or under contract between parties.
5. Alternate Procedures. In the alternative to proceeding with the provisions in (1) through (4) above, contract sellers may elect to be bound by and comply with the City’s Property Maintenance and Rental Housing Code, as outlined in Chapter 156 of this Code of Ordinances. If a contract seller elects to proceed under the governance of Chapter 156, said person must promptly notify the City and comply with all rental housing provisions prior to executing a contract.

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## CHAPTER 156

# PROPERTY MAINTENANCE AND RENTAL HOUSING CODE

156.01 Short Title

156.02 Adoption of Property Maintenance Code

156.03 Conflicts

156.04 Amendments, Modifications, Additions and  
Deletions

**156.01 SHORT TITLE.** This chapter shall be known as the Windsor Heights Property Maintenance and Rental Housing Code, and may be cited as such, and may be referred to herein as this chapter.

**156.02 ADOPTION OF PROPERTY MAINTENANCE CODE.** The *International Property Maintenance Code*, 2012 Edition, published by the International Code Council, Inc., is adopted in full except for such portions as may be hereinafter deleted, modified, or amended. A copy of the *International Property Maintenance Code*, 2012 Edition, as adopted and a copy of this chapter are on file in the office of the Code Official.

**156.03 CONFLICTS.** In the event requirements of this code conflict with applicable State and federal requirements, the more stringent shall apply.

**156.04 AMENDMENTS, MODIFICATIONS, ADDITIONS AND DELETIONS.** The *International Property Maintenance Code*, 2012 Edition (hereinafter known as the IPMC), is amended as follows:

1. Deletion. The following section is deleted from the IPMC and is of no force or effect in this chapter:

**111 – Means of Appeal**

2. Subsection 101.1, *Title*, of the IPMC is hereby deleted and there is enacted in lieu thereof the following subsection:

**101.1 Title.** These regulations shall be known as the Property Maintenance and Housing Code of the City of Windsor Heights, hereinafter known as “this code.”

3. Subsection 102.3, *Application of Other Codes*, of the IPMC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**102.3 Application of other codes.** Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions, as applicable, of the Windsor Heights Building Code, Windsor Heights Residential Code, Windsor Heights Mechanical Code, Windsor Heights Fuel Gas Code, Windsor Heights Plumbing Code, Windsor Heights Fire Code, and the Windsor Heights Zoning Code.

4. Subsection 102.11, *Rental Housing Code*, is hereby established by adding the following provisions:

**102.11 Rental Housing Code.** In addition to provisions of the Property Maintenance Code of the City of Windsor Heights, this subsection shall be hereafter known as the City Rental Housing Code and may be cited as such and will be referred to as such in this subsection.

**102.11.1 Adoption of Housing Code.** In accordance with the requirements of Section 364.17 of the *Code of Iowa*, the City hereby adopts the *Uniform Housing Code*, 1997 Edition, published by the International Conference of Building Officials and the *Recommended Minimum Housing Standards*, 1986 Edition, as published by the American Public Health Association. In instances where there is conflict between the *Uniform Housing Code*, 1997 Edition, and the *Recommended Minimum Housing Standards*, 1986 Edition, as adopted herein, the most restrictive provision will apply.

**102.11.2 Scope.** The provisions of this subsection shall be deemed to apply to all dwellings or portions thereof used or designed or intended to be used for human habitation. All occupancies in existing buildings may be continued as provided in previously adopted Building Code(s) except such structures as are found to be substandard as defined in this code. Where any building or portion thereof is used or intended to be used as a combination apartment house-hotel, the provisions of this code shall apply to the separate portions as if they were separate buildings. Every rooming house or lodging house shall comply with all of the requirements of this code applicable to dwellings. However, this subsection does not apply to single-family dwellings occupied by the owner, as defined in Section 167.04 of this Code of Ordinances, unless the owner is operating a rooming house. Further, the maximum occupancy of a dwelling unit under this chapter shall be either: (i) one family; or (ii) no more than one person per bedroom, plus one, but not to exceed three unrelated persons.

**102.11.3 Purpose.** The purpose of this code is to ensure that rental housing facilities and conditions are of sufficient quality to protect and promote the health, safety, and welfare of those persons utilizing such housing and also the general public.

**102.11.4 Definitions.** For use in this subsection the following items are defined:

**APARTMENT HOUSE OR BUILDING.** Any building or portion thereof which is designed, rented, leased, or hired out to be occupied, or which is occupied as the home or residence of two or more families living independently of each other and doing their own cooking in the said building, and includes flats and apartments.

**DWELLING.** Any house or building or portion thereof which is occupied in whole or part as a home or residence of one or more tenants, on a rental basis, or when, in return for housing, a tenant agrees to occupy and maintain the premises and pay utilities. No part of a building hereafter constructed or altered into a dwelling as described may be occupied in whole or in part for human habitation until the issuance of a rental certificate by the Building Inspector that such part of the dwelling conforms to code requirements. A dwelling unit that is being rented for a period of 90 days or less in a single calendar year or a portion of such dwelling unit shall be exempt from this chapter.

**DWELLING UNIT.** One or more habitable rooms in a dwelling, apartment house, rooming house, lodging house, or building which are occupied or which are intended or designed to be occupied by one family with facilities for living, sleeping, cooking, and eating.

**RENTAL CERTIFICATE.** A certificate that is issued within fourteen (14) days after written application if the dwelling unit, at the date of such application, is entitled thereto. Such a certificate shall thereafter be known as a rental certificate.

**TENANT.** (i) a person occupying a dwelling unit who pays (or has payments made on his or her behalf) a stated payment at fixed intervals for the use of the dwelling unit; or (ii) a person occupying a dwelling unit owned by another individual, who, in return for housing, agrees to occupy and maintain the premises and pay utilities.

**ROOMING HOUSE.** A building offered or occupied for lodging, with or without meals, and not occupied as a one- or two-family dwelling.



**102.11.5 Housing inspector.** The City Council may designate, by resolution, the Building and Zoning Administrator and his or her representatives or designees as housing inspectors, or the City Council may, by resolution, approve certain qualified firms or persons who by training or experience are familiar with the provisions of this code to perform inspections of rental dwelling units in the City, to insure their compliance with this code. The inspectors appointed under the provisions of this subsection shall be charged with the responsibility of performing inspections of rental dwelling units in the City only, but shall not be charged with the duty of enforcing the provisions of this code. The Code Official shall be responsible for the enforcement of this code and may also make any inspections required under the provisions of this subsection.

**102.11.6 Regular inspections.** Regular inspections of one- and two-family rental dwelling units shall be required every 18 months. Regular inspections of multi-family rental dwelling units shall be required every 12 months. The City will contact the property owner to schedule rental inspections. If, after reasonable attempts have been made and the property owner is not reachable or fails to respond to notices or other attempts to contact him or her, the City will contact the tenant to set a time for inspection and then, should it become necessary to contact a tenant to conduct an inspection required under this section, the City shall be entitled to collect additional fees from the property owner to compensate the City for the additional cost associated with this alternative inspection method.

**102.11.7 Signage.** Property owners shall be prohibited from placing a rental sign upon the subject property without the property having first been inspected and approved by the City, as provided by this subsection. Upon approval and passage of the inspection, if the property is in search of renters and if the owner chooses to notify potential renters by a sign, owners must use a sign provided by the City, which can be collected at City Hall. Any sign used to advertise a rental property must be the official sign available from the City. A deposit fee of \$65.00 will be charged to the property owner that reflects the cost of the sign and will be refunded to the property owner upon return of the sign. If it is discovered that the property owner is using a sign that does not conform to this code, it will be replaced with a code-compliant sign. The non-compliant signage will be left by the front door of the property. The property owner shall remit the \$65.00 deposit to the City for the compliant sign within 10 days of receipt of notice. If the property owner refuses to pay the sign deposit of \$65.00, it will be added to the cost of the next rental registration and will be non-refundable. If a non-compliant sign is replaced by the City, the property owner will be notified by City personnel by placing a notice on the front door of the rental property. A notice will also be mailed to the property owner’s address of record with the City.

**102.11.8 Applications for rental certificate.** Every person that offers for rent a dwelling unit in the City shall submit to the City Building Department, on forms provided, an application requesting a rental certificate. Such application shall be accompanied by an inspection fee in the amount established in this subsection. Upon receipt of such application, the City shall conduct an inspection of the premises and, if the same complies with the provisions of this chapter, issue a rental certificate. If the premises fail to comply, the inspector shall notify the applicant in writing, stating the reasons for such noncompliance.

**102.11.8.1 Applicable fees and fines.** The fee schedule for rental conversion, registration, and rental inspection is as follows:

1. Rental Conversion: New rental property that has not previously been registered as a rental property in the City is subject to this fee, which is set by Council resolution.
2. Rental Registration: \$75.00 for the first unit and \$15.00 for each additional unit thereafter.

**Rental Housing Compliance Inspection Rates**

Number of Units	Fee	Number of Units	Fee
1	\$ 75.00	6	\$150.00

2	\$ 90.00	7	\$165.00
3	\$105.00	8	\$180.00
4	\$120.00	9	\$195.00
5	\$135.00	10	\$210.00

3. Each additional unit in same building: \$15.00.

4. A charge of \$30.00 will be assessed to the property owner for failing to attend a scheduled inspection visit. The rental inspection program is performed by the Fire Department. If a rental inspection is missed because the Fire Department is performing fire or EMS-related duties, the property owner will not be charged a penalty. Every effort will be made to reschedule with the property owner to perform the inspection.

5. Re-inspections within 30 days of the previous inspection:

First re-inspection: \$50.00 per trip + \$10.00 per unit

Second re-inspection: \$70.00 per trip + \$10.00 per unit

Third re-inspection: \$120.00 per trip + \$10.00 per unit

Fourth re-inspection: Constitutes a municipal infraction, subject to the penalties and alternative relief authorized by this Code of Ordinances and by Section 364.22 of the *Code of Iowa* for failure to comply with the Rental Housing Code; civil penalty is \$500.00 or the maximum amount allowed by State law, whichever is greater.

**102.11.8.2 Assessment of Costs.**

1. The City may charge the owner of real property a late payment fee of \$25.00 and may add interest up to 1.5 percent per month if costs imposed under subsection 1 of this section are not paid within 30 days of the date due.

2. The City shall send a notice of the late payment costs to such owner by first class mail to the owner’s personal or business mailing address. The late payment fee and interest shall not accrue if such owner files an appeal with the City.

3. Any owner objecting to the collection of costs by assessment may file a written request for a hearing before the Housing Code Appeals Board. The appeal shall be filed within ten days from the date of the notice of late payment. An untimely appeal shall not be accepted unless, in the discretion of the City Administrator, good cause is shown for the untimely filing.

4. The City Administrator shall notify the appellant and all board members of the date, time, and location of the hearing.

5. Any unpaid costs and interest shall constitute a lien on the real property and may be collected in the same manner as a property tax. Before a lien is filed, the City shall send a notice of intent to file a lien to the owner of the real property by first class mail to such owner’s personal or business mailing address. Prior to filing a property lien, the City may use other means to recover payment, including (but not limited to) the use of professional collection services and the income offset program through the State of Iowa.

**102.11.9 Additional inspections.** In addition to the inspections required under Subsection 102.11.8, the City inspectors are also empowered to make similar inspections of all rental dwelling units as frequently as may be necessary and may make inspection at any reasonable time on a written complaint submitted by the owner, tenant, or other person concerned.

**102.11.10 Inspection fees for additional inspections.**

1. When an inspection is made at the request of the owner, an inspection fee as provided in subsection 102.11.8 shall be charged. If an inspection is made at the written request of a tenant and the dwelling unit is found to be in

noncompliance due to an omission of the owner, such owner shall be responsible for the re-inspection fee. No inspection shall be conducted at the request of a tenant unless the tenant has first submitted the complaint in writing to the landlord no less than seven (7) days before making such complaint to the City. If, after a written complaint by the tenant, the dwelling is found to comply or if such noncompliance is due to conduct on the part of the tenant, the tenant shall be liable for the cost of such inspection. If such costs are not paid by the tenant within thirty (30) days after the date of billing, the City may initiate an action at law or in equity to recover the same in which event the tenant shall be liable for reasonable attorney fees. No fee shall be charged to the owner for such inspection.

2. In the event an inspection is initiated by the City or at the written request of a person other than the owner or tenant, and if the dwelling unit is found to be in noncompliance, the owner shall be liable for such inspection fees. No inspection shall be conducted at the request of a person other than the owner or tenant unless that person has first submitted the complaint in writing to the landlord no less than seven (7) days before making such complaint to the City. In the event that, on the date of the inspection, the dwelling unit complies with the provisions of the housing code, no fee shall be charged. In the event that, on the date of inspection, a dwelling unit fails to comply with the provisions of the housing code, which necessitates additional inspections, the owner shall be liable for the cost of such re-inspection.

3. All fees required under this code shall be paid prior to the issuance or renewal of the rental certificate.

**102.11.11 Entrance and survey of buildings.** The building inspector and any such other persons as may be authorized by the City Administrator may, without fee except as provided in Section 102.11.8, enter, examine, make necessary records, and survey all dwelling units within the City. If entry into the interior portion of a dwelling unit is required, seventy-two (72) hours' notice shall be given by the City to the owner and tenant. The owner, owner's agent or representative, and the lessee and occupant of every dwelling unit and every person having the care and management of the same shall, at all reasonable times when required by such officers or persons, give them free access to such dwelling unit and premises. The owner of a dwelling unit and said owner's agents and employees shall have right of access to such dwelling units at reasonable times for the purpose of bringing about compliance with the provisions of this code or any order issued hereunder.

**102.11.12 Rental certificates.**

1. Rental Certificate Required. All owners of dwelling units shall register such dwelling units with the Building Inspector. No person shall rent, lease, operate, or otherwise allow the occupancy of any dwelling unit unless such person holds a valid rental certificate as is required by this code.

2. Issuance; Duration; Validation. If a dwelling unit fails to comply under Section 102.11.8, and if the dwelling unit and premises are found later to comply with the requirements of this code upon re-inspection, the Building Inspector shall issue a temporary rental certificate. This rental certificate shall be valid for a period of thirty (30) days from the date of inspection. Upon payment of the appropriate fees, the Building Inspector shall validate it.

3. Display. Rental certificates shall be displayed by the owner for the tenant to examine before the dwelling unit may be rented, leased, or otherwise occupied.

4. Transfer. Rental certificates shall not be transferable to succeeding owners. Rental certificates shall automatically terminate and become null and void, without further action of the City, upon transfer of property ownership or upon execution of an agreement to purchase property on contract.

5. Termination. Rental certificates shall automatically terminate and become null and void upon issuance of a nuisance abatement by the City that is related, in any way, to the property to which the rental certificate applies.

**102.11.13 Notice on sale of dwelling unit.** Every person holding a rental certificate under this code shall give notice in writing to the Building Inspector within ninety-six (96) hours after having sold, transferred, conveyed, or otherwise disposed of the ownership, interest in or control of any dwelling unit. This notice shall include the name and address of the person succeeding to the ownership or control thereof.

**102.11.14 Name and address of agent filed.** Every owner, agent, or lessee of a dwelling unit shall file with the City Clerk a notice containing the name and address of an agent of such dwelling unit for the purpose of receiving service of all notices required by this code.

**102.11.15 Emergency orders.** Whenever the Building Inspector finds that an emergency exists which threatens immediately the public health, safety or welfare, the Building Inspector may issue an order reciting the existence of such an emergency and requiring that such action be taken which the Building Inspector deems necessary to meet the emergency. Notwithstanding the other provisions of this code, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately.

**102.11.16 Designation of unfit dwelling and procedures of condemnation.** No person shall let to another for occupancy any dwelling unit for the purpose of living, inhabiting, sleeping, cooking, and eating therein which does not comply with the following requirements. Any dwelling unit which is found to have any of the following defects shall be condemned as unfit for human habitation and shall be so designated and placarded by the Building Inspector.

1. One which is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin infested that it creates a serious hazard to the health, safety or welfare of the occupants or the public.
2. One which lacks illumination, ventilation, or sanitation facilities adequate to protect the health, safety, or welfare of the occupants or of the public.
3. One which, because of its general condition or location is unsanitary or otherwise dangerous to the health, safety, or welfare of the occupants or of the public.

**102.11.17 Vacated immediately.** Any dwelling unit or any portion thereof condemned as unfit for human habitation and so designated and placarded by the Building Inspector shall be vacated immediately as ordered by the Building Inspector. The Building Inspector shall notify the City of such action prior to placarding the dwelling unit.

**102.11.18 Elimination of defects.** No dwelling unit or a portion thereof which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by the Building Inspector. The Building Inspector shall remove such placard whenever the defect or defects upon which the condemnation and placarding were based have been eliminated.

**102.11.19 Defaced or removed placard.** No person shall deface or remove the placard from any dwelling unit which has been condemned as unfit for human habitation and placarded as such, except as provided in this code.

**102.11.20 Authority to execute.** In case any notice or order issued by the Building Inspector or City is not complied with, the Building Inspector may recommend that the City apply to the district court for an order authorizing the City to execute and carry out the provisions of the notice or order to correct any violation specified in the notice or order to abate any nuisance in or about the dwelling unit.

**102.11.21 Action to enjoin.** In case any dwelling unit, building, or structure is constructed, altered, converted, or maintained in violation of any provisions of this code or of any order or notice of the Building Inspector, or in case a nuisance exists in any such dwelling unit, building, or structure or upon the lot on which it is situated, the City may cause the institution of any appropriate action or

proceeding to prevent such unlawful construction, alteration, conversion, or maintenance, to restrain, correct, or abate such violation, or nuisance, or to prevent the occupation of the dwelling unit, building, or structure, or to prevent any illegal act, conduct business in or about such dwelling unit or lot.

**102.11.22 Injunction.** In any such action or proceeding, the Building Inspector may, by a statement duly verified setting forth the facts, request that the City apply to the district court for an order granting the relief for which the action or proceeding is brought or for an order enjoining any persons from doing or permitting to be done any work in or upon such dwelling unit, building, structure or lot, or from occupying or using the same for any purpose until the entry of final judgment or order.

**102.11.23 Eviction; lease termination.** If the occupant of a dwelling fails to comply with the provisions of this code after due and proper notice from the Building Inspector or from the owner, such failure to comply shall be deemed sufficient cause for the eviction of such occupant by the owner and for cancellation of said occupant's lease.

**102.11.24 Duties of occupant.** It is unlawful for any tenant to deliberately or recklessly destroy, deface, damage, or remove a part of the premises or to knowingly permit any other person to do so, or to remove without permission of the landlord any furniture or other items of personal property belonging to the landlord or owner or to cause damage resulting in noncompliance with the housing code.

**102.11.25 Notice of actions.** In any action brought by the City in relation to a dwelling unit or injunction, vacation of the premises, or abatement of nuisance or to establish a lien thereon, or to recover a civil penalty, service of notice shall be in the manner provided by law for the service of an original notice.

**102.11.26 Rent collections.** Rent shall not be recoverable by the owner or lessee of any dwelling unit which does not comply with the provisions of this code. Rent shall not thereupon be recoverable by the owner of such dwelling unit until the City gives written notice to the owner and occupant that such dwelling unit has been issued a valid rental certificate as required by this code.

**102.11.27 City liability.** The City or any employee is not liable for damages to a person or property as a result of any act or failure to act in the enforcement of this code. This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any equipment or structure regulated herein for damages to a person or property caused by its defects, nor shall the City or any City employee be held as assuming any such liability by reason of the inspections authorized by this code or any approvals issued under this code.

**102.11.28 Civil liability.** The owner of any dwelling unit or of any building or structure upon the same lot with a dwelling unit, or of the lot, in violation of this code or where a nuisance, as defined in this Code of Ordinances, exists, who has been guilty of such violation or of creating or knowingly permitting the existence of such violation, or any occupant who violates or assists in violating any provisions of this code, shall also jointly and severally for each such violation and each such nuisance be subject to a civil penalty, in a civil action brought in the name of the City. Such person or persons and also the premises shall be liable in such case for all costs, expenses, and disbursements paid or incurred by the Building Department, including attorneys' fees, paid or incurred by the City, by any of the officers, agents, or employees thereof, in the removal of any such nuisance or violation.

**102.11.29 Additional liability.** Any person who, having been served with a notice or order to remove any such nuisance or violation, fails to proceed in good faith to comply with the notice or order within five (5) days after such service or who continues to violate any provisions or requirements of this Code of Ordinances, shall also be subject to a civil penalty. For the recovery of such

penalties, costs, expenses, or disbursements, an action may be brought in a court of competent civil jurisdiction.

#### **102.11.30 Rental Housing Code Appeals.**

**102.11.30.1 Board created.** There is hereby created a Housing Code Appeals Board consisting of five (5) members. The Housing Code Appeals Board shall designate its Chairperson and Secretary.

**102.11.30.2 Rules and regulations.** The Housing Code Appeals Board shall adopt reasonable rules and regulations for the conduct of its meetings and investigations and shall render all decisions and findings in writing to the Building Inspector and City Administrator. All decisions and findings shall be made part of the public record.

**102.11.30.3 Reconsideration.** Any person aggrieved by a notice or order of the Building Inspector in connection with any alleged violation of this Rental Housing Code, of any applicable rule or regulation issued pursuant thereto, or by any order requiring repair or demolition, may apply to the Building Inspector for an administrative conference for reconsideration of such notice or order if such application is made within fourteen (14) days after the date the notice or order was served. If the Building Inspector holds an administrative conference for reconsideration of the notice or order, the Building Inspector shall prepare a written summary of the conference including a written statement of the decision reached. Such summary and statement shall become part of the public record.

**102.11.30.3 Appeal.** Any person aggrieved by a decision of the Building Inspector issued under subsection 102.11.30.3 of this subsection may apply to the Housing Code Appeals Board for a reconsideration of such decision provided such application is made within twenty-one (21) days after the date the decision was served.

**102.11.30.4 Hearing; Decision.** Upon receipt of an appeal, the Housing Code Appeals Board shall set a time and place for the hearing within ten (10) days of the receipt of such application, and shall advise the applicant in writing of such time and place at least seven (7) days prior to the date of the hearing. At the hearing, the applicant shall be given an opportunity to be heard and to show cause why such decision of the Building Inspector should be modified, extended, withdrawn, or a variance granted. The Housing Code Appeals Board, by a majority vote, may sustain, modify, or withdraw the decision of the Building Inspector. In granting an extension or variance of any decision, the Appeals Board shall observe the following conditions, in Subsections 102.11.30.5 and 102.11.30.6:

**102.11.30.5 Extension granted.** The Housing Code Appeals Board may grant an extension of time for the compliance with any order, notice, or decision, for not more than six (6) months, subject to appropriate conditions and provided that the Appeals Board makes specific findings of fact based on evidence relating to the following:

1. There are practical difficulties or unnecessary hardships in carrying out the strict letter of any notice, order, or decision; and
2. Such an extension is in harmony with the general purpose and intent of this chapter in securing the public health, safety, and general welfare.

**102.11.30.6 Variance.** The Housing Code Appeals Board may grant a variance in a specific case and from a specific provision of this Rental Housing Code subject to appropriate conditions and provided the Appeals Board makes specific findings of fact based on evidence related to the following:

1. The property in question cannot yield a reasonable return or be used for a conforming purpose if used only for a purpose allowed in that zone or as allowed by the Rental Housing Code; and

2. The plight of the property owner is due to unique circumstances of the specific property owner and not to the general conditions of other properties in the City; and
3. The use to be authorized by the variance will not alter the essential character of the locality or the general purposes underlying the Rental Housing Code in securing the public health, safety, and general welfare; and
4. The hardship must be substantial, serious, real, and of compelling force, as distinguished from reasons of convenience, profit or caprice; and
5. The application of a particular Rental Housing Code provision to a particular property greatly decreases or practically destroys its value for any permitted use, or where such application bears so little relationship to the purposes of health, safety, and welfare of the public that, as to the property in question, the provision is in effect confiscatory, arbitrary, or capricious, or constitutes an unnecessary, unwarranted, or unjust invasion of, or interference with, a fundamental right or property; and
6. The unnecessary hardship of practical difficulties along with their arbitrary effect cannot be remedied by the grant of an extension.

Such grant of variance shall not go into effect until twenty-one (21) days after the date the variance is granted.

**102.11.30.7 Review by Council.** In any instance in which the Housing Code Appeals Board has granted a variance to any provision of the Rental Housing Code, within seven (7) days of the date on which the variance is granted, the Building Inspector, the Fire Chief, the City Administrator, or the City Attorney shall have the right to request, in writing, that the City Council review the action of the Housing Code Appeals Board. If such a request is received and filed by the City Clerk within the time period allowed, the variance granted by the Housing Code Appeals Board shall be stayed and suspended until such time as the City Council can review such matter. Within ten (10) days of receipt of such a request, the City Clerk shall set a date for the review hearing and shall notify, in writing, the affected property owners of the date, time, and place set for the review hearing, and shall further notify such owners that the grant of the variance is stayed and suspended pending further review by the City Council. On the date set for the review hearing, the City Council shall receive and review all facts and information relied on by the Housing Code Appeals Board and, in addition, shall receive any additional information that may be submitted to it by any party. After such review hearing, the City Council shall decide to affirm, reverse, or modify such grant of variance.

5. Subsections 103.1, *General*, of the IPMC is hereby amended by adding the following paragraph to said subsection:

The term Code Official is intended also to mean the Building and Zoning Administrator and his or her representatives or designees, who are herewith delegated the same powers, authorities, duties, and responsibilities as designated for the Code Official.

6. Subsection 103.5, *Fees*, of the IPMC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**103.5 Schedule of permit fees.** Permits and rental housing certificates shall not be issued until the fees, as set forth and established by resolution of the City Council, have been paid to the City of Windsor Heights. An amended permit or a supplemental permit for additional construction shall not be issued until the permit fee(s) for the additional work has been paid. The permit fees shall be based upon the valuation of the proposed construction and shall be computed from tables set by resolution of the City Council; rental housing certificate fees shall be as established by resolution of the City Council.

7. Subsection 103.6, *Work Commencing before Permit Issuance*, of the IPMC is hereby established by adding the following subsection:

**103.6 Work commencing before permit issuance.** Any person who commences any work under the provisions of this code before obtaining the necessary permits shall be subject to 100 percent of the usual permit fee in addition to the required permit fees.

8. Subsection 103.7, *Fee Refunds*, of the IPMC is hereby established by adding the following subsection:

**103.7 Fee refunds.** The Code Official is authorized to establish a refund policy.

9. Subsection 302.4, *Weeds*, of the IPMC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**302.4 Weeds.** Weeds and tall grasses shall be regulated as defined in the City of Windsor Heights Code of Ordinances.

10. Subsection 303.14, *Insect Screens*, of the IPMC is hereby amended by inserting the following dates and deleting a portion of the last sentence as follows:

**303.14 Insect screens.**

from April 1 to October 31.

Delete: and every screen door used for insect control shall have a self-closing device in good working condition.

11. Subsection 403.5, *Clothes Dryer Duct*, of the IPMC is hereby amended by adding the following subsection:

**403.5.1 Clothes dryer duct.** Transition ducts in rental dwelling units and buildings, used to connect the dryer to the exhaust duct system, shall be a single length that is listed and labeled in accordance with UL 2158A. Transition ducts shall be a maximum of 8 feet (2,438 mm) in length and shall not be concealed within construction.

12. Subsection 404.4.1, *Room Area*, of the IPMC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**404.4.1 Room area.** Every living room shall contain at least 120 square feet and every bedroom shall contain at least 70 square feet. Where more than two persons occupy a bedroom the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two.

13. Subsection 602.3, *Heat Supply*, of the IPMC is hereby amended by inserting the following dates:

**602.3 Heat supply.**

from September 15 to May 15.

14. Subsection 602.4, *Occupiable Work Spaces*, of the IPMC is hereby amended by inserting the following dates:

**602.4 Occupiable work spaces.**

from September 15 to May 15.

15. Subsection 605.2, *Receptacles*, of the IPMC, is hereby amended by adding the following exception and subsequent subsection:

Exception 1: Effective July 15, 2013, a bathroom receptacle shall be required in dwelling units permitted or constructed prior to 1978.



**605.2.1 Receptacles.** All 125-volt, single phase, 15- and 20-ampere receptacles in rental dwelling units, within six feet of water sources, shall be provided with ground fault circuit interrupter protection.

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## CHAPTER 157

# STANDARD CONSTRUCTION SPECIFICATIONS

157.01 Purpose

157.02 Adoption of Specifications

157.03 Amendments

157.04 Violation

**157.01 PURPOSE.** In order to ensure the consistent high quality of materials and workmanship in all public construction projects, the City deems it in the public interest to establish and publish Standard Construction Specifications which shall apply to and govern the construction of all public improvements in public rights-of-way within the City.

**157.02 ADOPTION OF SPECIFICATIONS.** The City adopts, by reference, the following minimum standards for public improvements constructed within the City's jurisdictional area: The *Iowa Statewide Urban Design and Specifications* – current edition – (SUDAS) manuals shall be the adopted City Standard for Public Improvements. SUDAS shall be the minimum standards; due to unusual or extenuating circumstances, the City may require that projects conform to additional standards or to greater than minimum standards. A copy of the specifications shall remain on file at the office of the Clerk and shall be available for inspection and copying. All contractors and suppliers shall be charged with knowledge of its contents.

**157.03 AMENDMENTS.** The City may, from time to time, make additions or changes to the specifications in the form of amendments adopted by resolution. Following adoption by resolution, the amendments shall be placed in the publication on file with the City Clerk and shall have the full force and effect of law as of the date the amendments are filed.

**157.04 VIOLATION.** Any person violating any provisions of the Standard Construction Specifications shall be guilty of a simple misdemeanor.

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# CHAPTER 158

## MECHANICAL CODE

158.01 Short Title  
158.02 Adoption of Mechanical Code  
158.03 Conflicts

158.04 Amendments, Modifications, Additions and  
Deletions

**158.01 SHORT TITLE.** This chapter shall be known as the Windsor Heights Mechanical Code, and may be cited as such, and may be referred to herein as this chapter.

**158.02 ADOPTION OF MECHANICAL CODE.** The *International Mechanical Code*, 2012 Edition, published by the International Code Council, Inc., is adopted in full except for such portions as may be hereinafter deleted, modified, or amended. A copy of the *International Mechanical Code*, 2012 Edition, as adopted and a copy of this chapter are on file in the office of the Code Official.

**158.03 CONFLICTS.** In the event requirements of this code conflict with applicable State and federal requirements, the more stringent shall apply.

**158.04 AMENDMENTS, MODIFICATIONS, ADDITIONS AND DELETIONS.** The *International Mechanical Code*, 2012 Edition (hereinafter known as the IMC), is amended as follows:

1. Deletions. The following are deleted from the IMC and are of no force or effect in this chapter:

**106.4.4 Extensions**

**109 Means of Appeal**

2. Subsection 101.1, *Title*, of the IMC is hereby deleted and there is enacted in lieu thereof the following subsection:

**101.1 Title.** These regulations shall be known as the Windsor Heights Mechanical Code, hereinafter known as this code.

3. Subsections 103.1, *General*, of the IMC is hereby amended by adding the following paragraph to said subsection:

The term Code Official is intended also to mean the Building and Zoning Administrator and his or her representatives or designees, who are herewith delegated the same powers, authorities, duties, and responsibilities as designated for the Code Official.

4. Subsection 106.1.1 *Permit Acquisition*, of the IMC is hereby established by adding the following:

**106.1.1 Permit acquisition.**

1. Permits are not transferable. Mechanical work performed under the provisions of this chapter must be done by a contractor meeting the licensing provisions as set forth by the State of Iowa Plumbing and Mechanical Systems Board in accordance with Chapter 105 of the *Code of Iowa*. A responsible person or mechanical professional licensed by the State of Iowa Plumbing and Mechanical Systems Board as a "Master" may sign and obtain a permit for the contractor for which said person is employed only when said responsible person or Master has provided proof of

employment or written confirmation by said licensed contractor. Any permit required by the provisions of this code may be revoked by the Code Official upon the violation of any provision of this code.

2. A State of Iowa licensed mechanical contractor shall be allowed only to secure permits for himself or herself, or for a single firm or corporation. When a State of Iowa licensed mechanical contractor has secured such a permit, only the employees of such contractor, when meeting the provisions of Chapter 105 of the *Code of Iowa*, shall perform the work for which the permit was obtained.

3. For purposes of this subsection, an “employee” is one employed by the contractor, firm, or corporation for a wage or salary. A contractor may be required by the Code Official to show positive evidence as to the employee status of workers on the job. Such evidence shall be in the form of payroll and time records, canceled checks, or other such documents.

4. The contractor may also be required to show the agreement or contract pertaining to the work being questioned as evidence that said contractor is, in fact, the actual contractor for such work. Failure or refusal by the contractor to make available such employee or contractual records within 24 hours from demand therefor shall be grounds for immediate revocation of any permit for the work in question.

5. Subsection 106.2, *Permits Not Required*, of the IMC is hereby amended by adding the following #9 to said subsection:

9. Replacement or relocation of existing house ventilation fans, bathroom exhaust, dryer vents, window air conditioners, and extension of existing supply and return ductwork.

6. Subsection 106.4.3, *Expiration*, of the IMC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**106.4.3 12-month expiration.** Every permit issued under the provisions of this code shall expire twelve (12) months from the date of issue, unless the application is accompanied by a construction schedule of specific longer duration, in which instance the permit may be issued for the term of the construction schedule, with approval of the Code Official. If the work has not been completed by the expiration date of the permit, no further work shall be done until the permit shall have been renewed by the owner or owner’s agent and by payment of the renewal fee as established by resolution of the City Council, and provided no changes have been made in plans or location. Upon approval, permits may be extended for no more than two periods not exceeding 180 days each.

7. Subsection 106.5.2, *Fee Schedule*, of the IMC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**106.5.2 Fee schedule.** Permits shall not be issued until the fees, as set forth and established by resolution of the City Council, have been paid to the City of Windsor Heights. An amended permit or a supplemental permit for additional construction shall not be issued until the permit fees for the additional work have been paid.

8. Subsection 106.5.3, *Fee Refunds*, of the IMC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**106.5.3 Fee refunds.** The Code Official is authorized to establish a refund policy.

9. Subsection 108.4, *Violation Penalties*, of the IMC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**108.4 Violation penalties.** Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, installs, alters, or repairs mechanical work in violation of the approved construction documents or directive of the Code Official, or of a permit issued under the provisions of this code, shall be subject to penalties as prescribed by law.

10. Subsection 108.5, *Stop Work Orders*, of the IMC is hereby amended by deleting the last sentence of said subsection and inserting in lieu thereof the following:

Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

11. Subsection 1107.2, *Refrigerant Piping*, of the IMC is hereby amended by deleting the last sentence thereof.

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# CHAPTER 159

## PLUMBING CODE

159.01 Short Title  
159.02 Adoption of Plumbing Code  
159.03 Conflicts

159.04 Amendments, Modifications, Additions and  
Deletions

**159.01 SHORT TITLE.** This chapter shall be known as the Windsor Heights Plumbing Code, and may be cited as such, and may be referred to herein as this chapter.

**159.02 ADOPTION OF PLUMBING CODE.** The *International Plumbing Code* 2012 Edition; published by the International Code Council, Inc., is adopted in full except for such portions as may be hereinafter deleted, modified or amended. A copy of the International Plumbing Code 2012 Edition, as adopted, and a copy of this chapter are on file in the office of the Code Official.

**159.03 CONFLICTS.** In the event requirements of this code conflict with applicable State and federal requirements, the more stringent shall apply.

**159.04 AMENDMENTS, MODIFICATIONS, ADDITIONS AND DELETIONS.** The *International Plumbing Code*, 2012 Edition (hereinafter known as the IPC), is amended as follows:

1. Deletions. The following are deleted from the IPC and are of no force or effect in this chapter:

**106.5.4 Extensions**

**109 Means of Appeal**

2. Subsection 101.1, *Title*, of the IPC is hereby deleted and there is enacted in lieu thereof the following subsection:

**101.1 Title.** These regulations shall be known as the Plumbing Code of the City of Windsor Heights, hereinafter known as “this code.”

3. Subsection 103.1, *General*, of the IPC is hereby amended by adding the following paragraph to said subsection:

The term Code Official is intended also to mean the Building and Zoning Administrator and his or her representatives or designees, who are herewith delegated the same powers, authorities, duties, and responsibilities as designated for the Code Official.

4. Subsection 105.2, *Alternate Materials, Methods and Equipment*, of the IPC is hereby amended by adding the following subsection 105.2.1 and exception:

**105.2.1 Uniform Plumbing Code.** The *Uniform Plumbing Code*, as prepared and edited by the International Association of Plumbing and Mechanical Officials, as currently adopted and amended by the Plumbing and Mechanical Systems Board, Iowa Department of Public Health, is hereby approved as an alternate equivalent method for complete plumbing systems.

Administration Exception 1: Administrative regulations shall be as prescribed in the *International Plumbing Code*, 2012 Edition, as amended in this section.

5. Subsection 106.1.1, *Permit Acquisition*, of the IPC is hereby established by adding the following:

**106.1.1. Permit acquisition.**

1. Permits are not transferable. Plumbing work performed under the provisions of this chapter must be done by a contractor meeting the licensing provisions as set forth by the State of Iowa Plumbing and Mechanical Systems Board in accordance with Chapter 105 of the *Code of Iowa*. A plumber licensed by the State of Iowa Plumbing and Mechanical Systems Board as a “Master” may sign and obtain a permit for the contractor for which said person is employed only when said Master has provided proof of employment by said licensed contractor. Any permit required by the provisions of this code may be revoked by the Code Official upon the violation of any provision of this code.

2. A State of Iowa licensed plumbing contractor shall be allowed only to secure permits for himself or herself, or for a single firm or corporation. When a State of Iowa licensed plumbing contractor has secured such a permit, only the employees of such contractor, when meeting the provisions of Chapter 105 of the *Code of Iowa*, shall perform the work for which the permit was obtained.

3. For purposes of this subsection, an “employee” shall be one employed by the contractor, firm, or corporation for a wage or salary. A contractor may be required by the Code Official to show positive evidence as to the employee status of workers on the job. Such evidence shall be in the form of payroll and time records, canceled checks, or other such documents.

4. The contractor may also be required to show the agreement or contract pertaining to the work being questioned as evidence that said contractor is, in fact, the actual contractor for such work. Failure or refusal by the contractor to make available such employee or contractual records within 24 hours from demand therefor shall be grounds for immediate revocation of any permit for the work in question.

5. Homeowners (owner/occupants) qualifying for the homestead tax exemption may acquire permits for their principal residence (not an apartment) and appurtenant accessory structures for plumbing work, not to include connection within the public right-of-way to the public main of sewer, water and storm lines, after having passed the Windsor Heights Plumbing Homeowner’s exam.

6. Subsection 106.5.3, *Expiration*, of the IPC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**106.5.3 12-month expiration.** Every permit issued under the provisions of this code shall expire twelve (12) months from the date of issue, unless the application is accompanied by a construction schedule of specific longer duration, in which instance the permit may be issued for the term of the construction schedule, with approval of the Code Official. If the work has not been completed by the expiration date of the permit, no further work shall be done until the permit shall have been renewed by the owner or his or her agent and by payment of the renewal fee as established by resolution of the City Council, and provided no changes have been made in plans or location. Upon approval, permits may be extended for no more than two periods not exceeding 180 days each.

7. Section 106.5.6, *Retention of Construction Documents*, of the IPC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**106.5.6 Retention of construction documents.** One set of construction documents shall be retained by the Code Official until final approval of the work covered therein.

8. Subsection 106.6.2, *Fee Schedule*, of the IPC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**106.6.2 Fee schedule.** Permits shall not be issued until the fees, as set forth and established by resolution of the City Council, have been paid to the City of Windsor

Heights. An amended permit or a supplemental permit for additional construction shall not be issued until the permit fees for the additional work have been paid.

9. Subsection 106.6.3, *Fee Refunds*, of the IPC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**106.6.3 Fee refunds.** The Code Official is authorized to establish a refund policy.

10. Subsection 108.4, *Violation Penalties*, of the IPC, is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**108.4 Violation penalties.** Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, installs, alters, or repairs plumbing work in violation of the approved construction documents or directive of the Code Official, or of a permit issued under the provisions of this code, shall be subject to penalties as prescribed by law.

11. Subsection 108.5, *Stop Work Orders*, of the IPC is hereby amended by deleting the last sentence of said subsection and inserting in lieu thereof the following:

Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

12. Subsection 305.4, *Freezing*, of the IPC is hereby amended by deleting the last sentence of said subsection and inserting in lieu thereof the following:

Exterior water supply system piping shall be installed not less than sixty (60) inches below grade.

13. Subsection 305.4.1, *Sewer Depth*, of the IPC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**305.4.1 Sewer depth.** Building sewers shall be a minimum of forty-eight (48) inches below grade.

14. Subsection 410.3, *Substitution*, of the IPC is hereby amended by adding the following exception:

Exception: Water coolers or bottled water dispensers in accessible locations and within accessible reach ranges may be substituted for the initial drinking fountain in business occupancies with an occupant load of not more than 30 and mercantile occupancies with an occupant load of not more than 100. (re: IBC chapter 11, T1902.1 and IPC T403.1 footnote e)

15. Section 605, *Materials, Joints and Connections*, of the IPC is hereby amended by adding the following subsection:

**605.1.1 Underground copper.** Copper tube for underground piping shall have a weight of not less than type K.

16. Section 703, *Building Sewer*, of the IPC is hereby amended by adding the following subsection:

**703.6 Minimum building sewer size.** The minimum diameter for a building sewer shall be four (4) inches.

17. Subsection 715.1, *Sewage Backflow*, of the IPC is hereby amended by adding the following:

Exception 1: The requirements of this section shall apply when determined necessary by the Code Official based on local conditions.

18. Subsection 901.2.1, *Venting Required*, of the IPC is hereby amended by adding the following exception:

Exception: A vent is not required on a three-inch basement floor drain provided its drain branches into the building drain on the sewer side at a distance of five feet or more from the base of the stack and the branch line to such floor drain is not more than 12 feet in length.

19. Subsection 903.1, *Roof Extension*, of the IPC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**903.1 Roof extension.** All open vent terminals which extend through a roof shall be terminated not less than 6 inches above the roof or less than 1 foot from any vertical surface. Where a roof is used for any purpose other than weather protection, the vent extensions shall terminate not less than 7 feet above the roof.

20. Subsection 1003.3, *Grease Interceptors*, of the IPC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**1003.3 Grease interceptors.** Grease interceptors shall comply with the requirements of the adopted Windsor Heights Storm Water Drainage Utility Ordinance (Chapter 101 of this Code of Ordinances).

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**CHAPTER 160**  
**CONSTRUCTION SITE EROSION**  
**AND SEDIMENT CONTROL**

160.01 Findings  
160.02 Purpose  
160.03 Definitions  
160.04 Applicability  
160.05 Application Procedure  
160.06 Inspection Procedures

160.07 Monitoring Procedures  
160.08 Enforcement  
160.09 Failure to Comply  
160.10 Appeal  
160.11 Financial Securities  
160.12 Right of Entry

**160.01 FINDINGS.**

1. The U.S. EPA's National Pollutant Discharge Elimination System ("NPDES") permit program ("Program") administered by the Iowa Department of Natural Resources ("IDNR") requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System ("MS4") ("MS4 Permit"). The City of Windsor Heights is subject to the Program and is required to obtain, and has obtained, an MS4 Permit; the City's MS4 Permit is on file at the office of the City Clerk and is available for public inspection during regular office hours.
2. The Program requires certain individuals engaged in construction activities ("applicants") to submit an application to the IDNR for a State NPDES general permit #2. Notwithstanding any provision of this chapter, every applicant bears final and complete responsibility for compliance with a State NPDES general permit #2 and a City COSESCO permit and any other requirement of State or federal law or administrative rule.
3. As a condition of the City's MS4 Permit, the City is obliged to undertake responsibility for administration and enforcement of the Program by adopting a CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL ("COSESCO") ordinance designed to achieve the following objectives:
  - A. Any applicant required by law or administrative rule to apply to the IDNR for a State NPDES general permit #2 shall also be required to obtain from the City a COSESCO permit ("City COSESCO permit") in addition to and not in lieu of the State NPDES general permit #2; and
  - B. The City shall have responsibility for inspection, monitoring and enforcement procedures to promote applicants' compliance with State NPDES General Permits #2 and City COSESCO permits.
4. No State or federal funds have been made available to assist the City in administering and enforcing the Program. Accordingly, the City shall fund its application, inspection, monitoring and enforcement responsibilities entirely by fees imposed on the owners of properties which are made subject to the Program by virtue of State and federal law, and/or other sources of funding established by a separate ordinance.
5. Terms used in this chapter shall have the meanings specified in the Program.

**160.02 PURPOSE.** The general purpose of this chapter is to establish regulatory requirements for land development and land disturbing activities aimed at minimizing the threats to public health, safety, public and private property, and natural resources within the community from construction site erosion. Specific purposes are to establish performance standards that will provide a single, consistent set of performance standards that apply to all developments and will protect public and private property and Walnut Creek and North Walnut Creek from damage resulting from erosion and sediment in storm water runoff.

**160.03 DEFINITIONS.** The following terms are defined for use in this chapter:

1. "Applicant" means a property owner or agent of a property owner who has filed an application for a construction site erosion and sediment control permit.
2. "Developer" means a person who undertakes land disturbance activities.
3. "Development" means activity land disturbance activity on land previously vacant of buildings or largely free of previous land disturbance activity other than traditional agricultural activities; or on land where existing land use is high density commercial or residential (a.k.a. "redevelopment").
4. "Enforcement officer" means that person designated by the City having responsibility for administration and enforcement of this chapter.
5. "Land disturbance activity" means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or manmade watercourse.
6. "Storm Water Pollution Prevention Plan" (SWPPP) means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.
7. "*Iowa Storm Water Management Manual*" means the current *Iowa Storm Water Management Manual* publication, by whatever name, as amended from time to time by Iowa Department of Natural Resources in collaboration with the Center for Transportation Research at Iowa State University, and which recommends storm water management guidelines and uniform sizing criteria and BMPs designed to address said guidelines.

**160.04 APPLICABILITY.**

1. All persons required by law or administrative rule to obtain a State NPDES general permit #2 from the IDNR are required to obtain a City COSESCO permit and prepare a Storm Water Pollution Prevention Plan (SWPPP).
2. All persons are required to obtain a City COSESCO permit and prepare an Erosion and Sediment Control Plan (ESC) if proposing a land disturbance activity that will:
  - A. Disturb a total land surface area of between 3,000 square feet and one acre; or
  - B. Excavate and/or fill a volume in excess of 50 cubic yards of material; or

C. Lay, repair, replace, or enlarge an underground utility, pipe or other facility, or disturb a road ditch, grass swale or other open channel for a distance of 300 feet or more.

#### **160.05 APPLICATION PROCEDURE.**

1. The applicant shall request a pre-application meeting, which will be facilitated by the City between the applicant, City staff, and staff of partner agencies as applicable. The meeting shall be mandatory prior to submission of a permit application. The purposes of the meeting are to understand the general parameters of the proposed project and to convey the requirements of meeting the provisions of this chapter and other applicable ordinances.
2. The City shall make a determination regarding the completeness of a City COSESCO permit application within ten (10) business days of the receipt of the application and notify the applicant in writing if the application is not complete including the reasons the application was deemed incomplete.
3. The applicant shall not commence any construction activity subject to this chapter until a City COSESCO permit has been authorized by the City. A complete review of the permit application shall be done within fifteen (15) business days of the receipt of a complete permit application from the applicant. The City will work with the necessary State, County, and local agencies to complete its review. The City shall review all information in the permit application, including proposed storm water practices, hydrologic models, and design methodologies and certify compliance with this chapter. Applications for City COSESCO permits shall be made on forms approved by the City, which applications may be obtained from the office of the City Clerk.
4. All permit fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such permit fees may, from time to time, be amended by the Council by resolution.
5. An applicant in possession of a State NPDES general permit #2 issued by the IDNR shall immediately submit to the City full copies of the materials described below as a basis for the City to determine whether to issue a City COSESCO permit:
  - A. Applicant's plans, specifications, and supporting materials previously submitted to the IDNR in support of applicant's application for the State NPDES general permit #2;
  - B. Applicant's authorizations issued pursuant to applicant's State NPDES general permit #2; and
  - C. A Storm Water Pollution Prevention Plan ("SWPPP") prepared in accordance with this chapter.
6. Every SWPPP submitted to the City in support of an application for a City COSESCO permit shall:
  - A. Comply with all current minimum mandatory requirements for SWPPPs promulgated by the IDNR in connection with issuance of a State NPDES general permit #2;
  - B. If the applicant is required by law to file a Joint Application Form, PROTECTING IOWA WATERS, IOWA DEPARTMENT OF NATURAL

RESOURCES AND U.S. ARMY CORPS OF ENGINEERS, comply with all mandatory minimum requirements pertaining to such applications;

C. Comply with all other applicable State or federal permit requirements in existence at the time of application;

D. Be prepared by a licensed professional engineer or landscape architect or a professional in erosion and sediment control or a representative of the local Soil and Water Conservation District, credentialed in a manner acceptable to the City; and

E. Include within the SWPPP a signed and dated certification by the NPDES general permit #2 permit holder that the SWPPP complies with all requirements of this chapter and the applicant's NPDES general permit #2.

7. In addition to the SWPPP requirements stated in subsection 6 of this section, which constitute minimum mandatory requirements imposed by the Program, every SWPPP submitted to the City in support of an application for a City COSESCO permit shall comply with SUDAS standard design criteria, including but not limited to design, location, and phased implementation of effective, practicable storm water pollution prevention measures, and shall also:

A. Limit total off-site annual aggregate sediment yield for exposed areas to an equivalent amount resulting from sheet and rill erosion equal to an annual, cumulative soil loss rate not to exceed the standard established from time to time by Soil and Water Conservation Districts; erosion rates can exceed soil loss limits as long as sediment yield does not exceed that expected from allowable erosion rates.

B. Identify the nature of the construction activity and the potential for sediment and other pollutant discharges from the site.

C. Calculate the predicted erosion and estimated sediment yield for the construction site using the USDA Revised Universal Soil Loss Equation.

D. Assure that stockpiles of soil or other materials subject to erosion by wind or water are covered, vegetated, or otherwise effectively protected from erosion and sedimentation in accordance with the amount of time the material will be on site and the manner of its proposed use; no stockpiling is allowed in the street.

E. Include an affidavit stating that the erosion caused by the activity will not exceed the Soil and Water Conservation District's adopted soil and loss limits according to Section 161A.64 of the *Code of Iowa*.

F. Identify measures and procedures to reasonably minimize site soil compaction and provide soil quality restoration as specified.

G. Assure that all temporary erosion and sediment controls shall not be removed until the City has determined that the site has been permanently stabilized.

H. Assure that all disturbed sites be permanently stabilized with 70% perennial cover as measured by the USDA line transect method.

I. Identify methods to prevent sediment damage to adjacent properties and sensitive environmental areas such as water bodies, plant communities,



rare, threatened, and/or endangered species habitats, wildlife corridors, greenways, etc.

J. Provide for design and construction methods to stabilize steep or long continuous slopes.

K. Include measures to control the quantity and quality of storm water leaving a site before, during, and after construction.

L. Provide for stabilization of all waterways and outlets.

M. Protect storm sewer infrastructure from sediment loading/plugging.

N. Specify precautions to be taken to contain sediment when working in or crossing water bodies.

O. Assure stabilization of disturbed areas, including utility construction areas, as soon as possible.

P. Protect outlying roads from sediment and mud from construction site activities, including tracking.

Q. Provide for disposal of collected sediment and floating debris.

R. Assure that, when working near Walnut or North Walnut Creek, the specific practices itemized immediately below are utilized:

(1) During Construction.

a. All exposed soil areas with a slope of 3:1 or steeper, which have a continuous positive slope to Walnut or North Walnut Creek, should have temporary erosion protection or permanent cover within three days after the area is no longer actively being worked; all other slopes that have a continuous positive slope to Walnut or North Walnut Creek should have temporary erosion protection or permanent cover within seven days after the area is no longer actively being worked.

b. Temporary sediment basin requirements should be used for common drainage locations that serve an area with five or more acres disturbed at one time.

(2) Buffer Zone. Provide for the maintenance at all times of an undisturbed buffer zone consisting of not less than 100 linear feet from Walnut or North Walnut Creek. Exceptions from this for areas such as water crossings or limited water access are allowed if the applicant fully documents in the SWPPP the circumstances and reasons that the buffer encroachment is necessary; all potential water quality, scenic and other environmental impacts of these exceptions should be minimized and documented in the SWPPP for the project.

(3) Enhanced Temperature Controls. Design the permanent storm water management system such that the discharge from the project will minimize any increase in the temperature.

a. Minimize new impervious surfaces; and/or

b. Other methods that will minimize any increase in the temperature of the sensitive waters.

8. Issuance by the City of a City COSESCO permit shall be a condition precedent for the issuance of a City building permit or site plan approval.

9. Every Erosion and Sediment Control Plan (ESC) submitted to the City in support of a City COSESCO permit shall:

- A. Phase construction to minimize duration of exposed soil areas.
- B. Provide temporary and permanent erosion prevention, sediment control, storm water runoff, and soil stabilization BMPs along with procedures to establish additional temporary BMPs as necessary for the site conditions during construction.
- C. Provide final stabilization of all exposed soil areas.
- D. Incorporate the following into the site design for erosion and sediment control:
  - (1) Minimize disturbance of natural soil cover and vegetation.
  - (2) Minimize, in area and duration, exposed soil and unstable soil conditions.
  - (3) Protect receiving water bodies, wetlands, and storm sewer inlets.
  - (4) Protect adjacent properties from sediment deposition.
  - (5) Minimize off-site sediment transport on trucks and equipment.
  - (6) Minimize work in and adjacent to water bodies and wetlands.
  - (7) Maintain stable slopes.
  - (8) Avoid steep slopes and the need for high cuts and fills.
  - (9) Minimize disturbance to the surrounding soils, root systems, and trunks of trees adjacent to site activity that are intended to be left standing.
  - (10) Minimize the compaction of site soils.
- E. Identify the:
  - (1) Elevations, sections, profiles, and details as needed to describe all natural and artificial features of the project.
  - (2) 100-year flood elevation with and without the floodway, flood fringe, and/or general flood boundary, if available.
  - (3) Normal water level, high water level, and emergency overflow elevations for the site and all associated ponding systems.
  - (4) Locations of all storm water management practices, infiltration areas, and areas not to be disturbed during construction.
  - (5) Location, size, and approximate grade of proposed public sewer and water mains.
  - (6) Construction phasing including a map and calculations as necessary of areas of grubbing, clearing, tree removal, grading, excavation, fill and other disturbance; areas of soil or earth material

storage; quantities of soil or earth material to be removed, placed, stored or otherwise moved on site, delineated limits of disturbance, and final stabilization methods.

(7) Locations of planned temporary and permanent erosion prevention, sediment control, storm water runoff, and soil stabilization BMPs.

10. For so long as a construction site is subject to a State NPDES general permit #2 or a City COSESCO permit, the applicant shall provide the City with current information, as follows:

A. The name, address, and telephone number of the person on site designated by the owner who is knowledgeable and experienced in erosion and sediment control and who will oversee compliance with the State NPDES general permit #2 and the City COSESCO permit;

B. The names, addresses, and telephone numbers of the contractors and/or subcontractors that will implement each erosion and sediment control measure identified in the SWPPP or ESC.

Applicant's failure to provide current information shall constitute a violation of this chapter.

11. Developers can transfer State NPDES general permit #2 and the City COSESCO permit responsibility to homebuilders, new lot owners, contractors, and subcontractors. Transferees must agree to the transfer in writing, must agree to fulfill all obligations of the SWPPP or ESC, the State NPDES general permit #2 (if applicable), and the City COSESCO permit. Absent such written confirmation of transfer of obligations, the developer remains responsible for compliance on any lot that has been sold. A developer shall notify the City of any application to the DNR for release of any property from a general permit #2 pursuant to Iowa Administrative Code 567, 64.6(6) or any similar successor provision.

12. Upon receipt of an application for a City COSESCO permit, the City shall either find that the application complies with this chapter and issue a City COSESCO permit in accordance with this chapter, or that the application fails to comply with this chapter; in which case, the City shall provide a bill of particulars identifying non-compliant elements of the application. The City will use a consulting engineer to accomplish this review.

13. Application for termination of a City COSESCO permit shall be made by contacting the City Inspector.

14. Before work under the permit is deemed complete, the permittee must submit as-builts and a maintenance plan demonstrating at the time of final stabilization that the storm water facilities conform to design specifications.

#### **160.06 INSPECTION PROCEDURES.**

1. All inspections required under this chapter shall be conducted by the Public Works Director, City Engineer, Building Inspector, a subcontractor credentialed in a manner satisfactory to the City, or other appropriate designee, hereinafter referred to as the "enforcement officer."

2. The City shall conduct inspections on a regular basis to ensure that both storm water and erosion and sediment control measures are properly installed and maintained prior to construction, during construction, and at the completion of the project. Mandatory inspections are required as follows:
  - A. Before any land disturbing activity begins;
  - B. At the time of footing inspections;
  - C. At the completion of the project; and
  - D. Prior to the release of financial securities.
3. Applicant shall notify the City prior to commencing land disturbing activity, at the time of footing inspections and when all measures required by applicant's SWPPP have been accomplished on-site, whereupon the City shall conduct an initial inspection for the purpose of determining compliance with this chapter, and shall within a reasonable time thereafter report to the applicant either that compliance appears to have been achieved, or that compliance has not been achieved, in which case the City shall provide a bill of particulars identifying the conditions of noncompliance. The applicant shall immediately commence corrective action and shall complete such corrective action within twenty-four (24) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for taking corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this chapter.
4. Construction shall not occur on the site at any time when the City has identified conditions of noncompliance.
5. Construction activities undertaken by an applicant prior to resolution of all discrepancies specified in the bill of particulars shall constitute a violation of this chapter.
6. The City shall not be responsible for the direct or indirect consequences to the applicant or to third parties for noncompliant conditions undetected by inspection.

#### **160.07 MONITORING PROCEDURES.**

1. Upon issuance of a City COSESCO permit, an applicant has an absolute duty to monitor site conditions and to report to the enforcement officer any change of circumstances or site conditions which the applicant knows or should know pose a risk of storm water discharge in a manner inconsistent with applicant's SWPPP, State NPDES general permit #2 and/or City COSESCO permit.
  - A. Such report shall be made by the applicant to the enforcement officer immediately but in any event within twenty-four (24) hours of the change of circumstances or site conditions.
  - B. Failure to make a timely report shall constitute a violation of this chapter.
2. Any third party may also report to the City site conditions which the third party reasonably believes pose a risk of storm water discharge in a manner inconsistent with applicant's SWPPP, State NPDES general permit #2, and/or City COSESCO permit.
3. Upon receiving a report pursuant to the previous subsections, the enforcement officer shall conduct an inspection of the site as soon as reasonably possible and thereafter shall provide the applicant with a bill of particulars identifying the conditions

of noncompliance. The applicant shall immediately commence corrective action and shall complete such corrective action within 24 hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for completing corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this chapter, whereupon the enforcement officer shall immediately commence enforcement actions specified in Section 160.05 below.

4. Unless a report is made to the enforcement officer pursuant to the previous subsections, the enforcement officer shall conduct at least one unannounced inspection during the course of construction to monitor compliance with the State NPDES general permit #2 and the City COSESCO permit. If the inspection discloses any significant noncompliance, the enforcement officer shall provide the applicant with a bill of particulars identifying the conditions of noncompliance. The applicant shall immediately commence corrective action and shall complete such corrective action within 24 hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for completing corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this chapter, whereupon the enforcement officer shall immediately commence enforcement actions specified in Section 160.05 below.

5. The City shall not be responsible for the direct or indirect consequences to the applicant or to third parties for noncompliant conditions undetected by inspection.

#### **160.08 ENFORCEMENT.**

1. Violation of any provision of this chapter may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.

2. Violation of any provision of this chapter may also be enforced as a municipal infraction within the meaning of Section 364.22 of the *Code of Iowa*, pursuant to Chapter 4 of this Code of Ordinances.

3. Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

4. In cases where cooperation for inspections is withheld, construction stop work orders shall be issued by the City until storm water and erosion and sediment control measures meet the requirements of this chapter. An inspection must follow before work can resume.

5. If storm water and/or erosion and sediment control management measures malfunction and breach the perimeter of the site, enter streets, other public areas, or Walnut and North Walnut Creek, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-way from the adjoining property owner, and implement the cleanup and restoration plan within 48 hours of obtaining permission. If, in the discretion of the City, the applicant does not repair the damage caused by the storm water runoff the City can complete the remedial work required and charge the cost to the applicant. If payment is not made within thirty days, payment will be made from the applicant's financial securities.

6. The City can take any combination of the following actions in the event of a failure by applicant to meet the terms of this chapter:

- A. Withhold inspections or issuance of certificates or approvals;
- B. Revoke any permit issued by the City to the applicant;
- C. Conduct remedial or corrective action on the development site or adjacent site affected by the failure;
- D. Charge applicant for all costs associated with correcting the failure or remediating damage from the failure; if payment is not made within thirty days, payment will be made from the applicant's financial securities;
- E. Bring other actions against the applicant to recover costs of remediation or meeting the terms of this chapter; and
- F. Any person, firm or corporation failing to comply with or violating any of these regulations shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. Each day that a separate violation exists shall constitute a separate offense.

**160.09 FAILURE TO COMPLY.** Failure to comply with this chapter constitutes a municipal infraction. The property owner is responsible to ensure that this chapter is observed.

**160.10 APPEAL.** Administrative decisions by City staff and enforcement actions of the enforcement officer may be appealed by the applicant to the City Council pursuant to the following rules:

1. The appeal must be filed in writing with the City Clerk within five (5) business days of the decision or enforcement action.
2. The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.
3. The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and copies of all documents the enforcement officer intends to introduce at the hearing.
4. The City Clerk shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice, in accordance with Chapter 21 of the *Code of Iowa*, of the date, time, and place for the regular or special meeting of the City Council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four (4) or more than twenty (20) days after the filing of the appeal. The rules of evidence and procedure, and the standard of proof to be applied, shall be the same as provided by Chapter 17A, *Code of Iowa*. The applicant may be represented by counsel at the applicant's expense. The enforcement officer may be represented by the City Attorney or by an attorney designated by the City Council at City expense.

The decision of the City Council shall be rendered in writing and may be appealed to the Iowa District Court.

**160.11 FINANCIAL SECURITIES.**

1. The City shall require financial securities from the applicant in an amount sufficient to cover the entirety of the estimated costs of permitted and remedial work based on the final design as established in a set finance security schedule determined by the City.
2. Financial securities shall not be released until all permitted and remedial work is completed.
3. Financial securities may be used by the City to complete work not completed by the applicant.
4. The form of the financial securities shall be one or a combination of the following to be determined by the City:
  - A. Cash Deposit. The first \$5,000 of the financial security for erosion and sediment control shall be by cash deposit to the City. The cash will be held by the City in a separate account.
  - B. Securing Deposit. Deposit, either with the City, a responsible escrow agent, or trust company and, at the option of the City, either:
    - (1) An irrevocable letter of credit or negotiable bonds of the kind approved for securing deposits of public money or other instruments of credit from one or more financial institutions, subject to regulation by State and federal government wherein said financial institution pledges funds are on deposit and guaranteed for payment;
    - (2) Cash in U.S. currency; or
    - (3) Other forms of securities (e.g., disbursing agreement) as approved by the City.
5. The security shall save the City free and harmless from all suits or claims for damages resulting from the negligent grading removal, placement or storage of rock, sand, gravel, soil, or other like material within the City.
6. If at any time during the course of the work the amount falls below 50% of the required deposit, the applicant shall make another deposit in the amount necessary to restore the cash deposit to the required amount. If the applicant does not bring the financial security back up to the required amount within seven (7) days after notification by the City that the amount has fallen below 50% of the required amount the City may:
  - A. Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy.
  - B. Revoke any permit issued by the City to the applicant for the site in question or any other of the applicant's sites within the City's jurisdiction.
7. The City may access financial security for remediation actions if any of the conditions listed below exist. The City shall use the security to finance remedial work undertaken by the City, or a private contractor under contract to the City, to reimburse the City for all direct costs incurred in the process of remedial work, including (but not limited to) staff time and attorney's fees.

- A. Abandonment. The applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.
  - B. Failure to Implement the SWPPP or ESC Plan. The applicant fails to conform to the grading plan and/or the SWPPP as approved by the City.
  - C. Failure to Perform. The techniques utilized under the SWPPP or ESC Plan fail within one year of installation.
  - D. Failure to Reimburse the City. The applicant fails to reimburse the City for corrective action taken.
8. When more than one-third of the applicant's maximum exposed soil area achieves final stabilization, the City can reduce the total required amount of the financial security by one-third. When more than two-thirds of the applicant's maximum exposed soil area achieves final stabilization, the City can reduce the total required amount of the financial security to two-thirds of the initial amount. This reduction in financial security will be determined by the City.
9. The security deposited with the City for faithful performance of the SWPPP or ESC Plan and any related remedial work shall be released one full year after the completion of the installation of all storm water pollution control measures as shown on the SWPPP or ESC Plan.

**160.12 RIGHT OF ENTRY.** The issuance of a permit constitutes a right of entry for the City or its contractor to enter upon the construction site. The applicant shall allow the City and the City's authorized representative upon presentation of credentials to:

- 1. Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations, or surveys;
- 2. Bring such equipment upon the permitted site as is necessary to conduct such surveys and investigation;
- 3. Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of the permit;
- 4. Inspect the storm water pollution control measures;
- 5. Sample and monitor any items or activities pertaining to storm water pollution control measures; and
- 6. Correct deficiencies in storm water and erosion and sediment control measures.

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## CHAPTER 161

# POST-CONSTRUCTION STORM WATER CONTROL

161.01 Findings of Fact	161.09 Approval of Storm Water Management Concept Plan
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### 161.01 FINDINGS OF FACT.

1. The U.S. EPA's National Pollutant Discharge Elimination System ("NPDES") permit program ("Program") administered by the Iowa Department of Natural Resources ("IDNR") requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System ("MS4") ("MS4 Permit"). The City of Windsor Heights is subject to the Program and is required to obtain, and has obtained, an MS4 Permit; the City's MS4 Permit is on file at the office of the City Clerk and is available for public inspection during regular office hours.
2. As a condition of the City's MS4 Permit, the City is obliged to develop, implement, adopt and enforce a POST-CONSTRUCTION STORM WATER CONTROL ordinance.
3. No State or federal funds have been made available to assist the City in administering and enforcing the Program. Accordingly, the City shall fund its operations under this chapter entirely by charges imposed on the owners or developers of properties which are made subject to the Program by virtue of State and federal law, and/or other sources of funding established by a separate ordinance.
4. Land development and associated increases in impervious cover alter the hydrologic response of local watersheds and increase storm water runoff rates and volumes, flooding, stream channel erosion, and sediment transport and deposition if left uncontrolled; this uncontrolled storm water runoff contributes to increased quantities of water-borne pollutants; and storm water runoff, soil erosion, and non-point source pollution can be controlled and minimized through the regulation of storm water runoff from development sites.
5. Therefore, City establishes this set of City storm water requirements applicable to all surface waters to provide reasonable guidance for the regulation of storm water runoff for the purpose of protecting local water resources from degradation. It is determined that the regulation of storm water runoff discharges from land development and other construction activities in order to control and minimize increases in storm water runoff rates and volumes, soil erosion, stream channel erosion, and non-point source pollution associated with storm water runoff is in the public interest and will prevent threats to public health and safety.
6. The *Iowa Storm Water Management Manual* published collaboratively by the Iowa Department of Natural Resources and maintained by the Iowa Storm Water Education Program establishes guidelines consisting of unified sizing criteria (water

quality volume, channel protection storage volume, overbank flood protection, extreme flood protection), storm water management designs and specifications and best management practices (BMPs). The City hereby finds and declares that the guidelines provided for in the *Iowa Storm Water Management Manual*, or future editions thereof, along with any locally adopted modifications, are hereby adopted as the storm water management standards of the City. Any BMP installation that complies with the provisions of the *Iowa Storm Water Management Manual*, or future editions thereof, at the time of installation shall be deemed to have been installed in accordance with this chapter.

**161.02 PURPOSE.** The purpose of this chapter is to adopt as the City's standards and sizing criteria and BMPs to address said standards the Guidelines, Sizing Criteria, and BMPs proposed by the *Iowa Storm Water Management Manual* and as specifically identified above (hereinafter collectively "City storm water requirements") in order to protect and safeguard the general health, safety, and welfare of the public within this jurisdiction. This chapter seeks to meet that purpose through the following objectives:

1. Minimize increases in storm water runoff from development within the City limits and fringe area in order to reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels;
2. Minimize increases in non-point source pollution caused by storm water runoff from development which would otherwise degrade local water quality;
3. Minimize the total annual volume of surface water runoff which flows from any specific development project site after completion to not exceed the pre-development hydrologic regime to the maximum extent practicable; and
4. Reduce storm water runoff rates and volumes, soil erosion, and non-point source pollution, wherever possible, through establishment of appropriate minimum storm water management standards and BMPs and to ensure that BMPs are properly maintained and pose no threat to public safety.

**161.03 APPLICABILITY.**

1. This chapter is applicable to all subdivision or site plan applications meeting the minimum square foot applicability criteria of Subsection 2 of this section, unless eligible for an exemption or granted a waiver by the City under Section 161.07 of this chapter. This chapter also applies to land disturbance activities that are smaller than the minimum square foot applicability criteria specified in Subsection 2 if such activities are part of a larger common plan of development that meets the minimum square foot applicability criteria specified in Subsection 2, even though multiple separate and distinct land development activities may take place at different times on different schedules. In addition, all plans must also be reviewed by an engineer hired by the City to ensure that established water quality standards will be maintained during and after development of the site and that post-construction runoff levels are consistent with any local and regional watershed plans. The following activities are exempt from this chapter:

- A. Any logging and agricultural activity which is consistent with an approved soil conservation plan or a timber management plan prepared or approved by the appropriate agency, as applicable.
- B. Additions or modifications to existing single-family structures.

- C. Repairs to any storm water BMPs deemed necessary by the City.
2. City storm water requirements must be met for development or redevelopment to be approved. Final authorization of all development and redevelopment projects shall be determined after a review by the City. City storm water requirements apply to any development and redevelopment meeting at least one of the following:
    - A. Land disturbing activity exceeding 43,560 square feet in area; or
    - B. Land disturbing activity creating or recreating 10,000 square feet in area or more of impervious cover, regardless of existing conditions; or
    - C. Land disturbing activities that are smaller than the minimum square feet applicability criteria set forth in this chapter, if such activities are part of a larger common plan of development that may or may not take place at the same time; or
    - D. Land disturbing activity exceeding 25,000 square feet in area where the existing land is being redeveloped.
  3. When a site development plan is submitted that qualifies as a development, as defined in this chapter, decisions on permitting any appropriate on-site BMPs shall be guided by the SUDAS Design Manual. Final authorization of all development and redevelopment projects will be determined after a review by City.

#### **161.04 COMPATIBILITY WITH OTHER REQUIREMENTS.**

1. It is intended that this chapter be construed to be consistent with Chapter 160, Construction Site Erosion and Sediment Control, and Chapter 102, Illicit Discharge to Storm Sewer System, of this Code of Ordinances.
2. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter imposes restrictions different from those imposed by any other chapter, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

#### **161.05 DEFINITIONS.** Terms in this chapter, other than those defined below, shall have the meanings set out in the *Iowa Storm Water Management Manual*.

1. “Applicant” means a property owner or agent of a property owner who has filed an application for a storm water management permit.
2. “Best management practice (BMP)” means a practice or series of practices used to manage storm water and as further defined in the *Iowa Storm Water Management Manual*.
3. “Building” means any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.
4. “Channel protection storage volume” means providing for practices that will allow for extended detention of the runoff generated by a 1-year, 24-hour event. This means capturing the runoff volume from a storm of this nature, and slowly releasing it over a period of no less than 24-hours to reduce rapid “bounce” effect common in many urban streams that leads to downcutting and streambank erosion.

5. “City storm water requirements” or “standard” means the guidelines provided for in this ordinance and the *Iowa Storm Water Management Manual*.
6. “Concept plan” shall be submitted for review during the planning process. This plan should be considered to be a 30% development plan showing conceptually where stormwater practices will be located and how the storm water will be routed to the facilities. This submittal shall include all of the information required stated in this chapter.
7. “COSECO” means Construction Site Erosion and Sediment Control Ordinance permit issued by the City of Windsor Heights’ Public Works Department.
8. “Dedication” means the deliberate appropriation of property by its owner for general public use.
9. “Developer” means a person who undertakes land disturbance activities.
10. “Development” means either:
  - A. Land disturbance activity exceeding 43,560 square feet on land previously vacant of buildings or largely free of previous land disturbance activity other than traditional agricultural activities; or
  - B. Land disturbance activity exceeding 43,560 square feet in areas where existing land use is high density commercial, industrial, institutional or multi-family residential (a.k.a. “redevelopment”).
11. “Drainage easement” means a legal right granted by a landowner to a cable operator allowing the use of private land for storm water management purposes.
12. “Enforcement officer” means that person designated by the City having responsibility for administration and enforcement of this chapter.
13. “Existing conditions” means the circumstances of the site at the time of first review of site plans or upon-initial submittal of permit applications.
14. “Extreme Flood Protection” means managing the effects of larger storm events (10-year to 100-year recurrence intervals) on the storm water management system, adjacent property, and downstream facilities and property. The management of these extreme events is accomplished using detention controls and/or floodplain management.
15. “Fee in lieu” means a payment of money in place of achieving or exceeding all or part of City storm water requirements.
16. “Impervious surface” means surfaces (roads, sidewalks, driveways and parking lots) that are covered by impenetrable materials such as asphalt, concrete, brick, and stone, rooftops as well as soils compacted by urban development.
17. *Iowa Storm Water Management Manual* means the current *Iowa Storm Water Management Manual* publication, by whatever name, as amended from time to time by Iowa Department of Natural Resources in collaboration with the Center for Transportation Research at Iowa State University, and which recommends storm water management guidelines and uniform sizing criteria and BMPs designed to address said guidelines.
18. “Land disturbance activity” means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials,

paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

19. “Low impact development” means an approach to storm water management that attempts to mimic pre-development conditions by compensating for losses of rainfall abstraction through infiltration, evapotranspiration, surface storage, and increased travel time to reduce excess runoff.

20. “Landowner” means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

21. “Maintenance agreement” means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of storm water BMPs.

22. “Overbank flood protection” means providing on-site storm water detention to limit runoff peak flows rates from the 5-year recurrence interval storm event to prevent downstream surcharge of conveyance systems and reduce overbank flooding. At the site development level, this can be accomplished by providing detention practices with multi-stage outlets that control the outflow from these events to pre-settlement conditions (meadow in good condition).

23. “Pre-settlement” means the nature of the site prior to human development when the landscape was dominated by naturally occurring features. Intended for storm water calculations, meadow in good condition.

24. “Storm water management” means the use of BMPs that are designed in accordance with City storm water requirements to reduce storm water runoff pollutant loads, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperature that affect water quality and habitat.

25. “Storm Water Pollution Prevention Plan” (SWPPP) means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

26. “Unified sizing criteria” means an integrated approach to managing storm water runoff quality and quantity by addressing the adverse impacts of stormwater runoff from development. The intent is to comprehensively manage stormwater to remove pollutants and improve water quality, prevent downstream streambank and channel erosion, reduce downstream overbank flooding and safely convey and reduce runoff from extreme storm events.

27. “Water quality volume” means the runoff resulting from rainfall depth of 1.25”. By managing these storms, many of the “first flush” pollutants of concern will be effectively managed on-site.

#### **161.06 PERMIT PROCEDURES AND REQUIREMENTS.**

1. Permit Required. No landowner or developer shall receive any of the building, grading, or other land development permits required for land disturbance activities without first meeting the requirements of this chapter prior to commencing the proposed activity.

2. Application Requirements.
  - A. Unless specifically exempted by this chapter, any landowner or developer desiring a permit for a land disturbance activity shall submit to the City a permit application on a form provided for that purpose.
  - B. Unless otherwise exempted by this chapter, a permit application must be accompanied by the following in order that the permit application be considered:
    - (1) A storm water management concept plan;
    - (2) A maintenance agreement; and
    - (3) A non-refundable permit review fee.
  - C. The storm water management concept plan and maintenance agreement shall be prepared to meet the requirements of this chapter, and fees shall be those established by the City annually or more often by separate ordinance or resolution.
3. Application Review Fees. The fee for review of any land development application shall be based on the amount of land to be disturbed at the site; the fee structure shall be established by City, and said fees shall be paid prior to the issuance of any applicable City permits. All such revenue shall be credited to a City budgetary category to support the administration of this chapter.
4. Application Procedure.
  - A. The applicant shall request a pre-application meeting which will be facilitated by the City between the applicant, City staff, and staff of partner agencies as applicable. The meeting shall be mandatory prior to submission of a permit application. The purposes of the meeting are to understand the general parameters of the proposed project and to convey the requirements of meeting the provisions of this chapter and other applicable ordinances.
  - B. Applications for land disturbance activity permits must be filed for review with the office of the City Clerk on any regular business day.
  - C. Permit applications shall include the following:
    - (1) Two copies of the storm water management concept plan;
    - (2) Two copies of the maintenance agreement, and
    - (3) Any required review fees.
  - D. The City shall make a determination regarding the completeness of a permit application within ten (10) business days of the receipt of the application and notify the applicant in writing if the application is not complete including the reasons the application was deemed incomplete.
  - E. Within 15 business days of the receipt of a complete permit application, including all documents as required by this chapter, City shall inform the applicant whether the application, plan, and maintenance agreement are approved or disapproved by the enforcement officer.
  - F. If the permit application, storm water management concept plan, or maintenance agreement are disapproved, the applicant may revise the storm water management concept plan or agreement. If additional information is

submitted, the City shall have 15 business days from the date the additional information is received to inform the applicant that the storm water management concept plan and maintenance agreement are either approved or disapproved.

G. If the permit application, storm water management final plan, and maintenance agreement are approved by City, all appropriate land disturbance activity permits shall be issued.

5. Permit Duration. Permits issued under this section shall be valid from the date of issuance through the date City notifies the permit holder that all storm water BMPs have passed the final inspection required under permit conditions.

**161.07 WAIVERS.** Every applicant shall provide for storm water management as required by this chapter, unless a written request is filed to waive implementation of BMPs, in whole or in part, and such waiver is granted. Requests to waive implementation of BMPs in whole or in part shall be submitted to City for approval.

1. A waiver of BMPs required by this chapter may be granted provided that at least one of the following conditions is established by applicant based on authoritative written evidence satisfactory to City:

A. The proposed development is not likely to impair attainment of the objectives of this chapter.

B. Alternative minimum requirements for on-site management of storm water have been established in a storm water management final plan that has been approved by City and fully implemented.

C. Provisions are made to manage storm water by an off-site facility within the same watershed and that has been approved by the City. The off-site facility is required to be in place, to be designed and adequately sized to provide a level of storm water control that is equal to or greater than that which would be afforded by on-site practices, and there is, in the City's sole judgment, a responsible entity legally obligated to monitor the performance of and maintain the efficiency of storm water BMPs in accordance with a written and recorded maintenance agreement.

D. In instances where one of the above conditions is established, the applicant must further establish by authoritative written evidence satisfactory to City that the partial waiver will not result in any of the following impacts to downstream waterways:

- (1) Deterioration of existing culverts, bridges, dams, and other structures; or
- (2) Degradation of biological functions or habitat; or
- (3) Accelerated stream bank or streambed erosion or siltation; or
- (4) Increased threat of flood damage to public health, life, property.

2. If the City finds that a waiver is appropriate because implementation of no on-site storm water BMPs is feasible due to the natural or existing physical characteristics of a site, or that one of the conditions specified in subsection 1 above cannot be established to a certainty, or that any one or more of the impacts to downstream

waterways specified above cannot be entirely averted, the applicant shall execute a binding written agreement to accomplish one or more of the following mitigation measures selected by City:

- A. The purchase and donation of privately owned lands, or the grant of an easement to be dedicated for preservation and/or reconstruction of native ecosystems of lands strategically located in the watershed consistent with the purposes of this chapter, of a sufficient quantity to enable City or others to achieve City storm water requirements with respect to a number of cubic feet of annual storm water equivalent to the estimated number of cubic feet of annual storm water that will not achieve City storm water requirements as a consequence of the waiver.
- B. The creation of one or more storm water BMPs on previously developed properties, public or private, that currently lack storm water BMPs, having a capacity to achieve City storm water requirements with respect to a number of cubic feet of annual storm water equivalent to the estimated number of cubic feet of annual storm water that will not achieve City storm water requirements as a consequence of the waiver.
- C. Monetary contributions (fee in lieu) to fund storm water management activities such as research and studies (e.g., regional wetland delineation studies, stream monitoring studies for water quality and macroinvertebrates, stream flow monitoring, threatened and endangered species studies, hydrologic studies, monitoring of storm water BMPs, and stream corridor stabilization practices). The monetary contribution required shall be in accordance with a fee schedule (unless the developer and the storm water authority agree on a greater alternate contribution) established by City, based on the estimated cost savings to the developer resulting from the waiver and the estimated future costs to City to achieve City storm water requirements with respect to a number of cubic feet of annual storm water equivalent to the estimated number of cubic feet of annual storm water that will not achieve City storm water requirements as a consequence of the waiver. All of the monetary contributions shall be credited to an appropriate capital improvements program project, and shall be made by the developer prior to the issuance of any building permit for the development.
- D. Dedication of land or granting of an easement by the applicant of a value equivalent to the cost to City of the construction of an off-site storm water management facility sufficient to achieve City storm water requirements with respect to a number of cubic feet of annual storm water equivalent to the estimated number of cubic feet of annual storm water that will not achieve City storm water requirements as a consequence of the waiver. The agreement shall be entered into by the applicant and City prior to the recording of plats or, if no record plat is required, prior to the issuance of the building permit.
- E. Factors that may generate waivers:
  - (1) Shallow bedrock.
  - (2) High groundwater.
  - (3) Hotspots or contaminated soils.
  - (4) City owned construction that was designed prior to 2019.



**161.08 STORM WATER STANDARDS.** Unless granted a waiver by the City, applicants shall meet the storm water standards established in this chapter.

1. The site design shall provide on-site treatment during construction and post-construction to ensure no increases over pre-settlement conditions (meadow not in good condition, CD=58) for the one-year, 24-hour storm event, the five-year, 24-hour storm event, and the 100-year, 24-hour storm event.
2. The site design shall provide on-site water quality treatment for the runoff resulting from a rainfall depth of 1.25 inches over the post-construction site area in order to reduce average annual post-development total suspended solids loadings by at least 80%. Roof top areas are exempt from the site area for water quality.
3. The site design shall retain on-site for recharge a portion of the water quality treatment volume calculated as a soil specific recharge factor multiplied by the volumetric runoff coefficient multiplied by the area and all divided by 12. The soil specific recharge factor is given as 0.51 for Hydrologic Soil Group (HSG) A soils, 0.34 for HSG B soils, 0.17 for HSG C soils, and 0.08 for HSG D soils. The volumetric runoff coefficient is calculated as  $0.05 + 0.009$  multiplied by the site impervious percentage. See the *Iowa Storm Water Management Manual* for additional clarification on the calculation. For areas of the site where there is no feasible way to achieve the recharge requirement, other options may be considered by the City if the options meet the performance standard listed for sites with restrictions in subsection 4 below.
4. Applicant shall fully attempt to comply with the standards in subsections 1 through 3 above. Options considered and presented shall examine the merits of relocating project elements to address varying soil conditions and other constraints across the site. If full compliance is not possible, the following flexible treatment options shall be used:
  - A. Applicant shall document the flexible treatment options sequence starting with Alternative #1. If Alternative #1 cannot be met, then Alternative #2 shall be analyzed. If Alternative #2 cannot be met then Alternative #3 shall be met. When all of the conditions are fulfilled within an alternative, this sequence is completed.
  - B. Recharge techniques considered shall include infiltration, reuse and rainwater harvesting, and canopy interception and evapotranspiration and/or additional techniques included in the *Iowa Storm Water Management Manual*.
  - C. Higher priority shall be given to BMPs that include volume reduction. Secondary preference is to employ filtration techniques, followed by rate control BMPs.
  - D. Factors to be considered for each alternative will include:
    - (1) Karst or Coal geology.
    - (2) Shallow bedrock.
    - (3) High groundwater.
    - (4) Hotspots or contaminated soils.
    - (5) Excessive cost.
    - (6) Poor soils (infiltration rates that are too low or too high, problematic urban soils).

E. Alternative #1: Applicant attempts to comply with the following conditions:

- (1) Achieve recharge to the maximum extent practicable, and
- (2) Treat by means of a filtration-based storm water treatment facility, the water quality volume determined in standard 2 above in order to provide removal of fine particles, and
- (3) Options considered and presented shall examine the merits of relocating project elements to address varying soil conditions and other constraints across the site.

F. Alternative #2: Applicant attempts to comply with the following conditions:

- (1) Achieve recharge to the maximum extent practicable, and
- (2) Remove 80% of the annual Total Suspended Solids load, and
- (3) Options considered and presented shall examine the merits of relocating project elements to address varying soil conditions and other constraints across the site.

G. Alternative #3: Off-Site Treatment. Off-site mitigation, as outlined in Section 161.07(2), Waivers, of the required treatment volume that cannot be provided on site can be used to protect Walnut Creek or North Walnut Creek.

5. The site shall be designed to provide vegetated buffers for water quality protection adjacent to receiving channels and waters. Buffers shall commence at “top of bank,” or at the delineated boundary of the water body. Buffer width as based on land use and are as follows:

- A. Residential: 30 feet
- B. Industrial: 50 feet
- C. Mid/High Density Residential & Commercial: 50 feet

Redevelopment of infill parcels that are surrounded by existing development shall be considered on a case by case basis. The intent of this section of ordinance is not to make existing lots undevelopable.

6. The site shall be designed using the Better Site Design process. Better Site Design involves techniques applied early in the design process to preserve natural areas, reduce impervious cover, distribute runoff and use pervious areas to more effectively treat storm water runoff. Site design should address open space protection, impervious cover minimization, and runoff distribution and minimization, and runoff utilization through considerations such as:

- A. Open space protection and restoration.
  - (1) Conservation of existing natural areas (upland and wetland).
  - (2) Reforestation.
  - (3) Re-establishment of prairies.
  - (4) Restoration of wetlands.

- (5) Establishment or protection of stream, shoreline and wetland buffers.
- (6) Re-establishment of native vegetation into the landscape.
- B. Reduction of impervious cover.
  - (1) Reduce new impervious cover through redevelopment of existing sites and use of existing roadways, trails etc.
  - (2) Minimize street width, parking space size, driveway length, sidewalk width.
  - (3) Reduce impervious surface footprint (e.g., two-story buildings, parking ramp).
- C. Distribution and minimization of runoff.
  - (1) Utilize vegetated areas for storm water treatment (e.g., parking lot islands, vegetated areas along property boundaries, front and rear yards, building landscaping).
  - (2) Direct impervious surface runoff to vegetated areas or to designed treatment areas (roofs, parking, driveways drain to pervious areas, not directly to storm sewer or other conveyances).
  - (3) Encourage infiltration and soil storage of runoff through grass channels, soil compost amendment, vegetated swales, rain gardens, etc.
  - (4) Plant vegetation that does not require irrigation beyond natural rainfall and runoff from the site.
- D. Runoff utilization.
  - (1) Capture and store runoff for use for irrigation in areas where irrigation is necessary.
- 7. The following general criteria shall be incorporated in site design for storm water runoff to protect surface and ground water and other natural resources:
  - (1) Reduce impacts on water.
  - (2) Protect soils.
  - (3) Preserve vegetation.
  - (4) Decrease runoff volume.
  - (5) Decrease erosion and sedimentation.
  - (6) Decrease flow frequency, duration, and peak runoff rates.
  - (7) Increase infiltration (groundwater recharge).
  - (8) Maintain existing flow patterns.
  - (9) Reduce time to peak flows by increasing the time of concentration to and through storm sewers.
  - (10) Store storm water runoff on-site.
  - (11) Avoid channel erosion.

8. Topsoil Requirements:
- A. Preservation: No topsoil shall be permanently removed from any construction site in accordance with the Iowa Department of Natural Resources General Permit 2. The preservation of topsoil shall be met only when the depth of topsoil after soil disturbing activities have been completed and final stabilization achieved for the permitted activity is equal to, or greater than, 4.0 inches on all areas of the site where the surface of the ground disturbed for the permitted land disturbing activities is exposed and not covered by concrete, asphalt, gravel or other such impervious material. If 4.0 inches of on-site topsoil is not available, imported topsoil meeting the requirements below or the amendment of existing low-quality on-site material may be used to comply with this requirement. Three inches of low-quality on-site material, may be incorporated with a minimum of 1.5 inches of compost meeting the requirements below to achieve an acceptable equivalent alternative. Topsoil shall be defined as the soil material excavated from the upper 12-inches of the soil profile that has a uniform quality free from debris, hard clods, roots, sod, stiff clay, hard pan, stones larger than 1 inch, has a high degree of fertility with an organic matter content of at least 2%, is free of herbicides that prohibit plant growth, has a pH level between 6.0 and 8.0, and is friable with a clay content less than 25%. Compost shall be defined as stable, mature, decomposed organic solid waste that is the result of the accelerated, aerobic biodegradation and stabilization under controlled conditions. The result is a uniform dark, soil-like appearance with 100% of the material passing through a 1 inch sieve (3/8 or 1/2 inch screen preferred), a pH range between 5.5 and 9, a minimum organic matter content of 35% dry weight and a soluble salt content of less than 4.0 mmhos/cm.
- B. Compaction: For the purposes of compliance with the Iowa Department of Natural Resources General Permit #2 requirements, the minimum standard for “minimizing soil compaction” shall be defined as working the soil prior to seeding/sodding such that a penetrometer can be inserted into the upper 6 inch with less force than 200 psi. As an alternative to the penetrometer test, a soil with a bulk density of less than 1.6 grams/cubic centimeter shall be deemed compliant with this requirement.

**161.09 APPROVAL OF STORM WATER MANAGEMENT CONCEPT PLAN.** No application for development will be accepted unless it includes a storm water management concept plan detailing in concept how runoff and associated water quality impacts resulting from the development will be controlled or managed. The storm water management concept plan shall meet the following requirements:

1. Be prepared by a licensed professional engineer or landscape architect or individual credentialed in a manner satisfactory to the City.
2. Indicate whether storm water will be managed on site or off site and, if on site, the general location and type of practices BMPs, with clear citations to the *Iowa Storm Water Management Manual*.
3. Include sufficient information (e.g., maps, hydrologic calculations, etc.) to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the storm water BMPs proposed for managing

storm water generated at the project site. The intent of this conceptual planning process is to determine the type of storm water BMPs necessary for the proposed project, and ensure adequate planning for management of storm water runoff from future development. To accomplish this goal, the following information shall also be included in the storm water management concept plan:

A. A soil management plan as defined by the *Iowa Stormwater Management Manual* shall be provided and include a technical assessment of soils that identifies the soil series and the site limitations based on soils data provided in the Web County Soil Survey hosted by Natural Resources Conservation Service (NRCS). It may only be used if soils have not been highly disturbed. Soil borings shall be included when necessary to confirm suitable site conditions for placement of buildings with basements and related structures, especially in areas with hydric soils and shallow depth to groundwater. If a stormwater BMP depends on the hydraulic properties of soils, then the assessment shall include soil borings and measurements of percolation/infiltration rates. The number and location of required soil borings and/or soil test sites shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the BMP. Borings may range from a minimum of 5' to 20' below subgrade depending on the size of the BMP. This information shall be used to provide a summary of the associated risks and potential for adequate drainage related to infiltration practices, groundwater mounding and basement flooding. Consultation with a Certified Professional Soil Scientist, Soil Classifier, or Geotechnical Engineer may be necessary or required.

B. A map (or maps) indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural storm water management and sediment and erosion BMPs. The map(s) will also clearly show proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads, and easements; and the limits of clearing and grading. A written description of the site plan and justification of proposed changes in natural conditions may also be required. A copy of the current SWPPP may satisfy this requirement.

C. Sufficient engineering analysis to show that the proposed BMPs are capable of achieving City storm water requirements for the site in compliance with this chapter.

D. A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project and a description of the watershed and its relation to the project site. This description should include a discussion of soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive BMPs that provide particular opportunities or constraints for development.

E. Landscaping and stabilization shall be accomplished to prevent stormwater violations or impairment of BMPs. In addition, a landscaping plan must be submitted with the final as-built drawings describing the vegetation stabilization and management techniques to be used at the site after construction is completed. This plan will include the entity responsible for

vegetation at the site and practices that will be used to ensure adequate vegetative cover.

F. A written description of the required maintenance burden for any proposed BMPs.

G. The City may also require a concept plan to consider the maximum development potential of a site under existing zoning, regardless of whether the applicant presently intends to develop the site to its maximum potential.

H. For development occurring on a previously developed site, an applicant shall be required to include within the storm water management concept plan BMPs for controlling existing storm water runoff discharges from the site in accordance with this chapter to the maximum extent practicable.

The storm water management concept plan shall be referred for comment to all other interested agencies, and any comments must be addressed in a storm water management final plan.

**161.10 APPROVAL OF STORM WATER MANAGEMENT FINAL PLAN.** No building, grading, or sediment control permit shall be issued until a satisfactory storm water management final plan (or a waiver thereof) shall have undergone a review and been approved by the City after determining that the plan or waiver is consistent with the requirements of this chapter. After review of the storm water management concept plan, and modifications to that plan as deemed necessary by City, a storm water management final plan must be submitted to the City for approval. The storm water management final plan, in addition to the information included in the storm water management concept plan, shall:

1. Be prepared by a licensed professional engineer or landscape architect or individual credentialed in a manner satisfactory to the City.
2. Indicate whether storm water will be managed on site or off site and, if on site, the general location and type of practices, with clear citations to the *Iowa Storm Water Management Manual*.
3. Include a signed and dated certification under penalty of perjury by the preparer of the storm water management final plan that it complies with all requirements of this chapter and the SUDAS Design Manual, meets the submittal requirements outlined in the *Iowa Storm Water Management Manual*, is designed to achieve City storm water requirements, and that City is entitled to rely upon the certification as due diligence on the part of City.
4. The storm water management final plan shall also include:
  - A. A detailed summary of how and why the storm water management final plan differs, if at all, from the storm water management concept plan previously submitted.
  - B. Contact information, including but not limited to the name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.
  - C. Topographic base map, consisting of a 1" = 200' topographic base map, of the site which extends a minimum of 300 feet beyond the limits of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all

existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown. A minimum of 2' contours shall be shown on-site and 2' contours outside of the proposed site.

D. Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in the *Iowa Storm Water Management Manual*. Such calculations shall include:

- (1) Description of the design storm frequency, intensity and duration;
- (2) Time of concentration;
- (3) Soil curve numbers or runoff coefficients;
- (4) Peak runoff rates and total runoff volumes for each watershed area;
- (5) Infiltration rates, where applicable;
- (6) Culvert capacities;
- (7) Flow velocities;
- (8) Data on the increase in rate and volume of runoff for the design storms referenced as referenced in the NOAA Atlas 14, Volumes 8 and 9 (April 2013); and
- (9) Documentation of sources for all computation methods and field test results.

E. If a storm water BMP depends on the hydrologic properties of soils (e.g., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles. The number and location of required soil borings or soil sites shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the BMP.

F. A maintenance and repair plan for all storm water BMPs including detailed maintenance and repair procedures to ensure their continued efficient function. These plans will identify the parts or components of a storm water BMP that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.

G. A detailed landscaping plan for management of vegetation at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. This plan must be prepared by a registered landscape architect, landscape designer, or by the soil and water conservation district.

H. Proof of permanent recorded maintenance easements that will ensure access to all storm water BMPs at the site for the purpose of inspection and repair. These easements will be recorded with the storm water management final plan and will remain in effect even with transfer of title to the property.

- I. Proof of a recorded maintenance agreement binding on all subsequent owners of land served by storm water BMPs to ensure maintenance and repair in accordance with the specifications of this chapter.
- J. Copies of all existing SWPPPS (as required by the City's COSESCO ordinance) current as of the date of submission of the storm water management final plan for all construction activities related to implementing any on-site storm water BMPs.
- K. Proof that the applicant has acquired all other applicable environmental permits for the site, or that no other such permits are required, prior to submission of the storm water management final plan to the City.
- L. For lot development impacted by storm water BMPs and conveyance features:
- (1) The permit holder shall provide to the Municipal Engineer, or designated City representative, an Elevation Certificate that is signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information.
  - (2) The Elevation Certificate shall certify that the protected level (lowest opening or protective flood barrier that achieves the same result) of all buildings shall be a minimum of 3 feet above the 100-year water surface elevation of storm water BMPs.
  - (3) Building foundations adjacent to storm water BMPs and/or storm water infrastructure (i.e. conveyance features, inlets, manholes) shall be 3 feet above the 100-year water surface elevation.
- M. Accommodating Upstream Drainage Areas: Any necessary and appropriate storm water BMPs shall be designed to accommodate runoff from any upstream area potentially draining into or through the area to be subdivided, whether such area is inside or outside the area to be subdivided. Such design shall assume that the upstream area upon development or redevelopment will be regulated such that volume of surface water runoff shall be equal to the runoff from the current land use condition.
- N. Protecting Downstream Drainage Areas: Any development shall provide for mitigation of any overload condition reasonably anticipated on any existing downstream storm water BMPs outside the area to be subdivided, provided that the development or use of the area to be subdivided creates or contributes to such condition.

#### **161.11 PERFORMANCE SECURITY OR BOND.**

1. The City shall require the submittal of an installation performance security or bond prior to issuance of a permit in order to ensure that the storm water BMPs are installed by the permit holder as required by the approved storm water management final plan.
2. The amount of the installation performance security or bond shall be the total estimated construction cost of the storm water BMPs approved under the permit, plus 25%. The installation performance security or bond shall contain forfeiture provisions for failure to complete work specified in the storm water management final plan.



3. The installation performance security or bond shall be released in full only upon submission of “as-built plans” of all storm water BMPs specified in the storm water management final plan and written certification by a professional engineer that the storm water BMPs have been installed in accordance with the approved storm water management final plan and other applicable provisions of this chapter. The City will make a final inspection of storm water BMPs to ensure compliance with the approved storm water management final plan and the provisions of this chapter. Provisions for a partial pro rata release of the installation performance security or bond based on the completion of various development stages can be made at the discretion of City.

4. The installation performance security or bond shall inure only to the benefit of the City for purposes of completing, modifying, or correcting the storm water BMPs to comply with this chapter.

#### **161.12 MAINTENANCE PERFORMANCE SECURITY OR BOND.**

1. The City shall also require the submittal of a maintenance performance security or bond prior to issuance of a permit in order to insure that the storm water BMPs are maintained in an effective state for a minimum of 10 years.

2. This maintenance performance security or bond may be released by the City upon a showing satisfactory to the City that:

A. The permit holder has assigned to another bona fide, financially responsible legal entity, such as a homeowners’ or similar organization organized under Iowa law, responsibility for maintenance of the storm water BMPs in an effective state for the balance of the 10-year period after assignment; and

B. Said assignee has fully accepted such responsibility in a written document that qualifies for recording and has been recorded in the County Recorder’s office under Iowa law; and

C. Said assignee posts a substitute maintenance performance security or bond subject to release at the end of the initial 10-year period upon a further showing by the assignee that the storm water BMPs are, in the City’s sole judgment, still reasonably effective.

3. This maintenance performance security or bond shall inure only to the benefit of the City to ensure the proper maintenance of the storm water BMPs.

4. This maintenance and performance security or bond may be issued on an annual basis, provided that there is no lapse in coverage.

5. The maintenance performance security bond amount shall be for 25% of the total cost of the overall permitted project unless otherwise specified by the City.

#### **161.13 CONSTRUCTION INSPECTION.**

1. The applicant must notify the City in advance before the commencement of construction. Regular inspections of construction of the storm water BMPs shall be conducted by City or City’s designated representative. Inspections will be conducted before any land disturbing activity begins, at the time of footing inspections, at the completion of the project; and prior to the release of financial securities. All inspections shall be documented and written reports prepared that contain the following information:

- A. The date and location of the inspection; and
  - B. Whether construction is in compliance with the approved storm water management concept plan; and
  - C. Variations, if any, from the approved storm water management concept plan.
2. If any violations are found, the applicant shall be notified in writing of the nature of the violation and the required corrective actions. No additional work shall proceed until any violations are corrected and all work previously completed has received approval by City.
  3. After construction is completed, applicants are required to submit actual “as-built” drawings satisfactory to City for any storm water BMPs located on site. The drawings must show the final design specifications for all storm water BMPs and must be certified by a professional engineer. A final inspection by City is required before the release of the installation performance security or bond can occur.
  4. Landscaping and stabilization shall be accomplished to prevent violation of City storm water requirements or impairment of BMPs. In addition, a landscaping plan must be submitted with the final as-built drawings describing the vegetative stabilization and management techniques to be used at a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. This plan must be prepared by a registered landscape architect, landscape designer, or by the local soil and water conservation district, and must be approved prior to receiving a permit. This is by reference incorporated into the site plan review process.

**161.14 MAINTENANCE AND REPAIR OF STORM WATER BMPS.** The applicant or owner of every site or an assignee qualified pursuant to Section 161.12 shall be responsible for maintaining as-built storm water BMPs in an effective state as determined in the sole judgment of City in perpetuity or until further redevelopment of the site.

1. **Maintenance and Repair Easement.** Prior to the issuance of any permit for development involving any storm water BMP, the applicant or owner of the site must execute a maintenance and repair easement agreement that shall be binding on all subsequent owners of land served by the storm water BMP. The agreement shall provide for access to the BMP and the land it serves at reasonable times for periodic inspection by City or City’s designee and for regular or special assessments of property owners to ensure that the BMP is maintained in proper working condition to meet City storm water requirements. The easement agreement shall be recorded by City at the expense of the permit holder or property owners.
2. **Maintenance Covenants.**
  - A. Maintenance of all storm water BMPs shall be ensured through the creation of a formal maintenance covenant that must be approved by the City and recorded prior to the storm water management final plan approval. The creation of these maintenance covenants are the responsibility of the property owner or their designated agent. As part of the covenant, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the storm water BMPs. The covenant shall also include plans for

periodic inspections to ensure proper performance of the BMPs between scheduled cleanouts.

B. The City, in lieu of a maintenance covenant, may (but is not required to) accept dedication of any existing or future storm water BMP to include City responsibility for maintenance and repair, provided that: the maintenance and repair of such element will not impose an undue burden on other City taxpayers who enjoy little if any benefit from the BMP; the BMP meets all the requirements of this chapter; and the dedication includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

3. Requirements for Maintenance Covenants. All storm water BMPs must undergo, at the minimum, an annual inspection to document maintenance and repair needs and ensure compliance with the requirements of this chapter and accomplishment of its purposes. These needs may include (but are not limited to) removal of silt, litter, and other debris from all storm water treatment and conveyance facilities, including ponds, infiltration basins, rain gardens, catch basins, inlets, and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance or repair needs detected must be corrected by the developer or entity responsible under a written maintenance agreement in a timely manner, as determined by City, and the inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of the storm water BMPs.

4. Inspection of Storm Water BMPs. Inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of State or federal water or sediment quality standards or the NPDES storm water permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in storm water BMPs, and evaluating the condition of storm water BMPs.

5. Right of Entry for Inspection. When any new storm water BMP is installed on private property, or when any new connection is made between private property and a public storm water management facility, sanitary sewer or combined sewer, the property owner shall grant to City the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when City has a reasonable basis to believe that a violation of this chapter is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this chapter.

6. Records of Installation and Maintenance and Repair Activities. Parties responsible for the operation and maintenance of storm water BMPs shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years or longer if the City Inspector deems it necessary. These records shall be made available to City during inspection of the facility and at other reasonable times upon request.

7. Failure to Maintain Storm Water BMPs. If a responsible party fails or refuses to meet the requirements of the maintenance covenant or any provision of this chapter, the City, after reasonable notice, may correct a violation by performing all necessary work to place the BMP in proper working condition. In the event that the storm water BMP becomes a danger to public safety or public health, the City shall notify the party responsible for maintenance of the storm water BMP in writing. Upon receipt of that notice, the responsible person shall have thirty (30) days to effect maintenance and repair of the storm water BMP in an approved manner. After proper notice, the City may assess, jointly and severally, the owners of the storm water BMP or the property owners or the parties responsible for maintenance under any applicable written agreement for the cost of repair work and any penalties; and the cost of the work shall be a lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes.

#### **161.15 ENFORCEMENT AND PENALTIES.**

1. Violation of any provision of this chapter may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.
2. Violation of any provision of this chapter may also be enforced as a municipal infraction within the meaning of Section 364.22 of the *Code of Iowa*, pursuant to Chapter 4 of this Code of Ordinances.
3. Enforcement pursuant to this section shall be undertaken by City upon the advice and consent of the City Attorney or other counsel employed by City.
4. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the City may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
5. Occupancy permits shall not be granted until all storm water BMPs have been inspected and approved by City.

**161.16 APPEAL.** Administrative decisions by City staff and enforcement actions may be appealed by the developer or property owner to the City Council pursuant to the following rules:

1. The appeal must be filed in writing with the City Clerk within five (5) business days of the decision or enforcement action.
2. The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.
3. The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and copies of all documents the enforcement officer intends to introduce at the hearing.

4. The City Clerk shall notify the applicant and the enforcement officer by ordinary mail and shall give public notice, in accordance with Chapter 21 of the *Code of Iowa*, of the date, time, and place for the regular or special meeting of the City Council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four (4) or more than twenty (20) days after the filing of the appeal. The rules of evidence and procedure and the standard of proof to be applied shall be the same as provided by Chapter 17A, *Code of Iowa*. The applicant may be represented by counsel at the applicant's expense. The enforcement officer may be represented by the City Attorney or by an attorney designated by the City Council at City expense.

5. The decision of the City Council shall be rendered in writing and may be appealed to the Iowa District Court.

*(Ch. 161 – Ord. 19-05 – Jul. 19 Supp.)*

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## CHAPTER 162

# FUEL GAS CODE

162.01 Short Title  
162.02 Adoption of Fuel Gas Code  
162.03 Conflicts

162.04 Amendments, Modifications, Additions and  
Deletions

**162.01 SHORT TITLE.** This chapter shall be known as the Windsor Heights Fuel Gas Code, and may be cited as such, and may be referred to herein as this chapter.

**162.02 ADOPTION OF FUEL GAS CODE.** The *International Fuel Gas Code*, 2012 Edition, published by the International Code Council, Inc., is adopted in full except for such portions as may be hereinafter deleted, modified, or amended. A copy of the *International Fuel Gas Code*, 2012 Edition, as adopted and a copy of this chapter are on file in the office of the Code Official.

**162.03 CONFLICTS.** In the event requirements of this code conflict with applicable State and federal requirements, the more stringent shall apply.

**162.04 AMENDMENTS, MODIFICATIONS, ADDITIONS AND DELETIONS.** The *International Fuel Gas Code*, 2012 Edition (hereinafter known as the IFGC), is amended as follows:

1. The following are deleted from the IFGC and are of no force or effect in this chapter:

**106.5.4 Extensions; 109 Means of Appeal.**

2. Subsection 101.1, *Title*, of the IFGC, is hereby deleted and there is enacted in lieu thereof the following subsection:

**101.1 Title.** These regulations shall be known as the Fuel Gas Code of the City of Windsor Heights, hereinafter known as “this code.”

3. Subsections 103.1, *General*, of the IFGC, is hereby amended by adding the following paragraph to said subsection:

The term Code Official is intended also to mean the Building and Zoning Administrator and his or her representatives or designees, who are herewith delegated the same powers, authorities, duties, and responsibilities as designated for the Code Official.

4. Subsection 106.1.1, *Permit Acquisition*, of the IFGC is hereby established by adding the following:

**106.1.1 Permit acquisition.**

1. Permits are not transferable. Fuel gas work performed under the provisions of this chapter must be done by a contractor meeting the licensing provisions as set forth by the State of Iowa Plumbing and Mechanical Systems Board in accordance with Chapter 105 of the *Code of Iowa*. A responsible person or mechanical professional licensed by the State of Iowa Plumbing and Mechanical Systems Board as a “Master” may sign and obtain a permit for the contractor for which said person is employed only when said responsible person or Master has provided proof of employment or written confirmation by said licensed contractor. Any permit required by the

provisions of this code may be revoked by the Code Official upon the violation of any provision of this code.

2. A State of Iowa licensed mechanical contractor shall be allowed only to secure permits for himself or herself, or for a single firm or corporation. When a State of Iowa licensed mechanical contractor has secured such a permit, only the employees of such contractor when meeting the provisions of Chapter 105 of the *Code of Iowa* shall perform the work for which the permit was obtained.

3. For purposes of this section, an “employee” is one employed by the contractor, firm, or corporation for a wage or salary. A contractor may be required by the Code Official to show positive evidence as to the employee status of workers on the job. Such evidence shall be in the form of payroll and time records, canceled checks, or other such documents.

4. The contractor may also be required to show the agreement or contract pertaining to the work being questioned as evidence that said contractor is, in fact, the actual contractor for such work. Failure or refusal by the contractor to make available such employee or contractual records within 24 hours from demand therefor shall be grounds for immediate revocation of any permit for the work in question.

5. Subsection 106.5.3 *Expiration*, of the IFGC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**106.5.3 12-month expiration.** Every permit issued under the provisions of this Code shall expire twelve (12) months from the date of issue, unless the application is accompanied by a construction schedule of specific longer duration, in which instance the permit may be issued for the term of the construction schedule, with approval of the Code Official. If the work has not been completed by the expiration date of the permit, no further work shall be done until the permit shall have been renewed by the owner or his or her agent and by payment of the renewal fee as established by resolution of the City Council, and provided no changes have been made in plans or location. Upon approval, permits may be extended for no more than two periods not exceeding 180 days each.

6. Subsection 106.5.6, *Retention of Construction Documents*, of the IFGC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**106.5.6 Retention of construction documents.** One set of construction documents shall be retained by the Code Official until final approval of the work covered therein.

7. Subsection 106.6.2, *Fee Schedule*, of the IFGC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**106.6.2 Fee schedule.** Permits shall not be issued until the fees, as set forth and established by resolution of the City Council, have been paid to the City of Windsor Heights. An amended permit or a supplemental permit for additional construction shall not be issued until the permit fee for the additional work has been paid.

8. Subsection 106.6.3, *Fee Refunds*, of the IFGC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**106.6.3 Fee refunds.** The Code Official is authorized to establish a refund policy.

9. Subsection 108.4, *Violation Penalties*, of the IFGC is hereby amended by deleting said subsection and inserting in lieu thereof the following:

**108.4 Violation penalties.** Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, installs, alters, or repairs fuel gas work in violation of the approved construction documents or directive of the Code Official, or of a permit issued under the provisions of this code, shall be subject to penalties as prescribed by law.

10. Subsection 108.5, *Stop Work Orders*, of the IFGC is hereby amended by deleting the last sentence of said subsection and inserting in lieu thereof the following:



Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

11. Subsection 403.10.1, *Pipe Joints*, of the IFGC is hereby amended by adding a new subsection as follows:

**403.10.1.1 Welded pipe joints.** All joints of wrought iron or steel gas piping larger than two-inch (2") standard iron pipe size and providing gas pressure of two (2) PSIG or greater shall be welded steel. All welded joints shall comply with the State of Iowa requirements and work shall be performed by certified welders.

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## CHAPTER 163

# DEMOLITION & RAZE PERMIT

163.01 Demolition Permit Required	163.08 Removal and Disposal
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### 163.01 DEMOLITION PERMIT REQUIRED.

1. No building in the City of Windsor Heights can be demolished or razed until a permit authorizing such work has been obtained from the building official.
2. No permit for the demolition of a building shall be issued other than in conformity with the provisions of this ordinance, as well as in conformity with the provisions of other laws and ordinances applicable to historic preservation and to the demolition of buildings.
3. Except as provided in this section, a demolition permit that has expired shall be null and void, and before any demolition work is subsequently commenced a new permit therefore shall be obtained. The fee for such permit shall be at the same rate as the original permit.
4. If a demolition permit to remove an unsafe building or a building that is the subject of a public nuisance action has expired, the building official shall order the prompt removal of such structure, in accordance with all requirements of this article. All of the costs attendant to this action, including administrative costs, shall be either assessed against the property or collected from the owner unless otherwise directed by the City Council.

**163.02 APPLICATION FOR PERMIT.** An application for demolition shall be made only by the person, partnership, corporation or realty trust which is the legal deed holder of the building at the time of such application. The applicant must comply with all federal, state and local regulations pertaining to the disposal of hazardous wastes and building demolition. The application must be made on the form provided by the City of Windsor Heights and must clearly state the following at a minimum:

1. How the anticipated final disposition of material will be accomplished in as sustainable manner as possible;
2. The name and address of the person in responsible charge of the work;
3. The street address and legal description of the property on which the building or structure is located;
4. The name and address of the of the owner and, when appropriate, his or her legal agent in responsible charge of the property;
5. Overall dimensions, number of stories and materials of construction of the building or structure to be demolished;

6. A plan showing areas to be protected by fences, barricades, covered walkways, or other protective devices, and details of construction for such devices;
7. Location of the site where the demolition debris is to be discarded;
8. Approval from other city departments including: Public services, fire and administration, and other governmental agencies when deemed necessary by the building official and any special conditions or restrictions relating thereto;
9. For demolition by explosives, the applicant shall furnish the information required in this subsection and shall furnish information regarding the person who will be conducting the demolition by explosives and shall furnish plans showing how the building or structure will be prepared for demolition, the type and amount of explosives to be used, and a detailed plan showing what safety precautions will be taken to protect persons and property;
10. Identification of any potential hazardous materials and how any hazardous materials contained within the structure proposed for demolition will be determined and remediated;
11. Identifying all material. Such as basements, sidewalks, utilities materials, etc., which will not be removed from the property as part of the proposed demolition;
12. A plan and schedule for accomplishing the demolition to include safety and security, and access limits.
13. The applicant shall provide a certificate of liability insurance for personal injuries, death and for property damage in an amount not less than \$2,000,000.00 naming the City as an additional named insured party. The certificate shall provide that the coverage shall not be cancelled or changed without ten days' prior written notice to the City. The City Council may require additional insurance coverage when the hazard appears greater than normally expected and may also in such instance require the posting of a bond acceptable to the City in an amount commensurate with the severity of the hazard. The bond shall provide that the applicant shall well and satisfactorily perform the demolition. The bond shall be for the benefit of the City and any person who is injured or damaged by the failure of the applicant to satisfactorily perform the demolition.
14. The applicant shall agree to indemnify and hold harmless the City from all losses resulting from damages or injuries caused by the applicant or the applicant's employees, servants or agents arising out of the use of explosives in demolition.

No permit for demolition of a building shall be granted until plans for use or development of the site after demolition have been filed with the Zoning Administrator and found to comply with all laws pertaining to the issuance of a building permit and where applicable, a site plan unless it is subject to a public nuisance or unsafe building. All approvals necessary for the issuance of such a building permit or certificate of occupancy including without limitation any necessary zoning variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.

**163.03 DEMOLITION WITH EXPLOSIVES.** A permit for the demolition of a building or structure by the use of explosives may be issued by the City Council subject to the following conditions, in addition to those set forth in Section 163.02:

1. The applicant for a permit must demonstrate to the City Council the need for demolition by explosives rather than demolition by conventional means and must demonstrate that demolition by explosives can be safely conducted at the specific location requested;
2. The building official, Public Services Director, fire chief and police chief shall review the application and submit their opinions to the City Council concerning whether or not the demolition can be safely conducted, together with any recommendations they may have;
3. The applicant shall pay the City in advance for reasonable expenses that will be incurred by the City in furnishing necessary security and police protection in the vicinity of the demolition site;
4. The applicant shall observe all applicable federal, state and local laws in the course of the demolition, including but not limited to the following:
  - A. The applicable provisions of the city fire prevention code relating to the storage, transportation and use of explosives.
  - B. The rules and regulations of the United States Environmental Protection Agency relating to the demolition of buildings or structures containing asbestos materials or other hazardous air pollutants.
5. The applicant shall meet all other requirements of this article relating to the demolition of structures or buildings; provided, however, that if a conflict exists between the provisions of this subsection and other sections of the City Code, the provisions of this subsection shall be deemed to be controlling;
6. The City Council shall at any time have the authority to impose additional requirements and safety precautions in the interest of the public health, safety and welfare;
7. Such other information as shall be reasonably required by the building official.

#### **163.04 ABATEMENT ORDERED - BOND REQUIRED.**

1. Before a permit is issued to remove a building which has been ordered removed as a public nuisance and which period of time granted by the City or by the courts for removal or other remedial action by the applicant or other party of interest has expired, the applicant may be required to post a cash bond equal to the estimated costs of the removal of the building and the disconnection of the existing utility services. If the applicant does not remove the building at the time the permit expires at a time specified by the building official, such bond shall be forfeited and used toward the costs of the City to remove it.
2. If the building is removed by the applicant prior to the time the permit expires, such bond shall be returned to the applicant. A return of the bond does not exempt the applicant from further assessments to the real estate for costs that have occurred prior to the issuance of the permit.

#### **163.05 CLEARING AND LEVELING THE SITE.**

1. The site of any demolition shall be properly cleared of debris, rubbish and pavement and shall be properly graded and leveled to conform with the adjoining grade of the neighboring property; and when so graded and leveled, the site shall be seeded, sodded or treated in some other manner acceptable to the Building Inspector so as to

prevent blowing dust, dirt, or sand. Excavations remaining after demolition shall be filled, graded and leveled off, not later than fifteen (15) consecutive days after demolition is completed.

2. Upon completion of the demolition work, the site shall be left in a clean, smooth condition. Inorganic building rubble, sand, clean earth, or other approved fill material may be used to fill excavations, basements, and depressions, provided that the top 12 inches shall be clean earth or its equivalent in terms of surface smoothness, free from dust, and cleanliness.

3. Excavations from demolished buildings or structures shall not be filled with any materials subject to deterioration. The Building Inspector, upon notification by the permit holder, the owner or his/her agent, in writing and upon forms provided by the Building Inspector for that purpose, shall within seventy-two (72) hours inspect each excavation, or part thereof, before applicant is permitted to fill any excavation.

4. It shall be unlawful to fill any such excavation without inspection and approval of the Building Inspector. Voids in filled excavations shall not be permitted. In the event of the unavailability of the Building Inspector to conduct an inspection within the seventy-two (72) hours after written notice; the Director of Public Service or designee may conduct inspection. Said opinion shall be deemed a sufficient approval by the City provided that a written copy of the opinion delivered to the City Clerk is at least forty-eight (48) hours before filling of the excavation commences.

**163.06 FENCING OR COVERING EXCAVATION OF BUILDING.** Before the demolition or razing of any building or structure has commenced the building or structure undergoing such demolition or razing and all debris on the property site shall be fenced and closed off to access by unauthorized persons with a fence not less than four feet in height. When such demolition and razing has reduced the building or structure to ground level, the resulting excavation consisting of a basement, cellar or other underground excavation shall be promptly filled to ground level not more than fifteen days after said building or structure has been lowered to ground level.

**163.07 TIME LIMIT FOR DEMOLITION.** The razing or demolition of any building or structure within the city limits shall be completed within thirty (30) days after such demolition or razing first commences. Completion of razing or demolition shall include the removal of all debris resulting from such razing or demolition from the site where said building or structure was located.

**163.08 REMOVAL AND DISPOSAL.** Removal, transportation and disposal of all hazardous waste, hazardous and toxic substances, and asbestos shall be conducted in compliance with all applicable state, federal and local statutes, ordinances and regulations. The permit holder shall give the Building Inspector seventy-two (72) hours written notice prior to any removal, transportation or disposal of hazardous waste, hazardous and toxic substances, and asbestos.

**163.09 DISCONNECTION OF SEWER AND WATER.** No permit to demolish shall be issued until it has been established that existing sewer and/or water services have been properly disconnected and approved.

**163.10 PLUGGING SEWERS FOR ABANDONED, RAZED, DEMOLISHED OR DESTROYED BUILDINGS.** From and after the effective date of this ordinance all sewer drains, sewer connections, and water service line serving any razed or demolished building or

any building that has been destroyed by fire or other casualty shall be sealed, plugged or capped by concrete or a mechanical watertight device where such sewer line exits from the building. Any plugs, caps or seals applied under the provisions of this ordinance shall be made between the sidewalk and the curb or such other point designated by the Director of Public Services and shall remain exposed until they have been viewed and approved by the Director of Public Services. Failure to obtain a permit as herein required or failure to seal, plug or cap a sewer drain or water service line within ten days after notice to do so by the Director of Public Works or failure to allow such plug, cap or seal to remain exposed until inspected by the Director of Public Works shall constitute a violation of this ordinance.

**163.11 RIGHT OF THE CITY TO ENTER UPON PREMISES IN THE EVENT OF NONCOMPLIANCE.** Authorized representatives of the City of Windsor Heights shall have the right to enter upon any premises where the razing or demolition of any building or structure is in progress for the purpose of constructing the fence or for the purpose of providing fill for the excavation where the owner of said property has failed to do so as required by this ordinance and assess the costs as a lien on the property.

**163.12 MISCELLANEOUS PROVISIONS.**

1. Demolition permits shall lapse and be void unless the work authorized thereby is commenced within six (6) months from the date thereof or completed within thirty (30) days from the date of commencement of said work. Any unfinished portion of work remaining beyond the required thirty (30) days must have special approval from the Building Inspector.
2. The building official shall have the authority to impose at any time reasonable requirements and safety precautions in the interest of public health, safety, and welfare, which, in his or her opinion, are commensurate with the severity of hazard, either demonstrated or anticipated, provided that such requirements may be appealed to and reviewed by the board of appeals at the request of the affected party.
3. The discharging, loading, or dumping of building materials from any building shall be accomplished in such manner as to minimize the creation of dust and scattering of debris. Materials shall not be dropped by gravity to any point lying outside the building walls except through an enclosed chute, unless such materials are dust free and the height of the drop is at least equal to the horizontal distance to the nearest property or barricade line. Where such horizontal distance is not available and practical necessity dictates the dropping of relatively large masses of materials, the building official may approve appropriate protective measures designed to provide protection from danger equivalent to that afforded by the otherwise required setback; provided, however that in all cases such materials shall be handled in a manner approved by the air pollution control division of the county health department.
4. When necessary as determined by city officials, in order to protect the public health, safety, or welfare, every demolition project shall be barricaded, fenced, lighted, and signed with warning and/or directional signs in a manner approved by the building official or Director of Public Services. The building official may also require the presence of approved security guards or flag persons. Such barricades, fences, lights, and signs as may be deemed necessary by the building official for protection of the public shall be maintained after completion of the demolition work until such time as the site is cleaned of all debris and all excavations, basements, and depressions in the ground are restored to grade rendered harmless.

5. Adequate precautions shall be taken to ensure that procedures or conditions relation to the demolition work do not constitute a fire hazard. If, in the opinion of the fire chief, a fire hazard exists or is likely to exist, he or she may order the cessation of work or require that appropriate protective measures approved by him or her are taken.
6. All streets, alleys, and public ways adjacent to the demolition site shall be kept free and clear of any rubbish, refuse, and loose material resulting from the demolition work unless an obstruction permit for such space has been obtained.
7. Demolition of structures subject to public nuisance action shall include removal of all footing and foundation materials unless an obstruction permit for such space has been obtained.
8. All debris must be hauled away at the end of each week for the work that was completed during that week. No combustible material shall be used for backfill, but shall be hauled away. There shall not be any burning of materials on the site of the razed building.
9. If any razing or removal operation under this Section results in, or would likely result in, dust particles in the air creating a nuisance in the vicinity thereof, the permittee shall take all necessary steps, by use of water spraying or other appropriate means, to eliminate such nuisance.
10. The permittee shall take all necessary steps, prior to the razing of a building, through the employment of a qualified person in the field of pest control or by other appropriate means, to treat the building as to prevent the spread and migration of rodents and insects therefrom during and after the razing operations.

*(Ch. 163 – Ord. 15-07 – Nov. 15 Supp.)*

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## CHAPTER 165

# ZONING CODE – GENERAL PROVISIONS

165.01 Title

165.02 Jurisdiction

165.03 Purpose

165.04 Consistency with Comprehensive Development Plan

165.05 Conflicting Provisions

165.06 Relief from Other Provisions

165.07 Publication

**165.01 TITLE.** Chapters 165 through 177 of this Code of Ordinances shall be known as the Zoning Code of the City of Windsor Heights.

**165.02 JURISDICTION.** The provisions of the Zoning Code shall be applicable to all property within the corporate limits of the City as authorized by Chapter 414 of the *Code of Iowa*.

**165.03 PURPOSE.** The purposes of the Zoning Code are to:

1. Serve the public health, safety, and general welfare of the City and its jurisdiction.
2. Classify property in a manner that reflects its suitability for specific uses.
3. Provide for sound, attractive development with the City and its jurisdiction.
4. Encourage environmentalism of adjacent land uses.
5. Protect environmentally sensitive areas.
6. Further the objectives of the Comprehensive Development Plan of the City.

**165.04 CONSISTENCY WITH COMPREHENSIVE DEVELOPMENT PLAN.** The City intends that this Zoning Code and any amendments to it shall be consistent with the City's Comprehensive Development Plan. It is the City's intent to amend this Code whenever such action is deemed necessary to keep regulatory provisions in conformance with the Comprehensive Development Plan.

**165.05 CONFLICTING PROVISIONS.** The Zoning Code shall be held to provide the minimum requirements necessary for the promotion of the public health, safety, and welfare. If any provision of the Zoning Code conflicts with any other provision of the Zoning Code, any other Ordinance of the City, or any applicable State or federal law, the more restrictive provision shall apply.

**165.06 RELIEF FROM OTHER PROVISIONS.** Nothing in these provisions shall relieve any property owner or user from satisfying any condition or requirement associated with a previous approval, special permit, variance, development permit, or other permit issued under any local, State, or federal ordinance or statute.

**165.07 PUBLICATION.** This Code shall be published in book or pamphlet form and, together with the maps being a part hereof, shall be filed with the City Administrator.

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## CHAPTER 166

# ZONING CODE – DEFINITIONS

### 166.01 Purpose

### 166.02 General Construction of Language

### 166.03 Definition of Terms

**166.01 PURPOSE.** The purpose of this chapter is to promote consistency and precision in the interpretation of this Zoning Code. The meaning and construction of words as set forth shall apply throughout this Zoning Code, unless where modified in a specific section or where the context of such words or phrases clearly indicates a different meaning or construction.

**166.02 GENERAL CONSTRUCTION OF LANGUAGE.** The following general rules of construction apply to the text of the Zoning Code.

1. **Headings.** Section and subsection headings contained herein are provided for illustrative purposes only and shall not be deemed to limit, govern, modify, or otherwise affect the scope, meaning, or intent of any provision of the Zoning Code.
2. **Illustration.** In the case of any real or apparent conflict between the text of this Zoning Code and any illustration explaining the text, the text shall apply.
3. **Conjunctions.** Unless the context clearly indicates the contrary, the following conjunctions shall be interpreted as follows:
  - A. “And” indicates that all connected items or provisions apply.
  - B. “Or” indicates that the connected items or provisions may apply singly or in any combination.
  - C. “Either ... or” indicates that the connected items or provisions shall apply singly but not in combination.
4. **Referenced Agencies.** Unless otherwise indicated, all public officials, bodies, and agencies referred to in this chapter are those of the City.

**166.03 DEFINITION OF TERMS.** For the purposes of this Zoning Code, certain terms and words are hereby defined. Certain sections contain definitions which are additional to those listed here. Where terms are not specifically defined, their ordinarily accepted meaning or meanings implied by their context shall apply.

1. “Abutting” means having lot lines or district boundaries in common, including property separated by a public street or alley. This term is used interchangeably with “adjacent.”
2. “Accessory structure” means a structure which is incidental to and customarily associated with a specific principal use or building on the same site.
3. “Accessory use” means a use which is incidental to and customarily associated with a specific principal use on the same site.
4. “Addition” means any construction which increases the size of a building or structure in terms of site coverage, height, length, width, or gross floor area.

5. “Agent of owner” means any person showing written verification that he/she is acting for – and with the knowledge and consent of – a property owner.
6. “Alley” means a public right-of-way which is used as a secondary means of access to abutting property.
7. “Alteration” means any construction or physical change in the internal arrangement of spaces, the supporting members, the positioning on a site, or the appearance of a building or structure.
8. “Apartment” means a housing unit within a building designed for and suitable for occupancy by only one family. Apartments are generally located within multi-family residential buildings.
9. “Attached” means having one or more walls in common with a principal building or connected to a principal building by an integral architectural element, such as a covered passageway, façade wall extension, or archway.
10. “Base Zoning District” means a district established by this Zoning Code which prescribes basic regulations governing land use and site development standards. For any actions taken after the effective date of this Code, no more than one Base Zoning District shall apply to any individually platted lot or parcel unless the lot or parcel is part of a Planned Unit Development.
11. “Basement” means a level of a building below street level that has at least one-half of its height below the surface of adjacent ground. A basement used for independent dwelling or business purposes shall be considered a story for the purposes of height measurement. Chapter 169 sets forth floodplain and floodway regulations governing building standards in flood-prone areas.
12. “Bedroom” means any space intended for sleeping purposes in the conditioned space of a dwelling unit which is 80 square feet and greater in size and which is located along an exterior wall, but not including the following: hall; bathroom; kitchen; laundry room.
13. “Beginning of construction” means the initial incorporation of labor and materials within the foundation of a building or structure.
14. “Block” means an area of land within a subdivision that is entirely bounded by streets, or by streets and the exterior boundaries of the subdivision, or by a combination of the above with a watercourse or lake, and which has been designated as such on a plat for the purposes of legal description of a property.
15. “Blockface” means the property abutting one side of a street and lying between the two nearest intersection streets, or between the one nearest intersecting street and a major physical barrier, including (but not limited to) railroads, streams, lakes, or the corporate limits of the City.
16. “Board of Adjustment” means a body established by the City expressly for the purpose of granting relief from situations of hardship and to hear appeals as provided by this Zoning Code.
17. “Buffer yard” means a landscaped area intended to separate and partially obstruct the view of two adjacent land uses or properties from one another.
18. “Building” means a structure entirely separated from any other structure by space or by walls and having a roof and built to provide shelter, support, or enclosure for persons or property.

19. “Building coverage” means the area of a site covered by buildings or roofed areas, excluding allowed projecting eaves, balconies, and similar features.
20. “Building envelope” means the three-dimensional space within which a structure is permitted to be built on a lot after all zoning and other applicable municipal requirements have been met.
21. “Building line” means the outer boundary of a building established by the location of its exterior walls.
22. “Building Official” means the designee of the City Council, responsible for the enforcement of Chapter 155 of this Code of Ordinances.
23. “Business” means activities that include the exchange or manufacture of goods or services on a site.
24. “Business center” means a building containing more than one commercial business, or any group of nonresidential buildings within a common development, characterized by shared parking and access.
25. “Certificate of Occupancy” means an official certificate issued by the Building Official, upon finding of conformance with the City’s Building Code (Chapter 155), and upon receipt of a Certificate of Zoning Compliance.
26. “Certificate of Zoning Compliance” means an official certificate issued by the Building Official, which indicates that the proposed use of building or land complies with the provisions of this Zoning Code.
27. “Change of use” means the replacement of an existing use by a new use.
28. “Cluster” means a development design technique that concentrates buildings in specific areas on a site to allow remaining land to be used for recreation, common open space, or the preservation of historically or environmentally sensitive features.
29. “Collector street” means a street connecting neighborhoods within the same communities, designed to carry traffic from local to arterial streets.
30. “Common area” means an area held, designed, and designated for common or cooperative use within a development.
31. “Common development” means a development proposed and planned as one unified project not separated by a public street or alley.
32. “Common open space” means land within or related to a development that is not individually owned or dedicated for public use, designed and generally intended for the common use of the residents of the development.
33. “Compatibility” means the degree to which two or more different land use types are able to exist together in close proximity, with no one use having significant negative effects on any other use.
34. “Comprehensive Plan” means the duly adopted Comprehensive Development Plan of the City.
35. “Conditional Use Permit (CUP)” is intended to accommodate those types of uses that don’t fit neatly into any particular zoning district, and which have the potential to impact surrounding properties. As part of the approval process, the Board of Adjustment can impose conditions on the proposed use to help minimize the potential impacts on surrounding property.

36. “Conditioned space” means an area, room, or space normally occupied and being heated and/or cooled by any equipment for human habitation.
37. “Condominium” means a real estate ownership arrangement that combines fee simple title to a specific unit and joint ownership in common elements shared with other unit owners. Types of units may include dwelling units, parking spaces, office spaces, or commercial spaces.
38. “Conservation development” means a development design technique that concentrates buildings in specific areas on a site to allow remaining land to be used for recreation, common open space, or the preservation of historically or environmentally sensitive features.
39. “Conservation subdivision” means, wholly or in majority, a residential subdivision that permits a reduction in lot area, setback, or other site development regulations, provided: (i) there is no increase in the overall density permitted for a conventional subdivision in a given zoning district; and (ii) the remaining land area is used for common space.
40. “Court” means an approved private right-of-way which provides access to residential properties and meets at least three of the following conditions:
- A. Serves 12 or fewer housing units or platted lots.
  - B. Does not function as a local street because of its alignment, design, or location.
  - C. Is completely internal to a development.
  - D. Does not exceed 600 feet in length.
41. “Courtyard” means an open, unoccupied space, bounded on two or more sides by the walls of the building.
42. “Deck” means an unroofed platform, unenclosed except by a railing, which is attached to the ground and/or another structure.
43. “Density” means the amount of development per specific unit of a site.
44. “Drive-in services” means uses which involve the sale of products or provision of services to occupants in vehicles.
45. “Detached” means fully separated from any other building or jointed to another building in such a manner as not to constitute an enclosed or covered connection.
46. “Driveway” means a permanent surface area providing vehicular access between a street and an off-street parking or loading area. A driveway surface area shall be asphaltic, Portland cement binder pavement, paver block, concrete block, or similar surface so as to provide a durable and dustless surface. Gravel or rock is not deemed to be a dustless surface.
47. “Dwelling unit” means one or more rooms, designed, occupied, or intended for occupancy as a separate living quarter, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.
48. “Easement” means a privilege or right of use granted on, above, under, or across a particular tract of land for a specific purpose by one owner to another owner, public or private agency, or utility.

49. “Enclosed” means a roofed or covered space fully surrounded by walls.
50. “Family” means one or more persons occupying a single dwelling unit, related by blood, marriage, domestic partnership, adoption, or other custodial arrangement.
51. “Federal” means pertaining to the Government of the United States of America.
52. “Floor area ratio” means the quotient of gross floor area divided by gross site area.
53. “Frontage” means the length of a property line of any one premises abutting and parallel to a public street, private way, or court.
54. “Grade” means the horizontal elevation of the finished surface of ground, paving, or sidewalk adjacent to any building line.
- A. For buildings having walls facing one street only, the grade shall be the elevation of the sidewalk (or the boundary line between the property and the street right-of-way in the absence of sidewalks) perpendicular to the center of the wall facing the street.
- B. For buildings having walls facing more than one street, the grade shall be the average elevation of the grades of all walls facing each street.
- C. For buildings having no walls facing a street, the grade shall be the average level of the finished surface of the ground adjacent to the exterior walls of the building.
55. “Gross floor area” means the total enclosed area of all floors of a building, measured to the inside surfaces of the exterior walls. This definition excludes the areas of basements, elevator shafts, airspaces above atriums, and enclosed off-street parking and loading areas serving a principal use.
56. “Height” means the vertical distance from the established grade to the highest point of the coping of a flat roof, the deck line of a mansard roof, gable, hip, shed, or gambrel roofs. For other cases, height shall be measured as the vertical distance from the established grade to the highest point of a structure as herein defined. Where a building or structure is located on a slope, height shall be measured from the average grade level adjacent to the building or structure.
57. “Home based business” or “home occupation” means an accessory occupational use conducted entirely within a dwelling unit by its inhabitants, which is clearly incidental to the residential use of the dwelling unit or residential structure and does not change the residential character of its site or have any external evidence of such use.
58. “Housing unit” or “dwelling unit” means a building or portion of a building arranged for and intended for occupancy as an independent living facility for one family, including permanent provisions for cooking.
59. “Impervious coverage” means the total horizontal area of all buildings, roofed or covered spaces, paved surface areas, walkways and driveways, and any other site improvements that decrease the ability of the surface of the site to absorb water, expressed as a percent of site area. The surface water area of pools is excluded from this definition.
60. “Landscaped area” means the area within the boundaries of a given lot, site or common development consisting primarily of plant material, including but not limited

to grass, trees, shrubs, vines, ground cover, and other organic plant materials; or grass paver masonry units installed such that the appearance of the area is primarily landscaped.

61. “Perimeter landscaped area” means any required landscaped area that adjoins the exterior boundary of a lot, site, or common development.

62. “Interior landscaped area” means any landscaped area within a site exclusive of required perimeter landscaping.

63. “Loading area” means an off-street area used for the loading or unloading of goods from a vehicle in connection with the use of the site on which such area is located.

64. “Lot” means a parcel of property with a separate and distinct number or other identifying designation which has been created, assigned, and recorded in the Office of the Polk County Recorder. Each individual lot is subject to the provisions of a particular Base Zoning District, and shall have a minimum frontage of 20 feet, except as provided in an approved Planned Unit Development and/or Conservation Subdivision.

A. “Corner lot” means a lot located at the junction of at least two streets, private ways or courts or at least two segments of a curved street, private way or court, at which the angle of intersection is no greater than 135 degrees.

B. “Double frontage lot” (also known as a “through lot”) means a lot, other than a corner lot, having frontage on two streets, private ways, or courts. Primary access shall be restricted on a double frontage lot to the minor of the two streets or to the front line as determined at time of platting or as defined by this Zoning Code.

C. “Interior lot” means a lot other than a corner lot.

D. “Common development lot” means a lot which is considered a single lot for the purposes of this Zoning Code, when two or more contiguous lots are developed as part of a Planned Unit Development.

65. “Lot area” means the total horizontal area within the lot lines of a lot.

66. “Lot depth” means the mean horizontal distance measured between the front and rear lot lines.

67. “Lot line” means a property boundary line of record that divides one lot from another lot or a lot from the public or private street right-of-way or easement. Once established, lot lines may not be redefined due to a change of address which would result in a new definition of the prior defined lot lines.

A. “Front lot line” means the lot line separating a lot and a public or private street right-of-way or easement:

(1) For an interior lot, the lot line separating the lot from the right-of-way or easement;

(2) For a corner lot, the shorter lot line abutting a public or private street or easement; in instances of equal line dimension, the front lot line shall be determined by the Building Official, or as may be noted on the final plat;

(3) For a double frontage lot, the lot lines separating the lot from the right-of-way or easement of the more minor street. In cases where each street has the same classification, the front lot line shall be



determined by the Building Official at the time of application for the original building permit for the lot, or as may be noted on the final plat.

- B. “Rear lot line” means the lot line which is opposite and most distant from the front line.
- C. “Side lot line” means any lot line that is neither a front or rear lot line. A side lot line separating a lot from a street, private way, or court is a street side lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.
68. “Lot width” means the horizontal distance measured between the side lot lines of a lot, at right angles to its depth along a straight line parallel to the front lot line at the minimum required setback line.
69. “Manufactured home dwelling” means a factory-built, single-family dwelling structure which is to be used as a place for human habitation, which is manufactured or constructed under the authority of 42 U.S.C. 5403, *Federal Manufactured Home Construction and Safety Standards*, and which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. A mobile home constructed to the *National Manufactured Home Construction and Safety Standards* promulgated by the US Department of Housing and Urban Development is not a manufactured home unless it has been converted to real property and is taxed as a site-built dwelling as is provided in the *Code of Iowa*, Section 435.26. For the purpose of any of these regulations, manufactured homes shall be considered the same as a single-family detached dwelling.
70. “Mixed use building” means a building or structure that incorporates two or more use types within a single building or structure, provided that each use type is permitted within the individual Base Zoning District in which the building or structure is to be located.
71. “Mixed use development” means a single development which incorporates complementary land use types into a single development.
72. “Mobile home” means a building type designed to be transportable in one or more sections, constructed on a permanent chassis or undercarriage, and designed to be used as a dwelling unit or other use with or without a permanent foundation when connected to the required utilities, but not bearing a seal attesting to the approval and issuance of the Iowa Department of Health or conformance to the *Manufactured Home Procedural and Enforcement Regulations*, as adopted by the US Department of Housing and Urban Development; or not otherwise satisfying the definition of “manufactured home dwelling.”
73. “Mobile home park” means a unified development under single ownership, developed, subdivided, planned, and improved for the placement of mobile home units for non-transient use. Mobile home parks include common areas and facilities for management, recreation, laundry, utility services, storage, storm shelter, and other services; but do not include mobile home sales lots on which unoccupied mobile homes are parked for the purposes of display, inspection, sale, or storage.
74. “Nonconforming development” means a building, structure, or improvement which does not comply with the regulations for its zoning district set forth by this Zoning Code but which complied with applicable regulations at the time of

construction. No action can be taken which would increase the nonconforming characteristics of the development.

75. “Nonconforming lot” means a lot which was lawful prior to the adoption, revision, or amendment of this Zoning Code but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of this Zoning Code. No action can be taken which would increase the nonconforming characteristics of the lot.

76. “Nonconforming sign” means a sign that was legally erected prior to the adoption, revision, or amendment of this Zoning Code but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of this Zoning Code. No action can be taken which would increase the nonconforming characteristics of the sign.

77. “Nonconforming structure” means a structure which was lawful prior to the adoption, revision, or amendment of this Zoning Code but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of this Zoning Code. No action can be taken which would increase the nonconforming characteristics of the structure.

78. “Nonconforming use” means a land use which was lawful prior to the adoption, revision, or amendment of this Zoning Code but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of this Zoning Code. No action can be taken which would increase the nonconforming characteristics of the land use.

79. “Nuisance” means an unreasonable and continuous invasion of the use and enjoyment of a property right which a reasonable person would find annoying, unpleasant, obnoxious, or offensive.

80. “Open space” means area included on any site or lot that is open and unobstructed to the sky, except for allowed projections of cornices, overhangs, porches, balconies, or plant materials.

81. “Outdoor storage” means the storage of materials, parts, or products that are related to the primary use of a site for a period exceeding three days.

82. “Overlay District” means a district established by this Zoning Code to prescribe special regulations to be applied to a site only in combination with a Base Zoning District.

83. “Owner” means an individual, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.

84. “Parking facility” means an area on a lot and/or within a building, including one or more parking spaces, along with provision for access circulation, maneuvering, and landscaping, meeting the requirements of this Zoning Code. Parking facilities include parking lots, private garages, and parking structures. Vehicle storage is distinct from parking, and is regulated by provisions in Sections 167.07(2)(F), 167.09(10) and Table 168-2. Vehicle storage is also governed by provisions of Chapter 174 – Off-Street Parking Regulations.

85. “Parking space” means an area on a lot and/or within a building, intended for the use of temporary parking of a personal vehicle. This term is used interchangeably with “parking stall.” Each parking space must have a means of access to a public street.

Tandem parking stalls in single-family detached, single-family attached, and townhouse residential uses shall be considered to have a means of access to a public street.

86. “Paved” means permanently surfaced with poured concrete, concrete pavers or masonry units, brick, or asphalt.

87. “Permitted use” means a land use type allowed as a matter of right in a zoning district, subject only to special requirements of this Zoning Code.

88. “Planning Commission” means the Planning and Zoning Commission of the City, as authorized pursuant to Chapter 414 of the *Code of Iowa*.

89. “Planned Unit Development” means a development of land which is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages. The development may include streets, circulation ways, utilities, buildings, open spaces, and other site features and improvements.

90. “Porch, unenclosed” means a roofed or unroofed open structure projecting from an exterior wall of a building and having no enclosed features more than 30 inches above its floor other than wire screening and a roof with supporting structure.

91. “Premises” means a lot, parcel, tract, or plot of land, contiguous and under common ownership or control, together with the buildings and structure thereon.

92. “Private garage” means a building for the storage of motor vehicles where no repair service facilities are maintained and where no motor vehicles are kept for rental or sale.

93. “Property line” – see “lot line.”

94. “Recreational vehicle” means a vehicle towed or self-propelled on its own chassis or attached to the chassis of another vehicle and designed or used for temporary dwelling, recreational, or sporting purposes. Recreational vehicles include (but are not limited to) travel trailers; campers; motor coach homes; converted buses and trucks, snowmobiles, boats, and boat trailers.

95. “Regulation” means a specific requirement set forth by this Zoning Code which must be followed.

96. “Remote parking” means a supply of off-street parking at a location not on the site of a given development.

97. “Right-of-way” means an area dedicated for public use or contained in an easement or other conveyance or grant to the City, including (but not limited to) streets, alleys, boulevards, sidewalks, public greenways, and other public property between the lateral property lines in which a roadway lies.

98. “Screening” means the method by which a view of one site from another adjacent site is shielded, concealed, or hidden. Screening techniques include fences, walls, hedges, berms, or other features as may be permitted by the landscape provisions of this Code.

99. “Setback” means the distance, as required by the minimum setback, which establishes the horizontal component of the building envelope.

100. “Sign” means a symbolic, visual device fixed upon a building, vehicle, structure, or parcel of land, which is intended to convey information about a product,

business, activity, place, person, institution, candidate, or political idea. Sign regulations are set forth in Chapter 175 of this Zoning Code.

101. “Site” means the parcel of land to be developed or built upon. A site may encompass a single lot or a group of lots developed as a common development under the special and overlay districts provisions of this Zoning Code.

102. “Site plan” means a plan, prepared to scale, showing accurately and with complete dimensioning the boundaries of a site and the location of all buildings, structures, uses, and principal site development features proposed for a specific parcel of land and which includes any other information that may reasonably be requested by the City in order that an informed decision can be made on the associated request.

103. “Story” means the portion of a building included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, the space between such floor and the next ceiling above it. A half story is a story under a sloped roof, the wall heights of which on at least two opposite exterior walls are less than four feet.

104. “Street” means a right-of-way dedicated to public use, which affords a primary means of access to the abutting property. This definition is intended to be inclusive of the term as defined in Iowa statutes.

A. In regard to a site, the principal street shall be the street to which the majority of lots on a blockface are oriented;

B. The intersecting street shall be a street other than a principal street.

105. “Street, local” means a street which is used primarily for access to the abutting properties.

106. “Street, major” means a street carrying traffic between neighborhoods, connecting neighborhoods with major activity centers, or accommodating major through traffic. Major streets are designated as collectors, arterials, or expressways by the Comprehensive Plan.

107. “Structure” means any object constructed or built, the use of which requires location on the ground or attachment to something located on the ground.

108. “Townhouse” means a dwelling unit having a common wall with or abutting one or more adjacent dwelling units in a townhouse structure, with its own front and rear access to the outside, and neither above nor below any other dwelling unit.

109. “Townhouse structure” means a building formed by at least two and not more than twelve contiguous townhouses with common or abutting walls.

110. “Use” means the conduct of an activity or the performance of a function or operation on a site or in a building or facility.

111. “Utilities” means installations, either above or below ground, necessary for the production, generation, transmission, delivery, collection, treatment, or storage of water, solid or fluid wastes, storm water, energy media, gas, electronic or electromagnetic signals, or other services which are precedent to development and use of land.

112. “Yard, required” means that portion of a lot which lies between a lot line and the corresponding building setback line or the required landscape area. This area shall

be unoccupied and unobstructed from the ground upward except as may be specifically provided for or required by this Zoning Code.

A. “Front yard” means the space extending the full width of a lot, lying between the front lot line and the front setback line. For a corner lot, the front yard shall normally be defined as that yard along a street which meets one of the following two criteria:

(1) The yard along the blockface to which a greater number of structures are oriented; or

(2) The yard along a street that has the smaller horizontal dimension.

B. “Rear yard” means the space extending the full width of a lot, lying between the rear lot line and the rear setback line.

C. “Side yard” means the space extending the depth of a lot from the front to rear lot lines, lying between the side yard setback line and the interior lot line.

D. “Street side yard” means, on a corner lot, the space extending from the front yard to the rear yard, between the street side yard setback line and the street side lot line.

113. “Zoned lot” means a parcel of land in single ownership that is large enough to meet the minimum zoning requirements of its zoning district and can provide such yards and other open spaces that are required by the site development regulations.

114. “Zoning district” means a designated specified land classification, within which all sites are subject to a unified group of use and site development regulations set forth in this Zoning Code.

*(Ch. 166 – Ord. 17-12 – Dec. 17 Supp.)*

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## CHAPTER 167

# ZONING CODE – USE TYPES

167.01 Purpose

167.02 Determinations

167.03 Agricultural Use Types

167.04 Residential Use Types

167.05 Civic Use Types

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167.07 Commercial Use Types

167.08 Parking Use Types

167.09 Industrial Use Types

167.10 Transportation Use Types

167.11 Miscellaneous Type Uses

**167.01 PURPOSE.** The purpose of this chapter is to establish a classification system for land uses and a consistent set of terms defining uses permitted or conditionally permitted within various zoning districts. This chapter also provides a procedure for determining the applicable use type of any activity not clearly within any defined use type.

### **167.02 DETERMINATIONS.**

1. Classification of Uses. In the event of any question as to the appropriate use types of any existing or proposed use or activity, the Zoning Administrator of the City shall have the authority to determine the appropriate use type. A determination of the Zoning Administrator may be appealed to the Board of Adjustment. In making such determinations, the Zoning Administrator and Board of Adjustment shall consider such characteristics or specific requirements of the use in common with those included as examples of use types. Those examples, when included in use type descriptions, are intended to be illustrative, as opposed to exclusive lists.
2. Records. The Zoning Administrator shall make all such determinations of appropriate use types in writing. The record of the determination shall contain a report explaining the reasons for the determination.

**167.03 AGRICULTURAL USE TYPES.** Agricultural use types include the on-site production and sale of plant and animal products by agricultural methods.

1. Horticulture. The growing of horticultural and floricultural specialties, such as flowers, shrubs, or trees intended for ornamental or landscaping purposes. This definition may include accessory retail sales under certain conditions. Typical uses include wholesale plant nurseries and greenhouses.
2. Crop Production. The raising and harvesting of tree crops, row crops, or field crops on an agricultural or commercial basis. This definition may include accessory retail sales under certain conditions.
3. Animal Production. The raising of animals or production of animal products, such as eggs or dairy products on an agricultural or commercial basis on a site which is also used for crop production or where grazing of natural vegetation is the major feed source; or the raising of animals for recreational use. Typical uses include grazing, ranching, dairy farming, and poultry farming.

**167.04 RESIDENTIAL USE TYPES.** Residential use types include uses providing wholly or primarily non-transient living accommodations. They exclude institutional living

arrangements providing 24-hour skilled nursing or medical care, forced residence, or therapeutic settings.

1. Single-Family Residential. The use of a site for one dwelling unit, occupied by one family. (NOTE: Mobile home units are not a single-family use type. See following categories for such units).
  - A. “Detached single-family residential” means a single-family residential use in which one dwelling unit is located on a single lot, with no physical or structural connection to any other dwelling unit.
  - B. “Attached single-family residential” means a single-family residential use in which one dwelling unit is located on a single lot and is attached by a common vertical wall to only one other adjacent dwelling unit on another single lot.
2. Duplex Residential. The use of a legally described lot for two dwelling units, each occupied by one family within a single building, excluding mobile home units, but including modular housing units.
3. Two-Family Residential. The use of a site for two dwelling units, each occupied by one family, each in a separate building, excluding a mobile home unit.
4. Townhouse Residential. The use of a site for three or more attached dwelling units, each occupied by one family and separated by vertical side walls extending from foundation through roof without openings. Each townhouse unit must have at least two exposed exterior walls.
5. Multiple-Family Residential. The use of a site for three or more dwelling units within one building.
6. Downtown Residential. The use of upper levels above street level of a building within the Town Center District of the City for single- or multiple-family residential uses.
7. Group Residential. The use of a site for a residence by four or more unrelated persons, not defined as a family, on a weekly or longer basis.
8. Manufactured Home Residential. The use of a site for one or more manufactured home dwellings, as defined in Chapter 166.
9. Mobile Home Park. The use of a site under single ownership for one or more mobile home units. Generally, the land on which mobile homes are placed in a mobile home park is leased from the owner of the facility.
10. Retirement Residence. A building or group of buildings which provide residential facilities for four or more residents of at least 50 years of age, or households headed by a householder of at least 50 years of age. A retirement residence may provide a range of residential building types and may also provide support services to residents, including (but not limited to) food service, general health supervision, medication services, housekeeping services, personal services, recreation facilities, and transportation services. The retirement residence may accommodate food preparation in independent units or meal service in one or more common areas. Retirement residences with more than 50 living units may include additional health care supervision or nursing care, provided that the number of beds for such residences shall not exceed 25% of the total number of individual living units. Typical uses include continuing care retirement centers.



**167.05 CIVIC USE TYPES.** Civic use types include the performance of utility, educational, recreational, cultural, medical, protective, governmental, and other uses which are strongly vested with social importance.

1. Administration. Governmental offices providing administrative, clerical, or public contact services that deal directly with the citizen, together with incidental storage and maintenance of necessary vehicles. Typical uses include federal, State, County, and City offices.
2. Cemetery. Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbaria, crematoria, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery.
3. Clubs. Uses providing meeting, recreational, or social facilities for a private, nonprofit, or non-commercial association, primarily for use by members and guests.
4. College and University Facilities. An educational institution of higher learning which offers courses of study designed to culminate in the issuance of a degree certified by a generally recognized accrediting organization.
5. Convalescent Services. Uses providing bed care and in-patient services for persons requiring regular medical attention but excluding a facility providing surgical or emergency medical services and excluding a facility providing care for alcoholism, drug addiction, mental illness, or communicable disease. Typical uses include nursing homes.
6. Cultural Services. A library, museum, or similar registered nonprofit organizational use displaying, preserving and exhibiting objects of community and cultural interest in one or more of the arts and sciences.
7. Day Care Services (Limited). This use type includes all classifications of day care facilities regulated by the State of Iowa that operate providing care for not more than six children. This term includes nursery schools, preschools, day care centers for children or adults, and similar uses but excludes public and private primary and secondary educational facilities.
8. Day Care Services (General). This use type includes all classifications of day care facilities regulated by the State of Iowa that operate providing care for more than six children. This term includes nursery schools, preschools, day care centers for children or adults, and similar uses but excludes public and private primary and secondary educational facilities.
9. Detention Facilities. A publicly operated or contracted use providing housing and care for individuals legally confined, designed to isolate those individuals from the community.
10. Emergency Residential Services. A facility or use of a building to provide a protective sanctuary for victims of crime or abuse, including emergency housing during crisis intervention for victims of rape, abuse, or physical beatings. Such facilities being limited to no more than three victims at any one time.
11. Family Home. A facility as defined in Section 414.22 of the *Code of Iowa*, and including, but not limited to, Elder Family Homes and Elder Group Homes.
  - A. Elder Family Home: A facility as defined in Section 231A of the *Code of Iowa*.

- B. Elder Group Home: A facility as defined in Section 231B of the *Code of Iowa*.
12. Group Care Facility. A government-licensed or approved facility which provides for resident care and short or long-term, continuous multi-day occupancy of more than 8 but no more than 30 unrelated persons, not including resident staff. Group Care Facilities include facilities which provide services in accordance with individual needs for the:
- A. Adaptation to living with, or rehabilitation from, the handicaps of physical disability.
  - B. Adaptation to living with, or rehabilitation from, the handicaps of emotional or mental disorder or developmental disabilities.
  - C. Rehabilitation from the effects of drug or alcohol abuse.
  - D. Supervision while under a program alternative to imprisonment, including (but not limited to) pre-release, work-release, and probationary programs.
  - E. Others who require direct adult supervision.
13. Group Home. A facility licensed by the State of Iowa in which at least three but no more than eight persons (not including resident managers or house parents), who are unrelated by blood, marriage, or adoption, reside while receiving therapy, training, living assistance, or counseling for the purpose of adaptation to living with or rehabilitation from a physical or mental disability as defined by the relevant provisions of the *Code of Iowa* or by the Fair Housing Amendments Act of 1988.
14. Guidance Services. A use providing counseling, guidance, recuperative, or similar services to persons requiring rehabilitation assistance as a result of mental illness, alcoholism, detention, drug addiction, or similar condition on a daytime care basis.
15. Health Care. A facility providing medical, psychiatric, or surgical service for sick or injured persons exclusively on an outpatient basis including emergency treatment, diagnostic services, training, administration, and services to outpatients, employees, or visitors.
16. Hospital. A facility providing medical, psychiatric, or surgical service for sick or injured persons primarily on an inpatient basis, including emergency treatment, diagnostic services, training, administration, and services to patients, employees, or visitors.
17. Maintenance Facilities. A public facility supporting maintenance, repair, vehicular or equipment servicing, material storage, and similar activities including street or sewer yards, equipment service centers, and similar uses having characteristics of commercial services or contracting or industrial activities.
18. Park and Recreation Services. Publicly owned and operated parks, playgrounds, recreation facilities, and open spaces.
19. Postal Facilities. Postal services, including post offices, bulk mail processing or sorting centers operated by the United States Postal Service.

20. Primary Educational Facilities. A public, private, or parochial school offering instruction at the elementary school level in the branches of learning study required to be taught in schools within the State of Iowa.
21. Public Assembly. Facilities owned and operated by a public agency or a charitable nonprofit organization accommodating major public assembly for recreation, sports, amusement, or entertainment purposes. Typical uses include civic or community auditoriums, sports stadiums, convention facilities, fairgrounds, incidental sales, and exhibition facilities.
22. Religious Assembly. A use located in a permanent building and providing regular organized religious worship and religious education incidental thereto (excluding private primary or private secondary educational facilities, community recreational facilities, day-care facilities, and incidental parking facilities). A property tax exemption obtained pursuant to *Property Tax Code* of the State of Iowa shall constitute prima facie evidence of religious assembly use.
23. Safety Services. Facilities for conduct of public safety and emergency services including police and fire protection services and emergency medical and ambulance services.
24. Secondary Educational Facilities. A public, private, or parochial school offering instruction at the junior high or high school level in the branches of learning and study required to be taught in the schools of the State of Iowa.
25. Utilities. Any above-ground structures or facilities, other than lines, poles, and other incidental facilities, used for the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, delivery, collection, or storage of water, sewage, electricity, gas, oil, energy media, communications, electronic or electromagnetic signals, or other services which are precedent to development and/or use of land.

**167.06 OFFICE USE TYPES.** Office use types include uses providing for administration, professional services, and allied activities. These uses often invite public clientele but are more limited in external effects than commercial uses.

1. General Offices. Use of a site for business, professional, or administrative offices. Typical uses include real estate, insurance, management, travel, or other business offices; organization and association offices; banks or financial offices; or professional offices.
2. Financial Services. Provision of financial and banking services to consumers or clients. Walk-in and drive-in services to consumers are provided on site. Typical uses include banks, savings and loan associations, savings banks, and loan companies. An ATM (automatic teller machine) which is not accompanied on-site by an office of its primary financial institution is considered a general retail services use type.
3. Medical Offices. Use of a site for facilities which provide diagnoses and outpatient care on a routine basis, but which do not provide prolonged, in-house medical or surgical care. Medical offices are operated by doctors, dentists, or similar practitioners licensed for practice in the State of Iowa.
4. Delayed Deposit Services Business. A person or individual, group of individuals, partnership, association, corporation, or any other business unit or legal entity who for a fee accepts a check, draft, share draft, or other instrument for the payment of money dated subsequent to the date it was written or accepts a check,

draft, share draft, or other instrument for the payment of money dated on the date it was written and holds it for a period of time prior to deposit or presentment pursuant to an agreement with, or any representation made to, the maker of the check, draft, or other instrument whether express or implied.

**167.07 COMMERCIAL USE TYPES.** Commercial uses include the sale, rental, service, and distribution of goods; and the provision of services other than those classified under other use types.

1. **Agricultural Sales and Service.** Establishments or places of business engaged in sale from the premises of feed, grain, fertilizers, farm equipment, pesticides, and similar goods or in the provision of agriculture-related services with incidental storage on lots other than where the service is rendered. Typical uses include nurseries, hay, farm implement dealerships, feed and grain stores, and tree service firms.

2. **Automotive and Equipment Services.** Establishments or places of business primarily engaged in sale and/or service of automobiles, trucks, or heavy equipment. The following are considered automotive and equipment use types:

A. **Automotive Rental and Sales:** Sale or rental of automobiles, noncommercial trucks, motorcycles, motor homes, recreational vehicles or boats, including incidental storage, maintenance, and servicing. Typical uses include new and used car dealerships; motorcycle dealerships; and boat, trailer, and recreational vehicle dealerships.

B. **Auto Services:** Provision of fuel, lubricants, parts and accessories, and incidental services to motor vehicles; and washing and cleaning and/or repair of automobiles, non-commercial trucks, motorcycles, motor homes, recreational vehicles, or boats, including the sale, installation, and servicing of equipment and parts. Typical uses include service stations, car washes, muffler shops, auto repair garages, tire sales and installation, wheel and brake shops, and similar repair and service activities but exclude dismantling, salvage, or body and fender repair services.

C. **Body Repair:** Repair, painting, or refinishing of the body, fender, or frame of automobiles, trucks, motorcycles, motor homes, recreational vehicles, boats, tractors, construction equipment, agricultural implements, and similar vehicles or equipment. Typical uses include body and fender shops, painting shops, and other similar repair or refinishing garages.

D. **Equipment Rental and Sales:** Sale or rental of trucks, tractors, construction equipment, agricultural implements, mobile homes, and similar heavy equipment, including incidental storage, maintenance, and servicing. Typical uses include truck dealerships, construction equipment dealerships, and mobile home sales establishments.

E. **Equipment Repair Services:** Repair of trucks, tractors, construction equipment, agricultural implements, and similar heavy equipment. Typical uses include truck repair garages, tractor and farm implement repair services, and machine shops, but exclude dismantling, salvage, or body and fender repair services.

F. **Vehicle Storage:** Storage of operating or non-operating vehicles for a period of no more than 21 days. Typical uses include storage of private parking tow-aways or impound yards but exclude dismantling or salvage.

Long-term storage of operating or non-operating vehicles beyond 21 days constitutes an industrial use type.

3. **Bed and Breakfast.** A lodging service that provides overnight or short-term accommodations to guests or visitors, usually including provision of breakfast. Bed and breakfasts are usually located in large residential structures that have been adapted for this use. For the purpose of this definition, bed and breakfasts are always owned and operated by the resident owner of the structure, include no more than ten units, and accommodate each guest or visitor for no more than seven consecutive days during any one-month period.
4. **Business Support Services.** Establishments or places of business primarily engaged in the sale, rental, or repair of equipment, supplies, and materials or the provision of services used by office, professional, and service establishments to the firms themselves but excluding automotive, construction, and farm equipment; or engaged in the provision of maintenance or custodial services to businesses. Typical uses include office equipment and supply firms, small business machine repair shops or hotel equipment and supply firms, janitorial services, photography studios, and convenience printing and copying.
5. **Business or Trade Schools.** A use providing education or training in business, commerce, language, or other similar activity or occupational pursuit, and not otherwise defined as a home occupation, college or university, or public or private educational facility.
6. **Campground.** Facilities providing camping or parking areas and incidental services for travelers in recreational vehicles or tents, which accommodate each guest or visitor for no more than seven consecutive days during any one-month period.
7. **Cocktail Lounge.** A use engaged in the preparation and retail sale of alcoholic beverages for consumption on the premises, including taverns, bars, cocktail lounges, and similar uses other than a restaurant as that term is defined in this section.
8. **Commercial Recreation.** Private businesses or other organizations, which may or may not be commercial by structure or by nature, which are primarily engaged in the provision or sponsorship of sports, entertainment, or recreation for participants or spectators. Typical uses include driving ranges, theaters, private dance halls, or private skating facilities. Commercial recreation is divided into the following categories:
  - A. **Commercial Recreation (Limited):** Facilities which include a structure of 10,000 square feet or less and/or a site covering an area of no more than one-half acre.
  - B. **Commercial Recreation (General):** Facilities which include a structure of more than 10,000 square feet and/or a site covering an area of more than one-half acre.
9. **Communications Services.** Establishments primarily engaged in the provision of broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms but not including those classified as Utilities. Typical uses include television studios, telecommunication service centers, telegraph service offices, or film and sound recording facilities. Broadcast towers and their minor ancillary ground structures are classified as miscellaneous use types.

10. Construction Sales and Services. Establishments or places of business primarily engaged in wholesale or retail sales, from the premises, of materials used in the construction of buildings or other structures, other than retail sale of paint, fixtures, and hardware. This use type excludes those uses classified under automotive and equipment services. Typical uses include building materials sales or tool and equipment rental or sales.

11. Consumer Services. Establishments which provide services primarily to individuals and households, but excluding automotive use types. Typical uses include automated banking machines, appliance repair shops, watch or jewelry repair shops, or musical instrument repair shops.

12. Convenience Storage. Storage services primarily for personal effects and household goods within enclosed storage areas having individual access but excluding use of such areas as workshops, hobby shops, manufacturing, or commercial activity. Typical uses include mini-warehousing.

13. Firework Sales. Establishments selling consumer first class fireworks and consumer second class fireworks. A firework Seller License issued by the State Fire Marshal is required. Firework establishments must comply with all standards of the National Fire Protection Act 1124.

14. Food Sales. Establishments or places of business primarily engaged in the retail sale of food or household products for home consumption. Typical uses include groceries, delicatessens, meat markets, retail bakeries, and candy shops.

A. Convenience Food Sales: Establishments occupying facilities of less than 10,000 square feet; and characterized by sales of specialty foods or a limited variety of general items, and by the sales of fuel for motor vehicles.

B. Limited Food Sales: Establishments occupying facilities of less than 10,000 square feet; and characterized by sales of specialty foods or a limited variety of general items, but excluding the accessory sale of fuel for motor vehicles. Typical uses include delicatessens, meat markets, retail bakeries, candy shops, and small grocery stores.

C. General Food Sales: Establishments selling a wide variety of food commodities, using facilities larger than 10,000 square feet. Typical uses include supermarkets.

15. Funeral Services. Establishments engaged in undertaking services such as preparing the human dead for burial and arranging and managing funerals. Typical uses include funeral homes or mortuaries.

16. Gaming Facilities. Establishments engaged in the lawful, on-site operation of games of chance that involve the risk of money for financial gain by patrons. Gaming facilities shall include the accessory sale of liquor and food, pursuant to licensing regulations of the City or the State.

17. General Retail Services (Small and Large Scale). Sale or rental with incidental service of commonly used goods and merchandise for personal or household use but excludes those classified more specifically by these use type classifications. Typical uses include department stores, apparel stores, furniture stores, or establishments providing the following products or services: household cleaning and maintenance products; drugs, cards, stationery, notions, books, tobacco products, cosmetics, and specialty items; flowers, plants, hobby materials, toys, and handcrafted items; apparel

jewelry, fabrics and like items; cameras, photographic services, household electronic equipment, records, sporting equipment, kitchen utensils, home furnishing and appliances, art supplies and framing, arts and antiques, paint and wallpaper, hardware, carpeting and floor covering; interior decorating services; retail sales of pets; office supplies; mail order or catalog sales; bicycles; and automotive parts and accessories (excluding service and installation).

A. General retail services (small scale) include facilities with no more than 10,000 square feet in a single establishment or 30,000 square feet within a multiple-tenant common development.

B. General retail services (large scale) include facilities of 10,000 or more square feet in a single establishment or 30,000 square feet within a multiple-tenant common development.

18. Kennels. Boarding and care services for dogs, cats, and similar small mammals or large birds; or any premises on which three or more animals included under this definition over four months of age are kept and maintained. Typical uses include boarding kennels, ostrich-raising facilities, pet motels, or dog-training centers.

19. Laundry Services. Establishments primarily engaged in the provision of laundering, cleaning, or dyeing services other than those classified as personal services. Typical uses include bulk laundry and cleaning plans, diaper services, or linen supply services.

20. Liquor Sales. Establishments or places of business engaged in retail sale for off-premises consumption of alcoholic beverages. Typical uses include liquor stores, bottle shops, or any licensed sales of liquor, beer, or wine for off-site consumption.

21. Lodging. Lodging services involving the provision of room and/or board, but not meeting the classification criteria of bed and breakfasts. Typical uses include the following definitions:

A. “Extended stay hotel or motel” means any structure consisting of one or more buildings, with more than five specific dwelling units with provisions for living, eating, contain kitchen facilities for food preparation including, but not limited to, refrigerators, stoves and ovens, sanitation, separate bathroom and kitchen sink, and sleeping in each unit, that is specifically constructed, kept, used, maintained, advertised, and held out to the public to be a place where temporary residence is offered for pay to persons, for a minimum stay of more than thirty days and a maximum stay of ten months within the dwelling units at the structure, that is approved pursuant to a valid certificate of occupancy issued by the building official having jurisdiction as having all of the required dwelling unit features, and for which such valid certificate of occupancy indicates the specific rooms within the structure that can be used as dwelling units, and that is approved by the Fire Marshal for extended stay temporary residence purposes. Each room shall be a minimum of 275 square feet in area, exclusive of bathroom, closet, or balcony space. Weekly services for each dwelling unit of linen change, towel change, soap change, general cleanup, and a registration lobby staffed on a 12-hour daily basis and 24-hour daily registration and emergency phone number are provided by the management. Each extended stay dwelling unit and facilities are subject to the City’s rental inspection outlined in the Chapter 156 of this Code of Ordinances (Rental Housing Code).

For the purposes of parking requirements, extended stay hotel or motels will have to meet the Multi-Family Residential parking requirements.

B. “Hotel” means one or more buildings containing 20 or more guest rooms, with such rooms being designed or intended to be used, or which are used as temporary or overnight accommodations for guests in which daily services of linen change, central telephone switchboard, towel change, soap change, general cleanup, and a registration lobby staffed on a 24-hour daily basis are provided by the management. Each room shall be a minimum of 250 square feet in area, exclusive of bathroom, closet, or balcony space. No room may be used by the same person or persons for a period exceeding 30 days per year. Access to all rooms shall be provided through one or more common entrances. Accessory uses are encouraged and permitted accessory uses include restaurants, cocktail lounges, banquet halls, ballrooms, or meeting rooms.

C. “Motel” means a building or group of buildings containing dwelling units, intended to be used or which are used as temporary or overnight accommodations for guests, in which daily services of linen change, central telephone switchboard, towel change, soap change, general cleanup, and a registration lobby staffed on a 12-hour daily basis and 24-hour daily registration and emergency phone number are provided by the management. Each room shall be a minimum of 250 square feet in area, exclusive of bathroom, closet, or balcony space. No room may be used by the same person or persons for a period exceeding 30 days per year. Each living or sleeping unit shall have an individual entrance from outside the building. Living or sleeping units may be equipped with cooking facilities. Parking close to the entrance of each living or sleeping unit should be made available.

22. Pawn Shop. The location at which or premises upon which a pawnbroker regularly conducts business. Pawnbroker is defined in Chapter 124 of this Code of Ordinances.

23. Personal Improvement Services. Establishments primarily engaged in the provision of informational, instructional, personal improvements, and similar services of a non-professional nature. Typical uses include driving schools, health or physical fitness studios, reducing salons, dance studios, handicraft and hobby instruction.

24. Personal Services. Establishments or places of business primarily engaged in the provision of services of a personal nature. Typical uses include beauty and barber shops; seamstress, tailor, or shoe repair shops; photography studios; or dry cleaning stations serving individuals and households, driving schools, health or physical fitness studios, reducing salons, dance studios, handicraft and hobby instruction.

25. Pet Services. Pet health services and grooming and boarding, when totally within a building, of dogs, cats, birds, fish, and similar small animals customarily used as household pets. Typical uses include pet stores, small animal clinics, dog bathing and clipping salons, and pet grooming shops, but exclude uses for livestock and large animals.

26. Research Services. Establishments primarily engaged in research of an industrial or scientific nature. Typical uses include electronics research laboratories, space research and development firms, testing laboratories, or pharmaceutical research labs.



27. Restaurant, Drive-In or Fast-Food. An establishment whose principal business is cooking and preparation of food to sell for consumption within a motor vehicle parked on the premises or within the restaurant building, or any combination thereof, and whose principal method of operation includes the following characteristics as contrasted to a standard restaurant; designed to attract and depend upon a large volume of customers; limited, relatively low-cost menu items; quick-order service at a window or counter, from where the customer generally carries the food to another counter or table for consumption; and most food is served in or on paper, plastic or other disposable containers; and any other restaurant not defined as a standard restaurant.
28. Restaurant, General. An establishment whose principal business is cooking and preparation of food to sell for consumption within the restaurant building and whose principal method of operation is characterized by customers being seated by a restaurant employee and provided with an individual menu, and who are served by a restaurant employee at the same table or counter at which food and beverages are consumed; also including cafeteria line service offering a wide selection of main courses and other menu items, including restaurants with limited drive-thru service to customers in a motor vehicle. Delicatessens, establishments whose principal business is the sale of pizza or of ice cream, yogurt, coffee or milk products are specifically included in the definition.
29. Restricted Businesses. Any business activity which offers the opportunity to view sexual activities or view or touch anatomical areas for entertainment purposes in a manner that offends contemporary standards in the community of Windsor Heights, depicts or describes sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, or scientific value. This category includes the sale or viewing of visual or print materials that meet these criteria. Typical uses include retail services or stores which are distinguished by an emphasis on activities or materials that emphasize sexual content; businesses which offer live performances characterized by exposure of specified anatomical areas; and adult theaters.
30. Short Term Vacation Rental (STVR). A lodging service that provides overnight or short-term accommodations to guests and visitors. For the purpose of this definition STVR's are always owned and operated by the resident owner of the structure and accommodate each guest or visitor for no more than 14 consecutive days during any one month period. For the purpose of this definition, the lodging service must be approved by a national accommodation service such as Airbnb, VRBO or other similar service. To be used as an STVR, property owner shall reside at the residence a minimum of 180 calendar days per year.
31. Stables and/or Riding Academies. The buildings, pens, and pasture areas used for the boarding and feeding of horses, llamas, or other equine not owned by the occupants of the premises. This use includes instruction in riding, jumping, and showing or the riding of horses/equine for hire.
32. Surplus Sales. Businesses engaged in the sale of used or new items, involving regular, periodic outdoor display of merchandise for sale. Typical uses include flea markets and factory outlets or discount businesses with outdoor display.
33. Trade Services. Establishments or places of business primarily engaged in the provision of services that are not retail or primarily dedicated to walk-in clientele. These services often involve services to construction or building trades and may involve a small amount of screened, outdoor storage in appropriate zoning districts. Typical

uses include shops or operating bases for plumbers, electricians, or HVAC (heating, ventilating, and air conditioning) contractors.

34. **Vehicle Storage.** Short-term storage of operating or non-operating vehicles for a period of no more than 21 days. Typical uses include storage of private parking tow-aways or impound yards but exclude dismantling or salvage. Long-term storage beyond 21 days constitutes an industrial use type.

35. **Veterinary Services.** Veterinary services and hospitals for animals. Typical uses include pet clinics, dog and cat hospitals, pet cemeteries, and veterinary hospitals for livestock and large animals.

#### **167.08 PARKING USE TYPES.**

1. **Off-Street Parking Lots and Facilities.** Parking use types include surface parking of motor vehicles on a temporary basis within a privately or publicly owned off-street parking facility.

2. **Parking Structure.** The use of a site for a multi-level building which provides for the parking of motor vehicles on a temporary basis, other than as an accessory to a principal use on the same site.

#### **167.09 INDUSTRIAL USE TYPES.** Industrial use types include the on-site extraction or production of goods by non-agricultural methods and the storage and distribution of products.

1. **Construction Yards.** Establishments housing facilities of businesses primarily engaged in construction activities, including incidental storage of materials and equipment on lots other than construction sites. Typical uses are building contractor's yards.

2. **Custom Manufacturing.** Establishments primarily engaged in the on-site production of goods by hand manufacturing, within enclosed structures, involving:

- A. The use of hand tools, or
- B. The use of domestic mechanical equipment not exceeding 2 horsepower, or
- C. A single kiln not exceeding 8 KW or equivalent.

This category also includes the incidental direct sale to consumers of only those goods produced on site. Typical uses include ceramic studios, custom jewelry manufacturing, and candle making shops.

3. **Light Industry.** Establishments engaged in the manufacture or processing of finished products from previously prepared materials, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales, and distribution. These establishments are characterized by having no major external environmental effects across property lines and include no unscreened or un-enclosed outdoor storage. Typical uses include commercial bakeries, dressed beef processing plants, soft drink bottling, apparel assembly from fabrics, electronics, manufacturing, print shops, and publishing houses.

4. **General Industry.** Enterprises engaged in the processing, manufacturing, compounding, assembly, packaging, storage, treatment, or fabrication of materials and products from prepared materials or from raw materials without noticeable noise, odor, vibration, or air pollution effects across property lines.

5. Heavy Industry. Enterprises involved in the basic processing and manufacturing of products, predominately from raw materials, with noticeable noise, odor, vibration, or air pollution effects across property lines; or a use or process engaged in the storage of or processes involving potentially or actually hazardous, explosive, flammable, radioactive, or other commonly recognized hazardous materials.
6. Recycling Collection. Any site which is used in whole or part for the receiving or collection of any post-consumer, non-durable goods including (but not limited to) glass, plastic, paper, cardboard, aluminum, tin, or other recyclable commodities.
7. Recycling Processing. Any site which is used for the processing of any post-consumer, non-durable goods including (but not limited to) glass, plastic, paper, cardboard, aluminum, tin, or other recyclable commodities.
8. Resource Extraction. A use involving on-site extraction of surface or subsurface mineral products or natural resources, excluding the grading and removal of dirt. Typical uses are quarries, borrow pits, sand and gravel operations, and mining.
9. Salvage Services. Places of business primarily engaged in the storage, sale, dismantling or other processing of used or waste materials which are not intended for reuse in their original forms. Typical uses include automotive wrecking yards, junk yards, or paper salvage yards.
10. Vehicle Storage (Long-Term). Long-term storage of operating or non-operating vehicles for a period exceeding 21 days. Typical uses include storage of private parking tow-aways or impound yards but exclude dismantling or salvage.
11. Warehousing. Uses including open-air storage, distribution, and handling of goods and materials, but not including storage of hazardous materials. Typical uses include monument yards or open storage.

**167.10 TRANSPORTATION USE TYPES.** Transportation use types include the use of land for the purpose of providing facilities supporting the movement of passengers and freight from one point to another.

1. Aviation Facilities. Landing fields, aircraft parking and service facilities, and related facilities for operation, service, fueling, repair, storage, charter, sales, and rental of aircraft, and including activities directly associated with the operation and maintenance of airport facilities and the provision of safety and security.
2. Railroad Facility. Railroad yards, equipment servicing facilities, and terminal facilities.
3. Transportation Terminal. Facility for loading, unloading, and interchange of passengers, baggage, and incidental freight or package express, including bus terminals, railroad stations, and public transit facilities.
4. Truck Terminal. A facility for the receipt, transfer, short term storage, and dispatching of goods transported by truck.

**167.11 MISCELLANEOUS TYPE USES.**

1. Alternative Energy Production Devices. The use of a site for the production of energy utilizing methods that do not involve the oxidation, combustion, or fission of primary materials. Typical uses include solar collector fields, geothermal energy installations, or water-powered mills or generating facilities.

2. Broadcasting Tower. A structure for the transmission or broadcasting of radio, television, radar, or microwaves, ordinarily exceeding the maximum height permitted in its zoning district.
3. Amateur Radio Tower. A structure for the transmission or broadcasting of electromagnetic signals by FCC-licensed amateur radio operators.
4. Construction Batch Plant. A temporary demountable facility used for the manufacturing of cement, concrete, asphalt, or other paving materials intended for specific construction projects.
5. Wind Energy Conservation System (WECS). Any device which converts wind energy to a form of usable energy, including wind charges, windmills, or wind turbines.
6. Landfill (Non-Putrescible Solid Waste Disposal). The use of a site as a depository for solid wastes that do not readily undergo chemical or biological breakdown under conditions normally associated with land disposal operations. Typical disposal material would include ashes, concrete, paving wastes, rock, brick, lumber, roofing materials, and ceramic tile.
7. Landfill (Putrescible and Non-Putrescible Solid Waste Disposal). The use of a site as a depository for any solid waste except hazardous and toxic waste as defined by the Federal Environmental Protection Agency and/or the State of Iowa. Typical disposal material would include non-putrescible wastes and putrescible wastes such as vegetation, tree parts, agricultural wastes (garbage) and manure.

*(Ch. 167 – Ord. 17-10 – Dec. 17 Supp.)*

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## CHAPTER 168

# ZONING CODE – ZONING DISTRICT REGULATIONS

168.01 Purpose  
168.02 Establishment of Districts  
168.03 Application of Districts  
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168.06 Zoning Map

168.07 Interpretation of District Boundaries  
168.08 Vacation of Streets and Alleys  
Table 168-1 Purposes of Zoning Districts  
Table 168-2 Permitted Uses by Zoning District  
Table 168-3 Summary of Site Development Regulations

**168.01 PURPOSE.** This chapter presents the Zoning District Regulations. Zoning Districts are established in this Zoning Code to promote compatible land use patterns and to establish site development regulations appropriate to the purposes and specific nature of each district.

**168.02 ESTABLISHMENT OF DISTRICTS.** The following base districts and overlay districts are hereby established. Table 168-1 displays the purposes of these districts.

<u>BASE ZONING DISTRICT</u>	<u>DISTRICT NAME</u>
R-1	Single-Family Residential District (Low-Density)
R-2	Single-Family Residential District (Urban-Density)
R-3	Urban Family Residential District
R-4	Multiple-Family Residential District
MH	Mobile Home Residential District
O	Office/Limited Commercial District
CC	Community Commercial District
GC	General Commercial District
UC	University Avenue Corridor Mixed Use District
TC	Town Center District
LI	Limited Industrial District
<u>OVERLAY DISTRICT</u>	<u>DISTRICT NAME</u>
MU	Mixed Use District
PUD	Planned Unit Development Overlay District
F	Floodplain/Floodway Overlay District

**168.03 APPLICATION OF DISTRICTS.** A base district designation shall apply to each lot or site within the City and its planning jurisdiction. Each site must be in one base district. The Planned Unit Development and Floodplain/Floodway Overlay Districts may be applied to any lot or site or any portion thereof, in addition to any base district designation. The Mixed Use District may stand alone as a base district or act as an overlay district.

**168.04 HIERARCHY.** References in this Zoning Code to less intensive or more intensive districts shall be deemed to refer to those agricultural, residential, commercial, and industrial

Base Zoning Districts established in Section 168.02, and shall represent a progression from the R-1 Single-Family Residential District as the least intensive to the LI Limited Industrial District as the most intensive. The Overlay Districts shall not be included in this reference.

**168.05 DEVELOPMENT REGULATIONS.** For each Zoning District: Purposes are set forth in Table 168-1; uses permitted are set forth in Table 168-2; and site development regulations are presented in Table 168-3. Supplemental regulations may affect specific land uses or development regulations in each zoning district. The applicable supplemental regulations are noted in Table 168-2.

**168.06 ZONING MAP.**

1. Adoption of Zoning Map. Boundaries of zoning districts established by this Zoning Code shall be shown on the Zoning Map maintained by the City Clerk. This map, together with all legends, references, symbols, boundaries, and other information, shall be adopted as a part of and concurrent with this Code. The Zoning Map shall be prominently displayed in the Council Chambers and/or an area accessible to the public at City Hall.
2. Changes to the Zoning Map. The Zoning Map may be changed from time to time by ordinance, following the procedure set forth by Chapter 177. Such changes shall be reflected on the Zoning Map. The City Administrator shall keep a complete record of all changes to the Zoning Map.<sup>†</sup>

**168.07 INTERPRETATION OF DISTRICT BOUNDARIES.** The following rules shall apply in determining the boundaries of any zoning district shown on the Zoning Map.

1. Where district boundaries are indicated as approximately following lot lines, such lot lines shall be considered the district boundaries.
2. Where district boundaries are indicated as within street or alley, railroad, or other identifiable rights-of-way, the centerline of such rights-of-way shall be deemed the district boundary.
3. Where a district boundary divides a property, the location of the boundary shall be determined by the use of the scale appearing on the Zoning Map.
4. The City Council shall determine any other uncertainty regarding district boundaries not covered in this section.

**168.08 VACATION OF STREETS AND ALLEYS.** Whenever a public street or alley is vacated, the zoning district adjoining each side of such right-of-way shall be extended out to the former centerline.

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<sup>†</sup> See EDITOR'S NOTE at the end of this chapter for ordinances amending the zoning map.

**Table 168-1 – Purposes of Zoning Districts**

<b>Symbol</b>	<b>Title</b>	<b>Purpose</b>
R-1	Single-Family Residential (Low-Density)	This district is intended to provide for low-density residential neighborhoods, characterized by single-family dwellings on relatively large lots with supporting community facilities and urban services. Its regulations are intended to minimize traffic congestion and to assure that density is consistent with the carrying capacity of infrastructure.
R-2	Single-Family Residential (Urban Density)	This district is intended to provide for medium-density residential neighborhoods, characterized by single-family dwellings on moderately sized lots with supporting community facilities and urban services. Its regulations apply to established parts of Windsor Heights and to new areas which are developed to higher residential densities. Regulations are intended to minimize traffic congestion and to assure that density is consistent with the carrying capacity of infrastructure.
R-3	Urban Family Residential	This district is intended to provide for medium-density residential neighborhoods, characterized by single-family dwellings on small to moderately sized lots and low-density, multiple-family development. It provides special regulations to encourage innovative forms of housing development. It adapts to both established and newer neighborhoods, as well as transitional areas between single-family and multi-family neighborhoods. Its regulations are intended to minimize traffic congestion and to assure that density is consistent with the carrying capacity of infrastructure.
R-4	Multiple-Family Residential	This district is intended to provide locations primarily for residential multiple-family housing, with supporting and appropriate community facilities. It also permits some nonresidential uses such as offices through a special permit procedure, to permit the development of mixed-use neighborhoods.
MH	Mobile Home Residential	This district recognizes that mobile home development, properly planned, can provide important opportunities for affordable housing. It provides opportunities for mobile home development within planned parks or subdivisions, along with the supporting services necessary to create quality residential neighborhoods.
O	Office/Limited Commercial	This district reserves appropriately located area for office and community-oriented commercial development and distinguishes these from other, more intensive commercial activities. The commercial and office uses permitted are compatible with nearby residential and civic areas. Development regulations are designed to ensure compatibility in size, scale, and landscaping with nearby residences.
CC	Community Commercial	This district is intended for commercial facilities which serve the needs of markets ranging from several neighborhoods to the overall region. While allowed commercial and office uses are generally compatible with nearby residential areas, traffic and operating characteristics may have more negative effects on residential neighborhoods than those permitted in the O District. CC Districts are appropriate at major intersections, at the junction of several neighborhoods, or at substantial commercial sub-centers.

**Table 168-1 – Purposes of Zoning Districts (continued)**

<b>Symbol</b>	<b>Title</b>	<b>Purpose</b>
GC	General Commercial	This district accommodates a variety of commercial uses, including auto-oriented uses, some of which have significant traffic or visual effects. These districts may include commercial uses which are oriented to services, including automotive services, rather than retail activities. These uses may create land use conflicts with adjacent residential areas, requiring provision of adequate buffering. This district is most appropriately located along major arterial streets or in areas that can be adequately buffered from surrounding residences.
UC	University Avenue Corridor Mixed Use	This district recognizes the mixed-use character of the University Avenue Corridor, which contains a combination of residential, commercial, and office uses. This corridor will include special aesthetic and sign design standards which will help enhance its character as Windsor Heights' main street.
TC	Town Center District	This district is intended to provide appropriate development regulations to encourage the emergence of the 66 <sup>th</sup> and University Avenue area as a town center for Windsor Heights. The regulations will recognize the mixed-use and civic character of the area, and will help to encourage the development of a pedestrian oriented district at the intersection.
LI	Limited Industrial	This district is intended to reserve sites appropriate for the location of industrial uses with relatively limited environmental effects. The district is designed to provide appropriate space and regulations to encourage good quality industrial development, while assuring that facilities are served with adequate parking and loading facilities.
<p>Special and Overlay Districts: These districts may be applied to a parcel in combination with a Base Zoning District. Overlay Districts are intended to help the City manage development in areas that exhibit special characteristics or features that warrant a greater differentiation of standards. Special and Overlay Districts include:</p> <ul style="list-style-type: none"> <li>▪ Mixed Use District</li> <li>▪ Planned Unit Development District</li> <li>▪ Floodplain/Floodway District</li> </ul> <p>Specific purposes and standards for each Overlay District are detailed in Chapter 169: Special and Overlay Districts.</p>		



**Table 168-2 – Permitted Uses by Zoning District**

Use Types	R-1	R-2	R-3	R-4	MH	O	CC	GC	UC	TC	LI	Additional Regulations
<b>Agricultural Uses:</b>												
Horticulture							C	C				
Crop Production												
Animal Production												
<b>Residential Uses:</b>												
Single-Family Detached	P	P	P	P	P	C			P	C		
Single-Family Attached	C	P	P	P	P	C			P	C		Sec. 171.03
Duplex		C	P	P		C			P			
Two-Family	C	C	P	P					P			
Townhouse			P	P		C	C		P			Sec. 171.03
Multiple-Family				P		C	C		P	P		
Downtown Residential										P		Sec. 171.03
Group Residential			C	P		C						
Manufactured Housing Residential	P	P	P	P	P	C						Sec. 171.03
Mobile Home Park					C							Sec. 171.03
Retirement Residential	C	C	C	P	C	C			C	P		
<b>Civic Uses:</b>												
Administration	C	C	C	C	C	P	P	P	P	P	P	
Cemetery	C	C	C	C								
Clubs	C	C	C	C	C	C	P	P	P	P		Sec. 171.04(1)
College/University	C	C	C	C	C	C	P	P	C	C		
Construction Sales/Service							P	P			P	
Convalescent Service		C	C	C	C	P	P		C			
Cultural Services	C	C	C	P	P	P	P	P	P	P	P	
Day Care (Limited)	P	P	P	P	P	P	P	P	P	P	C	Sec. 171.04(2)
Day Care (General)	C	C	C	P	C	P	P	P	P	P	C	Sec. 171.04(2)
Detention Facilities								C			C	
Elder Family Home	C	C	C	P	C	P			P	P		Sec. 171.04(3)
Elder Group Home	C	C	C	P	C	P			P	P		Sec. 171.04(3)
Emergency Residential	C	C	C	C	C	P	P	C	P	P	C	
Family Home	C	C	C	P	C	C			C	C		
Group Care Facility		C	C	P	C	P	P	P	P	P	C	Sec. 171.04(4)
Group Home	C	C	C	P	P	P	P	C	P	P		Sec. 171.04(4)
Guidance Services				C		P	P	P	P	P	P	
Health Care			C	C		P	P	P	P	P	P	
Hospitals				C		P	C	C	C	C	C	

P = Uses Permitted by Right

C = Uses Permitted by Conditional Use permit approval according to Sec. 177.03.

Blank = Use Not Permitted

**Table 168-2 – Permitted Uses by Zoning District (continued)**

Use Types	R-1	R-2	R-3	R-4	MH	O	CC	GC	UC	TC	LI	Additional Regulations
<b>Civic Uses (continued)</b>												
Maintenance Facility								P			P	
Parks/Recreation	P	P	P	P	P	P	P	P	P	P	P	
Postal Facilities						P	P	P	P	P	P	
Primary Education	C	C	C	P	P	P	P	C	P	P		
Public Assembly						P	C	P	P	P		
Religious Assembly	C	C	C	P	P	P	P	P	P	P		
Safety Services	C	C	C	P	P	P	P	P	P	P	P	
Secondary Education	C	C	C	C	C	C	C	C	C	C		
Utilities	C	C	C	C	C	C	P	P	P	P	P	
<b>Office Uses:</b>												
General Offices				C		P	P		P	P	P	
Financial Services				C		P	P		P	P	P	
Medical Offices				C		P	P		P	P	P	
<b>Commercial Uses:</b>												
Agricultural Sales/Service							C	P			P	
Auto Rental/Sales								C			P	Sec. 171.05(3)
Auto Services						C	C	P	C	C	P	Sec. 171.05(1,2)
Body Repair							C	C			P	Sec. 171.05(1)
Equipment Rental/Sales								P			P	Sec. 171.05(3)
Equipment Repair								P			P	Sec. 171.05(1)
Bed and Breakfast	C	C	C	C		P	P	P	P	P		Sec. 171.05(4)
STVR	P	P	P	P	P	P	P	P	P	P	P	
Business Support						P	P	P	P	P	P	
Business/Trade School						C	P	P	P	P	P	
Campground								C				Sec. 171.05(5)
Cocktail Lounge							P	P	C	C	C	
Commercial Recreation (Limited)						C	P	P	P	P	P	
Commercial Recreation (General)							C	P	C		P	
Communication Service						P	P	P	P	P	P	
Construction Sales/Service								P			P	
Consumer Service						C	P	P	P	P	P	
Convenience Storage							C	C			P	Sec. 171.05(6)
Delayed Deposit Services Business								C				Sec. 171.05(7)
Firework Sales							P	P				
Food Sales (Convenience)						C	C	P	C	C		
Food Sales (Limited)						C	P	P	P	P		

P = Uses Permitted by Right

C = Uses Permitted by Conditional Use permit approval according to Sec. 177.03.

Blank = Use Not Permitted

**Table 168-2 – Permitted Uses by Zoning District (continued)**

Use Types	R-1	R-2	R-3	R-4	MH	O	CC	GC	UC	TC	LI	Additional Regulations
<b>Commercial Uses (cont.)</b>												
Food Sales (General)							P	P	C	C		
Funeral Service			C	C		P	P	P	P	P		
Gaming Facility							C	P	C	C		
General Retail (Small-Scale)						C	P	P	P	P		
General Retail (Large-Scale)							P	P	C	P		
Kennels								C			P	
Laundry Services								P	C		P	
Liquor Sales							P	P	C	C	C	
Lodging						C	P	P	C	C		
Personal Improvement				C		P	P	P	P	P	P	
Personal Services				C		P	P	P	P	P	P	
Pet Services							P	P	P	P	P	
Research Services						C	P	P	P	P	P	
Restaurants (Drive-In)							P	P	C		C	Sec. 171.05(8)
Restaurants (General)						P	P	P	P	P	C	Sec. 171.05(8)
Restricted Businesses												Sec 177.05(9)
Stables												
Surplus Sales								P			P	
Trade Services							P	P	C	C	P	
Vehicle Storage								C			P	
Veterinary Services						C	P	P	P	P	P	
<b>Parking Uses:</b>												
Off-Street Parking						C	C	P	C	P	P	
Parking Structure						C	C	C	P	P	P	
<b>Industrial Uses:</b>												
Custom Manufacturing							C	P	C	C	P	
Light Industry								C			P	
General Industry											C	
Heavy Industry												
Resource Extraction												
Salvage Services											C	
Vehicle Storage (Long-Term)								C			C	
Warehousing											C	
Construction Yards											C	
Recycling Collection							C	P			P	
Recycling Processing											C	

P = Uses Permitted by Right

C = Uses Permitted by Conditional Use permit approval according to Sec. 177.03.

Blank = Use Not Permitted

**Table 168-2 – Permitted Uses by Zoning District (continued)**

Use Types	R-1	R-2	R-3	R-4	MH	O	CC	GC	UC	TC	LI	Additional Regulations
<b>Transportation Uses:</b>												
Aviation												
Railroad Facilities											P	
Truck Terminal											C	
Transportation Terminal							P	P	C	C	P	
<b>Miscellaneous Uses:</b>												
Broadcasting Tower							C	C			C	
Amateur Radio Tower	P	P	P	P	P	P	P	P	P	P	P	Sec. 172.03(2)
Construction Batch Plant											P	
WECS	C	C	C	C	C		C	C			P	
Landfill (Non-Putrescible)												
Landfill (Putrescible)												
Alternative Energy Production Devices	C	C	C	C	C		C	C			P	

**Note: Provisions of Sections 171.07 through 171.10 apply to all uses.**

P = Uses Permitted by Right

C = Uses Permitted by Conditional Use permit approval according to Sec. 177.03.

Blank = Use Not Permitted

**Table 168-3 – Summary of Site Development Regulations**

<b>Regulator</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>R-4*</b>	<b>MH</b>
Minimum Lot Area (square feet)	9,600	7,200	(Note 3)	(Note 5)	See Section 171.03(6)
Minimum Lot Width (feet)	80	50	60 (Note 4)	(Notes 4,6)	
Site Area per Housing Unit (square feet)	9,600	7,200	(Note 3)	(Note 7)	
Minimum Yards (feet)					
Front Yard	35	35	35	35	
Street Side Yard	35	35	35	35	
Interior Side Yard	8 (Note 1)	7 (Note 2)	7 (Note 2)	(Note 8)	
Rear Yard	35	35	35	35	
Maximum Height (feet)					
Main Building	35	35	35	(Note 9)	
Accessory Building	20*	20*	20*	20*	
Maximum Building Coverage	35%	45%	50%	50%	
Maximum Impervious Coverage	50% (Note 12)	55% (Note 12)	60% (Note 12)	65% (Note 12)	
Floor Area Ratio	NA	NA	NA	NA	

\*Side walls cannot exceed 14 feet

<b>Regulator</b>	<b>O</b>	<b>CC*</b>	<b>GC*</b>	<b>UC (Note 11)</b>	<b>TC (Note 11)</b>	<b>LI*</b>
Minimum Lot Area (square feet)	5,000 (Note 10)	7,200	5,000	5,000	None	10,000
Minimum Lot Width (feet)	50 (Note 10)	60	50	50	20	50
Site Area per Housing Unit (square feet)	(Note 10)	(Note 7)	NA	(Note 7)	500	NA
Minimum Yards (feet)						
Front Yard	25	25	15	25	0	25
Street Side Yard	15	25	15	25	0	10
Interior Side Yard	7	0	0	0	0	10
Rear Yard	25	20	15	10	0	10
Maximum Height (feet)						
Main Building	45	60	60	45	45	45
Maximum Building Coverage	50%	60%	70%	60%	100%	70%
Maximum Impervious Coverage	70% (Note 12)	80% (Note 12)	90% (Note 12)	80% (Note 12)	100% (Note 12)	90% (Note 12)
Floor Area Ratio	0.50	0.50	1.00	1.00	2.00	1.00

\*Uses in the R-4, LC, CC, GC and LI Districts are subject to landscape and screening provisions contained in Chapter 173.

Notes to Preceding Page (Table 168-3)

**Note 1:** Sum of side yards shall be 15 feet in R-1. Setbacks for nonresidential uses in R-1 shall be 40 feet on each side. See Section 171.03 for supplemental regulations governing single-family attached, zero lot line, and two-family residential use types.

**Note 2:** Sum of side yards shall be 15 feet in R-2 and R-3. Setbacks for nonresidential uses in R-2 and R-3 shall be 35 feet on each side. See Section 171.03 for supplemental regulations governing single-family attached, zero lot line, two-family, and townhouse residential use types.

**Note 3:** 7,200 square feet for single-family lots; 4,200 square feet per dwelling unit for two-, three-, or four-unit residential buildings.

**Note 4:** See Section 171.03 for supplemental regulations regarding modifications of lot width for townhouse residential use type.

**Note 5:** 7,200 square feet for single-family lots; 8,400 square feet per dwelling unit for two-unit residential buildings; 10,000 square feet for multi-family residential development.

**Note 6:** 60 feet for single-family of duplex residential, 80 feet for multi-family residential.

**Note 7:** 7,200 square feet for single-family lots; 4,200 square feet per dwelling unit for two-unit residential buildings; 1,000 additional square feet for each additional unit over four units. Density of multi-family residential may exceed this maximum, subject to approval of a Special Use Permit by the Board of Adjustment, with the recommendation of the Planning and Zoning Commission.

**Note 8:** Heights up to 30 feet: 10 foot minimum. Heights between 30 and 45 feet: 15 foot minimum; 30 foot sum of side yards.

**Note 9:** Heights over 45 feet permitted provided that each foot in height over 45 feet adds one foot to the minimum front, rear, and side yard setbacks.

**Note 10:** Same as R-4 for residential uses.

**Note 11:** The Planning Commission may establish different regulators for sites within the UC and TC Districts, based on the recommendations of the Comprehensive Plan or on specific redevelopment plans or projects within the districts.

**Note 12:** Maximum impervious restrictions apply not only to zoning districts, but also to uses outside of those districts consistent with the properties in the district. For example, a single-family residence located in a commercial district may still have only a maximum impervious coverage of 50% or 55%, based on lot size. Lot sizes consistent with an R-1 designation would be restricted to a maximum of 50% and lot sizes consistent with an R-2 District would be restricted to a maximum of 55%.



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## CHAPTER 169

# ZONING CODE – OVERLAY DISTRICTS

169.01 General Purpose  
169.02 Mixed Use District

169.03 Planned Unit Development District

**169.01 GENERAL PURPOSE.** Overlay Districts provide for base districts that allow multiple land uses and flexible development, with the requirement that a specific plan for the area be submitted by applicants. Overlay Districts are used in combination with base districts to modify or expand base district regulations. Overlay Districts are adapted to special needs of different parts of the City. The Overlay Districts are designed to achieve the following objectives:

1. To recognize special conditions in specific parts of the City which require specific regulation.
2. To provide flexibility in development and to encourage innovative design through comprehensively planned projects.

**169.02 MIXED USE DISTRICT.** The MU Mixed Use District is intended to accommodate projects which combine several compatible land uses into an integrated development. The MU District may also be used to pre-designate parts of the City which are appropriate for a mixture of residential, commercial, office, and accessory uses. The District permits mixing residential areas with workplaces and services. Development in the MU District must accommodate transportation systems, pedestrian and bicycle movement, and surrounding environments. All projects developed in an MU District are subject to the Site Review process as forth in Chapter 170.

1. Permitted Uses. Each regulation establishing an MU District establishes the use types permitted within its boundaries.
2. Site Development Regulations.
  - A. The minimum area of any MU District is three acres.
  - B. Prior to the issuance of any building permits or other authorization, all projects in the MU District shall receive approval by the City Council, following a recommendation by the Planning Commission, according to the Site Review procedure set forth in Chapter 170 of this Zoning Code. This approval may be granted for a specific plan for the development of an MU District in lieu of a plan for individual projects, provided that any subsequent developments are consistent with the specific plan.
3. Amendments. The Zoning Administrator is authorized at his/her discretion to approve amendments to an approved development plan, provided that:
  - A. A written request is filed with the Zoning Administrator, along with information specifying the exact nature of the proposed amendment.
  - B. The amendment is consistent with the provisions of this section.

C. The amendment does not alter the approved site regulations of the development plan and does not materially alter other aspects of the plan, including traffic circulation, mixture of use types, and physical design.

D. Any amendment not conforming to these provisions shall be submitted to the Planning Commission and City Council for action.

**169.03 PLANNED UNIT DEVELOPMENT DISTRICT.** The PUD Planned Unit Development Overlay District is intended to provide flexibility in the design of planned projects, to permit innovation in project design that incorporates open space and other amenities, and to ensure compatibility of developments with the surrounding urban environment. The PUD District may be used in combination with any base district specified in this Zoning Code. The PUD District, which is adopted by the City Council with the recommendation of the Planning and Zoning Commission, assures specific development standards for each designated project. All projects in the PUD District shall follow the procedures set forth in Chapter 170 of this Zoning Code.

1. Permitted Uses. Uses permitted in a PUD Overlay District are those permitted in the underlying base district. A PUD also may be combined with an MU Mixed Use District to allow a combination of use types not anticipated by conventional base districts.
2. Site Development Regulations. Site development regulations are developed individually for each Planned Unit Development District but must comply with minimum or maximum standards established for the base district, with the following exceptions:
  - A. Lot area and lot width are not restricted, provided that the maximum density allowed for each base district is not exceeded.
  - B. Maximum building coverage shall be the smaller of the allowed building coverage in the base district, or 60 percent.
3. Access to Public Streets. Each PUD District must abut a public street for at least 50 feet and gain access from that street.
4. Adoption of District.
  - A. The Planning and Zoning Commission and City Council shall review and evaluate each Planned Unit Development application. The City may impose reasonable conditions, as deemed necessary to ensure that a PUD shall be compatible with adjacent land uses, will not overburden public services and facilities, and will not be detrimental to public health, safety, and welfare.
  - B. The Planning and Zoning Commission, after proper notice, shall hold a public hearing and act upon each application.
  - C. The Planning and Zoning Commission may recommend amendments to PUD district applications.
  - D. The recommendation of the Planning and Zoning Commission shall be transmitted to the City Council for final action.
  - E. The City Council, after proper notice, shall hold a public hearing and act upon any ordinance establishing a PUD Planned Unit Development Overlay District. Proper notice shall mean the same notice established for any other zoning amendment.
  - F. An ordinance adopting a Planned Unit Development Overlay Zoning District shall require a favorable simple majority of the City Council for approval.
  - G. Upon approval by the City Council, the Development Plan shall become a part of the ordinance creating or amending the PUD District. All approved plans shall be filed with the City Clerk.

5. Amendment Procedure. Major amendments to the Development Plan must be approved according to the same procedure set forth in Subsection 5 of this section.
6. Building Permits. The City shall not issue a building permit, certificate of occupancy, or other permit for a building, structure, or use within a PUD District unless it is in compliance with the approved Development Plan or any approved amendments.
7. Termination of PUD District. If no substantial development has taken place in a Planned Unit Development District for 18 months following approval of the District, the Planning Commission shall reconsider the zoning of the property and may, on its own motion, initiate an application for rezoning the property.

*(Ch. 169 – Ord. 18-19 – Mar. 19 Supp.)*

- 1.
2. [The next page is 1125]

**CHAPTER 170**  
**ZONING CODE – DEVELOPMENT AND DESIGN**  
**STANDARDS**

**Part 1**

- 170.01 Development and Design Standards
- 170.02 Purpose and Scope
- 170.03 Jurisdiction
- 170.04 Validity of Approval
- 170.05 Amendment
- 170.06 Existing Development
- 170.07 Non-Conforming Uses
- 170.08 Severability
- 170.09 Site Review Process
- 170.10 Site Plan Review Requirements

**Part 2**

- 170.11 Intent
- 170.12 Definitions
- 170.13 Commercial Site Design Requirements - General Provisions
- 170.14 Commercial Architectural Requirements - Buildings
- 170.15 Commercial Parking Standards
- 170.16 Commercial Parking Lot Design and Landscaping Standards
- 170.17 Commercial Connectivity and Pedestrian Elements
- 170.18 Big Box/Large Retail Strip Establishments
- 170.19 Open Space; Landscaping – General Provisions
- 170.20 Landscaping Materials
- 170.21 Residential Standards – General
- 170.22 Residential Standards – Buildings

**PART 1**

**170.01 DEVELOPMENT AND DESIGN STANDARDS.** This section provides for the administration and enforcement of site plans and for establishing standards for site and building design and shall be known, referred to, and cited as the “Design and Development Standards Ordinance” of the City of Windsor Heights, Iowa.

**170.02 PURPOSE AND SCOPE.** The purpose of this Ordinance is to provide guidance and standards for development within the City in order to guide development in a manner which is conducive to protecting the health, safety, and general welfare of residents and property owners within the City. All development and redevelopment of land or property within the City shall minimize adverse effects upon adjacent properties by maintaining or improving upon the aesthetic quality of a surrounding area, and by providing adequate pedestrian and traffic safety, emergency access, water supply, sewage disposal, management of stormwater, erosion and sediment control. Site Plan review and approval by City Council shall be required of all principle structures other than individual single family and two family residential dwellings in any zoning district.

**170.03 JURISDICTION.** No permit shall be issued for any lot or development requiring the approval of a Site Plan after the effective date, unless in compliance with the provisions of the regulations herein. No development, except where specified herein, may be created, substantially improved, converted, enlarged or otherwise altered without conforming to the provisions of this section, all applicable provisions of the Code of Iowa, as amended, and all applicable provisions of the Windsor Heights City Code, as amended.

**170.04 VALIDITY OF APPROVAL.** A Site Plan shall become effective upon certification of approval by the City Council. The City Council approval of any Site Plan required by this article shall remain valid for one (1) year. A one (1) year extension may be granted with approval of City Council. If development has not been established or construction commenced within one (1) year or two (2) years in case of a received extension, then the Site Plan shall be deemed null and void. For the purpose of this article “actual construction” shall mean that the permanent placement of construction materials and utility work has started and is proceeding without undue delay with an approved building permit. Preparation of plans, securing financial arrangements, issuance of building permits, letting of contracts, grading of property, or stockpiling of materials on the site shall not constitute actual construction. At the time of Site Plan approval, the City

Council may grant an exemption on the time construction shall begin after their approval is given for a utility service structure.

**170.05 AMENDMENT.** Any Site Plan may be amended in accordance with the standards and procedures established herein, including payment of fees, provided that the Administrative Official may waive such procedures for those minor changes hereinafter listed. Such minor changes shall not be made unless the prior written approval for such changes is obtained from the Administrative Official. No fees shall be required for such minor changes. Minor changes include: Moving building walls within the confines of the smallest rectangle that would have enclosed each original approved building(s), relocation of building entrances or exits, shortening of building canopies, changing to a more restrictive commercial or industrial use, provided the number of off-street parking spaces meets the requirement of the Windsor Heights Zoning Ordinance. This does not apply to residential uses. Changing angle of parking or aisle provided there is no reduction in the amount of off-street parking as originally approved. Substituting plant species provided a landscape architect, engineer or architect certifies the substituted species is similar in nature and screening effect.

**170.06 EXISTING DEVELOPMENT.** Any improvement or maintenance to any structure or site feature shall not cause the site or building to become non-compliant with the regulations set forth in this Ordinance. If the site or building is already non-compliant, the change to the building or site proposed by the owner shall not cause them to become more non-compliant. In such instances, improvements shall be completed in a manner which makes the building, site, or related items more substantially compliant with the current provisions of this Ordinance than was previous to the improvements. Any improvement proposed to modify the size of a building, lot, parking area, etc. shall be submitted for review by the City. If the proposed improvement(s) modify the size of a building or lot by less than 30%, it shall be submitted for review by City staff and approved or disapproved by an Administrative Official. The Administrative Official shall have the authority to require such a project be reviewed by the Planning and Zoning Commission and City Council if they feel such review is warranted. If the proposed change is in excess of 30% in size, it shall be submitted for full review and approval or disapproval by the Planning and Zoning Commission and City Council.

**170.07 NON-CONFORMING USES.** Any site or building use permitted under a previous zoning district's regulation shall conform to the regulations of this Ordinance under the current site and building design provisions determined to be most applicable to the non-conforming use by the Administrative Official.

**170.08 SEVERABILITY.** If any section, provision or part of this Ordinance be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**170.09 SITE REVIEW PROCESS.** The Administrative Official is responsible for the established Site Plan and Site Review Process. The Administrative Official will serve as the Administrator of the Ordinance and the liaison between the applicant and reviewing bodies to ensure compliance with the Ordinance are met.

1. Notice and Hearings.
  - A. Public Hearing. Before submitting its recommendation on a Site Plan to the City Council, the Planning and Zoning Commission shall hold at least one public hearing thereon, notice of which will be given to all property owners within 200 feet whenever possible. Notice shall be published of said hearing

in a newspaper of general circulation, as required by, and in conformance with, Iowa law. The notice shall state the place and time at which proposed amendment to the Ordinance will be held as well as the legal description or address of said property.

Applicant shall submit a Site Review application and all associated fees with preliminary plans to the Planning Department. Additionally, the applicant will provide:

Full name, address and contact information for applicant in a reproducible electronic format.

Full legal description for the property in a reproducible electronic format.

Name and address of all property owners within 200' of proposed development in a reproducible electronic format.

B. Planning and Zoning Commission. The Planning and Zoning Commission is a seven (7) member body of citizens appointed by the City Council, whose main task is to conduct thorough reviews of development proposals to ensure that the development proposals are consistent with the community's established land use patterns and development standards. The Commission reviews site plans on the goals and policies as outlined in the Comprehensive Plan, the Zoning Ordinance and Chapter 170 Part 1 and 2. Upon completion of its review, the Commission makes a recommendation for approval, conditional approval, or denial of the development proposal to the City Council, who has final decision-making authority. The Commission may also defer a Site Plan for more information before a recommendation is made.

2. A Site Plan Review shall be required for the following:

A. New construction;

B. Major reconstruction (more than 30% of the exterior structure is affected);

C. Major renovation (more than 30% of the interior structure is affected);

D. Increases to parking by 10% or greater;

E. Any Development the Zoning Administrator deems is substantial enough to require oversight by the Planning Commission with Site Plan Review.

3. The applicant is required to attend a scheduled predevelopment meeting with City staff to review a conceptual Site Plan prior to submittal of a full Site Plan. Following the predevelopment meeting, the applicant shall submit a complete Site Plan in accordance with the requirements of the Site Plan and any other information determined to be necessary for the review at the Planning and Zoning Commission meeting.

4. As part of the review process, an applicant shall provide colored architectural elevation drawings for each elevation of the building or buildings proposed for new construction, addition, alteration, or the like.

A. The elevation drawings should be provided in 11" by 17" format unless otherwise approved by the Administrative Official.

- B. Each elevation drawing should include massing dimensions and callouts of the proposed materials indicated on the elevation.
  - C. In the event that accessory structures are proposed as a part of the site plan review process, the Administrative Official shall have the ability to request elevation drawings or colored details of said accessory structures to ensure compliance with the provisions of this ordinance.
5. The applicant shall provide City staff with information determined to be applicable to the project by the Administrative Official. The proposal shall then be brought before the Planning and Zoning Commission in order to receive a recommendation before being presented to the City Council. Action of the Planning and Zoning Commission and City Council shall be approval, approval subject to conditions, denial, or table for further review. Action of the Council shall be approval, denial, or table for further review. A site plan may be presented for consideration by the City Council in the event of a recommendation of denial by the Planning and Zoning Commission. In the event of denial of a Site Plan by the City Council, the applicant would be required to resubmit and begin the review process anew to have another proposal considered by the Planning and Zoning Commission and City Council. Resubmittal will not be accepted until one (1) year after a denial from the Planning and Zoning Commission or City Council. Resubmittal of a Site Plan shall be subject to all applicable costs associated with review of the documentation unless exception is made by City staff. Site Plan review shall exist as a measurement determined by the City to meet the objectives outlined by the Windsor Heights Comprehensive Plan.

**170.10 SITE PLAN REVIEW REQUIREMENTS.** Site Plans shall be submitted in electronic format and 24” by 36” format with ten (10) copies of the plans submitted, unless otherwise approved by the Administrative Official. A Site Plan will not be submitted to the Planning and Zoning Commission for action until they are deemed complete. The Administrative Official has the authority to deem the submittal complete. Approval by the Fire Inspector, Public Works, Engineer, and other Administrative Officials will be obtained before Planning and Zoning Commission review. It is permissible and encouraged to introduce large and potentially controversial projects to City staff as far in advance as possible.

The following information shall be clearly provided on the site plan:

- 1. Narrative Information to be provided:
  - A. Name and address of property owner; including telephone and email.
  - B. Name and address of applicant; provide if different than property owner.
  - C. Name and address of plan preparer; including telephone and email.
  - D. Certification of Architect and Civil Engineer licensed in the State of Iowa. Include Seal, Date, and Signature on all applicable drawings prior to City Council approval of the Site Plan. Other certification may be requested when appropriate by the Administrative Official.
  - E. Certification of a Registered Land Surveyor licensed in the State of Iowa. Include Seal, Date, and Signature on applicable drawings prior to City Council Approval.
  - F. Current Zoning of Property. List the property’s existing zoning consistent with the City of Windsor Heights’ Official Zoning Map. Also



include any overlay districts the property may be within and the land use identified in the current City of Windsor Heights Comprehensive Plan where the property is located.

G. Legal Description of Site. Include the plat name and lot number for all new Site Plans. Building permits shall only be permitted on a platted lot of record.

H. Total Area of Site. The total area of the site should be indicated in acres and square feet.

I. Open Space.

(1) Indicate the total area of the proposed site in square feet, the area of open space within the site, and its percentage of the total site. The calculation should include all open space pervious areas and permitted pedestrian plazas.

(2) The total area of the site reserved for parking facilities, the open space within the defined parking area, and its percentages of the total parking area should be calculated and indicated in square feet.

J. Pervious and Impervious Surface. Indicate the total area of the proposed site in square feet, the area of pervious surface and the area of impervious surface including all structures.

K. Proposed Use of Site. Indicate all proposed uses for the site and building(s) as known at the time of application.

L. Parking Stalls. The total amount of parking stalls required based upon the proposed building use(s) of the site should be indicated. If more than one building use is proposed for the site, each individual parking stall requirement should be indicated separate of the total.

M. Loading Areas. If applicable to the proposed building uses of the site, the number of required and provided loading stalls should be indicated.

N. Setback Requirements. All setback requirements of the applicable zoning district within which the proposed site is located should be provided.

O. 100-year Flood Elevation. The 100-year flood elevation should be indicated based upon the most recent FEMA Flood Insurance Study.

## 2. Plan Information.

A. General and Survey Information.

(1) North Arrow. Include on Site Plan and all other applicable sketches, drawings, and details.

(2) Scale of Drawing. A minimum scale of 1"= 80' shall be required.

(3) Vicinity Sketch. A minimum scale of 1"= 800' shall be used to indicate the properties within 300 feet of the proposed site location. The boundary of the proposed site location should be clearly defined in relation to other properties shown within the vicinity sketch.

(4) Site Boundary. All property lines shall be delineated with a heavy line.

- (5) Bearing and Distances or Curve Data along boundary. Information shall be indicated as platted. Any measured information different than platted should be identified.
  - (6) Name and address of all Adjoining Property Owners. All property lines adjacent to the proposed site, or across street right-of-way, shall be indicated with the owner and/or subdivision name(s) in addition to any adjoining lot numbers as appropriate.
  - (7) Existing Features. All existing physical features shall be indicated on the Site Plan including but not limited to plant materials, drainage ways, structures, fences, and any encroachments. Projects involving numerous existing features may be requested to submit a demolition, removal, or relocation plan as determined to be most beneficial.
  - (8) Soil Tests and Similar Information. Soil tests and similar information may be required to determine the feasibility of the proposed development in relation to the design standards set forth herein.
  - (9) Topography. The existing and proposed topography shall be indicated with a maximum of two (2) foot intervals. Spot elevations may also be required at the request of the Administrative Official.
  - (10) Limits of Phased Construction. If the site is to be developed in more than one phase, the limits of each proposed construction/development phase shall be indicated including all facets of the phasing proposed.
  - (11) Additional Information. Drawings or other materials necessary to describe a proposed project may be requested by the Planning and Zoning Commission or Administrative Official. The applicant may include additional information or materials such as sketches, videos, models, or photos, if they help explain the proposal.
- B. Building Footprint.
- (1) Footprint. An accurate representation of the proposed building(s) footprint including exterior structures incorporated into the building mass and proposed internal demising walls known at the time of application.
  - (2) Size. Include the total square footage of each proposed floor, the number of floors, and the amount of finished area on each floor including any proposed basement area. For all multi-family and townhome proposals the total number of units proposed for each building footprint should be indicated.
  - (3) Entryways. The location of all proposed entries, service doors and overhead doors.
  - (4) Mechanical Units. Indicate the proposed location and type of all proposed ground mechanical units including air conditioning units, telephone pedestals, transformers, coolers, or other similar units.

- (5) Trash Enclosures. Indicate the proposed location of all trash enclosures for the site and provide a detail of the structure for review.
- C. Pedestrian Circulation.
- (1) Paths. All proposed sidewalks, trails, and pathways should be indicated as appropriate on the Site Plan including the width, thickness, and type of pavement. All sidewalks, trails, and pathways shall be constructed to Windsor Heights Standard Specifications as applicable to the project. Wherever possible, bike racks should be provided.
- (2) Connectivity. Pedestrian corridors should be indicated from any public street to all proposed principle buildings.
- (3) Stoops. All proposed emergency exits where a sidewalk is not indicated shall provide a stoop of an approved dimension determined to be adequate in providing a safe exit from the building.
- D. Streets and Access.
- (1) Access. All existing and proposed access drives to the site from a public street shall be indicated on the Site Plan and shall include appropriate spacing as determined by the City's Engineer.
- (2) Public Improvements. All public improvements required of the developer shall be indicated on the site plan. The amount of improvements required shall be determined by the Windsor Heights Comprehensive Plan, streetscape plan, a traffic impact analysis, or any other approved documentation identifying the amount and type of improvements necessary to accommodate increased activity to the site or to facilitate future development as it relates to the development of said site.
- (3) Private Streets. The use of private streets shall be allowed if the proposed private streets meet the following criteria:
- a. Proposed private streets are built to Windsor Heights Standard Specifications for public streets.
  - b. They are maintained by the property owners requiring the private street(s) through a Homeowners Association or through an approved development agreement between the developer(s) and the City.
  - c. The width and thickness of the private street(s) is appropriate as determined by the City Engineer or a traffic impact study in accordance with the city specifications.
  - d. Sidewalks should be installed on both sides of the private street(s) unless additional landscaping or open space is incorporated into the site in an amount approved by the City Council in relief of one sidewalk per street.
  - e. A public ingress/egress easement is provided over the private street(s) location.
- (4) Shared Access.

- a. Any project where the development of townhomes provides access to garages from a public street shall provide a shared access drive between two or more units in order to minimize the amount of obstruction to the flow of traffic along said public street.
  - b. Any development of commercial property where shared access is anticipated shall provide an easement and conceptual building footprint(s) for all proposed lots which are proposed to share the access drive(s).
- E. Parking and Loading Areas.
  - (1) All proposed parking and loading areas incorporated in the Site Plan shall meet the requirements in the Zoning Ordinance and all other applicable State and Federal regulations.
  - (2) A complete traffic circulation and parking plan, showing the location and dimensions of all existing and proposed parking stalls, loading areas, entrance and exit drives, sidewalks, dividers, planters, and other similar permanent improvements in addition to indicating traffic movements within access drives in order to better identify any potential traffic impediments based upon the proposed parking configuration and access drives.
  - (3) Individual parking stalls should be indicated as appropriate and differentiated from parking aisles. Stalls intended to accommodate handicapped accessibility should be indicated appropriately.
  - (4) Proposed loading areas should indicate traffic movements where applicable to determine maneuverability within the site.
  - (5) Individual loading docks should be indicated on the site plan.
- F. Lighting.
  - (1) A lighting plan should be provided with all site plans indicating the location, type, height, power rating, and any shielding methods required of all existing and/or proposed lighting fixtures. Lighting shall follow all applicable City ordinances including Dark-Sky standards.
  - (2) A manufacturer's cut-sheet shall be provided for each type of lighting fixture incorporated into the site layout including its material(s) and color. Information required from the cut-sheet shall include the description of lamps, supports, reflectors, and any other components of a particular lighting fixture. The Site Plan shall indicate all proposed lighting as depicted by the manufacturer.
  - (3) A photometric plan shall also be required identifying the horizontal illumination of the site and the vertical light trespass along the perimeter of the site. The photometric plan shall show a point by point foot-candle reading for the entire site at a minimum spacing of 10 feet between each point, including 2 feet past the property line. The vertical photometric plan shall only be required along the property line with a maximum spacing of 10 feet.
- G. Lighting Standards.

(1) Definitions. Unless the context clearly indicates otherwise, the words and phrases used in this Ordinance shall have the following meaning:

- a. Exterior lighting. Temporary or permanent lighting that is installed, located or used in such a manner to cause light rays to shine outdoors.
- b. Exterior lighting fixture. The complete exterior lighting unit, including: the artificial source of light, the parts required to distribute the light, elements for light output control such as the reflector (mirror), or refractor (lens), the housing that protects and holds the lamp in place, the connection to the power supply, and the component that anchors the lighting unit to the ground or onto a structure.
- c. Floodlight. A lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction.
- d. Foot-candle. The illuminance measured one (1) foot from a one (1) candle source.
- e. Full cut-off. A shielded light fixture that emits no light above a horizontal plane touching the lowest point of the fixture.
- f. Glare. The light in a direction near one's line of sight that either causes discomfort to the eye or impairs visibility.
- g. Horizontal and vertical foot-candles. The illuminance, measured by a light meter, striking a vertical or horizontal plane.
- h. Illuminance. The intensity of light in a specified direction measured at a specified point.
- i. Light. A form of radiant energy acting on the retina of the eye to make sight possible.
- j. Light trespass. Unwanted light falling on public or private property from an external location.
- k. Recreational Facility. Football fields, soccer fields, baseball fields, tennis courts, swimming pools, or any other special event or show area.

#### H. Lighting Design.

(1) Required Lamps – Generally, all lamps shall be halogen, metal halide, LED, or others with similar qualities to reduce glare and provide for improved color correct vision. Full cut- off high pressure sodium lamps, not exceeding a maximum lumen rating of 16,000 lumens, may be used in outdoor storage areas where the need for good color rendering capabilities for safety and security is not necessary. Such areas shall not be accessible to the general public or adjacent to any 'R' zoned property.

(2) Required Exterior Lighting Fixtures – Generally, all exterior lighting fixtures shall be full cut-offs. No portion of the lamp, lens, or diffuser shall be visible from the side or top of any shield, or otherwise protrude from the bottom of the shield. No exterior lighting fixture shall emit light at or above a horizontal plane that runs through the lowest point of the shield.

(3) Commercial and Industrial Architectural and Decorative Lighting.

a. Limited building-mounted lighting may be used to highlight specific architectural features or primary customer or building entrances. Floodlights are only permitted provided all light emitted is contained by the building or by an eave or protruding structure.

b. Lighting fixtures shall be located, aimed, and shielded to minimize the glare that is emitted on objects other than a building's façade or landscape walls.

c. Building-mounted neon lighting may only be used when the lighting is recessed, or contained inside a cap or architectural reveal.

d. An exterior lighting fixture that emits less than 1800 lumens shall not be required to be a full cut-off fixture, provided that the lamp itself creates no glare or has an opaque covering.

(4) Site and Parking Lot Lighting.

a. The mounting height for lighting fixtures shall not exceed twenty five feet (25') from grade to the top of the lighting fixture.

b. The maximum average maintained foot-candles for a parking lot lighting fixture shall be three (3) foot-candles. The maximum lighting level for a parking lot lighting fixture shall be ten (10) foot-candles.

c. The maximum horizontal foot-candle measurement at any property line shall be two (2) foot-candles. The maximum maintained vertical foot-candle at an adjoining property line shall be two (2) foot-candles, as measured at five feet (5') above grade. If the adjacent property is the same owner, the light trespass limits may be waived by Council.

(5) Canopy Lighting. The maximum maintained foot-candles under a canopy shall be thirty-five (35) foot-candles. Areas outside the canopy shall be regulated by the guidelines and standards outlined above. Permissible fixtures for canopy lighting include:

a. Recessed fixtures that incorporate a lens cover that is either recessed or flush with the bottom surface of the canopy.

b. Indirect lighting where light is emitted upward and then reflected down from the underside of the canopy. Such

fixtures shall be shielded to ensure that no light is emitted at or above a horizontal plane that runs through the lowest point of the canopy.

(6) Street Lighting. All private street light fixtures shall measure no more than thirty feet (30') from grade to the top of the lighting fixture, and shall be cobra-style, unless the Commission and Council permit the installation of an alternative fixture. The Commission and Council may approve an alternative lighting fixture only after a determination has been made that the alternative fixture has been designed to avoid glare and trespass. The use of lighting fixtures that direct light upward into the air is strictly prohibited. Public lighting along University Avenue shall conform to the specifications of lighting already in place. All other lighting on public streets shall conform to any adopted Streetscape Plans.

(7) Pedestrian Walkway Lighting. All pedestrian walkways shall be lit by pedestrian-level, bollard-type lighting (4 ft. height max.), ground mounted lighting, pole lighting (12 ft. height max.), or other low, glare-controlled fixtures that are mounted on building or landscape walls. University Avenue lighting should be followed as above.

(8) Recreational Facilities. The lighting fixtures at all public or private outdoor recreational facilities shall be designed to minimize the amount of light that is directed upward into the air, glare, and light trespass. The illumination of any public or private outdoor recreational facility after 11:00 p.m. is prohibited, except in order to conclude a specific activity, previously scheduled, which is in progress under such illumination prior to 11:00 p.m.

(9) Exemptions. This Ordinance shall not apply to the following exterior lighting sources:

- a. Airport lighting required by law.
- b. Temporary emergency lighting.
- c. Temporary lighting, other than security lighting, at construction projects.
- d. Governmental facilities where a compelling need for safety and security has been demonstrated.
- e. Lighting for flag poles, church steeples or other similar non-commercial items provided they do not cause distraction within public rights-of-way.

I. Signage.

(1) The location and type of all existing and proposed signage shall be indicated on the site plan.

(2) All signage shall meet the requirements identified within the Zoning Ordinance.

J. Landscaping.

(1) A landscaping plan shall be provided including the size and type of all proposed trees and plantings and any existing trees larger than six (6) inches in diameter proposed to be removed.

(2) All landscaping necessary for fulfillment of all City Ordinances shall be indicated on the Site Plan and will conform to Section 170.20 of this Ordinance.

**PART 2**

**170.11 INTENT.** The following Ordinance is put forth in an effort to aid future development, redevelopment and alterations of Windsor Heights by identifying desirable aesthetic qualities. This Ordinance provides assistance in articulating the vision of Windsor Heights as established in the Comprehensive Plan and other plans as adopted by the City Council. This Ordinance will replace existing design standards as outlined in the Zoning Code and will become a comprehensive guide derived from all past completed plans and studies. This Ordinance will act as an overlay and shall operate in conjunction with any underlying zoning district; all other applicable regulations will remain in effect. If provisions of this Ordinance conflict with the underlying zoning, this Ordinance shall prevail. The overall objective is to have an atmosphere that is safe, convenient, vibrant, and attractive through the integration of uses and eclectic architecture, and to creatively handle stormwater drainage issues in an environmentally sound manner. Where a question of interpretation arises between a proposed project in relation to the Ordinance, the Administrative Official shall provide for the determined interpretation. The intent of the Design Standards is:

1. **Public Space.** To preserve, enhance, or create a variety of forms of publicly accessible open space, such as parks, plazas, tree-lined streets, and community gathering area.
2. **Compact Mixed Use.** To create a compact concentration of land uses within each development through multiple uses in a single building or in the same general area.
3. **Street Aesthetics.** To encourage an attractive and aesthetically pleasing environment, which will draw customers and residents and will help enhance and maintain the City's safe and superior quality of life.
4. **Attract new business and enhance property values** that are viable to the citizens of Windsor Heights for the present and future.
5. **Healthy Living.** To promote healthy living through trail enhancement and pedestrian connectivity.
6. **"Green" Friendly.** To reduce the amount of impervious parking in general and the amount of visible impervious parking specifically by utilizing shared parking, pedestrian pathways, permeable paving alternatives and creative, attractive landscaping.
7. **Design.** To achieve a unique aesthetic design through high quality architecture and construction with attention to placement, relationship and orientation of structures to provide a greater compatibility with surrounding land uses and create a feeling of permanence.

**170.12 DEFINITIONS.** The following terms are defined for use in this chapter:



1. “Administrative Official” means the Windsor Heights Administrative Official or appropriate designee.
2. “Big box retail” means a structure exceeding 50,000 square feet.
3. “Buffer” means a combination of horizontal space (land) and vertical elements (plants, berm, fences, and walls), used to physically separate or visually screen incompatible adjacent land uses.
4. “Community use” means administrative and legislative government offices, schools, postal facilities (such as libraries and museums), meeting halls, clubhouses, amphitheaters, band shells, and pavilions.
5. “Development Committee” means a committee made up of two Council Members, the Mayor, Planning and Zoning Commission liaison, Administrative Officials, two citizens and a business owner.
6. “Dormer” means a projecting framed structure set vertically on the rafters of a pitched roof, with its own roof (pitched or flat), sides, and a window set vertically in the front.
7. “Drive-Thru” means an establishment that provides or dispenses products or services, through an attendant or an automated machine, to persons remaining in their vehicle that are designated drive-thru stacking lanes. A drive-thru facility may be in combination with other uses, such as financial institutions, restaurants, pharmacies, and service providers such as dry cleaners.
8. “Façade” means the exterior face of a building which is the architectural front, sometimes distinguished from the other faces by elaboration of architectural or ornamental details.
9. “Landscape amenities” means living or non-living materials used to augment the beauty of usability of a landscaped area. Amenities may include (but are not limited to) additional vegetation, flower gardens, tables, sculptures, monuments, benches, gardens, banners, enhanced pavement, pedestrian plaza areas, fountains, and planters.
10. “Landscape islands” means a raised unpaved area located within or protruding into a parking lot or the center, unpaved area of a cul-de-sac or traffic circle. The area of a landscape island is measured from the back of the inside curb to the back of inside curb.
11. “Landscape pod” means a small individual unpaved area within a parking lot incorporated to provide locations for vegetation, thus increasing the aesthetic quality of the parking lot.
12. “Large retail strip establishments” means a structure (or structures when combined) which exceeds 50,000 square feet and is a largely nonresidential development, which is shallow in depth and lies along a length of roadway. Buildings organized in a linear pattern or in isolated “islands” characterize a large retail establishment.
13. “Live-work unit” means a unit which offers both a studio work environment and a living environment. The work environment shall be primarily involved in the artistic crafts, offices, or service uses with minimum impacts on surrounding neighborhood, such as self-employed consultants, researchers, or artists.
14. “Main entrance” means that entrance of the building which is most architecturally prominent and contains operable doors.

15. “Mixed use” means a single building containing two or more types of land use; or a single development of more than one building and use, where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas.
16. “Open space” means any area within a single site or lot that is not covered by a building, structure, parking lot, or driveway. Sidewalks and patios may be counted as open space. Open space is an area which serves the need for leisure, recreation, or pedestrian interaction. Spaces may include (but are not limited to) plaza areas, open lawn areas, trails, recreation facilities, gardens, and pedestrian walkways.
17. “Opacity degree” means an imaginary vertical plane extending from the established grade to a required height, which will be visually obscured to deferring levels of opaqueness through the position of obstructions between the viewing point and the viewed object.
18. “Parapet” means a low, solid, protective screening or decorative wall, often used around a balcony, or along the edge of a roof to screen roof equipment.
19. “Pedestrian style or scale” or “human scale” means the establishment of appropriate proportions for building mass and features in relation to pedestrians and the surrounding context.
20. “Place making” means distinct features, such as parks, plazas, or civic areas which connect residents with a community and promote positive user interaction.
21. “Planned Unit Development” means a planned combination of diverse land uses, such as housing, recreation and shopping, in one contained development or subdivision.
22. “Plaza” means a public square or an open space.
23. “Smart Growth” means an approach to growth that focuses on developing urban (metropolitan) communities that are more hospitable, productive, and fiscally and environmentally responsible than most communities developed in the last century. The principles of smart growth are based on compact and multiuse development, infill and redevelopment, expansion of infrastructure, enhanced livability, expanded mobility, and conservation of open space. While some parties focus on one aspect of development over another, smart growth seeks to identify a common ground where developers, environmentalists, public officials, citizens, and others can call find ways to accommodate growth.
24. “Snout house” means a house designed with the garage closest to the street, which presents the garage as the dominant façade.
25. “Streetscape” means a combination of vegetation, amenities such as bike racks, and special visual features along either side of vehicular travel lanes for the purpose of aesthetics or shade.
26. “Streetscape furniture” means amenities, such as benches, lighting, and trash receptacles, which help to carry out the development’s chosen theme.
27. “Structural Offsets” means an architectural feature designed to break up monotonous building materials and provides enhanced aesthetics.
28. “Travel way” means a pedestrian or automotive path.

29. “Vehicle use area” means the area of a development subject to vehicle traffic, including access ways, loading and service areas, areas used for parking or storage of vehicles, boats, or portable construction equipment and all land which vehicles cross over as a function of the primary use.

**170.13 COMMERCIAL SITE DESIGN REQUIREMENTS – GENERAL PROVISIONS.**

1. Buildings and building facades are encouraged to be placed and designed to provide a strong street orientation to create a pleasing pedestrian environment.
2. Uses and buildings with greater intensity and height to produce a concentration of jobs, shops, meeting facilities, residential units, entertainment, and restaurants within close proximity to each other is strongly encouraged.
3. The design shall create small, shared, aesthetically landscaped, and screened parking lots, which are designed to function not only in the interest of accommodating automobiles, but also in the interest of the pedestrian.
4. The design shall allow for the creative design of plazas, green spaces, and focal elements for retail, office, or mixed use developments.
5. Building façades shall be varied and articulated to provide visual interest. Buildings shall be proportioned and defined by clear façade elements such as a base, middle, and top.
6. Building volume and mass are partially defined by façade treatment. Facades shall be designed to be proportional to the overall building and reflect the architectural style. Building volumes shall be reduced through wall offsets or projections.
7. The site design requirements encourage the design of mixed-use structures to provide an environment that offers office, retail, and residential opportunities. Mixed-use buildings or developments shall be designed to limit the impacts of traffic, noise, and safety to the surrounding neighborhood.
8. A compact concentration of land uses is encouraged within each development through multiple uses in a single building, or in the same general area.
9. Landscaped, outdoor uses that serve the pedestrian are preferred.
10. Developments shall provide buffering for street frontage through enhanced vegetation, berming, or landscape features that are sufficient to attractively enhance the project, as set forth in subsection 170.17 of this section.
11. Buildings are preferred to be located as close to the street as is allowed in the zoning ordinance, with the preference off-street parking behind or on the side of the building.
12. Buildings shall be arranged to create view corridors between pedestrian destinations within and adjacent to the site including building entrances or open spaces.
13. Buildings are encouraged to be placed to occupy the street edge to the greatest degree possible. Buildings with two street frontages are encouraged to be placed or enlarged to occupy both street edges.
14. Courtyards are encouraged with multiple entrances/uses serving courtyards.
15. Each development shall provide outdoor lighting fixtures as prescribed in adopted Streetscape Plans, integrated street pavers or patterns, and landscaping that reinforces the neighborhood theme and identity.

16. Loading areas, overhead doors, or service areas shall not face the corridor.
17. Developments that abut existing developments shall be designed to respect the surrounding developments in order to provide for a transition from the typical development patterns to the new development.
18. Upper stories shall be differentiated from the lower floor by wall offsets, step backs, balconies or other features.
19. Corners of street intersections shall be distinguished by special landscape or architectural treatments such as:
  - A. Flower displays,
  - B. Accent rocks,
  - C. Decorative lighting,
  - D. Outdoor art,
  - E. Vertical architectural elements,
  - F. Special paving.

#### **170.14 COMMERCIAL ARCHITECTURAL REQUIREMENTS - BUILDINGS.**

1. Buildings are required to have architectural interest by achieving the following:
  - A. Using heavier building materials at the bottom of the building;
  - B. Demonstrate architectural compatibility through consistent and complementary building style, mass scale, materials, and colors to the neighborhood.
  - C. Building articulations shall be used to create interest and reduce building scale. This can be achieved through varying heights and setbacks within the same building, offsetting wall planes and adding architectural interest with roof overhangs, awnings, trellises, windows, moldings and other elements.
  - D. Colors for exterior building finishes shall be earth tones, brick tones, creams, pastels of earth tones, or dark/muted green, blues, and reds.
  - E. Bright white, black, or primary colors shall be used only as accents, occupying a maximum of ten (10) percent of the building. No more than two (2) accent colors shall be used on a building.
  - F. The selected material and color palette shall be used on all exposed sides of a building, not just the street facing or entry façade.
  - G. Preferred primary exterior materials:
    - (1) Aluminum composite materials
    - (2) Brick
    - (3) Cast Stone
    - (4) Cultured Stone
    - (5) Precast Concrete Panels

- H. Secondary Exterior Materials shall include but not limited to:
- (1) Architectural Metals
  - (2) Copper Flashing
  - (3) EIFS (exterior insulation finishing system)
  - (4) Fiber Cement Siding
  - (5) Structural Composite Sandwich Paneling
  - (6) Tile
  - (7) Those materials listed as Primary Materials
- I. Secondary Materials shall be used to further define and accent the architectural characteristics of a proposed structure.
- J. The City Council may consider an alternative material(s) not specifically listed above if the overall design is determined to provide a unique use of the material(s) which meets the intent of this section in creating appearance of permanency and sustained interest throughout the entirety of the building.
- K. Using roof details such as cornices, caps, or parapets at the top of the building; inclined roofs are preferred.
- L. Alternating roof styles, heights, and elements; including pitch or hip roofs;
- (1) Roof design shall be an integral part of the overall building design. It shall be of a height and proportion so as not to appear as an afterthought or appendage.
  - (2) Rooftop outdoor living spaces shall be integrated into the building structure. Step backs, parapets and other features shall be used to provide privacy and screening of utilitarian areas and equipment.
  - (3) Building rooflines make a profile against the sky and the design of this profile helps define community character. Roofline design shall be consistent with existing block or neighborhood patterns where appropriate.
  - (4) Roof material shall be appropriate to the buildings architecture. Materials with highly reflective surfaces are not allowed.
- M. Both horizontal and vertical division shall be incorporated into the building façade.
- N. Monotonous, uninterrupted expanses of wall are prohibited. Recesses, projections, columns, openings, ornamentation, materials and colors shall be used to add texture and detail. Blank walls shall not normally exceed twenty (20) feet of lineal frontage along University Avenue or Hickman Road and twenty-five (25) feet along all other streets.
2. Fenestration (door and window openings) shall be sized to the scale of the building and detailed appropriately. Use of repeating window patterns and details are encouraged to unify the design.

3. Entries and windows shall contribute to the volume, mass proportion and texture of the building. They shall be designed as an integral part of the overall building design and shall reflect the building's architectural style.
4. Materials shall change with the change in building plans; however, all materials shall keep within the chosen theme.
5. New and renovated developments shall exhibit high quality design and construction that will enhance the community.
6. Reflective glass or mirrored glass is prohibited. Clear glass shall be used on storefronts, windows, and doors to promote the linkage of the interior and exterior buildings.
7. Trim and structural elements such as posts or columns shall be sized to the scale of the building and detailed appropriately to the theme. When used, masonry materials shall have the appearance of three-dimensional elements.
8. Colorful landscaping is encouraged to frame doorways or accent windows. Landscaping may be planting beds, sidewalks planters, containers and/or window boxes. Planters, containers and window boxes are encouraged to complement the architectural style and color of the building it is framing.
9. Corporate franchise design where the building functions as a trademark shall be permissible only if it incorporates architectural elements, which are compatible with the overall theme and uniqueness of the development and surrounding development.
10. Outbuildings on commercial lots are also required to use attractive architectural elements as outlined above.
11. In the case of gas stations, canopy supports shall be clad in brick, masonry, wood or other similar material that is compatible with the architecture of the building. Cladding of the supports shall be proportioned to the height and scale of the canopy. All downspouts shall be integrated into the canopy structure. Canopy fascia shall be finished to match the building material and color.
12. All townhome, row, and multi-family dwellings proposed within the same development shall have a unified architectural theme. Sites where four (4) or more buildings are proposed shall provide slight differentiation in design amongst buildings of the same size or number of units to provide for a higher level of architectural design for the site as a whole.
13. Window bays, articulation of roof lines through the use of dormers or gables, variation in building offsets, the division of continuous material(s), the use of architectural accents such as chimneys, balconies, pediments, columns, cornice lines, or moldings shall be used in townhomes or row dwelling facilities and multi-family facades.
14. Any garage door proposed within a townhome, row dwelling, or multi-family structure shall be integrated into the façade so as not to become a prominent element of the dwelling.
15. Stairways and stairwells shall be integrated into and complement the overall architectural form and style. Flimsy, open metal, prefabricated stairs are not allowed. Uncovered stairs shall be screened from view with wing walls or landscaping.

**170.15 COMMERCIAL PARKING STANDARDS.**

1. Parking areas shall consist of separated parking fields that are aesthetically pleasing, landscaped to screen the public views and located so as not to be the dominant feature along any street or intersection, with appropriate landscaping and landscaping pods and units as set out in subsection 170.17 of this section.
2. Parking structures and lots shall be designed to contribute to an attractive appearance of the streetscape, including appropriate lighting, and not deter from the pedestrian access.
3. Parking should be as unobtrusive as possible. As a whole, the massing and details of the building shall dominate the streetscape; not parking.
4. Structured parking shall provide pedestrian access to both the street level and multistory residential or retail.
5. Shared parking between mixed uses is encouraged.
6. Seasonal overflow parking shall be located in the rear of the lot or in an off-site private/public co-use of spaces and should be considered with parking spaces within a one block distance counting towards the minimum parking space requirements of the development.
7. Consideration will be given for the reduction of parking requirements if the applicant can provide data that indicates potential parking demand that is less than the current code. The applicant may use shared parking to reduce the number of required stalls.
8. Parking shall be located to utilize natural landscape and topography.
9. The design of all parking lots shall permit the travel of the Fire Department's vehicle access requirements.
10. Pedestrian travel ways shall be separated from vehicular traffic with landscaping, bollards made of materials complimenting the architectural style of the project, special paving, or any other feature, which identifies the pedestrian space.
11. Developers shall give special consideration to parking lots using permeable paving alternatives such as those paving systems designed to infiltrate and capture storm water. Such alternatives may be required as part of the site plan approval.

**170.16 COMMERCIAL PARKING LOT DESIGN AND LANDSCAPING STANDARDS.** Locating parking in the back of the development is strongly preferred; however it doesn't work for every development. The intent of this subsection is to encourage extensive landscaping in parking lot areas which tend to have the greatest negative impact on developments and that will provide breaks in what could be viewed as a sea of asphalt parking. All parking areas shall be designed to create small, shared, aesthetically landscaped, and screened parking lots that are designed to function not only in the interest of accommodating automobiles, but also in the interest of the pedestrian. The following standards are in addition to the landscaping requirements in Chapter 173 of the zoning ordinance.

1. Landscape islands shall be spaced no greater than 12 parking stalls apart within a single row of parking. Islands shall be 10 feet in width by 38 feet in length for dual row parking rows and 10 feet in width by 19 feet in length for single rows.
2. No parking space, within a single row of parking, shall be greater than twelve stalls from a landscape island.

3. Landscape islands shall be located at the terminus end of parking rows.
4. A variety of plants, shrubs, and trees shall be installed in each landscape pod and island. In addition, a variety of perennials may be required as the time of site plan review. In all events, the landscape pods and islands shall be sodded or mulched. If mulched, mulch shall be replenished annually; volcano mulching around trees is not permissible. Pea gravel and lava rocks will not be allowed.
5. The developer and/or successors shall maintain landscaped medians. Some landscaping must provide winter interest and be evergreen in nature.
6. Areas where parking lots or drive lanes are visible from the public street shall provide a significant level of screening through the use of any of the following:
  - A. Earthen berms;
  - B. Three feet or higher in conjunction with vegetation;
  - C. Landscaped walls;
  - D. Walls constructed for the retainment of soil which are greater than 4 feet in height shall be designed by an individual knowledgeable and certified in structural engineering;
  - E. Walls may be brick, individual decorative modular wall stone, or natural stacked wall or filed stone. Walls composed of landscape timbers or other wood products are not desired due to the deterioration potential of the material. Wood walls may be used, with approval by the Administrative Official or Planning and Zoning Commission and City Council, in areas where views of the wall are minimal.
  - F. Vegetation shall be planted along all types of walls to soften the visual impact, visually break up long expanses of the wall and to visually anchor it to the site. Vegetation screening shall be of evergreen materials.
  - G. Perimeter masonry screen walls are encouraged with landscaping. Where possible, landscaping shall be provided within a minimum 4' wide planting bed and include trees, shrubs, and/or groundcovers. Landscaping shall coordinate with the streetscape landscaping. Landscaping shall be kept in a neat and orderly manner.

#### **170.17 COMMERCIAL CONNECTIVITY AND PEDESTRIAN ELEMENTS.**

1. Sites shall be designed with delineated sidewalks, walkways, and paths to provide continuous circulation throughout the site connecting principal structures, dwelling units, parking areas, parking garages, and other prominent features. Pedestrian connection(s) shall be made between the internal circulation system and the adjacent public sidewalk or trail systems. The site shall be organized so that the buildings frame and reinforce pedestrian circulation between lots.
2. Sites shall be designed to limit the number of pedestrian and motorist conflict points.
3. Sidewalks in designated areas shall be of a sufficient width to accommodate outdoor seating areas for cafes, pedestrian street furniture, walkways, and street trees. Sidewalks shall be a minimum of six (6) feet unless specifically exempted by the Administrative Official or other Administrative Official.



4. Developments shall provide breaks between buildings at mid-block and shall have pedestrian amenities such as walkways, benches, etc.
5. Any pedestrian paths which cross internal drives shall be constructed to visually contrast to provide a highly visible crosswalk.
6. Enhanced pedestrian elements at the sidewalk level including decorative lighting, seating or low sitting walls, planters, enhanced paving techniques, etc., shall be incorporated into the theme.
7. To promote a higher level of pedestrian awareness, the use of alternate paving materials to designate pedestrian traffic areas from vehicular use areas and travel lanes is required. Mere cuts in the concrete will not be sufficient to meet the requirements of this section.
8. Common walls between residential and nonresidential uses shall be constructed to minimize the transmission of noise and vibration.
9. On-site bicycle parking shall be provided and in a location that is easily accessible, but non-intrusive to sidewalk areas or building entries.
10. Parking and refuse containers shall be placed in a convenient location for the residential units of mixed-use buildings and shall be enclosed with wooden or masonry structure.

**170.18 BIG BOX/LARGE RETAIL STRIP ESTABLISHMENTS.** It is the intent of this Ordinance to create a unique environment through mixed uses and interesting design. Each large retail establishment is required to provide pedestrian scale through the incorporation of several of the following suggested elements:

1. Arcades;
2. Arches or recessed archways;
3. Architectural details, such as tile work and moldings, which are integrated into the building structure and design;
4. Awnings, canopies, or porticos;
5. Changes in massing;
6. Changes in material;
7. Clearly defined, highly visible, multiple customer entrances;
8. Display windows;
9. Dormers;
10. Peaked roof forms;
11. Planters, outdoor patios or wing walls that incorporate landscape areas and/or places for sitting;
12. Raised corniced parapets over the doors;
13. Separate shops (or the appearance of separate shops) with separate entrances placed in front of the larger building;
14. Varying plate heights.

15. Buildings constructed shall be designed to sustain interest throughout the entirety of the building's exterior and reduce the appearance of a box or cube.

16. Individual buildings within a planned retail center, office park, or similar environment shall be designed with a compatible architectural style or theme.

17. In order to ensure the longevity and future usability of retail buildings in excess of 50,000 square feet (e.g. big box retailer, anchor of a large retail strip establishments, etc.) additional articulation and structural offsets shall be provided to ensure future reuse of the structure by smaller user groups. This shall be accomplished by visually separating the building into masses conducive to such reuse.

**170.19 OPEN SPACE; LANDSCAPING – GENERAL PROVISIONS.** The open space provisions exist to provide minimum open space requirements with a desire to increase densities within the development. Properties that have provided or otherwise dedicated land towards the creation of green space meet this requirement. Refer to the open space plan in the Comprehensive Plan to determine where open spaces may be required.

1. Developments shall adhere to the requirements of Section 170.20 of this Ordinance. However, the following standards shall be followed when providing open space. All developments shall provide open space, or spaces, which allow for the interaction among pedestrians and with the surrounding environment according to the Comprehensive Plan

2. Open spaces shall be designed to encourage the interaction and presence of people throughout the day and evening.

3. Outdoor spaces shall provide as many seating opportunities as possible through the placement of moveable chairs, sidewalks cafes, and planter walls.

4. Outdoor space shall be privately owned and maintained by the developer or property owner's association. However, if the determination has been made by the City Council that a particular open space serves not only the patrons of the development but the greater community as a whole, the City may provide assistance to aid in the development of the public space.

5. The integration of storm drainage and detention shall be designed to enhance the public space, which could include the creation of ponds, rain gardens, permeable paving alternatives, etc

6. Open space shall be designed to create an outdoor room, by limiting the interaction with moving vehicles and partially surrounding the spaces by buildings, landscaping elements, and architectural features.

7. All utility boxes shall be screened with evergreen trees or shrubs proportional to the heights of the utility box with enough clearance to allow service on the boxes if necessary.

8. Irrigation sufficient to sustain plant life enabling it to flourish is required.

**170.20 LANDSCAPING MATERIALS.** The following materials are permitted, encouraged, or prohibited, based on categories. See Iowa Urban Tree Council website for ash tree replacement list.

Partial Listing of Large Shade Trees for Planting on Public and Private Property

1. *Nyssa sylvatica* (Blackgum)
2. *Cladrastis kentuckea* (Yellowwood)
3. *Liriodendron tulipifera* (Tuliptree)
4. *Taxodium distichum* (Bald Cypress)
5. *Betula nigra* (River Birch)
6. *Celtis occidentalis* (Hackberry)
7. *Gleditsia triacanthos* i. (Honeylocust cv.)
8. *Gymnocladus dioicus* (Kentucky Coffeetree) – Male only
9. *Ginkgo biloba* (Ginkgo, Maidenhair Tree) – Male only
10. *Quercus* sp. (Oaks)
11. *Tilia* sp. (Lindens)

Evergreens for Planting on Public and Private Property

1. *Densiformis* Yews
2. *Juniperus virginiana* (Eastern Red Cedar)
3. *Picea glauca densata* (Blackhills Spruce)
4. *Picea pungens glauca* (Colorado Blue Spruce)
5. *Pinus banksiana* (Jack Pine)
6. *Pinus ponderosa* (Ponderosa Pine)
7. *Pinus mugho mughus* (Swiss Mountain Pine)
8. Eastern White Pine
9. *Abies concolor* White Fir
10. *Pinus strobes* White Pine
11. *Thuja occidentalis* (Arborvitae)
12. Fat Albert (Colorado Blue Spruce)

Tree Planting Prohibited on Street Right-of-Way and Not Recommended for Private Property

1. *Acer negundo* (Box Elder)
2. *Acer saccharinum* (Silver Maple)
3. *Betula papyrifera* (White Birch – ROW only)
4. *Gleditsia tricanthos* (Thorny Honeylocust)
5. *Robinia pseudocacia* (Black Locust)
6. *Quercus palustris* (Pin Oak – ROW only)
7. All Evergreens (ROW only)
8. Trees bearing fruits and nuts over one foot diameter (ROW only)

Dense Deciduous Shrub List for ScreeningLarge:

1. *Acer ginnala* ‘Bailey Compact’ (Bailey Compact Amur Maple, 8’ x 8’)
2. *Cotoneaster lucida* (Hedge Cotoneaster, 8-10’ x 4-5’)
3. *Physocarpus opulifolius* ‘Diablo’ (Ninebark, 8-10’ x 8-10’)
4. *Prunus tomentosa* (Nanking Cherry, 8-10’)
5. *Syringa x prestoniae* (Donald Wyman, James MacFarlane, Agnes Smith, 8’ x 8’)
6. *Viburnum dentatum* (Arrowwood Viburnum, 8’ x 8’)
7. *Viburnum opulus* (European Cranberry Viburnum, 8-12’ x 10-12’)

8. *Viburnum trilobum* (American Cranberrybush *Viburnum*, 10' x 8')
9. *Arborvitae* – any species not prone to splitting

Medium:

1. *Rhus aromatica* (Fragrant Sumac, 6' x 5')
2. *Ribes alpinum* (Alpine Current, 5' x 8')
3. *Spirea vanhouttei* (Bridal Wreath *Spirea*, 6' x 6')
4. *Syringa meyeri palibin* (Dwarf Korean Lilac, 6' x 10')
5. *Viburnum trilobum* Compact cv. (Compact American Cranberry *Viburnum*, 6' x 6')

Small:

1. *Physocarpus opulifolius nanus* (Dwarf Ninebark, 3' x 3')
2. *Potentilla fruticosa* cv. (*Potentilla* varieties, usually 3' x 3')
3. *Rhus aromatica* Gro-Low (Gro-Low Sumac, 2 x 4-5')
4. *Ribes alpinum* Green Mound (Green Mound Alpine Current, 3-4' x 2-3')
5. *Salix purpurea nana* (Dwarf Blue Leaf Arctic Willow, 4 x 4)
6. *Spirea bumalda* cv. (*Spirea* varieties, 2' x 2' – 4' x 4' – varies with cultivar)
7. *Spirea japonica* cv. (Japanese *Spirea* varieties, 2' x 2' – 4' x 4' – varies with cultivar)
8. *Viburnum opulus nanum* (Dwarf Cranberry *Viburnum*, 3' x 3')
9. Boxwood Koreanus
10. *Densiflorus* Yews
11. Hearty shrub roses

Evergreen Shrubs

1. Chinese Junipers *Juniperus chinensis*
2. Blue holly – *ilex meserveae*
3. Sea Green Juniper *Juniperus chinensis* 'Sea Green'
4. Japanese Garden Juniper *Juniperus chinensis* procumbens
5. Dwarf Creeping Juniper *Juniperus horizontalis*
6. Spreading Japanese Yew *Taxus cuspidate*
7. Hicks upright Yew *Taxus media* 'Hicks'
8. Taunton Yew *Taxus media* 'Taunton'
9. *Densiflorus* Yews
10. Green Velvet Boxwood
11. Green Mountain Boxwood
12. *Rhododendron* "PJM"

Small Trees for Under High Wires (with upright branching to avoid pedestrians on sidewalks)

1. *Acer platanoides* 'Crimson Sentry' (Crimson Sentry Maple, 25' x 15')
2. *Amelanchier x grandiflora* 'Robin Hill' (Robin Hill Serviceberry)
3. *Maackia amurensis* (Amur *Maackia*, 25' x 20')
4. *Malus Adirondack* (Adirondack Flowering Crabapple, white, 20' x 10')
5. *Malus Centurion* (Centurion Flowering Crab, rose-red, 20' x 12')
6. *Malus Red Barron* (Red Barron Flowering Crab, rose, 18' x 8')
7. *Malus Sentinel* (Sentinel Flowering Crab, white, 20' x 12')
8. *Prunus nigra* 'Princess Kay' (15' x 8-10')
9. *Syringa reticulata* 'Ivory Silk' (Ivory Silk Japanese Tree Lilac, 20' x 15')

Small Trees for Under High Wires (where sidewalk clearance is not an issue)

1. Acer ginnala (Amur Maple, 20' x 20')
2. Acer tatarica (Tatarian Maple, 25' x 15')
3. Amelanchier canadensis (Shadblow Serviceberry, tree form, 25' x 15')
4. Amelanchier g. Autumn Brilliance (Autumn Brilliance Serviceberry, 20' x 25')
5. Carpinus caroliniana (American Hornbeam, 25' x 20')
6. Cercis canadensis (Eastern Redbud, 25' x 20')
7. Cornus alternifolia (Pagoda Dogwood, 20' x 15')
8. Crataegus intricata (Thicket Hawthorn, 20' x 15')
9. Crataegus phaenopyrum (Washington Hawthorn, 20' x 20')
10. Crataegus v. Winter King (Winter King Hawthorn, 20' x 20')
11. Hamamelis virginiana (Common Witch-hazel, 12-15' x 12')
12. Ostrya virginiana (American Hophornbeam, 35' x 25')
13. Prunus maackia (25' x 25')
14. Pyrus c. Chanticleer (Chanticleer Flowering Pear, 35' x 15')

Permitted Disease Resistant Flowering Crabapples (not a comprehensive list)

1. Adams (red to pink flowers, red persistent fruit, 15' x 20')
2. Baccata Jackii (white flowers, red fruit, 20' x 20')
3. Beverly (white flowers, red fruit, 20' x 20')
4. Candied Apple (pink flowers, red persistent fruit, 15' x 15')
5. Calloway (20' x 20')
6. Cardinal (16' x 20')
7. David (white flowers, red persistent fruit, 12' x 12')
8. Donald Wyman (white flowers, red persistent fruit, 20' x 24')
9. Golden Raindrops (white flowers, yellow persistent fruit, 20' x 15')
10. Jewelberry (white flowers, red fruit, 8' x 12')
11. Liset (dark red flowers, maroon fruit, 15' x 15')
12. Louisa (pink flowers, yellow fruit, 15' x 15')
13. Ormiston Roy (white flowers, amber persistent fruit, 20' x 25')
14. Pink Princess (pink flowers, deep red fruit, 8' x 12')
15. Prairiefire (rose-red flowers, dark red persistent fruit, 20' x 20')
16. Professor Sprenger (white flowers, orange-red persistent fruit, 20' x 20')
17. Robinson (deep pink flowers, red fruit, 25' x 20')
18. Sargent (white flowers, red persistent fruit, 8' x 12')
19. Strawberry Parfait (18' x 22')
20. Sugar Tyme (white flowers, red fruit, 18' x 15')
21. Zumi Calocarpa (white flowers, red fruit, 15' x 15')

Plants with Good to Moderate Salt ToleranceDeciduous Shrubs:

1. Caragana arborescens (Siberian Pea Shrub, 20' x 10')
2. Hypericum prolificum (St. John's Wort, 4' x 4')
3. Lilacs (Miss Kiss)
4. Myrica pennsylvanica (Northern Bayberry, 9' x 6')
5. Philadelphus spp. & cvs. (Mockorange, size varies with species)

6. *Potentilla* spp. & cvs. (Cinquefoil, 3' x 3')
7. *Rhus glabra* (Smooth Sumac, 10' x 5')
8. *Rhus typhina* (Staghorn Sumac, 24' x 12')
9. *Shepherdia argentea* (Silver Buffalo Berry, 20' x 15')
10. *Spirea vanhouttei* (Bridalwreath Spirea, 6'x 6')
11. *Symphoricarpos albus* (Snowberry, 3' x 3')
12. *Syringa vulgaris* (Common Lilac, 12'x10')
13. *Viburnum dentatum* (Arrowwood Viburnum, 6' x 6')

Deciduous Trees:

1. *Acer ginnala* (Amur Maple)
2. *Acer platanoides* (Norway Maple)
3. *Aesculus hippocastanum* (Common Horsechestnut)
4. *Amelanchier Canadensis* (Shadblow Serviceberry)
5. *Catalpa speciosa* (Northern Catalpa)
6. *Celtis occidentalis* (Hackberry)
7. *Crataegus crus-galli* (Cockspur Hawthorn)
8. *Elaeagnus angustifolia* (Russian Olive)
9. *Ginkgo biloba* - Male only
10. *Gleditsia tricanthos* (Honeylocust)
11. *Gymnocladus dioicus* (Kentucky Coffeetree) – Male only
12. *Populus alba* (White Poplar)
13. *Populus deltoides* (Cottonwood)
14. *Populus tremuloides* (Quaking Aspen)
15. *Prunus serotina* (Black Cherry)
16. *Prunus virginiana* (Choke Cherry)
17. *Quercus alba* (White Oak)
18. *Quercus macrocarpa* (Burr Oak)
19. *Quercus rubra* (Red Oak)
20. *Tamarix ramosissima* (Five Stamen Tamarisk)

Groundcovers:

1. Bugleweed *Ajuga reptans*
2. Goutweed *Aegopodium podagraria*
3. Creeping Cotoneaster *Cotoneaster adpressa*
4. Bearberry Cotoneaster *Cotoneaster dammeri*
5. Rockspray Cotoneaster *Cotoneaster horizontalis*
6. Hesse Cotoneaster *Cotoneaster horizontalis* 'Hessei'
7. Wintercreeper *Euonymus fortunei* cultivars
8. English Ivy *Hedera helix*
9. Plantain Lily Cultivars *Hosta* cultivars
10. Japanese Garden Juniper *Juniperus chinensis procumbens*
11. Sargent Juniper *Juniperus chinensis sargentii*
12. Japanese pachysandra *Pachysandra terminalis*
13. Gro-low sumac *Rhus aromatica* 'Gro-low'
14. Periwinkle *Vinca minor*

Low Maintenance Perennial

Full Sun (Includes sun from 12:00 - 5:00 p.m.)

**Non-Native**

1. *Artemisia camphorata* (Southernwood)
2. *Aster Alma Pötschke*
3. *Aster Purple Dome*
4. *Baptisia australis* (False Indigo)
5. *Boltonia a. Snowbank* (White Boltonia)
6. *Chelone lyonii* (Turtlehead)
7. *Coreopsis Zagreb* (Tickseed)
8. *Echinacea purpurea* (Coneflower)
9. *Euphorbia polychroma* (Cushion Spurge)
10. *Geranium c. Biokova*
11. *Geranium sanguineum* Max Frei
12. *Heliopsis* (False Sunflower)
13. *Hemerocallis* (Daylily)
14. *Iris sibirica* (Siberian Iris)
15. *Liatris* (Blazing Star)
16. *Lamiaceae Origanum*
17. *Herrenhausen* (Ornamental Oregano)
18. *Paeoniaceae Peony*
19. *Perovskia* (Russian Sage)
20. *Rudbeckia Goldsturm* (Black-Eyed Susan)
21. *Ruta graveolens* (Rue)
22. *Salvia May Night/East Friesland/Blue Hills etc.* (Meadow Sage)
23. *Sedum kamtschaticum* (Stonecrop)
24. *Sedum spectabile Autumn Joy/Brilliant/Matrona etc.*
25. *Stachys Helene von Stein* (Lamb's Ears)
26. *Tanacetum* (Fern Leaf Tansy)
27. *Waldsteinia ternata* (Barren Strawberry)
28. *Yucca filamentosa*

**Native**

1. Bee Balm
2. Bottle Gentian
3. Butterfly Milkweed
4. Canada Anemone
5. Culvers Root
6. False Sunflower
7. Leadplant
8. Gray-headed Coneflower
9. Monkey Flower Plant
10. Nodding Onion
11. Ohio Spiderwort
12. Pale Purple Coneflower
13. Penstemon or Foxglove Beardtongue
14. Prairie Blazing Star
15. Prairie Phlox
16. Prairie Smoke
17. Purple Coneflower
18. Purple Prairie Clover
19. Queen of the Prairie

20. Rough Blazing Star
21. Silky Aster
22. Smooth Blue Aster
23. Stiff Goldenrod
24. Susan, Brown and Black-Eyed
25. White Prairie Clover
26. Wild Bergamot
27. Wild Geranium

Full Sun Grasses

**Non-Native**

1. Calamagrostis Karl Foerster (Feather Reed Grass)
2. Deschampsia caespitosa (Tufted Hair Grass)

**Native**

1. Schizachyrium scoparium (Little Bluestem)
2. Sporobolus heterolepis (Prairie Dropseed)
3. Sorghastrum nutans (Indiangrass)
4. Boutelousa (Side Oats Gramma)
5. Panicum (Switch grass)

Partial Shade (morning sun, afternoon shade)

**Non-Native**

1. Alchemilla (Lady's Mantle)
2. Aruncus (Goatsbeard)
3. Astilbe varieties
4. Carex s. Variegata (Variegated Sedge)
5. Chelone lyonii (Turtlehead)
6. Deschampsia caespitosa (Tufted Hair Grass)
7. Fern varieties
8. Heuchera varieties
9. Hosta varieties
10. Iris sibirica (Siberian Iris)
11. Lamiastrum g. Herman's Pride
12. Lamium m. Chequers
13. Ligularia The Rocket
14. Thalictrum aquilegifolium (Meadow Rue)
15. Waldsteinia ternata (Barren Strawberry)

**Native**

1. Dodecatheon amethystinum (Amethyst Shooting Star)
2. Aquilegia canadensis (Columbine)
3. Boltonia asteroides (False Aster)
4. Penstemon digitalis (Penstemon or Floxglove Beardsstongue)
5. Lobelia siphilitica (Great Blue Lobelia)
6. Symphyotrichum cordifolium (Heart-leaved Aster)
7. Polemonium reptans (Jacob's Ladder)
8. Lobelia spicata (Pale Spiked Lobelia)
9. Geranium maculatum (Wild Geranium)



Shade (filtered light or direct sun only in early morning or late evening)**Non-Native**

1. Alchemilla (Lady’s Mantle)
2. Aruncus (Goatsbeard)
3. Asarum canadense (Wild Ginger)
4. Carex s. Variegata (Variegated Sedge)
5. Cimicifuga racemosa (Cohosh)
6. Epimedium (Barrenwort)
7. Fern varieties
8. Hosta varieties
9. Pulmonaria (Lungwort)

**Native**

1. Asarum canadense (Wild Ginger)
2. Adiantum pedatum (Maidenhair fern)
3. Polystichum acrostichoides (Christmas Fern)
4. Dryopteris marginalis (Marginal Wood Fern)
5. Athyrium filix-femina (Lady Fern)
6. Dryopteris marginalis (Marginal Wood Fern)
7. Sanguinaria Canadensis (Bloodroot)
8. Hepatica nobilis var. acuta (Hepatica)
9. Trillium cernuum (Nodding Trillium)
10. Thalictrum thalictroides (Rue Anemone)
11. Mertensia virginica (Virginia Bluebells)

**Prohibited Landscaping material**

1. Berberis thunbergii (Japanese Barberry 6’ x 6’)
2. Berberis thunbergii cv. (‘Crimson Pygmy’ 2’x 2’, ‘Globe’ 2’x 2’, ‘minor’ 3’ x 3’, etc.)

**170.21 RESIDENTIAL STANDARDS – GENERAL.**

1. Garage doors shall NOT be the predominate features of a home. Garage doors facing the public street shall be set back so as to minimize the dominance of their appearance and provide adequate space between the street or sidewalk and the garage to accommodate additional parking. Garages or accessory structures shall incorporate architecture details with the use of windows, doors, and other façade detailing.
2. Single-family homes in a neighborhood shall have a varying front setback. For example, homes may have a range of front setbacks.
3. Porches are strongly encouraged to be a part of the front façade of single- and multi-family homes to provide an outdoor space and promote “eyes on the street.”
4. Dwelling units are encouraged on the second or higher story of structures when possible.
5. A publicly accessible outdoor space such as a private park, plaza, pavilion, or courtyard shall be included within each residential development to provide a focal point for such activities as outdoor gathering, neighborhood events, picnicking, sitting, and passive and active recreation.

6. Multi-density homes and high-density apartment complexes shall have a street orientation through the use of small setbacks, balconies, or porches.
7. High- and medium-density residential buildings are strongly encouraged to be multi-story.
8. Eighty percent of multi-family units within a development shall provide a balcony of at least five feet deep, which may extend into the setback, yet may be no closer than five feet to the property line.

**170.22 RESIDENTIAL STANDARDS – BUILDINGS.**

1. Fenestration (door and window openings) shall be sized to the scale of the building and detailed appropriately to the pedestrian theme. Use of repeating window patterns and details are encouraged to unify design.
2. Entrances into buildings shall be easily identified through the use of build design and detailing. Projected or recessed entryways, higher rooflines, awnings, or changes in building material are examples that can create this effect.
3. Buildings shall provide a unifying theme while maintaining each building's individual character.
4. Materials shall change with the change in building planes; however, all material shall keep within the chosen theme.
5. All sides of all buildings open to public view shall be treated with the same level of architectural style. Parking shall be located to utilize natural landscape and topography.

*(Ch. 170 – Ord. 17-14 – Dec. 17 Supp.)*

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## CHAPTER 171

# TEMPORARY USES AND STRUCTURES

171.01 Purpose	171.10 Temporary Uses and Structures
171.02 Agricultural Uses	171.11 Definitions
171.03 Residential Uses	171.12 Compliance with Chapter Provisions
171.04 Civic Uses	171.13 Permit Required
171.05 Commercial Uses	171.14 Prior Determination for Temporary Use Permit Approved
171.06 Performance Standards for Industrial Uses	171.15 General Regulations
171.07 Maximum Permitted Sound Levels Adjacent to Residential Zoning Districts	171.16 Specific Requirements for Related Areas
Table 171.07-1 Maximum Permitted Sound Levels at Residential Boundaries	171.17 Conditions of Approval
171.08 Accessory Uses	171.18 Fees
171.09 Outdoor Storage	171.19 Violations and Penalties

**171.01 PURPOSE.** The Supplemental Use Regulations set forth additional standards for certain uses located within the various zoning districts. These regulations recognize that certain use types have characteristics that require additional controls in order to protect public health, safety, and welfare. These regulations complement the use regulations contained in Chapter 168 of this Code of Ordinances.

**171.02 AGRICULTURAL USES.** Nothing in these provisions shall relieve any property owner or user from satisfying any condition or requirement associated with a previous approval, special permit, variance, development permit, or other permit issued under any local, State, or federal ordinance or statute.

### **171.03 RESIDENTIAL USES.**

1. Zero Lot Line Single-Family Detached Residential. Within a common development, one interior side yard may be equal to zero for single-family detached residential use, subject to the following additional regulations:

A. The side yard opposite to the zero yard must equal at least twice the normal required side yard.

B. The normal side yard setback requirement must be maintained adjacent to any lot with an existing structure not within the common development or not otherwise designated for zero lot line use.

C. An easement for maintenance of the zero lot line façade is filed with the Polk County Register of Deeds and the City Clerk at the time of application for a building permit.

2. Single-Family Attached. When permitted, the minimum side yard opposite the common wall shall be equal to twice the normal required side yard.

3. Townhouse Residential. Where permitted, townhouse residential is subject to the following regulations:

A. The site area per unit must be 3,000 square feet in all districts where permitted.

B. The minimum width for any townhouse lot sold individually shall be 25 feet, except within an approved creative subdivision.

- C. Coverage percentages are computed for the site of the entire townhouse common development.
- 4. Two-Family Residential.
  - A. The second dwelling unit shall be located to the rear of the site and shall be separated from the front dwelling unit by a minimum of 25 feet.
  - B. The second dwelling unit shall be served by a driveway at least ten feet in width, leading from a public street adjacent to the lot.
- 5. Downtown and Group Residential in TC District. Downtown and Group Residential uses are permitted in the TC District only on levels above street level. A unit or units specifically designed for occupancy by disabled residents may be developed at street level, subject to approval by the Board of Adjustment.
- 6. Mobile Home Parks in the MH District. Mobile home parks are permitted in the MH District as conditional uses, subject to approval by the Board of Adjustment. Following the effective date of this Zoning Code, no mobile home shall be located outside of a mobile home park. A mobile home park is subject to approval of a special use permit and compliance with the following regulations:
  - A. Certification. A certification of compliance with all ordinances and regulations regarding mobile home licensing, zoning, health, plumbing, electrical, building, fire protection, and any other applicable requirements shall be required of all mobile home parks.
  - B. Minimum and Maximum Area. A mobile home park shall be considered to be one zoned lot. The minimum contiguous area of a mobile home park shall be 100,000 square feet.
  - C. Density Requirements.
    - (1) The maximum gross density of a mobile home park shall be 10 units per acre.
    - (2) The minimum size of an individual mobile home space shall be 3,500 square feet for singlewide mobile home units and 5,000 square feet for doublewide mobile home units.
    - (3) Each mobile home space shall have a width of at least 40 feet wide and a length of at least 75 feet.
  - D. Site Development Standards.
    - (1) Setbacks. Each mobile home park shall have a minimum perimeter setback of 35 feet from adjacent nonresidential uses and 50 feet from adjacent residential uses. No space for a dwelling unit or any other structure shall be permitted in the required setback.
    - (2) Setback Landscaping. All area contained within the required setbacks except sidewalks and private drives shall be landscaped and screened in conformance with Chapter 173 of this Zoning Code. Screening shall be provided in conformance with Chapter 173 for any common property line with another nonresidential use.
    - (3) Impervious Coverage. Impervious coverage for a mobile home park shall not exceed 50 percent of the total site area.

- (4) Open Space. Each mobile home park shall provide a minimum of 400 square feet of open recreational space per unit. Such space shall be provided at a central location accessible from all parts of the park by pedestrians. Required perimeter setbacks or buffers shall not be credited toward the fulfillment of this requirement.
  - (5) Separation Between Mobile Home Units. The minimum separation between a mobile home unit and attached accessory structure and any other mobile home units and/or accessory structure shall be 20 feet.
  - (6) Separation and Setbacks for Accessory Buildings. An accessory building on a mobile home space shall maintain a minimum rear and side yard setback of five feet. A minimum distance of ten feet shall be provided between any mobile home and an unattached accessory building.
- E. Street Access and Circulation Requirements.
- (1) Access to Public Street. Each mobile home park must abut and have access to a dedicated public street with a right-of-way of at least 60 feet. Direct access to a mobile home space from a public street is prohibited.
  - (2) Vehicular Circulation. The mobile home park must provide interior vehicular circulation on a private internal street system. Minimum interior street width shall be 27 feet. The street system shall be continuous and connected with other internal and public streets or shall have a cul-de-sac with a minimum diameter of 90 feet. No such cul-de-sacs may exceed 300 feet in length.
  - (3) Separation between Units and Circulation Areas. The minimum distance between a mobile home unit and any attached accessory structure and the pavement of an internal street or parking area shall be ten feet.
  - (4) Sidewalks. Each mobile home park shall provide a sidewalk system to connect each mobile home space to common buildings or community facilities constructed for the use of its residents; and to the fronting public right of way. Sidewalk width shall be at least four feet.
  - (5) Street and Sidewalk Standards. All internal streets and sidewalks shall be hard-surfaced. Electric street lighting is required along all internal streets.
  - (6) Parking Requirements. Each mobile home park must provide at least two off-street parking stalls for each mobile home space.
- F. Tornado Shelters. Underground or other approved tornado shelters shall be provided in the mobile home park. Such shelter or shelters shall be built according to the recommendations of the Civil Defense authority and be large enough to meet the specific needs of the park and its residents.

## G. Utilities.

(1) All mobile home parks shall provide individual units and common facilities with an adequate, piped supply of hot and cold water for both drinking and domestic purposes; and standard electrical service, providing at least one 120-volt and one 240-volt electrical service outlet to each mobile home space.

(2) Complete sanitary and sewer service shall be provided within each mobile home park in accordance with this Code of Ordinances.

(3) Properly spaced and operating fire hydrants shall be provided for proper fire protection within each mobile home park in accordance with this Code of Ordinances.

(4) All electric, telephone, gas, and other utility lines shall be installed underground.

H. Financial Responsibility. Each application for a mobile home park shall include a demonstration by the developer of financial capability to complete the project, and a construction schedule.

I. Completion Schedule. Construction must begin on any approved mobile home park within one year of the date of approval by the Planning and Zoning Commission. Such construction shall be completed within two years of approval, unless otherwise extended by the Planning Commission.

**171.04 CIVIC USES.**

1. Clubs. Clubs located adjacent to residential uses shall maintain a buffer yard of not less than 15 feet along the common boundary with such residential use.

2. Day Care. Day care facilities are permitted as a conditional use in the LI Limited Industrial Zoning District only if incidental to a permitted primary use.

3. Elder Family and Elder Group Homes. New elder family and elder group homes shall not be located within a one-mile radius of another family home, elderly family home, or elder group home.

4. Group Care Facilities and Group Homes.

A. Each group care facility or group home must be validly licensed by either the State of Iowa or the appropriate governmental subdivision.

B. Group homes are permitted in the TC District only on levels above street level, except that a facility specifically designed for occupancy by disabled residents may be developed at street level, subject to approval as a conditional use by the Board of Adjustment.

C. No group care facility or group home shall be established within 300 feet of a previously existing and currently operating group care facility, family home, or group home.

**171.05 COMMERCIAL USES.**

1. Auto Service, Repair, Equipment Repair, and Body Repair.

A. Where permitted in commercial districts, all repair activities, including oil drainage, lifts, and other equipment, must take place within a

completely enclosed building. Outdoor storage is permitted only where incidental to auto repair and body repair, provided that such storage is completely screened so as not to be visible from residential areas or public rights-of-way. Screening is subject to provisions of Chapter 173 of this Zoning Code.

B. Any spray painting must take place within structures designed for that purpose and approved by the Building Official.

C. All entrances and exits serving gasoline service stations, convenience stores offering gasoline sales, or automobile repair shops shall be at least 150 feet from a school, public park, religious assembly use, hospital, or residential use, as measured along any public street. Such access shall be at least 50 feet away from any intersection.

D. All gasoline pumps shall be set back at least 15 feet from any right-of-way line.

2. Auto Washing Facilities.

A. Each conveyor operated auto washing facility shall provide 100 feet of stacking capacity per washing lane on the approach side of the washing structure and stacking space for two vehicles on the exit side.

B. Each self-service auto washing facility shall provide stacking space for three automobiles per bay on the approach side and one space per bay on the exit side of the building.

3. Automobile and Equipment Rental and Sales.

A. All outdoor display areas for rental and sales facilities shall be hard-surfaced.

B. Body repair services are permitted as an accessory use to automobile rental and sales facilities, provided that such repair services shall not exceed 25% of the gross floor area of the building.

4. Bed and Breakfasts. Bed and Breakfasts permitted in the TC District must provide any sleeping facility only on levels above street level except that units specifically designed and reserved for occupancy by handicapped people may be located on the street level.

5. Campgrounds.

A. Minimum Size. Each campground established after the effective date of this Zoning Code shall have a minimum size of one acre.

B. Setbacks. All campgrounds shall maintain a 50-foot front yard setback and a 25-foot buffer yard from all other property lines.

C. Each campground must maintain water supply, sewage disposal, and water and toilet facilities in compliance with all City ordinances, or alternately, be limited to use by self-contained campers, providing their own on-board water and disposal systems.

6. Convenience Storage. When permitted in the GC and LI Districts, convenience storage facilities shall be subject to the following additional requirements:

- A. The minimum size of a convenience storage facility shall be two acres.
  - B. Activities within the facility shall be limited to the rental of storage cubicles and the administration and maintenance of the facility.
  - C. All driveways within the facility shall provide a paved surface with a minimum width of 25 feet.
  - D. All storage must be within enclosed buildings and shall not include the storage of hazardous materials.
  - E. No storage buildings may open into required front yards.
  - F. Facilities must maintain landscaped buffer yards of 35 feet adjacent to any public right-of-way and 20 feet adjacent to other property lines, unless greater setbacks are required by Chapter 173.
7. Delayed Deposit Services Business.
- A. Locations. No person, whether as principal or agent, clerk, or employee, either for such person or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any delayed deposit businesses in the following locations:
    - (1) In any residential area in the City, including upon any sidewalk abutting upon such residential area.
    - (2) Within 1,000 feet of any residentially zoned or used property, or any property designated on the City's Comprehensive Plan as residentially oriented.
    - (3) Within 1,000 feet of any parcel of real property upon which is located any of the following facilities:
      - a. An elementary school, junior high school, or senior high school.
      - b. A church that conducts religious programs.
      - c. Park or recreational facilities operated and approved by the City, County, the Polk County Conservation Board, the State of Iowa, or a not-for-profit institution.
      - d. Federal, State, County, City, or special district governmental offices.
      - e. Supermarket or convenience market primarily engaged in the sale of food.
      - f. Restaurant, fast-food, or food establishment catering to family trade.
    - (4) Within 1,000 feet of any other pawn shop or delayed deposit service business, as defined in Section 167.06(4) and 124.01.
  - B. Measurement of Distance. The distance between any two pawn shops and/or delayed deposit services businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any pawn shop and delayed



C. deposit services business and any religious institution, school, or public park, government office, supermarket, restaurant, or any property designated for residential use or used for residential purposes shall be measured in a straight line without regard to intervening structures, from the closest property line of the pawn shop or delayed deposit services business to the closest property line of the religious institution, school, public park, government office, supermarket, restaurant, or the property designated for residential use or used for residential purposes.

D. Restrictions. Visibility into the store shall be maintained by utilizing clear, transparent glass on all windows and doors, and by keeping all windows free of obstructions for at least three (3) feet into the store. Product may be displayed for sale in the window, provided that the display, including signage, does not occupy more than 30 percent of the window area. Interior and exterior bars, grills, mesh, or similar obstructions, whether permanently or temporarily affixed, shall not cover any exterior door or window.

8. Restaurants. Restaurants in the LC District that include the accessory sale of alcoholic beverages require approval of a conditional use permit, as set forth in Section 177.03 of this Zoning Code.

9. Restricted Businesses. Restricted businesses are not permitted within the zoning jurisdiction of the City.

**171.06 PERFORMANCE STANDARDS FOR INDUSTRIAL USES.** The following performance standards apply to all industrial uses permitted within an LI Limited Industrial zoning district:

1. Physical Appearance. All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be stored outside. Normal daily inorganic wastes may be stored outside in containers, provided that such containers are not visible from the street.

2. Fire Hazard. No operation shall involve the use of highly flammable gases, acid, liquids, or other inherent fire hazards. This prohibition shall not apply to the normal use of heating or motor fuels and welding gases when handled in accordance with the regulations of Polk County and the City of Windsor Heights.

3. Maximum Permitted Sound Levels Adjacent to Residential Zoning Districts. No operation in the LI District shall generate sound levels in excess of those specified in Table 171.07-1 at the boundary of a residential district. All noises shall be muffled so as not to be objectionable because of intermittence, beat frequency, or shrillness.

4. Sewage and Wastes. No operation shall discharge into a sewer, drainage way, or the ground any material which is radioactive, poisonous, detrimental to normal sewer plant operation, or corrosive to sewer pipes and installations.

5. Air Contaminants. No material may be discharged into the air from any source in such quantity as to cause injury, detriment, nuisance, or annoyance to any considerable number of people or to the public in general; or to endanger the health, comfort, or safety of any considerable number of people or to the public in general; or to damage other businesses, vegetation, or property.

6. Odor. The emission of odors determined by the Planning and Zoning Commission to be obnoxious to most people shall be prohibited. Such odors shall be measured at the property line of the operation.

7. Gases. No release of noxious or poisonous gases shall be permitted except as provided in this section. Measurements of sulfur dioxide, hydrogen sulfide, or carbon monoxide shall not exceed 5 parts per million taken at the property line of the operation.

8. Vibration. All machines shall be mounted to minimize vibration. No measurable vibration shall occur at the property line of the operation which exceeds a displacement of 0.003 inch.

9. Glare and Heat. All glare generated by a use shall be shielded or directed so as not to be visible at the property line of the operation. No heat may be generated from an operation that raises the air temperature at the property line of the operation by more than five degrees Fahrenheit above the ambient air temperature.

10. Storage of Chemical Products. If allowed by special use permit, any above or below ground storage of liquid petroleum products or chemicals of a flammable or noxious nature shall not exceed 150,000 gallons when stored on one lot less than one acre. Such storage shall not exceed 25,000 gallons in any one tank. Storage of liquid petroleum products or chemicals of a flammable or noxious nature in excess of 25,000 gallons shall be located at least 50 feet from any structure intended for human habitation and at least 200 feet from any Residential, Office, or Commercial zoning district.

**171.07 MAXIMUM PERMITTED SOUND LEVELS ADJACENT TO RESIDENTIAL ZONING DISTRICTS.** Table 171.07-1 displays the maximum permitted sound levels that may be generated by uses in the CC, GC, UC, TC, or LI zoning districts where adjacent to residential zoning districts. All measurements shall be taken at or within the boundary between the originating district and the adjacent residential zoning district with a sound level meter meeting ANSI specifications for a Type II or better general purpose sound level meter. The A-weighted response shall be used.

Table 171.07-1 – Maximum Permitted Sound Levels At Residential Boundaries

Originating Zoning District	Time	Maximum One Hour LEQ* (dBa)
CC, GC, UC, TC	7:00 a.m. – 10:00 p.m.	60
	10:00 p.m. – 7:00 a.m.	50
LI	7:00 a.m. – 10:00 p.m.	65
	10:00 p.m. – 7:00 a.m.	55
* LEQ is the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. It is the average sound level and accurately portrays the sound the human ear actually hears.		

**171.08 ACCESSORY USES.**

1. Home-Based Businesses; Home Occupations. Each home-based business shall register with the City, on a form established by the Zoning Administrator. Home-based businesses and home occupations are permitted as an accessory use in residential units subject to the following conditions:

A. External Effects.

(1) There shall be no change in the exterior appearance of the building or premises housing the home occupation other than signage permitted within this section.

(2) No noise, odors, bright lights, electronic interference, storage, or other external effects attributable to the home occupation shall be noticeable from any adjacent property or public right-of-way.

(3) The home occupation shall be carried on entirely within the principal residential structure and/or within a detached accessory building approved by the Board of Adjustment in accordance with these zoning regulations. All "external effects" criteria in subparagraphs (1), (2), (4), (5), and (6) of this paragraph A are applicable for the detached accessory building. Signage is not allowed upon the detached accessory building.

(4) Mechanical or electrical equipment supporting the home occupation shall be limited to that which is self-contained within the structure and normally used for office, domestic or household purposes.

(5) No outdoor storage of materials or equipment used in the home occupation shall be permitted, other than motor vehicles used by the owner to conduct the occupation. Parking or storage of heavy commercial vehicles to conduct the home occupation is prohibited.

(6) No home occupation shall discharge into any sewer, drainage way, or the ground any material which is radioactive, poisonous, detrimental to normal sewer plant operation, or corrosive to sewer pipes and installations.

B. Employees. The home occupation shall employ no more than one full time or part time employee on site other than the residents of the dwelling unit, provided that one off-street parking space is made available and used by that nonresident employee.

C. Extent of Use. For all residential zoning districts, a maximum of 30% of the floor area of the dwelling may be devoted or used for a home based business/home occupation, inclusive of any attached garage or detached accessory buildings used for the home occupation.

D. Signage. Signage designating the home occupation shall be consistent with regulations for zoning districts set forth in Chapter 175 of this Zoning Code.

- E. Traffic Generation.
    - (1) Home-based businesses may generate no more than 10 vehicle trips per day.
    - (2) Delivery or service by commercial vehicles or trucks over ten tons gross empty weight is prohibited for any home-based business located on a local street.
  - F. Prohibited Home-Based Businesses or Home Occupations.
    - (1) Beauty and Barber Shops. Barber and beauty shops are allowed only as a conditional use as home occupations in the AG, R-2, R-3, and R-4 zoning districts.
    - (2) Welding, vehicle body repair, and rebuilding or dismantling of vehicles are not permitted as home-based businesses.
2. Permitted Accessory Uses – Residential Uses. Residential uses may include the following accessory uses, activities, and structures on the same lot.
- A. Private garages and parking for the residential use.
  - B. Recreational activities and uses by residents.
  - C. Home occupations, subject to subsection 1 of this section.
  - D. Residential convenience services or common facilities for multi-family uses or mobile home parks.
  - E. Garage sales, provided that the frequency of such sales at any one location shall not exceed four sales, each with a maximum duration of two days, in a calendar year.
  - F. Caretaker’s residences.
  - G. Vehicle sales, provided that the frequency of such vehicle sales does not exceed more than one vehicle at any given time and no more than two vehicles per calendar year, with a maximum duration of 30 days per vehicle.
3. Permitted Accessory Uses – Civic Use Types. Guidance services and health care use types are permitted in the GI General Industrial zoning districts only as accessory uses to a primary industrial use, subject to approval by the Board of Adjustment.
4. Permitted Accessory Uses – Other Use Types. Other use types may include the following accessory uses, activities, and structures on the same lot:
- A. Parking for the principal use.
  - B. Manufacturing or fabrication of products made for sale in a principal commercial use, provided such manufacturing is totally contained within the structure housing the principal use.
  - C. Services operated for the sole benefit of employees of the principal use.
5. Permitted Accessory Uses – Agricultural Use Types,
- A. Garden centers and roadside stands, subject to the regulations set forth in subsection 1 of this section.

- B. Other uses and activities necessarily and customarily associated with the purpose and functions of agricultural uses.

**171.09 OUTDOOR STORAGE.** Outdoor storage is prohibited in all zoning districts except the LI Limited Industrial zoning district, except as provided in this section.

1. Agricultural Use Types. Outdoor storage is permitted only where incidental to agricultural uses.
2. Civic Use Types. Outdoor storage is permitted only where incidental to maintenance facilities.
3. Commercial Use Types.
  - A. Outdoor storage is permitted where incidental to agricultural sales and service; auto rentals and sales, construction sales, equipment sales and service, stables and kennels, and surplus sales.
  - B. Outdoor storage is permitted where incidental to auto services, equipment repair, and body repair, provided that such storage is completely screened at property lines by an opaque barrier, as set forth in Section 173.05. This provision shall apply to any auto services, equipment repair, or body repair use established after the effective date of this Zoning Code.
4. Industrial and Miscellaneous Use Types.
  - A. Light Industry within the GC General Commercial zoning district may not include outdoor storage.
  - B. Outdoor storage is permitted where it is incidental to Light Industry in the LI District. Any such outdoor storage is subject to screening requirements set forth in Chapter 173.
  - C. Outdoor storage is permitted where incidental to landfills.

**171.10 TEMPORARY USES AND STRUCTURES.** These regulations are intended to prescribe the conditions under which limited duration activities (e.g., Christmas tree sales, pumpkin sales, landscape material sales, grand openings, and special events, etc.) may be conducted. The intent is to allow for the temporary storage and the display and marketing of merchandise on a seasonal basis in an attractive manner to serve the desires of the general public, but prevent the creation of any nuisance or annoyance to the occupants of adjacent buildings, premises or property, and the general public. It is also the intent to establish minimum standards for the operation of temporary uses in a manner that will provide for the health, safety, and welfare of the patrons, employees, the general public, etc. that may utilize or be affected by the establishment of the temporary use.

**171.11 DEFINITIONS.**

1. Temporary Use. A temporary use may be defined as short term or long term. A short-term use is a use with a maximum duration of four consecutive days or less. A long-term use is a use in duration of more than four consecutive days.
2. Temporary Structure. “Temporary structure” means any shed, structure, building, trailer, tent or enclosure of any kind used for storage, commercial or business or residential purposes which any person or business intends to place on the same lot with or on any lot immediately adjacent to, any permanent structure used for business or commercial or residential purposes. This term includes “temporary

portable storage container,” which is defined as a large container designed and rented or leased for the temporary storage of commercial, industrial, or residential household goods and that does not contain a foundation or wheels for movement. All other words or phrases shall have the same meaning assigned to them in Chapter 166 of this Code of Ordinances.

**171.12 COMPLIANCE WITH CHAPTER PROVISIONS.** No temporary use or structure permit shall be issued except for when hereinafter provided.

**171.13 PERMIT REQUIRED.** The following uses are eligible for a temporary permit, provided they meet the following criteria and obtain prior approval from the Zoning Administrator. No temporary use shall occur, and no temporary structures shall be erected, without first obtaining a permit from the Zoning Administrator. All permits are subject to approval by the Zoning Administrator. Further, the Zoning Administrator may impose certain reasonable requirements as may be required to prevent any negative impact to surrounding properties. City sponsored events are exempt from these requirements.

1. Construction Related. If a building permit has been issued for construction of a new building on the same property or if a contractor has another non-building related construction project, the applicant may also apply for a temporary use permit for the purpose of installing any temporary structures used as temporary living, office, shop, or storage on the property provided they directly relate to the new construction activity and the temporary structure is removed upon completion of the construction project. Specific uses under this category may include the following:

- A. Real estate offices and model homes;
- B. Any structure used for temporary living, construction offices, workshops, and storage;
- C. Any other construction related uses not specified in this section which, in the opinion of the Zoning Administrator, are similar to the uses listed in this section.

2. Event Related. These uses are intended to serve special events such as grand openings, parking lot sales, group assembly activities, etc. These uses typically involve the use of a tent, outdoor shelter, or any other enclosure and temporary structure. Garage sales are exempt from these provisions, provided they do not occur any more frequently than one 3-day event per 180-day period. Garage sales occurring more frequently shall be considered a commercial retail sales business in a residential zone which is prohibited. Specific uses under this category may include the following:

- A. Parking lot sales, sidewalk sales (private sidewalks only), clearance sales, or other temporary uses which, in the opinion of the Zoning Administrator, are similar to the uses listed in this section. (For purposes of this section, the term “sidewalks” does not apply to outside areas adjacent to sidewalks that were specifically built for outside sales.)
- B. Grand openings and special events, and grand openings which are not sponsored by the City or Chamber.
- C. Group assembly activities not sponsored or endorsed by the City (e.g. carnivals, fairs, rodeos, sports events, concerts, and shows).
- D. Temporary food and beverage uses must meet the requirements of Chapter 183. *(Subsection D – Ord. 18-03 – Apr. 18 Supp.)*

- E. Any other event related uses not specified in this section which, in the opinion of the Zoning Administrator, are similar to the uses listed in this section.
3. Seasonal Related. These uses typically involve the erection or setup of a temporary structure in order to display seasonal goods and wares. These permitted uses and any related structures expire upon the completion of the season or at another specified date. Specific uses under this category may include the following:
- A. Retail sales of Christmas trees and pumpkins.
  - B. Retail sale of agricultural products and landscape nursery material, section unless establishment sells and is zoned for sales of similar materials.
  - C. Nurseries and greenhouses.
  - D. Any other seasonal related uses not specified in this section which, in the opinion of the Zoning Administrator, are similar to the uses listed in this section.

**171.14 PRIOR DETERMINATION FOR TEMPORARY USE PERMIT APPROVAL.**

The Zoning Administrator shall only approve an application for a temporary use permit if all of the following findings can be made:

1. The proposed temporary use will be compatible with adjacent uses and will not adversely affect the surrounding neighborhood by means of odor, noise, dust, or other nuisance.
2. The additional parking required by the temporary use will be provided on site, if applicable, or adequate street parking is available in the immediate area.
3. Increased traffic caused by the temporary use will not adversely affect the surrounding neighborhood or City at large.
4. The proposed temporary use is consistent with the comprehensive plan, this Code of Ordinances, and all City and State regulations.
5. Unless specifically exempted by the Zoning Administrator, the temporary use must involve sales compatible with merchandise sold within the main business structure.

**171.15 GENERAL REGULATIONS.** Each temporary use shall:

1. Be described in a permit issued by the Zoning Administrator prior to commencement of the use. This permit shall be in addition to all other licenses, permits, or approvals otherwise required by any governmental entity.
2. Parking Spaces.
  - A. The number of additional parking spaces required, if any, and the location of such additional parking spaces, for the temporary activity shall be determined by the Zoning Administrator. The number of permanent parking spaces allowed to be used under the short-term temporary use permit shall be reviewed and determined by the Zoning Administrator.
  - B. The maximum number of permanent parking spaces allowed to be used for the operation of a long-term temporary use shall not exceed twenty percent (20%) of the parking on a site plan that was approved by the City to

be counted toward the allowable size of the long-term temporary use or twenty percent (20%) of the site area, whichever is more restrictive.

3. All sites shall be completely cleaned of debris and temporary structures including (but not limited to) trash receptacles, signs, stands, poles, electric wiring, or any other fixtures and appurtenances or equipment connected therewith, within five days after the termination of the sale or special event.
4. A bond or cash deposit in the amount of five hundred dollars (\$500.00) shall be deposited with the City to assure adequate cleanup of activities that occur on vacant or undeveloped lots, and/or involving the construction or placement of temporary structures. The bond for long-term temporary food and beverage uses shall be in the amount of seven hundred fifty dollars (\$750.00). Activities located in fully developed shopping centers will be exempt from bonding, with the exception of uses that involve construction or placement of a temporary structure, and any long-term temporary food and beverage facilities shall be required to post a bond or cash deposit. The Zoning Administrator may waive this requirement for normal and customary uses incidental and complimentary to the principal use.
5. Sanitary facilities, either portable or permanent, shall be made available to all employees, attendants and participants of the activity during its operational hours, as approved by the Zoning Administrator in concurrence with the City Engineer and County Health Department, unless stipulated otherwise in this chapter. If the restroom facilities are located within an adjacent building, the written authorization of the owner of the adjacent building shall be required specifically stating that the restroom facilities will be made available to the employees, attendants and participants at all times during the hours of operation of the temporary use activity.
6. No area of public right-of-way may be used without obtaining approval from the Zoning Administrator, who will confer with the Chief of Police, Fire Chief, Public Works Director, and the City Administrator.
7. Proof of ownership or a signed letter, either from the property owner or an authorized representative for the property on which the activity is to take place, shall be presented at the time the temporary permit is requested.
8. All temporary structures including (but not limited to) greenhouses, trailers, mobile homes, signs, etc., shall conform to the zoning setback requirements unless stated otherwise in this chapter. Temporary structures are also subject to permit requirements as set forth in Chapter 152 of this Code of Ordinances.

#### **171.16 SPECIFIC REQUIREMENTS FOR RELATED AREAS.**

1. Construction Related.
  - A. Construction Offices and Related Structures.
    - (1) Permitted Zone: Any.
    - (2) Maximum Duration: 24 months.
    - (3) Normal setbacks for the land use classification district shall apply.
    - (4) Limited to one per property and located entirely within the property boundaries.
    - (5) Located so not to obstruct vehicle sight lines.



(6) Effectively screened from view of the street or any adjacent public space.

(7) Will not obstruct any on-site care parking bays or vehicular maneuvering area which is required to be provided for the approved use(s) of the property.

B. Real Estate Sales Offices and Model Homes.

(1) Permitted Zone Locations: all residential zones.

(2) Maximum Duration: 24 months.

(3) On-Site Sales Office: On-site temporary real estate sales office or temporary model home complex may be established only within the boundaries of a residential subdivision, as an accessory facility, for the limited purpose of conducting sales of lots within the same division.

(4) Off-Site Sales Office: Off-site sales or offers to sell off-site lots or dwelling units, from any temporary office or trailer complex established pursuant to this section shall not be permitted unless a special use permit is approved by the City.

(5) Definition of Off-Site Sales Office: "Off-site lots" means those lots outside the boundaries of a residential subdivision which subdivision contains an approved real estate sales office or model home complex, and which lots are not adjacent to or contiguous with that subdivision.

(6) Requirements: Any temporary real estate sales office or model home established or maintained pursuant to this section shall meet the following requirements:

a. Receipt by the City of an agreement and a cash deposit or surety bond in a form approved by the Zoning Administrator in an amount sufficient to guarantee to the City the removal of the sales office or model home complex, or the restoration of the premises in conformity with the approved development plan and with the applicable provisions of this Code of Ordinances within 60 days after the last residence or lot within the subdivision has been sold and escrow closed. If after 60 days, no action has been taken to restore the site or premises, the City may take action to restore the site by utilizing the bond or monies deposited or other methods at its disposal.

b. Screening of parking areas by walls, fencing, landscaping, or other methods shall be provided as approved by the Zoning Administrator.

(7) Conditions: A temporary real estate office or temporary model home complex may be constructed in advance of the filing of a final plat map, subject to the following requirements:

a. The street plans for the entire plat shall be filed with the Public Works Department.

b. The Public Works Director shall have approved the engineering plans.

c. Prior to the operation of such office or complex, all applicable requirements of the Iowa and City subdivision laws and real estate sales laws shall be fulfilled.

(8) Maximum Duration: The temporary real estate sales office and temporary model home complex may be maintained until all of the on-site lots in the subdivision have been sold and escrow closed.

2. Event Related.

A. Lot and Sidewalk Commercial Activities.

(1) Permitted Zone Locations: all commercial districts.

(2) Maximum Duration: four consecutive days, not to exceed four events in a 12-month period.

(3) Setbacks: All merchandise, trucks, trailers, etc., shall be set back a minimum of 35 feet from all property lines.

(4) Area of Operation: The area of the operation shall not exceed 800 square feet and no dimension shall exceed 40 linear feet.

(5) Transient Merchants: Transient merchants shall be subject to the licensing requirements of Chapter 122 of this Code of Ordinances. Said license shall be secured prior to issuance of a temporary use permit.

B. Grand Opening Sales and Special Events.

(1) Permitted Zone Locations: all zoning districts.

(2) Maximum Duration: four consecutive days, not to exceed four events in a 12-month period.

(3) Other: All such events shall be conducted by a business located on the property.

C. Group Assembly Activities.

(1) Permitted Zone Locations: any zoning district.

(2) Maximum Duration: 14 consecutive days, not to exceed four events in a 12-month period.

(3) Exception: Upon approval of the Zoning Administrator, the number of events in the Town Center district may exceed four in a 12-month period.

(4) Hours of Operation: Residential zones, 7:00 a.m. to 10:00 p.m. except on Fridays and Saturdays to 12:00 midnight with approval of the Chief of Police; all other zones as determined by the Zoning Administrator.

D. Temporary Food and Beverage Facilities.

***(Repealed by Ordinance 18-03 – Apr. 18 Supp.)***

3. Seasonal Related.

- A. Retail Sales of Christmas Trees and Pumpkins.
  - (1) Permitted Zone Locations: all commercial and mixed use districts.
  - (2) Maximum Duration: forty (40) calendar days prior to December 25 for Christmas tree sales; October 1 through November 1 for pumpkin sales.
- B. Agricultural Produce Stands.
  - (1) Permitted Zone Locations: any zoning district.
  - (2) Termination: Stands and displays shall be removed when not used for a period of 30 consecutive days.
- C. Retail Sales of Landscape Nursery Materials.
  - (1) Permitted Zone Locations: all commercial districts.
  - (2) Maximum Duration: April 1 through October 31.
  - (3) Restrictions of Merchandise and Products: This use is limited to the display of green goods, i.e., living plants, and associated garden products. Associated garden products may include:
    - a. Bagged bulk materials such as topsoil, mulch, compost, peat, fertilizer, etc.
    - b. Garden pavers, stone and prefabricated stepping stones.
    - c. Bird baths or similar lawn ornaments as a minor portion of the products displayed.
    - d. Other products determined to be consistent with the intent of this subsection, with the approval of the Zoning Administrator.
  - (4) Safety Standards: In order to promote the safety of the patrons of these facilities, the following shall be required:
    - a. Bulk material shall be neatly and safely stacked.
    - b. All sales areas shall be separated from vehicular uses by the placement of a fence or barrier acceptable to the Zoning Administrator to prevent pedestrian and vehicular conflicts. If a barrier is of an open nature where patrons can reach through and obtain access to the merchandise, a four foot walkway shall be located adjacent to the barrier to prevent patrons from standing outside the barrier in traffic ways to shop.
    - c. The door openings for any greenhouses, shade structures or similar enclosure shall have a minimum ten-foot setback from drive aisles where an opening in the barrier is provided aligned with the door of the structure.
    - d. Where openings in the barriers occur for pedestrian access, sight visibility shall be maintained so that vehicles can clearly see pedestrians approaching the opening from a distance of no less than 50 feet.
    - e. Temporary drive aisles shall be maintained at a minimum 24-foot width for two-way traffic and shall be

delineated by the placement of traffic barriers, fencing, or some other physical marker that clearly informs drivers of the end of the parking area and the start of the drive aisle. A clear line of sight shall be maintained at the entrance and exit of the temporary drive aisles.

f. Vehicle loading areas shall be located in an area that minimizes pedestrian and vehicle conflict and provides for the safe loading of merchandise and vehicle access to and from the traffic lanes to the loading area, preferably without backing movements.

(5) Applications for the temporary use of a garden center shall be accompanied by the prescribed number of copies of a project plan and such other detailed elevations, plans and other information as may be required to adequately evaluate the proposed use. A plan of the layout of the proposed use shall be submitted to the City with the application on a base plan prepared in accordance with the site plan requirements of the City. The proposed layout of the garden center area may be drawn onto a copy of a previously approved site plan for the temporary use permit submittal. The layout plan shall identify the following:

a. The area on the site proposed to be utilized as part of the temporary garden center and associated sales areas.

b. The areas dedicated to the display of green goods, i.e., flowers, trees, shrubs, etc., and the area of the site dedicated to bulk material storage.

c. Proposed modifications to the traffic patterns and methods proposed to notify patrons and identify the temporary traffic pattern changes, i.e., signage, traffic cones, fencing and barriers, etc.

d. Proposed vehicle loading zone.

e. Proposed temporary barriers or corral with an architectural elevation, photo or sketch of the barriers' proposed construction.

f. Location of electrical connection and water connection, if applicable.

g. Waste Disposal: The applicant shall provide, as determined by the Zoning Administrator, adequate facilities for disposal of trash, waste, pallets, dead plants, broken bags and empty plant transport and display racks.

h. Restroom Facilities: restroom facilities shall be provided at all times during the temporary use activity.

i. Indemnification and Proof of Insurance: The owner or operator of any long term temporary use shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the State of Iowa in the limits of at least \$1,000,000.00 for each personal injury accident and/or death;

\$1,000,000.00 for each aggregate personal injury and/or death; and \$1,000,000.00 for each property damage accident. The evidence shall name the City as a coinsured and shall state that it cannot be canceled or materially altered without giving the City at least 30 days' written notice by registered mail, return receipt requested. The owner or operator of a temporary garden center or the property owner shall execute an agreement, acceptable to the City, which indemnifies and holds harmless the City from any and all liability, damages, claims, costs, expenses, interest, and reasonable attorney fees relating to the garden center and associated facilities on the property.

j. Electrical Service: Any electrical service shall be provided as follows:

I. Overhead power connection with a minimum clearance above grade of 14 feet;

II. Installation of an underground conduit; or

III. Other method acceptable to the City. The use of an overhead connection shall only be allowed in those areas where overhead electrical service currently exists in the area. Use of extension cords, cables, or wires, whether lying on the ground or otherwise connected to a power source, is expressly prohibited for long-term garden center uses. An electrical permit shall be obtained prior to any electrical installation or connection.

k. Removal: At the expiration of the temporary use permit, any structures, barricades, shelving, pallets, leftover merchandise, or other facilities associated with the temporary use shall be removed from the site in accordance with provisions stated in subsection 3 ("General Regulations") of this section.

**171.17 CONDITIONS OF APPROVAL.** The Zoning Administrator may impose such conditions on a temporary use permit as is necessary to meet the purposes of this section and protect the public health, safety, and welfare and adjacent uses.

**171.18 FEES.** For uses other than long-term temporary food and beverage uses, the application fee for a temporary use permit shall be in the amount as established from time to time by resolution of the Council. The application fee for a long-term temporary food and beverage permit shall be in the amount as established from time to time by resolution of the Council, payable each year of operation.

**171.19 VIOLATIONS AND PENALTIES.** The operation of a temporary use is a privilege allowed by this section. Failure to maintain a temporary use in compliance with the conditions of approval and the regulations of this section shall constitute a nuisance and may be punished as set forth in Chapter 50 of this Code of Ordinances. A written notice of a violation of the temporary use permit shall be sent to the operator of the temporary use and the property owner, if different than the operator, and the operator shall have a maximum of five (5) days, as

determined by the Zoning Administrator, to bring the site into compliance. If the operator fails to correct the violation in the prescribed time, the City may revoke the temporary use permit and issue a cease and desist order for the temporary use. There shall also be a one-year moratorium from that date on the issuance of any other temporary use permits on the property and a one-year probationary period for the second year following the violation. During the probationary period, if the operator of a temporary use fails to maintain the premises and the use in conformance with the conditions of approval and this Code, after the notification procedures noted above, the City may revoke the temporary use permit and no other temporary use permits shall be issued on the property for a period of two (2) years.

*(Sec. 171.10-171.19 added by Ord. 17-01 – May. 17 Supp.)*

[The next page is 1183]

**CHAPTER 172**  
**ZONING CODE –**  
**SUPPLEMENTAL SITE DEVELOPMENT REGULATIONS**

172.01 Purpose  
172.02 Setback Adjustments  
172.03 Height Exceptions

172.04 Exceptions for Creative Subdivisions  
172.05 Fence Regulations  
172.06 Appeals

**172.01 PURPOSE.** The Supplemental Site Development Regulations recognize the existence of special conditions that cannot comply literally with the site development regulations set out for each zoning district. Therefore, these regulations qualify or modify the district regulations of this Zoning Code and provide for specific areas of exception.

**172.02 SETBACK ADJUSTMENTS.**

1. Lots Adjoining Alleys. In calculating the depth of a required side or rear yard setback for a lot adjoining a dedicated public alley, one-half of the alley may be credited as a portion of the yard.
2. Exceptions to Openness of Required Yards. Every part of a required yard shall be open and unobstructed from finished grade upward, except as specified herein.
  - A. Architectural projections, including roofs which cover porches, enclosed porches, windowsills, belt courses, cornices, eaves, flues, and chimneys, and ornamental features may project three feet into a required yard.
  - B. Terraces, patios, and attached features must be set back at least five feet from an adjacent side lot line, ten feet from the rear lot line, or 20 feet from any street property.
  - C. Fire escapes, fireproof outside stairways, and balconies opening to fire towers may project a maximum of 4.5 feet into a required rear or interior side yard, provided that they do not obstruct the light and ventilation of adjacent buildings.
  - D. For buildings constructed upon a front property line, a cornice may project into public right-of-way. Maximum projection is the smaller of four feet or five percent of the right-of-way width.
  - E. In commercial districts, a canopy may extend into a required front yard, provided that the canopy is set back at least five feet from the front property line, covers less than 15 percent of the area of the required front yard, and has a vertical clearance of at least 8 feet, 6 inches.
  - F. Accessory buildings are subject to all site development regulations of its zoning district, except as provided below:
    - (1) Side Yards. An accessory building may be located a minimum of three feet from the side lot line of the property if it is located between the rear building line of the principal building and the rear property line.

- (2) Front Yards. No accessory building may be located between the front building line of the principal building and the front property line.
- (3) Rear Yard. The minimum rear yard setback for accessory buildings shall be 5 feet. This minimum rear yard setback shall be increased to 15 feet if the accessory building requires vehicular access from an alley. Double-frontage lots shall require front-yard setbacks along both street frontages as set forth in Table 168.3. Easements may be incorporated into these required setbacks. No accessory building shall be located within any easement or right-of-way along the rear property line.
- (4) Street Yards. No accessory building shall be located within a required front yard or street side yard.
- (5) Maximum Size. With the exception of detached garages, no accessory building shall exceed 144 square feet, or 1.5% of the total lot area, whichever is larger, within a residential district. The maximum size of a detached garage for a single-family detached, single-family attached, or duplex residential uses shall not exceed 30% of the building coverage of the back lot. All buildings on a site, taken together, must comply with the building coverage requirements for the zoning district.
- (6) Height. The maximum height for accessory buildings shall be 20 feet. The exterior side wall height shall not exceed 14 feet. The height shall be measured from grade, and shall include the foundation or retaining walls.
- (7) Separation from Other Buildings. No accessory building shall be placed within ten feet of any other building on its own property or any adjacent properties unless it meets applicable separation requirements of the City's Fire Code.
- (8) Attached Accessory Buildings. Any accessory building physically attached to the principal building shall be considered part of the principal building and subject to the development regulations of its zoning district.
- (9) Effect on Adjacent Properties. If an adjacent lot is built upon, the accessory building must be entirely to the rear of the front building line of any principal building on such adjacent lot. No accessory building shall damage adjacent property by obstructing views, inhibiting solar access, or hindering ventilation.
- (10) Hazards. Any accessory use which creates a potential fire hazard shall be located a minimum of ten feet from any residential structure. Such uses include but are not limited to detached fireplaces, barbecue ovens, or storage of flammable materials.
- (11) No accessory building shall be built upon any lot until construction of the principal building has begun.



- G. Lampposts with a maximum height of 10 feet and flag poles up to a maximum height of 25 feet may be located within required yards, provided they are set back at least 5 feet from property lines.
3. Setback Adjustments.
- A. Setbacks on Built-Up Blockfaces. These provisions apply if 40 percent or more of the buildings on that blockface have front yard setbacks different from those required for the specific district.
- (1) If a building is to be built on a parcel of land within 100 feet of existing buildings on both sides, the minimum front yard shall be the mean setbacks of the adjacent buildings.
- (2) If a building is to be built on a parcel of land within 100 feet of an existing building on one side only, the minimum front yard shall be the setback of the adjacent building.
- (3) If a building is to be built on a parcel of land not within 100 feet of an existing building on either side, then the minimum front yard shall be the mean setback of all existing buildings on the blockface.
- (4) No setback adjustment pursuant to this section shall create a required front yard setback more than five feet greater than that otherwise required by the applicable zoning district.
- B. Corner Lots. Required setbacks shall not reduce the buildable width of any corner lot to less than 24 feet. Appropriate setback adjustments shall be allowed to maintain this minimum width.
4. Rear Yard Exceptions – Residential Uses. When an irregular lot is used for residential purposes, the rear yard may be measured as the average horizontal distance between the building and rear lot line, provided that the minimum setback shall not be less than 60 percent of the rear yard required by the zoning district.
5. Double Frontage Lots. Residentially zoned double frontage lots on a major street, and with no access to that street, may have a 25-foot minimum front yard setback along said street. All other double frontage lots must provide full front yard setbacks from each adjacent street.
6. Satellite Antennas.
- A. Antennas with a surface area over 6.3 square feet which are accessory to a primary use and are designed to receive and transmit electromagnetic signals, or to receive signals from satellites, shall not be located within any front yard of the primary use.
- B. Such antennas shall be located no less than 15 feet from the property line of an adjacent property within a residential zoning district.
7. Vision Clearance Zones. No structure, including a fence, shall be built to a height of more than three feet above the established curb grade on the part of the lot bounded by the street lines of the streets which intersect and a line connecting a point on each of such lines 40 feet from their point of intersection. No landscaping shall be planted in such area which will materially obstruct the view of drivers approaching the street intersection.

**172.03 HEIGHT EXCEPTIONS.** These provisions allow exceptions to the height limit of any zoning district in certain situations.

1. Vertical Projections. Chimneys, cooling towers, building mechanical equipment, elevator bulkheads, fire towers, grain elevators, non-parabolic receiving antennas, tanks, solariums, steeples, penthouses not exceeding 25 percent of total roof area, flag poles, stage towers or scenery lofts, and water towers may be built to any height in accordance with existing and future ordinances. Such structures shall not extend into the approach zones, clear zones, or other restricted air space required for the protection of any public airport.
2. Amateur Radio Towers and FCC Pronouncements.
  - A. Radio towers, antennas and other appurtenances operated by licensed amateur radio operators, where permitted and when, may not exceed 75 feet in height. This height has been determined by the City to reasonably accommodate amateur service communications, and further represents the minimum practicable regulation to accomplish legitimate municipal land use regulation purpose, as recognized under published guidelines of the Federal Communications Commission.
  - B. Special instances may require that amateur radio tower heights exceed 75 feet to achieve effective and reliable communications. In such cases, the Council may grant a special use permit to a licensed amateur radio operator for a specific tower height that exceeds 75 feet. In determining whether to grant such permission, the Council shall consider the federal guidelines contained in PRB-1 (*Amateur Radio Preemption*, 101 FCC 2d (1985), codified at C.F.R. Section 97.15(e).
  - C. Such radio towers shall not be located within any front yard of the primary use.
3. Broadcast Towers. Broadcast towers, when operated by a federally licensed commercial or nonprofit organization, may be built to any height in accordance with existing and future ordinances, subject to approval of a conditional use permit. This exception does not apply to radio towers, antennas and other appurtenances operated by licensed amateur radio operators.
4. Civic Buildings. Buildings housing civic use types may be built to a maximum height of 60 feet. Such buildings located in residential districts shall be set back one foot in addition to required setbacks from each property line for each foot of height over the maximum height of the zoning district.
5. Wind Energy Conservation Systems (WECS).
  - A. The distance from all lot lines or any building or power line to any tower support base of a WECS shall be equal to the sum of the tower height and the diameter of the rotor. A reduction of this requirement may be granted as part of a special permit approval if the Planning Commission finds that the reduction is consistent with public health, safety, and welfare.
  - B. The distance between the tower support bases of any two WECS shall be the minimum of five rotor lengths, determined by the size of the largest rotor. A reduction of this requirement may be granted as part of a special permit approval if the Planning Commission finds that the reduction does not impede the operation of either WECS.

- C. The WECS operation shall not interfere with radio, television, computer, or other electronic operations on adjacent properties.
  - D. A fence six feet high with a locking gate shall be placed around any WECS tower base; or the tower climbing apparatus shall begin no lower than 12 feet above ground.
  - E. The WECS is exempt from the height restrictions of the base district.
6. Conditional Permit Uses. The Board of Adjustment may grant an exception from the height limit for a zoning district for a conditional use, as part of its approval of that use. The limit or extent of this exception shall be a specific part of the conditional use permit.
  7. Federal Aviation Administration Rules. No structure may be built in any zoning district which exceeds the maximum height permitted under the rules of the Federal Aviation Administration. These rules describe the glide angles and operational patterns for any airport within the planning jurisdiction of the City.

**172.04 EXCEPTIONS FOR CREATIVE SUBDIVISIONS.** In the instance that this Zoning Code provides for creative subdivisions, the City may authorize such subdivisions to allow for greater flexibility in the design and development of subdivisions, in order to produce innovative residential environments, to provide for more efficient use of land, to protect topographic and to encourage the preservation of common area and open space. These special regulations and design exceptions apply only to creative subdivisions.

1. Site Area Per Unit. Unless otherwise provided, the site area per unit for a creative subdivision as a whole shall be that of the zoning district in which such subdivision is located. For the purpose of computing site area per unit, the area of public streets and private ways within the subdivision must be excluded. Residential use types may be combined within the creative subdivision provided that the subdivision as a whole complies with the required maximum density of the zoning district.
2. Perimeter Yards. Structures must maintain normal street yard setbacks from any public streets that form the perimeter of the development. Structures must maintain a 20-foot minimum side yard setback from any property line that forms the boundary of the development.
3. Area and Yards for Individual Lots.
  - A. Individual lots within a creative subdivision are exempt from minimum lot area or yard setback requirements set forth elsewhere in this Zoning Code, unless provided for by the regulations for a specific zoning district. A creative subdivision must be planned and developed as a common development. A minimum separation of 20 feet shall be established for all residential structures not attached to one another, unless the City Council grants a specific exception for developments proposing unique circumstances, only in as much as said development can be demonstrated to avoid detriment to the City's efforts to protect public health, safety, welfare, community character, property values and aesthetics.
  - B. Any private garage oriented to or facing a public street or private way internal to the creative subdivision must be set back a minimum of 25 feet from that public street or private way.

4. Coverage and Landscaping Requirements. Individual lots in a creative subdivision are exempt from maximum building and impervious coverage limitations and street yard landscaping requirements established for the zoning district. However, the subdivision as a whole, including streets, walks, and access ways, must comply with the building and impervious coverage regulations for its zoning district.

#### **172.05 FENCE REGULATIONS.**

1. Permit Required. It shall be unlawful for any person to construct, alter, replace or relocate any fence or landscape wall within the City without first obtaining the appropriate permit(s) as required by the City Code of Ordinances and Zoning Code. A written application for the permit shall be filed with the Director of Planning. The application shall include the street address or legal description of the property, the name of the owner, the name and address of the person performing the work, and the proposed plan of construction or repair. The plan of construction or repair must include the depth, width, and type of material used along with where it will lie compared to structures and lot lines. The Director of Planning shall issue the permit if the proposed plan meets all the requirements of this chapter and the fence regulations including any specifications contained herein, if the fee is paid, and if the construction or repair as planned will not create any substantial hazard. A permit shall expire six (6) months after the date of issuance, if the fence is not constructed at that time.

2. The applicant for a fence permit shall pay a permit fee to the Clerk to cover the cost of issuing the permit and supervising, regulating, and inspecting the work. All permit fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such permit fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective permit fees shall be kept on file in the office of the City Administrator and shall be open to inspection during regular business hours.

3. Location Restriction. Unless otherwise provided by this Zoning Code or other sections of this Code of Ordinances, no fence shall be built on any lot or tract outside of the property owner's surveyed lot lines. If a fence is erected along the property lines the owner installing the fence must ensure there is a permanent means for maintaining both sides of the fence subject to state and local ordinances. No landscape retaining wall shall be installed within two feet of the lot line of another property that is in excess of 24" without first conducting a consultation meeting with the City's storm water coordinator and the adjoining property owner.

4. Responsibility. The property owner erecting the fence/wall is responsible for the following provisions:

- A. Ensuring the fence is located on their property in accordance with the provisions of this section.
- B. Maintaining the fence on both sides.
- C. Ensuring that the fence be maintained in a state of good repair and kept safe for pedestrians or other traffic.

5. Required Openings. Unless otherwise provided by this Zoning Code or other sections of this Code of Ordinances, any fence built on residential property within required front or street side yards shall contain openings constituting no less than 50 percent of the surface area of the fence.

6. Sight Obstruction. No fence permitted or required by this Zoning Code or other sections of this Code of Ordinances shall be built within a triangle formed by the adjacent curb lines of two intersecting streets and a line connecting points 40 feet on each leg from their point of intersection; or otherwise in any manner create a traffic hazard or obstruction to visibility.
7. Facing. The finished surfaces or decorative side of any fence shall face toward adjacent properties and street frontage.
8. Effect on Adjacent Properties. No fence shall damage adjacent property by obstructing views, inhibiting solar access, or hindering ventilation.
9. Residential Fences. Fences constructed within residential districts or on land used for residential purposes are subject to the following provisions:
  - A. Height. The maximum height of a fence within a front yard or street side yard setback shall be four feet. The maximum height for any fence outside of a required front yard shall be six feet and is measured from the property grade.
  - B. Exception for Street Side Yards. On corner lots, a fence built parallel to the street side yard line but set back in conformance with the street yard setback may have a maximum height of six feet.
  - C. Exception to Openness Requirement. Fences built on residential property outside of required front or street side yards may exceed 50 percent closed construction.
  - D. Exception for Front Yards of Double Frontage Lots. A fence built within the required front yard of a double frontage lot may be a maximum of six feet in height and may exceed 50 percent closed construction if such lot fronts an arterial street or expressway, as defined in the Comprehensive Development Plan of the City, and if such frontage does not provide primary access to the property.
  - E. Prohibited construction methods. No woven, twisted, welded or interlaced wire fence shall be erected on residential properties. No chain link or wired fence of any kind shall be constructed or maintained with the cut or selvage end of the fencing material exposed and leaving an opening more than two inches above the ground or extending upward beyond the cross bar.
  - F. Materials. Fences shall be constructed of wood, PVC/ resin, stone, wrought iron, masonry or chain link materials only. Wood fences shall utilize standard building lumber only.
  - G. Location restrictions. Fences may not be constructed on lots unless a primary building is in place, with the exception of a temporary fence for safety as approved by the City or Zoning Administrator.
  - H. Prohibited Materials. A fence or wall may not be designed to cause pain or injury to humans or animals. Therefore, the use of spikes, broken glass, barbed wire, razor wire, nails, electrical charge or other similar materials shall be prohibited.
  - I. Fences may not be constructed within two feet of a public sidewalk.

10. Nonresidential fences.
  - A. The maximum height of a fence for any permitted use in a nonresidential district shall be eight feet.
  - B. The Board of Adjustment may approve greater fence heights on a case-by-case basis if it concludes that such permission furthers the health, safety, and welfare of the residents of the City.
  - C. Barbed wire or electrified fences above grade shall not be used in the construction of any fence within the corporate limits of the City.
11. Covenants. The City does not enforce covenants on file with the Recorder. Property owners shall be aware of all restrictive covenants for their platted subdivision.
12. Easements: No fence may be allowed to be constructed, built or located over a public easement, unless otherwise noted in this ordinance or approved by the zoning administrator.
13. Overland flowage easements.
  - A. Fences may encroach into an overland flowage easement providing measures are taken to make certain that the fence does not restrict the water flow, cause siltation buildup, etc.
  - B. Permitted fence material includes chain link, wrought iron fencing, picket style fencing that is at least thirty percent (30%) open, or other fencing styles that are at least thirty percent (30%) open.
  - C. Solid fencing shall be elevated a minimum of six inches (6") through the swale part of the easement to allow water flowage.
14. Nonconforming fences. Any fence existing on the effective date of this Chapter and not in conformance with this Section may be maintained, but alterations, modifications, relocations or improvements of more than fifty percent (50%) of said fence shall require a permit and the owner to bring the fence into compliance with this Section.
15. Miscellaneous. Fences which enclose public or institutional parks, playgrounds, or schoolyards in residential areas shall be of open type not exceeding 6' in height except as required for recreational purposes such as baseball backstop when a limited section(s) of open fence up to 10' in height is allowed, where necessary to provide for such backstop or similar purposes.

*(Ord. 15-06 – Nov. 15 Supp.)*

**172.06 APPEALS.** Denial, revocations, or cancellations of a building permit based on the provisions of this chapter may be appealed to the Board of Adjustment, as set forth in Chapter 177.

[The next page is 1201]

**CHAPTER 173**  
**ZONING CODE –**  
**LANDSCAPING AND SCREENING STANDARDS**

173.01 Purpose	Table 173-1 Required Landscape Depth
173.02 Applicability	173.06 Buffer Yard Provisions
173.03 Landscaping Plan Review Procedure	Table 173-2 Buffer Yard Requirements
173.04 Landscaping Requirements	173.07 Screening Standards
173.05 Landscaping Materials and Installation Standards	173.08 General Provisions

**173.01 PURPOSE.** The Landscaping and Screening Regulations provide additional guidance on the development of sites within the City by addressing landscaping and screening requirements. They are designed to improve the appearance of the community, buffer potentially incompatible land uses from one another, and conserve the value of properties within the City.

**173.02 APPLICABILITY.** The provisions of this chapter apply to all new development on each lot or site upon application for a building permit, except for the following:

1. Reconstruction or replacement of a lawfully existing use or structure following a casualty loss.
2. Remodeling, rehabilitation, or improvements to existing uses or structures which do not substantially change the location of structures, parking, or other site improvements.
3. Additions or enlargements of existing uses or structures which increase floor area or impervious coverage area by less than 20 percent. Where such additions or enlargements are 20 percent or greater, these provisions apply only to that portion where the new development occurs.

**173.03 LANDSCAPING PLAN REVIEW PROCEDURE.**

1. Landscaping Plan Review Required. Landscaping plan review is required for all developments requesting actions regarding re-zonings, building and grading permits, and minor and major subdivisions. The review will be performed by the Zoning Administrator. Landscaping plan review is initiated at the time of application for a plat or permit. Compliance with these landscape requirements must be complete prior to issuance of a certificate of Zoning Compliance or Certificate of Occupancy for the structure. No building or grading permit shall be issued by the Zoning Administrator, except in conformity with the provisions of this Zoning Code, unless said official receives a written order from the Board of Adjustment in the form of an administrative review, special exception, or variance as provided by this Zoning Code.
2. Submittal for Landscaping Plan Approval. Submittal shall include the following information:
  - A. Common and scientific names for all proposed plant material.
  - B. Quantity, height/caliper/gallon size (as applicable) of all proposed plant material.
  - C. Location of all proposed plant materials.

- D. Number of ground cover plants per square foot to be planted, and/or pounds of seed per 1,000 square feet and species/characteristics of grass in all areas to be seeded.
- E. Location, size, and species of all existing plant material to remain. This includes a diagram and/or tree survey noting the location, size, and species of existing trees and shrubs.
- F. Location of retaining walls, fences, utility easements, existing and proposed structures and parking areas.
- G. Plant installation details.
- H. Drainage areas.
- I. North arrow and scale of drawing.

**173.04 LANDSCAPING REQUIREMENTS.** Landscaping shall be required adjacent to each street property line and within street yards as set forth in Table 173-1.

**173.05 LANDSCAPING MATERIALS AND INSTALLATION STANDARDS.**

1. **Restricted List of Plant Material.** No plant material contained on the Restricted List of Plant Material shall be used to fulfill landscape requirements. This list is provided through the office of the Zoning Administrator. These plants are restricted from use because of problems with disease, maintenance, or suitability.
2. **Use of Inorganic Landscaping Materials.** No artificial trees, shrubs, plants, or turf shall be used to fulfill the minimum requirements for landscaping. Inorganic materials, such as stone or decorative pavers, may be used provided that such material does not comprise more than 35% of the minimum required landscaped area. Other concrete and/or asphalt pavement surfaces may not be used within the minimum required landscaped area, except for walkways less than 5 feet in width.
3. **Official List of Plant Materials.** All plant material installed in landscaped areas or buffer yards shall be consistent with the Official List of Plant Materials provided through the office of the Zoning Administrator. All plant materials shall conform in size, species, and spacing with this section of the Zoning Code.

**Table 173-1 – Required Landscape Depth**

Zoning District	Depth of Landscaping Adjacent to Street Property Line	Percentage of First 80 Feet of Street Yard that Must Be Landscaped	Percentage of Street Yard Beyond First 80 Feet that Must Be Landscaped
R-1	20 feet	65% of whole street yard	NA
R-2	20 feet	55% of whole street yard	NA
R-3	20 feet	50% of whole street yard	NA
R-4	15 feet	45% of whole street yard	NA
MH	35 feet	65% of whole street yard	NA
LC	15 feet	20%	5%
CC	10 feet	10%	5%
GC	10 feet	10%	5%
UC	15 feet	20%	5%
TC	No requirement	10%	No requirement
GC	10 feet	10%	5%
LI	10 feet	15%	5%



4. Supplements to the Official List of Plant Materials. The list of Official List of Plant Materials has been compiled using the latest research data available. Plants other than those listed may be used to fulfill minimum landscaping requirements as approved by the Zoning Administrator. To be considered for approval, a proposed plant material must be submitted for review with the following information:
  - A. Common name and scientific name of plant material;
  - B. Habitat, geographic climate range and whether plant is native to this region;
  - C. Growing characteristics, including evergreen or deciduous, height and spread at maturity;
  - D. Suitability for different landscape uses and applications;
  - E. Susceptibility to disease and tolerance of environment: heat, drought, pollution stress;
  - F. Fruit bearing characteristics which may be hazardous in pedestrian and parking areas.
5. Encouragement of Native Landscaping Materials. The use of suitable native plant materials is encouraged to fulfill landscaping requirements. Native plants, or those plants which occur naturally in this region, have shown greater adaptability to the seasonal and climate changes which occur in this region.
6. Installation Standards for Required Landscaping.
  - A. Basic plant materials standards shall include the following:
    - (1) Evergreen trees: minimum height of 6 feet;
    - (2) Shrubs: minimum two-gallon size container, or the equivalent height and/or spread;
    - (3) Groundcover shrubs: minimum spacing upon installation of 18 inches on center;
    - (4) Deciduous shade trees: minimum caliper (diameter) of 2 inches as measured 6 inches above the ground;
    - (5) Ornamental deciduous trees: minimum caliper (diameter) of 2 inches as measured 6 inches above the ground.
  - B. All other specifications shall conform with the *American Standards for Nursery Stock*, published by the American Association of Nurserymen for that type of tree or shrub at the time of installation.
  - C. All plant material shall be installed free of disease and in a manner that ensures the availability of sufficient soil and water to sustain healthy growth.
7. Minimum Spacing of Plant Materials.
  - A. Tree spacing along streets: minimum of one tree for every 50 feet of perimeter length.
  - B. Spacing of trees: spacing consistent with generally accepted species spread dimension at maturity defined by *American Standards for Nursery Stock*, or a minimum of one tree for every 50 feet, whichever is less.

- C. Groundcover shrubs: minimum spacing upon installation of 18 inches on center.
  - D. Groundcover turf: immediate and complete coverage of area within the season.
  - E. Groundcover, creeping: spacing adequate to provide complete coverage in three years.
8. Supplemental Installation Requirements for Shrubs.
- A. Shrubs shall be installed in a manner that promotes ease of maintenance and quality appearance.
  - B. All shrubs shall be installed in designed beds or naturalized settings containing a minimum of 3 inches of organic or inorganic mulch, contained by some form of edging, with an underlayment of landscape fabric.
  - C. Shrub installations beyond mere shrub beds, such as may contain groundcovers, native perennials or seasonal annuals, may be approved without these features at the discretion of the Zoning Administrator, upon demonstration of quality design and a maintenance contract/commitment.

**173.06 BUFFER YARD PROVISIONS.** These provisions apply when use is established in a more intensive zoning district (District A) which is adjacent to a less intensive zoning district (District B). The owner, developer, or operator of the use within District A shall install and maintain a landscaped buffer yard on his/her lot or site, as set forth in this section. Buffer yard requirements apply only to those districts indicated in Table 173-2. Buffer yards are not required of single-family, two-family, duplex, or townhouse use types in the more intensive zoning district.

1. The buffer yard dimensions set forth in Table 173-2 apply to zoning districts which share a common lot line or are adjacent but separated by an intervening alley.
2. When a street separates adjacent zoning districts requiring a buffer yard, the size of the buffer yard shall be one-half the required buffer yard set forth in Table 173-2.
3. Each required buffer yard must be entirely landscaped and free of paved areas, accessways, storage, or other disturbances.

**Table 173-2 – Buffer Yard Requirements**

		Less Intensive Adjacent District			
		R-1*	R-2*	R-3	R-4
More Intensive District	R-4	20	20	15	---
	TC, UC	20	20	15	10
	CC, GC	30	30	20	20
	LI	40	40	40	30
*Applies to residential uses only.					

**173.07 SCREENING STANDARDS.**

1. Application. Screening is required between adjacent zoning districts indicated in Table 173-2 when one or more of the following conditions in the more intensive zoning district is directly visible from and faces toward the boundary of the less intensive zoning district.
  - A. The rear elevation of buildings.
  - B. Outdoor storage areas or storage tanks, unless otherwise screened.
  - C. Loading docks, refuse collection points, and other service areas.
  - D. Major machinery or areas housing a manufacturing process.
  - E. Major on-site traffic circulation areas or truck and/or trailer parking.
  - F. Sources of glare, noise, or other environmental effects.
2. Opaque Barrier. A six-foot opaque barrier shall be provided which visually screens the conditions listed in subsection 1 from less intensive uses as follows:
  - A. A solid wood and/or masonry fence or wall at least six feet in height.
  - B. A landscaped screen, using evergreen or deciduous materials, capable of providing a substantially opaque, hedge-like barrier and attaining a minimum height of six feet within three years of planting. (Note: All planting materials shall conform to the minimum caliper/size requirements set in Section 173.05.)
  - C. A landscaped earth berm with a maximum slope of three to one, rising no less than six feet above the existing grade of the lot line separating the zoning districts.
  - D. Any combination of these methods that achieves a cumulative height of six feet.
3. Location of Screening Wall. A screening wall or fence shall be installed no closer to the less intensive zoning district than one-half the width of the required buffer yard.
4. Effect on Drainage. Screening shall not adversely affect surface water drainage.

**173.08 GENERAL PROVISIONS.**

1. Obstruction of View. Landscaping or screening installed in any landscaped area shall not obstruct the view from or to any driveway approach, street, alley, or sidewalk.
2. Earth Berm Locations. All earth berm locations shall be reviewed by the Public Works Director to determine how the berms shall relate to drainage and public utilities.
3. Exceptions. A development may continue to comply with the buffer yard and screening requirements in effect at the time of issuance of its original permit, regardless of whether an adjacent lot or site is subsequently rezoned to a less intensive district which would otherwise require compliance with buffer yard or screening provisions.

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## CHAPTER 174

# ZONING CODE – OFF-STREET PARKING

174.01 Purpose	174.06 Off-Street Parking Design Standards
174.02 General Applications	174.07 Off-Street Loading
174.03 Schedule of Off-Street Parking Requirements	Table 174-3 Off-Street Loading Requirements for Single Use Structures
174.04 Parking Facility Location	174.08 Parking for Personal and Recreational Vehicles
Table 174-1 Minimum Off-Street Parking Requirements	174.09 Storage and Parking of Unlicensed or Other Vehicles
174.05 Parking for People with Disabilities	
Table 174-2 Accessible Parking Requirements	

**174.01 PURPOSE.** The Off-Street Parking Regulations require that developments provide parking in proportion to the need created by each use. The regulations further establish standards for the functional design of parking facilities. These regulations are intended to accommodate vehicles in a functionally satisfactory manner and to minimize external effects on neighboring properties.

### **174.02 GENERAL APPLICATIONS.**

1. **Applicability.** Off-street parking shall be provided for any new building constructed, for new uses or conversions of existing buildings, or for enlargements of existing structures.
2. **Exemptions.** Any use within the TC Town Center District is exempt from the off-street parking requirements provided by Section 174.03. Any off-street parking facility constructed in the TC District after the effective date of this Zoning Code must comply with the design standards set forth in this chapter.

**174.03 SCHEDULE OF OFF-STREET PARKING REQUIREMENTS.** Parking facilities for each use shall be provided in accord with the minimum requirements set forth in Table 174-1.

1. When a computation of required parking results in a fraction of 0.5 or greater, the requirement should be rounded up to the next whole number.
2. Unless otherwise indicated, parking requirements are based on gross floor area. Gross floor areas for the purpose of this calculation exclude any interior space used for the parking or loading of vehicles.
3. When parking requirements are computed on the basis of capacity, capacity shall be determined by the Building Code in effect for the City at the time the use is established.
4. For sites with more than one use, the parking requirement shall be the sum of spaces required for each use, except as provided below.
5. The Board of Adjustment may authorize an adjustment in the total parking requirement for separate uses located on the same site or for separate uses located on adjoining sites and served by the same parking facility. The Board shall consider at least the following criteria in determining approval of such an adjustment:
  - A. The characteristics and time of operation of each use, and differences in projected peak parking demand.

- B. Potential reduction in total expected vehicle movements afforded by multiple uses of the parking facilities.
- C. Functional design of the development and its parking facilities.
- D. Evidence of a written agreement that provides for the joint use of parking facilities.

**174.04 PARKING FACILITY LOCATION.**

1. Residential Parking.
  - A. Off-street parking for residential uses shall be located on the same lot or site as the use.
  - B. Off-street parking areas for multi-family residential uses shall be at least six feet from any residential building, and shall not be located within a required front yard or street side yard.
2. Nonresidential Parking. Off-street parking for nonresidential uses shall be located on the same lot or site as the use, or within 300 feet of that use if the parking site is within a zoning district that permits the off-street parking use type. Control of ownership or use rights to the remote off-street parking must be demonstrated as a condition of permission.

**Table 174-1 – Minimum Off-Street Parking Requirements**

<b>Agricultural Use Types</b>	<b>Required Spaces</b>
Horticulture	1 space per 1,000 square feet of sales area
Crop Production	No requirement
<b>Residential Use Types</b>	
Single-Family Residential	2 spaces per dwelling unit plus 1 space for each boarder, if any
Duplex Residential	2 spaces per dwelling unit plus 1 space for each boarder, if any
Two-Family Residential	2 spaces per dwelling unit plus 1 space for each boarder, if any
Multi-Family Residential	1.5 spaces per efficiency or 1-BR unit; 2 spaces per other units
Group Residential	1 space for each two residents
Mobile Home Residential	2 spaces per dwelling unit
Retirement Residential	1 space per each independent living unit and 1 space per each two assisted living units plus 1 space for each employee on largest shift
<b>Civic Use Types</b>	
Administration	1 space for 500 square feet
Cemetery	No requirement
Clubs	1 space per 4-person capacity
Convalescent Services	1 space for 10 beds plus 1 space per each employee on largest shift
Cultural Services	1 space per 500 square feet of public area
Day Care Services	1 space per 5-person capacity plus 1 space per employee on largest shift
Group Care Facility	1 space per 4-person capacity plus 1 space per employee on largest shift
Group Home	1 space per 4-person capacity plus 1 space per employee on largest shift
Guidance Services	1 space per 300 square feet
Health Care	1 space per 300 square feet plus 1 space per employee on largest shift
Hospitals	1 space per 4 beds plus 1 space per employee on largest shift
Maintenance Facilities	See Schedule A

**Table 174-1 - Minimum Off-Street Parking Requirements**

(continued)

<b>Commercial Use Types</b>	<b>Required Spaces</b>
Agricultural Sales/Service	See Schedule A
Auto Rental and Sales	See Schedule A
Auto Service *	4 times service capacity
Body Repair *	5 spaces per repair stall
Business Support	1 space per 500 square feet
Campground	1 space per camping unit
Cocktail Lounge	1 space per 150 square feet
Commercial Recreation	1 space per 4-person capacity
Communication Services	1 space per 500 square feet
Construction Sales	See Schedule A
Consumer Services	1 space per 200 square feet
Convenience Storage	1 space per 20 storage units **
Equipment Sales/Service	See Schedule A
Food Sales (all types)	1 space per 200 square feet
Gaming Facilities	1 space per 100 square feet
General Retail Services	1 space per 200 square feet
Liquor Sales	1 space per 200 square feet
Lodging	1 space per unit plus 1 space for each employee on duty
Personal Improvement	1 space per 200 square feet
Personal Services	1 space per 500 square feet
Pet Services	1 space per 500 square feet
Restaurants (Drive-In)	1 space per 50 square feet of customer service area
Restaurants (General)	1 space per 3-person capacity in dining area plus 1 space per each 150 square feet in cocktail lounge
Stables/Kennels	1 space per employee plus 1 stall per 5,000 square feet of site area
Surplus Sales	See Schedule A
Trade Services	1 space per 300 square feet
Veterinary Services	1 space per 500 square feet
<b>Office Use Types</b>	
General Offices	1 space per 250 square feet
Medical Offices	3 spaces per staff doctor or dentist
<b>Miscellaneous Use Types</b>	
Broadcasting Tower	No requirement
Non-Putrescible Landfill	No requirement
All Landfills	No requirement
<b>Industrial Use Types</b>	
Agricultural Industries	See Schedule A
Light Industry	See Schedule A
General Industry	See Schedule A
Heavy Industry	See Schedule A
Railroad Facilities	See Schedule A
Resource Extraction	1 space per employee on largest shift
Salvage Services	See Schedule A
Warehousing	See Schedule A
Construction Yards	See Schedule A
* Auto Service and body repair subject to other restrictions applicable under this Zoning Code. See Chapter 168 – Use Types – “Vehicle Storage” and Section 171.09, “Outdoor Storage.”	
** This standard may be reduced by up to 20% at the discretion of the Zoning Administrator, if site plan review demonstrates that circulation and loading patterns accommodate adequate space for queuing and temporary parking by users during the peak hours of operation.	





**Table 174-1 – Minimum Off-Street Parking Requirements**  
(continued)

<b>SCHEDULE A</b>	
This schedule sets forth minimum off-street parking requirements for uses with elements that have different functions and operating characteristics.	
<b>Function of Element</b>	<b>Required Spaces</b>
Office or Administration	1 space per 300 square feet
Indoor Sales, Display or Service Area	1 space per 500 square feet
Outdoor Sales, Display or Service Area	1 space per 2,000 square feet
Equipment Servicing or Manufacturing	1 space per 1,000 square feet
Indoor or Outdoor Storage or Warehousing	1 space per 5,000 square feet

**174.05 PARKING FOR PEOPLE WITH DISABILITIES.** Each off-street parking facility shall provide the number of parking spaces set forth in Table 174-2 designed and designated for use by people with disabilities. Parking spaces shall be van-accessible. Design criteria and dimensions are set forth in the Off-Street Parking Design Standards and the requirements of the Americans with Disabilities Act. Parking facilities for single-family, duplex, two-family, and mobile home residential uses are exempt from this requirement.

**Table 174-2 – Accessible Parking Requirements**

<b>Number of Stalls</b>	<b>Number of Required Accessible Spaces</b>
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1,000	2% of total
1,001 and over	20, plus 1 for each 100 stalls over 1,000
One in every eight accessible spaces (but not less than one) shall be served by an access aisle with a minimum width of 96 inches and shall be designated as “Van Accessible.”	

**174.06 OFF-STREET PARKING DESIGN STANDARDS.**

1. Dimensions.
  - A. Standard parking stalls shall be 9 feet wide and 18 feet long.
  - B. Required drive aisle widths shall be as follows:
    - (1) For diagonal parking (15 to 75 degrees), 20 feet for one-way aisles and 24 feet for two-way aisles.
    - (2) For perpendicular parking (75 to 90 degrees), 24 feet for all aisles.
  - C. Parking facilities may provide up to 40% of their total stalls as designated compact stalls. Compact parking stalls shall be a minimum of 8.5 feet wide and 16 feet long.
  - D. Spaces designated for persons with disabilities shall have a minimum width of 12 feet. Each space shall provide a barrier free route to an accessible building entrance, which shall not require users to walk or wheel behind parked cars. Such spaces shall be designated with an upright sign exhibiting the universal symbol for accessibility by the handicapped. All such spaces shall be designed in compliance with the standards of the Americans with Disabilities Act.
2. Pavement and Drainage.
  - A. Off-street parking facilities shall be hard surfaced and maintained with materials sufficient to prevent mud, dust, or loose material. Acceptable hard surface materials shall include concrete, asphalt, or brick or concrete pavers.
  - B. Off-street parking facilities shall be designed and built to prevent the free flow of water onto adjacent properties or public rights-of-way.
  - C. Residential driveways which are not hard-surfaced at the effective date of this Zoning Code shall be required to come into compliance within two (2) years after adoption of this Code of Ordinances, or prior to the transfer of the title of the property, whichever comes first, unless they are rental properties or used as a home-based business.
3. Landscape and Screening Requirements. Unless otherwise noted, each unenclosed parking facility of over 3,000 square feet shall comply with the following regulations:
  - A. Each unenclosed parking facility shall provide a minimum landscaped buffer of ten feet along any street property line.
  - B. Each parking facility that abuts a residential district shall provide a ten-foot landscaped buffer along its common property line with the residential district.
  - C. Any parking facility which abuts property in a residential district shall provide a fence, wall, landscape screen, or earth berm not less than four feet in height for the length of the common boundary. A grade change, terrace, or other site feature which blocks the sight line of headlights into a residential property may satisfy this requirement, subject to the determination of the Planning Director.

- D. Each unenclosed parking facility of over 4,500 square feet within a street yard shall provide interior landscaped area equal to no less than 5 percent of the total paved area of the parking facility.
  - E. Interior landscaping shall be credited toward the satisfaction of overall landscaping requirements set forth in Chapter 173 of this Zoning Code.
4. Entrances and Exits.
- A. Adequate access to each parking facility shall be provided by means of clearly defined and limited driveways or access points. Such driveways shall be designed to direct nonresidential traffic away from residential areas.
  - B. Parking facilities other than driveways for single-family, duplex, two-family, or mobile home residential uses must permit vehicles to enter streets in a forward position.
5. Safety Features.
- A. Parking facilities shall be designed to provide visibility of and between pedestrians and vehicles when circulating within or entering or leaving the facility, and shall not create blind, hidden, or hazardous areas.
  - B. Circulation patterns shall be designed in accord with accepted standards of traffic engineering and safety.
6. Lighting. Any lighting used to illuminate any off-street parking area shall be arranged to direct light away from adjoining properties in any residential district.
7. Maintenance. All parking facilities shall be maintained to assure the continued usefulness and compatibility of the facility. Acceptable maintenance includes keeping the facility free of refuse, debris, carts, and litter; maintaining parking surfaces in sound condition; maintaining aisle lines and the painted surfaces of signs; and providing proper care of landscaped areas.
8. Adjustment. For uses subject to conditional use permit approval, the Board of Adjustment may adjust the minimum requirements of this section, in order to provide design, usability, attractiveness, or protection to adjoining uses in a manner equal to or greater than the minimum requirements of this chapter.

**174.07 OFF-STREET LOADING.**

- 1. Loading Requirement. Any use which involves the receipt or distribution of freight, merchandise, supplies, vehicles, or equipment as part of its typical operation shall provide and maintain adequate space for off-street loading and circulation. Loading areas shall be designed to avoid undue interference with the public use of streets and sidewalks.
- 2. Schedule of Loading Spaces. Loading spaces for each use requiring them shall be provided in accord with the minimum requirements set forth in Table 174-3.

**Table 174-3 – Off-Street Loading Requirements for Single Use Structures**

Gross Floor Area of Use (square feet)	Number of Required Loading Spaces
5,000 or less	None
5,001 – 25,000	1
25,001 – 75,000	2
Larger than 75,000	3

3. Design Standards.
  - A. Each loading space shall be at least 10 feet wide by 50 feet long, with a vertical clearance of at least 14 feet.
  - B. Paving of loading spaces and access areas shall be permanent, durable, and free of dust.
  - C. Off-street loading areas are subject to the landscaping and buffering requirements for parking facilities set forth in this chapter.

**174.08 PARKING FOR PERSONAL AND RECREATIONAL VEHICLES.**

1. Applicability. This section permits the parking of personal vehicles on a single lot in a residential district subject to specific conditions. Personal vehicles include: passenger cars; vans; pickup trucks, camper shells, toppers, and other similar appurtenances intended for attachment to a personal vehicle; trailers under 20 feet in length; and boats. Trucks, tractor cab units, trailers, recreational vehicles, and vehicles over 2.5 tons gross empty weight shall be defined as heavy commercial vehicles.
2. Location of Parking
  - A. Parking is permitted within any enclosed structure when such structure conforms to the regulations of its zoning district.
  - B. Parking of personal vehicles is permitted on a paved driveway (outside of an enclosed structure) within the front yard setback, but shall in no case encroach upon the public right-of-way.
  - C. Parking of personal vehicles may occur in the rear yard setback (outside of an enclosed structure and not on the front yard paved driveway) if the Zoning Administrator determines that such parking conforms to the provisions of this Zoning Code, meets the following conditions:
    - (1) The parking space is provided on a paved surface connected by a paved surface to a dedicated public right-of-way and/or alley.
    - (2) The paved parking does not exceed the maximum impervious coverage limit for the lot.
  - D. Heavy commercial vehicles, including tractor cab units weighing more than 2.5 tons gross empty weight, and recreational vehicles shall not be parked on any lot within the RI, R2, R3, R4 and MH residential zoning districts, except as provided below.
3. Special Provisions for Recreational Vehicles and Boats. Parking and storage of recreational vehicles and boats within residential districts is subject to the following

additional conditions. These conditions are in addition to those requirements for the parking of Personal Vehicles.

- A. Recreational vehicles and boats must be maintained in a clean, well-kept state.
- B. Recreational vehicles and boats equipped with liquefied petroleum gas containers must ensure that such containers must meet the current standards of the Interstate Commerce Commission, the United States Department of Transportation, or the American Society of Mechanical Engineers. Any valves must be closed at all times that the vehicle is not in preparation for immediate use. Leaks in containers must be repaired immediately.
- C. Recreational vehicles may be used as temporary housing by non-paying guests for a maximum of three consecutive days or 14 days total during any calendar year. Cooking in the recreational vehicle is prohibited at all times.
- D. Recreational vehicles and boats may not be permanently connected to utility lines.
- E. Recreational vehicles and boats may not be used for the storage of goods, materials, or equipment other than those items which pertain to the use of the vehicle.
- F. If at all physically feasible on a lot, recreational vehicles and boats shall be parked outside of required front yard and street side yard setbacks if the Zoning Administrator determines that such parking conforms to the provisions of this Zoning Code and if such parking meets the following conditions:
  - (1) For all boats equal to or exceeding 16 feet in length, the parking space is provided on a paved surface connected by a paved surface to a dedicated public right-of-way and/or alley.
  - (2) For all boats less than 16 feet in length, the parking space provided is a separate or stand-alone paved surface with its width equal to or exceeding the width of the boat and with its length equal to or exceeding the length of the boat.
  - (3) For all other recreational vehicles, the parking space is provided on a paved surface.
  - (4) The paved parking does not exceed the maximum impervious coverage limit for the lot.
- G. No more than two recreational vehicles and/or boats may be parked on a single property at any one time. Any recreational vehicle or boat parked on a property must be owned in whole or in part by the resident of the property.

**174.09 STORAGE AND PARKING OF UNLICENSED OR OTHER VEHICLES.**

- 1. The storage or keeping of motor vehicles not having a properly issued current motor vehicle registration and current motor vehicle license plate properly displayed is prohibited on any lot, parcel or tract of land or part thereof, situated within the zoning jurisdiction of the City; provided, conformance with the following shall not constitute a violation of this section:
  - A. The storage of any unlicensed and/or unregistered motor vehicle in a fully enclosed garage.

B. The storage of not more than one personal vehicle in good operable condition and shielded from view of the general public by a manufactured and fitted vehicle cover and located on a paved driveway pursuant to a permit to store obtained from the City. The permit shall be issued without cost to the applicant and shall:

- (1) Be issued for a period of not to exceed six months and shall be renewable upon application for like periods as long as such storage is in all respects in compliance with this section;
- (2) Identify the vehicle by make, year of manufacture, model and manufacturer's identification number;
- (3) State the reason the vehicle does not bear a current registration and license;
- (4) Require owner to prove continued operability of the vehicle within 72 hours upon request of the Police Department;
- (5) Contain the property owner's and vehicle owner's consent for the City and its agents to enter upon the premises and vehicle for purposes of identification and inspection of the vehicle.

C. The storage, keeping or abandonment of parts, including scrap metals, from motor vehicles or machinery, or parts thereof, is prohibited on any lot, parcel or tract of land or part thereof, situated within the zoning jurisdiction of the City, except in enclosed buildings or garages or where otherwise permitted by this Zoning Code.

D. Parking, storage or keeping, other than in a fully enclosed garage of any non-operable motor vehicle is prohibited on any residential zoned lot, parcel or tract of land or part thereof, situated within the zoning jurisdiction of the City; provided, however, automobiles that are non-operable by reasons of repair work being done thereon may be parked on the residential lot of the owner of said automobile within the City's zoning jurisdiction under the following conditions:

- (1) The automobile is owned by the occupier of the premises and registered to him/her at that address.
- (2) The period of said repair work does not exceed ten days in duration.
- (3) Repair work is at all times conducted on a paved driveway.
- (4) No more than one automobile in need of repair is situated on the premises at the same time.

2. Before the City removes a vehicle suspected of being in violation of this section, by reason of it being inoperable, the City shall give the owner of the premises upon which the offending vehicle is situated a 72-hour warning notice. Notice shall be given by tagging the motor vehicle and by regular mail, postage pre-paid to the occupier of the premises on which the motor vehicle is situated. Any motor vehicle not removed from the premises within such 72-hour period shall be presumed to be inoperable and shall be subject to proceedings set forth in Chapter 50 of this Code of Ordinances. The owner may demonstrate operability of the vehicle by making special arrangements with the Police Department to demonstrate operability of the vehicle within said 72-hour

period. If operability of the vehicle is satisfactorily demonstrated, the automobile need not be removed.

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## CHAPTER 175

# ZONING CODE – SIGN REGULATIONS

175.01 Purpose

175.02 Definition of Terms

175.03 General Sign and Street Graphics Regulations

175.04 Basic Design Elements for On-Premises Signs

175.05 Other Design Elements

175.06 Use of Compatible Materials

175.07 Method of Measurement for Regulators

175.08 General Permit Procedures

175.09 Nonconforming Signs

Table 175-1 Permitted Signs by Type and Zoning District

Table 175-2 Auxiliary Design Elements by Zoning District

Table 175-3 Permitted Signs by Maximum Permitted  
Area and District

Table 175-4 Permitted Signs by Numbers, Dimensions  
and Locations

**175.01 PURPOSE.** The Sign Regulations provide standards for communicating information in the environment of the City and its jurisdiction. The regulations recognize the need to protect public health, safety, and welfare; to maintain the City’s attractive appearance; to provide for adequate business identification, advertising, and communication of information; and to encourage the fair enforcement of sign regulations, all while protecting and promoting the free speech and expression rights of citizens within Windsor Heights. Fair enforcement means enforcement based on these provisions, and not the content expressed by any sign. Any complaint received regarding a sign that comports with these regulations does not constitute a violation of this code section.

**175.02 DEFINITION OF TERMS.** The following definitions shall be used for terms contained in this chapter that are not otherwise defined in this Code of Ordinances.

1. “Abandoned sign” means a sign, including sign face and supporting structure, which refers to a discontinued business, profession, commodity, service, or other activity or use formerly occupying the site; or which contains no sign copy on all sign faces for a continuous period of six months.
2. “Attached sign” means a sign which is structurally connected to a building or depends upon that building for support.
3. “Auxiliary design elements” means terms which describe secondary characteristics of a sign, including its method of illumination and other features within the bounds of its basic shape.
4. “Awning” and “awning sign” mean a temporary or movable shelter supported entirely from the exterior wall of a building and composed of non-rigid materials, except for a supporting framework. An awning sign is a message printed on such a shelter.
5. “Banner” means material with a printed message or graphic secured or mounted from a structure in such a way as to allow wind movement under which pedestrian or vehicle traffic passes, but does not include signs or materials under which peoples or traffic do not pass, such as that tied or secured within or to a window or porch opening, or tied or secured flush against a building.
6. “Building marker” means an historic or commemorative plaque, or a building name or cornerstone carved into a masonry surface.
7. “Business center identification sign” means a sign which identifies a building or group of commercial buildings in single ownership or control, sharing parking and access.

8. “Canopy” means a projecting non-movable structure cantilevered or suspended from a building, supported by the main structural members to which it is attached, and used only as a roof or fixed shelter. A canopy may include a printed message or graphic, or not, and is treated no differently as a result under this ordinance.
9. “Clearance” means the distance from the bottom of a sign face elevated above grade and the grade below.
10. “Detached sign” means a sign which is self-supporting and structurally independent from any building.
11. “Directional sign” means a sign which serves only to designate the location or direction of any area or place.
12. “Double-faced sign” means a sign consisting of no more than two parallel faces supported by a single structure.
13. “Frontage” means the length of a property line of any one premises abutting and parallel to a public street, private way, or court.
14. “Ground sign” means a detached on-premises sign built on a freestanding frame, mast, or poles with a clearance no greater than 3 feet.
15. “Illumination” means lighting sources installed for the primary purpose of lighting a specific sign or group of signs.
16. “Marquee” means a permanent roofed structure attached to and supported by a building and extending over public right-of-way.
17. “Maximum permitted sign area” means the maximum permitted combined area of all signs allowed on a specific property.
18. “Monument sign” means an on-premises freestanding sign with the appearance of a solid base. The width of such base shall be at least 75 percent of the width of the sign.
19. “Moving sign” means a sign which conveys its message through rotating, changing, or animated elements.
20. “Nonconforming sign” means a sign that was legally erected prior to the adoption of this chapter but which violates the regulations of this chapter.
21. “Pole sign” means an on-premises sign, including any flag, built on a freestanding frame, mast, or poles with a clearance greater than 3 feet, and where the support encompasses less than 75% of the width of the sign.
22. “Portable sign” means any sign supported by frames or posts rigidly attached to bases not permanently attached to the ground or a building and capable of being moved from place to place.
23. “Premises” means a tract of one or more lots or sites which are contiguous and under common ownership or control.
24. “Projecting sign” means a sign other than a wall sign that is attached to and projects from a building face.
25. “Promotional sign” means a sign that is located within a business parking lot and affixed to a light pole or cart caddy to advertise a special price or event.

26. “Residential sign” means a small detached or attached sign located on a residential premises. Residential signs include window signs.
27. “Roof sign” means any sign or part of sign erected upon, against, or directly above a roof or on top of or above the parapet or cornice of a building.
- A. “Integral roof sign” means a roof sign positioned between an eave line and the peak or highest point on a roof, substantially parallel to the face of a building.
- B. “Above-peak roof sign” means a roof sign positioned above the peak of a roof or above a parapet or cornice.
28. “Sign” any device, display, or structure that is visible from a public place and that has words, letters, figures, designs, symbols, logos, illumination, or projected images. This definition does not include architectural elements incorporated into the structure or façade of a building. For the purposes of this sign code, “signs” do not include those only visible from the inside of a building or athletic field/stadium; nor do “signs” include those held by or attached to a person.
29. “Sign type” means a functional description of the use of an individual sign, and includes owner identification, advertising, directional, electronic message, and temporary.
30. “Street façade” means any separate external face of a building, including parapet walls and omitted wall lines, oriented to and facing a public street, private way, or court. Separate faces oriented in the same direction or within 45 degrees of one another are considered part of the same street façade.
31. “Temporary sign” a sign constructed of cloth, canvas, vinyl, paper, plywood, fabric, plastic, or other lightweight material that is neither permanently installed in the ground nor permanently affixed to a building or structure that is permanently installed in the ground, and which is intended to be displayed less than 60 days. The term “temporary sign” includes, but is not limited to, A-frame signs, lawn signs, banners, inflatable signs, and window signs. The term “temporary sign” does not include flags, and signs that are intended to regularly move, such as motorized signs.
32. “Wall sign” means a sign attached to and parallel with the side of a building.
33. “Window sign” means a sign painted on or installed inside a window for the purpose of viewing from outside the premises. Window signs do not include messages, signs, or speech hung from or exercised in the interior of the home which are visible from the exterior of the homes. Residents may elect for window signs to count towards residential signs or temporary signs.
34. “Zone lot” means a parcel of land in single ownership that is large enough to meet the minimum zoning requirements of its zoning district and can provide such yards and other open spaces that are required by the site development regulations.

### **175.03 GENERAL SIGN AND STREET GRAPHICS REGULATIONS.**

1. Compliance. Each sign or part of a sign erected within the zoning jurisdiction of the City must comply with the provisions of this chapter and of other relevant provisions of this Code of Ordinances.
2. Resolution of Conflicting Regulations. This chapter is not meant to repeal or interfere with enforcement of other sections of this Code of Ordinances. In cases of

conflicts between Code sections, or State or Federal regulations, the more restrictive regulations shall apply, except where State law or the State Constitution preempts municipal law, in which case State law or the State Constitution will govern, or where Federal law of the U.S. Constitution preempts State and municipal law, in which case Federal law or the U.S. Constitution will govern.

3. Prohibited Signs. The following signs are prohibited in all zoning districts.
  - A. Any sign which is structurally unsafe, unsafely installed, or otherwise hazardous to physical safety.
  - B. Any sign that obstructs free ingress to or egress from a fire escape, door, window, or other required access way to or from a building or site.
  - C. Any sign not maintained in good condition.
  - D. Any sign that blocks a driver's clear line of sight of traffic or pedestrians, or which obscures official signs or signals.
  - E. Any sign that interferes with the view of, or is confused with, any traffic control sign or device, and any sign that misleads or confuses traffic flow. A sign's position, size, shape, color, and illumination, but not its content, shall be considered when making such a determination.
  - F. Abandoned signs, which must be removed within six months of the date of abandonment.
  - G. Signs advertising activities that are illegal under Federal, State or local laws and regulations. This does not include signs which advocate for a change in the laws.
  - H. Rolling LCD signs which incorporate in any manner any rolling, flashing, pulsating, rotating, beacons, or moving lights.
  - I. Neon lights or signs, not intended to add to the overall architectural theme of the site.
  - J. Hazardous signs, or any sign or structure which is structurally unsafe, is not kept in good repair, or is capable of causing electrical shock to persons likely to come in contact.
  - K. Signs which include visible moving parts, changeable copy or description by electrical or non-electrical means, or by action of wind currents; except as permitted in this section.
  - L. Any sign nailed, fastened, or affixed to any tree.
  - M. Any sign located on private property against the wishes of the property owner.
  - N. Any sign that otherwise violates this sign code.
  - O. Any sign displaying any obscene matter, as that term is defined by Iowa Code Chapter 728.
4. Exempt Signs. The following signs are permitted in any zoning district and are exempt from other provisions of this chapter.
  - A. Up to three non-temporary signs on private residential property that are smaller than 4 square feet in area.

- B. Official signs authorized by a government or governmental subdivision, including public schools, which give traffic, directional, or warning information, or other official information.
  - C. Temporary signs less than 8 square feet for flat, or two-dimensional signs, or less than 64 cubic feet, for three-dimensional signs of displays.
  - D. On premise construction signs.
  - E. Signs, including works of graphic art painted or applied to building walls.
  - F. Neighborhood or subdivision identification signs under 50 square feet.
  - G. Street numbers.
  - H. Signs which are not visible from a public right-of-way, private way, or court or from a property other than that on which the sign is installed.
5. Buffer Yards. No sign other than on-premises directional signs shall be placed within any buffer yard required by Chapter 173, Landscaping and Screening Regulations, except buffer yards adjacent to intervening major streets.
6. Vision-Clearance Area. No sign may project into or be placed within a vision-clearance area defined by a triangle with legs of 25 feet from the point at which the curbs or edges of two intersecting streets, private ways, or courts or an intersecting street, private way, or court and driveway, meet.
7. Removal of Signs. If a sign owner's business, profession, commodity, service, or other activity or use formerly occupying the site is discontinued, the sign must be removed within fifteen (15) days of closure. If the owner does not remove the sign, the City will remove it at the owners expense.

#### **175.04 BASIC DESIGN ELEMENTS FOR ON-PREMISES SIGNS.**

1. Professional Design and Construction. All signs must be designed and constructed by an individual or company pre-approved by the City and familiar with the City's sign ordinance. The proposed individual or company shall be designated on the applicant's sign permit and approved by the City in advance of sign construction.
2. Wall Signs and Graphics. Wall signs and graphics are subject to the following general regulations.
  - A. A wall sign shall not extend more than 12 inches from the wall to which it is attached.
  - B. A wall sign must be parallel to the wall to which it is attached.
  - C. A wall sign may not extend beyond the corner of the wall to which it is attached, except where attached to another wall sign, it may extend to provide for the attachment.
  - D. A wall sign may not extend beyond its building's roofline.
  - E. A wall sign attached to a building on its front property line may encroach upon public right-of-way by no more than 12 inches. Such a wall sign shall provide minimum clearance of eight feet, six inches.
  - F. For the purpose of calculating permitted sign areas pursuant to this chapter, signs painted on the walls of buildings shall be considered wall signs.

- G. Where permitted, canopy signs are counted as wall signs when calculating total permitted sign area.
3. Projecting Signs and Graphics. Projecting signs and graphics are subject to the following general regulations.
- A. The maximum projection of any projecting sign shall be three feet.
- B. A projecting sign may be no closer than two feet from the vertical plane of the inside curb line.
- C. Each projecting sign must maintain at least the following vertical clearances:
- (1) 8 feet, 6 inches over sidewalks, except that a canopy may reduce its vertical clearance to 7 feet, 6 inches;
  - (2) 10 feet outside of parking areas or driveways, but within 3 feet of such areas, or within 50 feet of the right-of-way lines formed by a street intersection;
  - (3) 14 feet over parking lots;
  - (4) 18 feet over alleys or driveways.
- D. No projecting sign extending three feet from a property line may be located within 22 feet of any other projecting sign extending three feet from a property line.
- E. Projecting signs must minimize visible support structure and may not expose guy wires, cables, turnbuckles, angle iron, or other similar external support structure.
4. Roof Signs. Roof signs are subject to the following regulations:
- A. Where permitted, integral roof signs may be used interchangeably with wall signs.
- B. An integral roof sign must be mounted parallel to the wall of the building that it faces.

#### **175.05 OTHER DESIGN ELEMENTS.**

1. Illumination. Lighting, when installed, must be positioned in such a manner that light is not directed onto an adjoining property or onto a public street or highway.
2. Marquees and Marquee Signs. Signs placed on, attached to, or constructed on a marquee are subject to the maximum projection and clearance regulations of projecting signs.
3. Banners.
  - A. A banner sign projecting from a building may not exceed the wall height of the building.
  - B. Maximum projection for any banner is three feet with a minimum clearance of 8.5 feet.
  - C. Maximum size of a banner is the lesser of twice the permitted size of a projecting sign or 120 square feet.

4. Clocks. For the purposes of this chapter, clocks are not considered a moving sign.

**175.06 USE OF COMPATIBLE MATERIALS.** All signs, excluding temporary signs, shall be constructed of materials that are similar to those used on the principal building. Such signage shall be dominated with materials of permanency and strength and shall be compatible with other structures and signs in the development.

**175.07 METHOD OF MEASUREMENT FOR REGULATORS.**

1. Maximum Permitted Sign Area. Maximum permitted sign area for a premises is set forth as a numerical limit or as a function of the frontage of the premises on a street or private way. For properties with frontage on more than one street or private way, the total frontage shall be calculated as the longest frontage plus one-half the length of all additional frontages.
2. Sign Area.
  - A. Sign area includes the entire area within the perimeter enclosing the extreme limits of the sign, excluding any structure essential for support or service of the sign, or architectural elements of the building.
  - B. The area of double-faced signs is calculated on the largest face only.
  - C. The sign area for ground signs, monument signs, and architectural sign bands is calculated as the area enclosing the extreme limits of the copy only.
  - D. In the case of individual letters mounted to a wall, only the total area of the letters themselves is included within the sign area.
3. Height. The height of a sign is measured from the average grade level below the sign to the topmost point of the sign or sign structure.
4. Setback. The setback of a sign is measured from the property line to the supporting frame, mast, pole, or base of the sign.

**175.08 GENERAL PERMIT PROCEDURES.** Any installation, modification, or expansion of any sign which is not exempt from the provisions of this chapter shall be subject to the following permit procedure.

1. Maintenance of Valid Sign Permit. The owner of a property containing signs requiring a permit under this Zoning Code shall at all times maintain in force a sign permit for such property. Sign permits may be issued for individual zoned lots, tenants, or sign owners. A sign permit may be revoked if the sign is not maintained in good condition.
2. Any ambiguity in this sign code should be resolved in favor of allowing the display of a proposed sign.
3. Any person who displays a sign in compliance with this code may substitute the message on that sign without first securing any additional approval, permitting, or notice, provided that any such substitution would not result in the sign becoming noncompliant.
4. Nothing in this code is intended or shall be construed so as to prevent the strengthening or restoration to a safe condition of a nonconforming sign for purposes of the public health and safety.

5. Sign Permit Applications. All applications for sign permits shall be submitted to the Zoning Administrator in accordance with application specifications established by the ordinance.
6. Application Fees. Each application for a sign permit shall be accompanied by any applicable fees, which shall be established by the Council from time to time by resolution.
7. Action. Within ten working days of the submission of a complete application for a sign permit, the Zoning Administrator shall either:
  - A. Issue the sign permit, if the sign conforms to the provisions of this chapter, regardless of content of the sign.
  - B. Reject the sign permit if the sign that is the subject of the application fails in any way to conform with the requirements of this chapter, regardless of the content of the sign.
8. Permit Expiration. If a permanent sign is not constructed in accordance with an approved permit within six months of the date of approval, such permit shall lapse. Permits on non-permanent signs lapse in accordance with the timeline identified on the permit. After 60 days, permits are required to maintain temporary signs, or more than a single temporary sign with a maximum of two renewals.
9. Assignment of Sign Permits. A current and valid sign permit shall be freely assignable to a successor as owner of the property or holder of a business license for the same premises.

#### **175.09 NONCONFORMING SIGNS.**

1. Any permanent sign that was in place and lawfully established on December 21, 1998, shall be considered as a legal nonconforming sign to the extent that such a sign does not comply with the provisions of this chapter. The cover of such sign may be changed from time to time, provided that the sign area shall not be enlarged or reduced beyond the sign area in existence on December 21, 1998.
2. Any nonconforming sign which presently is or becomes structurally damaged or deteriorated, or is altered by more than 50% of its replacement cost, shall be either removed or altered so as to comply with this chapter.
3. For business centers pre-existing on the effective date of this Zoning Code which do not conform to the total permitted sign area provisions of this chapter, individual signs may be replaced, modified, or substituted prior to December 31, 2004. Each new sign shall conform to the applicable regulations of this Zoning Code for individual signs and shall be installed so as to reduce the total amount of the nonconformance on the site.



**Table 175-1 – Permitted Signs by Type and Zoning Districts**

Sign Types	R-1	R-2	R-3	R-4	MH	O	CC	GC	UC	TC	LI
<b>Detached Signs</b>											
Residential	P	P	P	P	P	P	P	N	P	N	N
Business Identification	P(C)	P(C)	P(C)	P	P	P	P	P	P	P	P
Directional	P(C)	P(C)	P(C)	P(C)	P	P	P	P	P	P	P
Ground	P	P	P	P	P	P	P	P	P	P	P
Pole	N	N	N	N	N	N	N	N	N	N	N
<b>Attached Signs</b>											
Awning	N	N	P	P	P	P	P	P	P	P	P
Banner	N	N	N	N	N	N	P	P	P	P	P
Building Marker	P	P	P	P	P	P	P	P	P	P	P
Business Identification	P(C)	P(C)	P	P	P	P	P	P	P	P	P
Canopy	N	N	N	N	N	P	P	P	P	P	P
Directional	P(C)	P(C)	P	P	P	P	P	P	P	P	P
Marquee	N	N	N	N	N	P	P	P	P	P	P
Projecting	N	N	N	N	N	N	P	P	N	P	P
Promotional	N	N	N	N	N	P*	N	N	P*	N	P*
Roof, Integral	N	N	N	N	N	N	P	P	N	P	P
Roof, Above Peak	N	N	N	N	N	N	P	P	N	P	P
Wall	P	P	P	P	P	P	P	P	P	P	P
Window	N	N	N	N	N	P	P	P	P	P	P
<b>Miscellaneous</b>											
Flag	P	P	P	P	P	P	P	P	P	P	P
Portable	N	N	N	N	N	N	N	N	N	N	N

\* One promotional sign per 3,500 square feet of lot size is permitted, with a maximum of 15 signs

P = Permitted for All Uses; P(C) = Permitted for Civic Uses Only; N = Not Permitted

**Table 175-2 – Auxiliary Design Elements by Zoning District**

Sign Types	R-1	R-2	R-3	R-4	MH	O	CC	GC	UC	TC	LI
<b>Illumination</b>											
Indirect	P(C)	P(C)	P(C)	P(C)	P(C)	P	P	P	P	P	P
Direct	N	N	N	N	N	N	N	N	N	N	N
Internal	P(C)	P(C)	P(C)	P	P(C)	P	P	P	P	P	P
Neon	N	N	N	N	N	N	P	P	P	P	P
Flashing	N	N	N	N	N	N	N	N	N	N	N
Flame	N	N	N	N	N	N	N	N	N	N	N
Bare Bulb	N	N	N	N	N	N	N	N	N	N	N
<b>Other</b>											
Electronic Information	N	N	N	N	N	N	P	P	P	N	P
Moving	N	N	N	N	N	N	N	N	N	N	N
Rotating	N	N	N	N	N	N	N	N	N	N	N
Rolling LCD	N	N	N	N	N	N	N	N	N	N	N

P = Permitted for All Uses; P(C) = Permitted for Civic Uses Only; N = Not Permitted

**Table 175-3 - Permitted Signs by Maximum Permitted Area and District**

The Maximum Permitted Area for all signs on a premises, excluding directional signs, building marker signs, and flags, shall not exceed the lesser of the following:

Zoning District:	R-1 R-2 MH	R-3 R-4	O	CC	GC	UC	TC	LI
Maximum Total Square Feet	Note 1	Note 2	75 Note 3	150 Note 4	150 Note 4	150 Notes 3, 4	100	200
<p>Note 1: 32 square feet for civic uses; 2 square feet for residential uses, including home occupations.</p> <p>Note 2: 48 square feet for project identification signs for multi-family or mobile home developments and for nonresidential uses when permitted; 2 square feet for residential uses, including home occupations.</p> <p>Note 3: Maximum limits apply to nonresidential premises only. On-premises with a primary residential use, 75 square feet for project identification signs for multi-family developments; 2 square feet for residential uses, including home occupations.</p> <p>Note 4: One additional business center identification sign with a maximum area of 150 square feet is permitted subject to the regulations set forth by Table 175-4.</p>								

**Table 175-4 – Permitted Signs by Numbers, Dimensions and Locations**

*Each individual sign shall comply with the regulations for maximum quantity, maximum size, minimum setbacks, and height limits shown in this table:*

Zoning District:	R-1 R-2 R-3 MH	R-4	O	CC Note 1 Note 3	GC Note 1 Note 3	UC Note 2 Note 3	TC Note 2 Note 3	LI
Detached Signs								
Number Permitted Per Premises	1	1	1	NA	NA	1	1	NA
Per Feet of Frontage	NA	NA	NA	1 per 300	1 per 200	NA	NA	1 per 200
Maximum Size* (square feet)	32*	48*	75*	90	90	90	90	90
Maximum Height (feet) of Structure Above Ground	10	10	10	10	10	10	10	10
Front Yard Setback (feet)	5	10	10	10	5	10	10	0
Side Yard Setback (feet)	10	10	10	5	5	10	10	0
Attached Signs								
Maximum Size* (square feet)	32*	48*	75	150	150	150	100	200
Percentage of Street Façade	NA	NA	20%	20%	20%	20%	20%	25%

\* For those uses only permitted a sufficient maximum sign area in Table 175-3

Note 1: In addition to its total permitted sign area, each premises used for a business center may have one detached center identification sign, subject to the following conditions:

1. The maximum area for a center identification sign shall be 150 square feet.
2. No center identification sign shall be within 300 feet of any other center identification sign or within 150 feet of any other detached sign on the same or adjacent premises.
3. The sign shall display no more than the name and location of the business center.
4. Each sign shall be subject to all other regulations for detached signs or graphics set forth in this chapter.

Note 2: All monument signs must conform with these provisions by December 31, 2009, or will be subject to penalties for zoning code violation.

Note 3: The sign at 6601 University Avenue is a permanent, lawful, nonconforming sign as a result of a redevelopment agreement.

*(Ch. 175 – Ord. 18-14 – Nov. 18 Supp.)*

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## CHAPTER 176

# ZONING CODE – NONCONFORMING DEVELOPMENT

176.01 Purpose

176.02 Regulations Additive

176.03 Nonconforming Lots

176.04 Nonconforming Structures

176.05 Nonconforming Uses

**176.01 PURPOSE.** This chapter contains the Nonconforming Development Regulations. The purposes of these regulations are:

1. To allow for reasonable use of legally created lots of record which do not meet current minimum requirements for their respective zoning districts.
2. To provide for reasonable use of legally constructed structures which do not meet current site development regulations for their respective zoning districts.
3. To allow for the reasonable continuation of legally established uses which do not meet current use regulations for their respective zoning districts.
4. To allow for the reasonable continuation of legally established uses which do not meet current use regulations for their respective zoning districts.
5. To limit the continuation and provide for the gradual replacement of nonconforming uses.

**176.02 REGULATIONS ADDITIVE.** Regulations for nonconforming uses are in addition to regulations for nonconforming structures. In the event of a conflict, the most restrictive regulation shall apply.

**176.03 NONCONFORMING LOTS.**

1. Pre-Existing Lots of Record. Nonconforming lots of record existing at the time of the adoption of this Zoning Code shall be exempt, unless otherwise provided, from the minimum lot area and lot width requirements of each zoning district. Such lots may be developed with any use allowed by the regulations for the district and must comply with all other site development regulations set forth by this Zoning Code.
2. Reductions Due to Public Acquisition. If a portion of a legally existing lot in any district is acquired for public use, the remainder of this lot shall be considered a conforming lot.

**176.04 NONCONFORMING STRUCTURES.** These regulations apply to buildings and structures which were constructed legally under regulations in effect before the effective date of this Zoning Code.

1. Continuation. A lawful nonconforming structure existing on the effective date of this Zoning Code may be continued, repaired, maintained, or altered, subject to the provisions of this section.
2. Additions or Enlargements to Nonconforming Structures.
  - A. A lawful nonconforming structure may be added to or enlarged if the addition satisfies one or more of the following conditions:

(1) The enlargement or addition, when considered independently of the existing building, complies with all applicable setback, height, off-street parking, and landscaping requirements.

(2) The nonconforming building and impervious surface coverages on the site are not increased and the building, after the addition, conforms to height and off-street parking regulations applicable to its zoning district.

(3) The addition projects no further into a required side yard setback than the existing building; the length of the side wall of the addition is the smaller of 25 feet or 50 percent of the length of the existing nonconforming side wall; and the enlarged building complies with building and impervious coverage, front and rear yard setbacks, and height regulations applicable to its zoning district.

B. No permitted addition to a nonconforming structure may place a wall within ten feet of a window of an adjacent pre-existing residential structure.

C. Nonconforming buildings shall be limited to one addition or enlargement pursuant to these regulations.

3. **Moving of Nonconforming Structures.** A lawful nonconforming building or structure shall not be moved in whole or in part to another location on its lot unless every part of the structure conforms to all site development regulations applicable to its zoning district.

4. **Repair of Nonconforming Structures.** A lawful nonconforming building damaged by fire, explosion, storm, or other calamity, except flood damages, may be repaired and reconstructed, provided there is no increase in the degree of nonconformity. Repair and reconstruction within the designated floodplain shall be in conformance with Floodplain development regulations. Any repairs must be completed in compliance with all applicable building codes and regulations.

5. **Conversion of a Conforming Building.** A conforming building shall not be changed in any way that will result in a nonconforming development.

6. **Applicability of Landscaping and Screening Regulations.** A pre-existing structure, building, or development shall be exempt from Chapter 173, Landscaping and Screening Regulations. However, any expansion of such structure, building, or development or any adjacent new development onto property that is or becomes vacant on or after the effective date of this Zoning Code shall be subject to Chapter 173.

#### **176.05 NONCONFORMING USES.**

1. **Continuation of Nonconforming Uses.** Any nonconforming use lawfully existing on the effective date of this Zoning Code may continue, subject to the limitations of this section.

2. **Enlargement of Nonconforming Uses.** A building or structure housing a lawful nonconforming use may not be added to or enlarged.

3. **Abandonment of Nonconforming Use.** If any structure or property used as a lawful nonconforming use becomes vacant or unused for a continuous period of six months, any subsequent use must conform to all use regulations applicable to the property's zoning district.

4. Change of Use. A lawful nonconforming use may be changed only to a use type permitted in a zoning district that is equal to or less intensive than that normally required for the previous use.
5. Allowance for Repairs. Repairs and maintenance of a structure occupied by a nonconforming use may be made, provided that no structural alterations are made other than those required by law.
6. Damage or Destruction of Structures. Should a structure occupied by a lawful nonconforming use be damaged to the extent that the cost of restoration exceeds 50 percent of the replacement cost of the structure, the nonconforming use shall no longer be permitted.
7. Nonconforming Uses and Conditional Use and Special Use Permits. A lawful pre-existing use which would require a conditional use or special use permit in its zoning district shall be presumed to have the appropriate permit and shall be considered a conforming use. The use shall be subject to the regulations governing lapses or revocation of permits, set forth in Chapter 176.

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**CHAPTER 177**  
**ZONING CODE –**  
**ADMINISTRATION AND PROCEDURES**

177.01 Purpose  
177.02 Site Plan Review Procedure  
177.03 Amendment Procedure

177.04 Extension of The Extra-Territorial Jurisdiction  
Table 177-1 Criteria for Site Plan Review

**177.01 PURPOSE.** The Administration and Procedures provisions establish the methods for implementation of site plan review, rezoning and amendments into the zoning code.

**177.02 SITE PLAN REVIEW PROCEDURE.**

1. Purpose. The Site Plan Review Procedure provides for special review in addition to plan review required by other sections of this Code of Ordinances of projects that have potentially significant effects on traffic circulation or a significant effect on land uses in adjacent neighborhoods. The procedure provides for review and evaluation of site development features and possible mitigation of unfavorable effects on surrounding property.
2. Administration. The Zoning Administrator shall review, evaluate, and act on all site plans submitted pursuant to this procedure. The Planning and Zoning Commission shall review site plans and shall transmit its recommendation to the City Council for approval.
3. Uses Requiring Site Plan Review. Select uses as require by Chapter 170.
4. Application Requirements. An application for a site plan review may be filed by the owner of a property or the owner's authorized agent with the Zoning Administrator. Site plan application forms are available in the offices of Zoning Administrator. The application shall include the criteria listed in Chapter 170.
5. Administrative Action. The Zoning Administrator shall review each site plan and provide a written recommendation to the Planning and Zoning Commission and City Council. The Planning and Zoning Commission shall transmit its recommendation to the City Council, which will then act on the application.
6. Review and Evaluation.
  - A. The Planning and Zoning Commission and City Council shall review and approve the site plan based on the criteria established in Chapter 170 and Table 180-1 and conformance with applicable regulations in this Zoning Code and the vision of the comprehensive plan.
  - B. The Planning and Zoning Commission shall make the following findings before recommending approval of the site plan to the City Council:
    - (1) The proposed development, together with any necessary modifications, is compatible with the criteria established in Chapter 170 and Table 180-1.

(2) Any required modifications to the site plan are reasonable and are the minimum necessary to minimize potentially unfavorable effects.

(3) The site plan conforms to this Zoning Code and to the vision of the comprehensive plan.

7. **Modification of Site Plan.** The Zoning Administrator, Planning and Zoning Commission, and City Council may require modification of a site plan as a prerequisite for approval. Required modifications may be more restrictive than base district regulations and may include (but are not limited to) additional landscaping or screening; installation of erosion control measures; improvement of access or circulation; rearrangement of structures on the site; or other modifications deemed necessary to protect the public health, safety, welfare, community character, property values, and/or aesthetics.

8. **Term and Modification of Approval.**

A. A site plan approval shall become void one year after the date of approval, unless the applicant receives a building permit and diligently carries out development prior to the expiration of this period.

B. The Zoning Administrator may approve an application to modify a previously approved site plan if he/she determines that the modification does not affect findings related to the criteria set forth in Table 177-1.

C. The Zoning Administrator may revoke a site plan approval if said official determines that the development is not complying with the terms and conditions of the approval. Such revocation may be appealed to the Board of Adjustment.

**177.03 AMENDMENT PROCEDURE.** The amendment procedures describe the methods by which changes may be made in the text of this Zoning Code (text amendment) and/or the official boundaries of zoning districts (rezoning).

1. **Initiation of Amendments.**

A. Text amendments may be initiated by the Planning and Zoning Commission or City Council.

B. Rezoning may be initiated by a property owner or authorized agent, the Planning and Zoning Commission, or the City Council.

2. **Rezoning Application Requirements.** An application for a rezoning may be filed with the Zoning Administrator. The application shall include the following information:

A. Name and address of the applicant.

B. Owner, address, and legal description of the property.

C. A description of the reason for the rezoning application and the nature and operating characteristics of the proposed use.

D. Any graphic information, including site plans, elevations, other drawings, or other materials determined by the Zoning Administrator to be necessary to describe the proposed use to approving agencies.

3. **Amendment Process.**

A. The Planning Commission, following not less than 4 days notice and publication shall hold a public hearing on each proposed text or rezoning and shall recommend action to the City Council.

B. The City Council, after publication and public hearing, shall act on the proposed amendment. A majority vote of those members either elected or appointed to the City Council is required for approval. If the proposed amendment is recommended for disapproval by the Planning Commission, a majority vote plus one of the City Council shall be required for approval.

C. Protest. If a valid protest petition opposing an amendment is filed with the City Clerk by eligible property owners, a majority vote plus one of those members either elected or appointed to the City Council is required for approval. A valid protest petition must meet the following criteria:

(1) Submission of the petition in the office of the City Clerk within 14 days after the conclusion of the public hearing on the amendment by the Planning Commission.

(2) Notarized signatures by at least one of the following:

(i) The owner or owners of at least 20% of the property proposed for rezoning.

(ii) The owners of 20% of the total area, excepting public rights-of-way and public property, within the zoning jurisdiction of the City and within 200 feet of the proposed rezoning.

4. Required Notice and Publication. Prior to consideration of amending, supplementing, changing, modifying, or repealing this Zoning Code by the governing body, notice of public hearings shall be provided by two of the three following methods, as determined by the City:

A. Publication. Not less than 4 days before the date of hearing, the City Clerk shall have published in a newspaper published at least once weekly and having a general circulation in the City a notice of the time, place, and subject matter of such hearing.

B. Notification by Mail. At least ten days prior to the date of hearing, the party initiating the rezoning request shall present the City Clerk a certified address list of those persons who own property within 500 feet of the subject site. The City Clerk shall mail notice of the time, place, and subject matter of the hearing to such property owners at least ten days prior to the date of the hearing.

**177.04 EXTENSION OF THE EXTRA-TERRITORIAL JURISDICTION.** Upon the automatic extension of the two-mile extra-territorial jurisdiction due to annexation, the City Council with the recommendation of the Planning Commission shall zone properties within the newly established jurisdiction concurrent with adoption of the annexation ordinance. The zoning shall consider the Comprehensive Development Plan of the City and the present use of the land.

**Table 177-1 – Criteria for Site Plan Review**

	<b>Criteria – Site Plan Review</b>
<b>Land Use Compatibility</b>	
Development Density	Site area per unit or floor area ratio should be similar to surrounding uses if not separated by major natural or artificial features.
<b>Height and Scale</b>	
Height and Bulk	Development should minimize differences in height and building size from surrounding structures. Differences should be justified by urban design considerations.
Setbacks	Development should respect pre-existing setbacks in surrounding area. Variations should be justified by site or operating characteristics.
Building Coverage	Building coverage should be similar to that of surrounding development if possible. Higher coverage should be mitigated by landscaping or site amenities.
<b>Site Development</b>	
Frontage	Project frontage along a street should meet minimum frontage requirements and provide reasonable exposure for the development.
Parking and Internal Circulation	Parking should serve all structures with minimal conflicts between pedestrians and vehicles.
	All structures must be accessible to public safety vehicles.
	Development must have access to adjacent public streets and ways. Internal circulation should minimize conflicts and congestion at public access points.
Landscaping	Landscaping should be integral to the development, providing street landscaping, breaks in uninterrupted paved areas, and buffering where required by surrounding land uses. Parts of site with sensitive environmental features or natural drainage ways should be preserved.
Building Design	Architectural design and building materials should be compatible with surrounding areas or highly visible locations

**Table 177-1 – Criteria for Site Plan Review and Conditional Use**  
(continued)

<b>Criteria – Site Plan Review</b>	
<b>Operating Characteristics</b>	
Traffic Capacity	Project should not reduce the existing level of traffic service on adjacent streets. Compensating improvements will be required to mitigate impact on street system operations.
External Traffic Effects	Project design should direct nonresidential traffic away from residential areas.
Operating Hours	Projects with long operating hours must minimize effects on surrounding residential areas.
Outside Storage	Outside storage areas must be screened from surrounding streets and less intensive land uses.
<b>Public Facilities</b>	
Sanitary Waste Disposal	Developments within 500 feet of a public sanitary sewer must connect to sewer system. Individual disposal systems, if permitted, shall not adversely affect public health, safety, or welfare.
	Sanitary sewer must have adequate capacity to serve development.
Storm Water Management	Development should handle storm water adequately to prevent overloading of public storm water management system.
	Development should not inhibit development of other properties.
	Development should not increase probability of erosion, flooding, landslides, or other run-off related effects.
Utilities	Project must be served by utilities.
<b>Other</b>	
Comprehensive Plan	Projects should be consistent with the City Comprehensive Development Plan
Common Facilities	Properties are required to have tornado shelters. Underground or other approved tornado shelters shall be provided in mobile home parks. Such shelter or shelters shall be built according to the recommendations of the Civil Defense authority and be large enough to meet the specific needs of the park and its residents
Certification	A certification of compliance with all ordinances and regulations regarding mobile home licensing, zoning, health, plumbing, electrical, building, fire protection, and any other applicable requirements shall be required of all mobile home parks.

*(Ch. 170 – Ord. 18-06 – Jun. 18 Supp.)*

[The next page is 1295]

**CHAPTER 178**  
**COMPREHENSIVE PLAN**

**EDITOR'S NOTE**

The Comprehensive Plan for the City of Windsor Heights, adopted February 20, 2017, by Ordinance No. 16-11, and amendments thereto, contained in a separate volume, are a part of this Code of Ordinances and are in full force and effect. The following ordinances have been adopted amending the Comprehensive Plan.

<b>ORDINANCE NO.</b>	<b>ADOPTED</b>	<b>ORDINANCE NO.</b>	<b>ADOPTED</b>
17-04	May 25, 2017		

[The next page is 1299]



## CHAPTER 179

# BOARD OF ADJUSTMENT

179.01 Organization and Meetings

179.02 Meetings

179.03 Appeals

179.04 Powers

179.05 Exceptions

179.06 Decisions of the Board of Adjustment

**179.01 ORGANIZATION AND MEETINGS.** The Board of Adjustment hereafter referred to by the words “Board of Adjustment,” is hereby continued.

Such Board of Adjustment shall consist of five members appointed by the City Council. Terms shall be as provided by State statute. The Council shall have the power to remove any member of the Board of Adjustment for cause upon written charges and after public hearing.

**179.02 MEETINGS.** The Board of Adjustment shall adopt rules and regulations in accordance with this Zoning Code and the *Code of Iowa*. The meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be a public record. The presence of three members shall be necessary to constitute a quorum.

### **179.03 APPEALS.**

1. Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of Windsor Heights affected by any decision of the Zoning Administrator, as provided in Iowa Code 414. Such appeal shall be taken within 20 days of the decision by filing with the Zoning Administrator and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed is taken from.

2. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment, after notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may not be granted by the Board of Adjustment, or by a court of record on application, on notice to the Zoning Administrator and on due cause shown.

3. The Board of Adjustment shall fix a reasonable time for the hearing on the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent, or by attorney. Before an appeal is filed with the Board of Adjustment, the appellant shall pay a fee according to the schedule of fees which is on file in the office of the City Clerk and submit all required paperwork and application.

**179.04 POWERS.** The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Administrator in the enforcement of this ordinance.
2. To grant a variation from the terms of this ordinance; provided, however, that all variations granted under this clause shall be in harmony with the intent of this ordinance and the applicable State Statute Iowa Code Section 414. In granting approval or conditional approval of a variance, the Board of Adjustment shall prepare written findings of fact that all of the conditions below apply to the application:
  - A. **Special Circumstances.** Special circumstances exist relating to the physical character of the property that are peculiar to the property and that do not apply generally to other properties in the same zoning district. And these circumstances are not of so general or recurrent a nature as to make it practical to provide, in the form of an amendment to this ordinance, a general rule to cover them.
  - B. **Hardship or Practical Difficulties.** Because of these special circumstances, the literal application of the provisions of this ordinance would, without a variance, result in unnecessary and undue hardship or practical difficulties for the applicant, as distinguished from mere inconvenience.
  - C. **Not Resulting from Applicant Action.** The special circumstances and either practical difficulties or hardship that are the basis for the variance have not resulted from any act, undertaken subsequent to the adoption of this ordinance or any applicable amendment thereto, of any party with a present interest in the property.
  - D. **Reasonable Use and Return.** Without the requested variance, the property cannot yield a reasonable return, or cannot be reasonably used consistent with the intent of the zoning district and the use of other properties therein, but the purpose of the variance is not otherwise to increase the return from the property or to confer special privileges not ordinarily enjoyed by other properties in the same district.
  - E. **Not Alter Local Character.** The variance will not alter the essential character of the locality or substantially impair public safety or welfare or property values in the area.
  - F. **Minimum Variance Needed.** The variance approved is the minimum required to allow reasonable use and enjoyment of the property.
3. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under this ordinance. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.
4. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

**179.05 EXCEPTIONS.**

1. To permit the following exceptions to the district regulations set forth in the ordinance, provided all exceptions shall be their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property, shall not impair an adequate supply of light and air to adjacent property, shall not increase congestion in the public streets, shall not increase public danger of fire and safety, and shall not diminish or impair established property values in surrounding areas.
2. To permit erection and use of a building or the use of premises or vary the height, yard or area regulations in any location for a public service corporation for public utility purposes, or for purposes of public communication, which the Board of Adjustment determines is reasonably necessary for the public convenience or welfare.
3. To issue special permits and decide such matters as may be required by other sections of this ordinance.

**179.06 DECISIONS OF THE BOARD OF ADJUSTMENT.**

1. In exercising the above mentioned powers, the Board of Adjustment may, in conformity with the provisions of law, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determinations as it believes proper, and to that end shall have all the powers of the Zoning Administrator. The concurring vote of three of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance. The action of the Board of Adjustment shall not become effective until after the resolution of the Board of Adjustment, setting forth the full reason for its decision and the vote of each member participating therein, has been filed. Such resolution, immediately following the Board of Adjustment's final decision, shall be filed in the office of the Board of Adjustment, and shall be open to public inspection.
2. Every variation and exception granted or denied by the Board of Adjustment shall be supported by a written testimony or evidence submitted in connection therewith. Any taxpayer, or any officer, department, board or bureau of Windsor Heights, or any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board of Adjustment.

*(Ch. 179 – Ord. 18-07 – Jun. 18 Supp.)*

1. [The next page is 1305]

## CHAPTER 180

# CONDITIONAL USE PERMITS

180.01 Intent	180.07 Burden of Persuasion
180.02 Conditional Use Permit Required	180.08 Board of Adjustment Action on Applications
180.03 Issuance of Conditional Use Permit	180.09 Expiration of Permits
180.04 Application of Conditional Use Permits	180.10 Previously Approved Permits
180.05 Notification	180.11 Effect of Permit on Successors and Assigns
180.06 Standards for Approval	180.12 Amendments and Modifications

**180.01 INTENT.** Many land use activities, while not inherently inconsistent with other permitted uses in a particular zoning district, may have significant impact on the surrounding area. Conditional use permits for such uses allow special conditions to be “attached” to the development to address those impacts. The conditional use permit process provides for flexibility in identifying the special conditions without making the ordinance unreasonably complicated. The objective of the conditional use permit process is to encourage compatibility of the proposed development with the environment, and with existing and future land uses in the area.

**180.02 CONDITIONAL USE PERMIT REQUIRED.** Those uses which require a Conditional Use Permit are listed in the individual districts, as well as those having the discretion of the Zoning Administrator.

**180.03 ISSUANCE OF CONDITIONAL USE PERMIT.**

1. A Conditional Use Permit may be issued only after review and approval of the submitted application, including any plans, by the Board of Adjustment. An application and plan shall only be approved upon determination that the development, if completed as proposed, will comply with the provisions of this chapter.
2. The Conditional Use Permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, and shall incorporate by reference the approved application and plan. The permit shall contain any special conditions or requirements lawfully imposed by the Board of Adjustment.
3. All development shall occur strictly in accordance with such approved application and plan.

**180.04 APPLICATION FOR CONDITIONAL USE PERMITS.**

1. The applicant for a conditional use permit must be a person with the legal authority to take action in accordance with the permit. In general, this means that applications should be made by the owners or lessees of the subject property or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits, or their agents.
2. The application must be submitted on an approved form and must be complete. An application shall be complete when it contains all the information necessary for the Board of Adjustment to decide whether the development, if completed as proposed, will comply with all of the requirements of this section. Unless the Zoning Administrator informs the applicant in what way the application is incomplete, the application shall

be presumed to be complete. If the application is deemed incomplete, the Zoning Administrator will not schedule the hearing until all required documentation has been submitted.

3. Additional documents needed:
  - A. Site plan with dimensions of the proposed with dimensions of the proposed building and land.
  - B. Property owners within 500 feet of the property in reproducible electronic format.
  - C. A complete legal description of the property shall be provided in reproducible electronic format.
  - D. Narrative to the Standards for Approval #1-6.
4. To minimize planning costs to the applicant, avoid misunderstandings or misinterpretations, and to ensure compliance with the requirements of this section, a pre-application conference between the applicant and the Zoning Administrator is strongly encouraged.

**180.05 NOTIFICATION.** The Board of Adjustment shall fix a reasonable time for the hearing on the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

**180.06 STANDARDS FOR APPROVAL.**

1. The Board of Adjustment shall review the proposed development for conformance to the following Standards of Approval:
  - A. **Compatibility.** The proposed buildings or use shall be constructed, arranged and operated so as to be compatible with the character of the zoning district and immediate vicinity, and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations. The proposed development shall not be unsightly, obnoxious or offensive in appearance to abutting or nearby properties.
  - B. **Transition.** The development shall provide for a suitable transition, and if necessary, buffer between the proposed buildings or use and surrounding properties.
  - C. **Traffic.** The development shall provide for adequate ingress and egress, with particular attention to vehicular and pedestrian safety and convenience, traffic flow and control, and emergency access.
  - D. **Parking and Loading.** The development shall provide all off-street parking and loading areas as required by this ordinance, and adequate service entrances and areas.  
  
Appropriate screening shall be provided around parking and service areas to minimize visual impacts, glare from headlights, noise, fumes or other detrimental impacts.
  - E. **Signs and Lighting.** Permitted signage shall be in accordance with the applicable district regulations and shall be compatible with the immediate vicinity. Exterior lighting, if provided, shall be with consideration given to glare, traffic safety and compatibility with property in the immediate vicinity.

F. Environmental Protection. The development shall be planned and operated in such a manner that will safeguard environmental and visual resources. The development shall not generate excessive noise, vibration, dust, smoke, fumes, odor, glare, groundwater pollution or other undesirable, hazardous or nuisance conditions, including weeds.

2. If the Board of Adjustment concludes that all of the Standards for Approval criteria will be met by the development, it shall approve the application and plans. If it concludes, based on the information submitted at the hearing, which if completed as proposed there is a strong probability the development will:

- A. Not adequately safeguard the health, safety and general welfare of persons residing or working in adjoining or surrounding property, or
- B. Impair an adequate supply (including quality) of light and air to surrounding property, or
- C. Unduly increase congestion in the roads, or the hazard from fire, flood or similar dangers, or
- D. Diminish or impair established property values on adjoining or surrounding property, or
- E. Not be in accord with the intent, purpose and spirit of the zoning ordinance or comprehensive plan.

**180.07 BURDEN OF PERSUASION.** The burden of persuasion as to whether the development, if completed as proposed, will comply with the requirements of this and all chapter is at all times on the applicant. The burden of presenting evidence to the Board of Adjustment sufficient enough for it to conclude that the application does not comply with the requirements of this section is upon the person or persons recommending such a conclusion, unless the information presented by the applicant warrants such a conclusion.

**180.08 BOARD OF ADJUSTMENT ACTION ON APPLICATIONS.** In considering whether to approve an application for a conditional use permit, the Board of Adjustment shall proceed according to the following format:

1. The Board of Adjustment shall establish findings of fact based upon information contained in the application, the staff report and information gather at the Board of Adjustment hearings.
2. The board shall consider such reasonable requirements or conditions to the permit as will ensure the development will satisfy the requirements of this chapter. A vote may be taken on such conditions before consideration of whether the permit should be approved or denied for any of the reasons set forth in 3 or 4.
3. The Board of Adjustment shall consider whether the application complies with all of the applicable Standards for Approval set forth in 180.06. Separate votes may be taken with respect to each criterion. If the Board of Adjustment concludes that the application fails to meet one or more of the criteria, the application shall be denied.
4. If the Board of Adjustment concludes that all such criteria have been met, the application shall be approved unless it adopts a motion that the application fails to meet any of the approval standard set forth in 178.06. Separate votes may be taken with respect to each standard. Any such motion regarding compliance or noncompliance of the application to the development criteria or Standards for Approval shall specify the supporting reasons for the

motion. It shall be presumed the application complies with all criteria and standards not specifically found to be unsatisfied. Without limiting the foregoing, the Board of Adjustment may attach to a permit a conditions it deems necessary to protect the health, safety, and general welfare of the public. All conditions or requirements shall be entered on the permit.

The Board of Adjustment shall not grant a conditional use for any home occupation/home based business which is otherwise prohibited under this zoning code.

**180.09 EXPIRATION OF PERMITS.**

1. A Conditional Use Permit shall become void one year after its effective date if the applicant has not carried out development or occupancy during that period.
2. The Board of Adjustment may revoke a conditional use permit should the operation of the use subject to such permit violate the conditions under which the permit was granted.

**180.10 PREVIOUSLY APPROVED PERMITS.** Any permit approved under regulations in effect before the effective date of this zoning code shall be considered a valid permit, subject to the requirements imposed at the time of its approval.

**180.11 EFFECT OF PERMIT ON SUCCESSORS AND ASSIGNS.** A Conditional Use Permit authorizes the permit holder the use of land or structures in a particular way and subject to certain conditions. As such, it is transferable. However, no person (including successors or assigns of the original permit holder) may make use of the land or structures covered under such permit except in accordance with all terms and requirements of the permit, so long as the permit remains in effect.

**180.12 AMENDMENTS AND MODIFICATIONS.**

1. Insignificant modifications to the approved permit are permissible upon authorization by the Zoning Administrator. A modification is insignificant if it has no discernible impact on neighboring properties, the general public or those intended to use or occupy the proposed development.
2. Minor modifications to the approved permit are permissible with the approval of the Board of Adjustment. Such permission may be obtained without a formal application, public hearing or payment of fees. A modification is minor if it has no substantial impact on neighboring properties, the general public or those intended to use or occupy the proposed development.
3. All other requests for modifications to the approved permit will be processed as new applications. New conditions may be imposed by the Board of Adjustment, but the applicant retains the right to reject such new conditions by withdrawing the request for modifications and proceeding under the terms and conditions of the original permit.
4. The permit holder requesting approval of modifications shall submit a written request (including plans as necessary) for such approval to the administrator, and the request shall specifically identify the modifications. The administrator shall determine whether the proposed modifications falls within the categories set forth in Subsections 1, 2 and 3.
5. Approval of all modifications must be given in writing.

*(Ch. 180 – Ord. 18-08 – Jun. 18 Supp.)*

[The next page is 1311]



## CHAPTER 181

# ADMINISTRATION AND ENFORCEMENT

181.01 Building Permits

181.02 Schedule of Fees, Charges and Expenses

181.03 Complaints Regarding Violations

181.04 Penalties for Violation

### 181.01 BUILDING PERMITS.

1. Administration and Enforcement. The Zoning Administrator shall administer and enforce this zoning code. The Board of Adjustment may direct other person to assist the Zoning Administrator. If the Zoning Administrator finds that any of the provisions of this zoning code are being violated, said official shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The Zoning Administrator shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this zoning code to ensure compliance with or to prevent violation of its provisions.

2. Building Permits Required. Except as provided by the building code, no building or other structure regulated by this zoning code shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless a separate permit for each building or structure has first been obtained from the Building Official. No building permit shall be issued by the Building Official except in conformity with the provisions of this zoning code, unless he/she receives a written order from the Board of Adjustment in the form of an administrative review, special exception, or variance as provided by this zoning code.

3. Application for Building Permit. All applications for building permits shall include plans if applicable in duplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the administrative official, including existing or proposed building or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this zoning code. One copy of the plans shall be returned to the applicant by the administrative official, after said official has marked such copy either as approved or disapproved and attested to same by signing such copy. One copy of the plans, similarly marked, shall be retained by the administrative official.

4. Certificates of Zoning Compliance for New, Altered or Nonconforming Uses. No building or other structure regulated by this zoning code shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless a certificate of zoning compliance for each building or structure has first been obtained from the Building Official. No building permit shall be issued by the Building Official except in conformity with the provisions of this zoning code, unless said official receives a written order from the Board of Adjustment in the form

of an administrative review, special exception, or variance as provided by this zoning code.

5. Expiration of Building Permit.
  - A. If the work described in any building permit has not begun within 180 days from the date of issuance thereof, said permit shall expire; it shall be canceled by the administrative official; and written notice thereof shall be given to the persons affected.
  - B. If the work described in any building permit has not been substantially completed within one year of the date of issuance thereof, said permit shall expire and be canceled by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained.
  - C. The expiration date of a building permit may be established for a period longer than one year if established at the time that such permit is issued by the City. The Zoning Administrator may, at his or her discretion, extend the expiration period of the building permit.
6. Construction and Use to be As Provided in Applications, Plans, Permits, and Certificates of Zoning Compliance. Building permits of certificates of zoning compliance issued on the basis of plans and applications approved by the administrative official authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be deemed violation of this zoning code, and punishable as provided herein.

**181.02 SCHEDULE OF FEES, CHARGES AND EXPENSES.** The City Council shall establish by resolution a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, site plan reviews, appeals, and other matters pertaining to this zoning code. The schedule of fees shall be posted in the office of the City Clerk, and may be altered or amended only by the City Council. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

**181.03 COMPLAINTS REGARDING VIOLATIONS.** Whenever a violation of this resolution occurs, or is allowed to have occurred, any person may file a written complaint. Such complaints stating fully the causes and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint immediately, investigate, and take action thereon as provided by this resolution.

**181.04 PENALTIES FOR VIOLATION.**

1. Violation and Penalty. Violation of the provisions of this zoning code or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants or variances or special exceptions) shall constitute a municipal infraction, subject to the penalties and alternative relief authorized by this zoning code and Section 364.22 of the *Code of Iowa*.
2. Restraining Order. In case any building is built, developed, altered, or otherwise used in violation of this zoning code, the City Attorney, in addition to other remedies, may institute any proper action or proceed in the name of the City to prevent

such unlawful action; to restrain, correct, or abate such violation; or to prevent any illegal act, conduct, business, or use in or about said premises.

3. The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

4. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

*(Ch. 181 – Ord. 18-09 – Jun. 18 Supp.)*

1. [The next page is 1331]

## CHAPTER 183

### MOBILE FOOD UNITS

183.01 Definitions	183.06 Pushcart Specific Regulations
183.02 License and Permit Required	183.07 Mobile Food Unit Specific Regulations
183.03 Application	183.08 Enforcement and Penalties
183.04 Exceptions	
183.05 General Regulations for All Mobile Food Units and Pushcarts	

#### 183.01 DEFINITIONS.

1. “Commissary” means a licensed food facility regulated by a governmental entity where food is stored, prepared, portioned, packaged or any combination thereof, and where such food is intended for consumption at another location or place from a mobile food unit or pushcart.
2. “Food establishment” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. For the purposes of this chapter, “food establishment” does not include an establishment that offers only pre-packaged foods that are non-potentially hazardous; a produce stand which sells only whole, uncut fresh fruits and vegetables; an establishment operating in a farmers market if potentially hazardous food is not sold or distributed; a residence in which food that is non-potentially hazardous is sold for consumption off premises to a consumer customer provided the food is labeled so as to identify its preparer; a private home that receives catered or home-delivered food; child care facilities or food establishments in hospitals or health care facilities which are subject to regulation by state agencies; supply vehicles and vending machines.
3. “Mobile food unit” means motorized, a self propelled food establishment or a trailer or vehicle towed by a motorized vehicle, that is readily movable, and which typically operates at a remote location and returns to base of operation or commissary at the end of its daily business. Mobile food units are considered Class IV mobile food units by the Iowa Department of Inspections and Appeals.
4. “Mobile food unit zone” means an area of governmentally owned property that has been designated as a location upon which mobile food units and pushcarts may sell or offer for sale for immediate consumption food and/or beverages.
5. “Potentially hazardous food” A biological (microorganism), chemical (cleansers, pesticides), or physical (fingernail, plastic) property that may cause an unacceptable consumer health risk.
6. “Pushcart” means a non-motorized food establishment limited to serving non-potentially hazardous packaged foods with limited assembly or commercial or commissary prepared foods that are reheated on the pushcart, such a frankfurters. Pushcarts may be towed by a vehicle, but are generally capable of being moved by human power. Pushcarts are considered Class III mobile food units by the Iowa Department of Inspections and Appeals.

**183.02 LICENSE AND PERMIT REQUIRED.** No person shall sell or offer for sale or otherwise engage in a business as a mobile food unit or pushcart within the City without having

first obtained a license to operate as such. A mobile food unit license is a special license and is required in addition to any other required City business license or state license or permit the person may hold or be required to hold. A separate mobile food unit license is required for each mobile food vehicle or pushcart from which business is conducted in the City. Mobile food unit licenses are not transferable or assignable. The license fee required shall be established by the City Council by resolution. Permits expire at the end of each calendar year.

No person shall sell or offer for sale or otherwise engage in business as a mobile food unit or pushcart within the public right-of-way, other than in a designated mobile food unit zone, unless a special occurrence permit has been obtained during a City affiliated event. The owner shall make a formal request and complete an application to the City outlining all dates/times. Special Occurrence Permits require Building Official approval and a fee established by City Council by resolution.

**183.03 APPLICATION.** An application form available from the Building and Zoning Department must be filled out and submitted to the Building and Zoning Department for processing. The completed application must be submitted together with a copy of the applicant's Iowa retail sales tax permit and proof of liability insurance, including commercial general liability insurance coverage and automotive liability insurance coverage. Commercial general liability insurance shall include coverage for bodily injury, death and property damage with limits of liability of not less than one million dollars per occurrence and aggregate combined single limit. Automobile liability insurance coverage shall include coverage for bodily injury, death and property damage with limits of liability of not less than one million dollars per occurrence, combined single limit. Certificates of insurance shall provide that the policy or policies have been endorsed to provide thirty days advance notice of cancellation and forty-five days advance notice of non-renewal and ten days advance notice of cancellation for non-payment of premium and that these notices shall be provided to the City finance department by email, facsimile or mail. Cancellation of required insurance automatically revokes and terminates the mobile food unit license to operate in Windsor Heights unless other insurance policies are provided in a timely manner to the City. If the mobile food unit sells food or beverages other than pre-packaged items that do not require hot or cold handling procedures, the application shall also contain a copy of the mobile food unit's license issued by the Iowa Department of Inspections and Appeals, a copy of the food establishment license issued by the Iowa Department of Inspections and Appeals for any commissary kitchen or other premises where food is prepared, copies of the food protection manager certifications, the name and address of the facility at which any waste fat, waste oil or waste grease generated by the mobile food unit operation is disposed of, and a copy of the certificate of annual compliance issued by the fire marshal.

**183.04 EXCEPTIONS.**

1. Temporary food units associated with a private party on private, residential property hosted by the owner of the property upon which the unit is dispensing food and/or beverage, such as a graduation party, wedding reception, birthday celebration or similar event, are exempt from the licensing provisions of this chapter provided the unit's participation is by invitation or contract with the host and provided the vendor displays proof of its authorization to operate in Iowa and required health inspection certification.

**183.05 GENERAL REGULATIONS FOR ALL MOBILE FOOD UNITS AND PUSHCARTS.**

1. Mobile food units shall have, and at all times maintain, all necessary licenses and permits from the Iowa Department of Inspections and Appeals as well as the City of Windsor Heights's required permits and licenses.
2. Mobile food units shall at all times operate in compliance with all applicable food, health and sanitation laws and shall comply with all health department regulations regarding food service, food storage and preparation, food handling and food cooking and shall have a valid inspection certificate or permit evincing health department inspection and approval on display and easily visible to the mobile food unit's or pushcart's patrons at all times in operation.
3. No mobile food unit or pushcart shall offer for sale or sell food and/or beverage between the hours of 12:00 a.m. and 6:00 a.m.
4. No mobile food unit or pushcart may operate in the right-of-way or outside of a designated mobile food vending zone established by the City of Windsor Heights absent of the premises obtaining a special occurrence permit which must be approved by the Building Official.
5. No mobile food unit or pushcart shall operate within a City park unless such operation occurs within the boundaries of a designated mobile food unit zone or a separate Special Occurrence Permit permit has been acquired from the Building Official.
6. No mobile food unit or pushcart shall park or stand its pushcart or vehicle within (1) 40 feet of a pedestrian crosswalk, or a stop sign or traffic signal light, (2) adjacent to a designated bicycle lane, or (3) absent written authorization of the restaurant, within 200 feet of any public entrance to any permanent restaurant during hours the restaurant is open for business. For purposes of this section, bars that serve food are deemed to be restaurants. Mobile food units and pushcarts that are not directly involved with the sponsor organization shall not park or stand within 1,200 feet (3 City blocks) of an approved special event.
7. No mobile food unit or pushcart shall operate in a manner that violates Chapter 54 of the City Code concerning noise. A mobile food unit or pushcart shall not call out to, cry out, shout out or otherwise communicate or make any noise or use any device to call attention to his or her unit's or cart's location and operation.
8. A mobile food unit or pushcart is responsible for keeping and maintain the area around and within fifty feet of the mobile food unit or pushcart neat, clean and free from trash, debris, garbage and other hazardous conditions at all times regardless of whether the trash, debris or garbage originated from the operation of the unit or pushcart or was left in the area by a pedestrian passersby or natural conditions. A mobile food unit or pushcart shall provide adequate trash receptacles for the public for all garbage from its operation and from the accumulation of garbage in the area around his or her unit or pushcart at all times the unit is in operation. At the close of its daily business the mobile food unit or pushcart must remove all garbage from the area and properly dispose of it away from the site of its operation; the garbage shall not simply be placed in nearby public garbage receptacles provided for use to the general public at large.
9. The license required by this chapter, the state sales tax permit and all licenses, permits or certificates required to be displayed by state law, shall be posted on the

mobile food unit or pushcart so as to be readily visible to all persons conducting business with the mobile food unit.

10. Mobile food units and pushcarts shall only offer single service food utensils such as cups, straws, knives, forks, spoons, stirrers, plates, bowls, wrappers, containers, and similar utensils, which shall be individually wrapped if usual, and kept in a clean place and only used once in the service of food and/or beverage.

11. No mobile food unit or pushcart shall be left at its operating location at the end of its business day and shall be removed to its base business operation location.

12. No mobile food unit or pushcart shall conduct operations at a location or in a manner that hinders, impedes or restricts access to a pay phone, mail box, emergency call box, traffic control box, fire hydrant, entrance to a building or a driveway.

13. A mobile food unit or pushcart operating on private property shall not encroach into any public sidewalk or public right-of-way. All private property owners allowing mobile food units on property must register with the City as having a mobile kitchen for public safety purposes.

14. No mobile food unit or pushcart is allowed on the grounds of any school unless it has been invited to be there as part of a school authorized function.

15. The City reserves the right to move a mobile food unit or pushcart from any location if determined to be necessary for the provision of emergency or public services or in the interest of public safety, peace and welfare.

16. No mobile food unit or pushcart shall offer for sale or sell any liquor, beer or wine from such unit unless a Liquor License has been approved by the Iowa Alcoholic Beverage Division.

17. City sanctioned or sponsored events may be reserved or restricted by the City of Windsor Heights including the designated mobile food vending zone established by the City of Windsor Heights. Check with the Building Official for current event Special Occurrence Permits. Special Occurrence Permits are given on a first come first serve basis depending on space provided.

#### **183.06 PUSH CART SPECIFIC REGULATIONS.**

1. A pushcart shall not allow, cause or obstruct the passage along any sidewalk, street, alley or parking lot as a result of a congregation of people seeking service from the pushcart or because of the size, shape or placement of the pushcart so as to interfere, inhibit or block the normal flow of pedestrian or vehicular traffic.

2. A pushcart shall not violate parking regulations.

3. A pushcart shall not sell to any person operating a vehicle on a public street while the person's vehicle is located within the traveled portion of the roadway. A pushcart may sell to a person operating or occupying a motor vehicle that is legally parked, but may only do so from the curb side of said parked vehicle.

4. No pushcart or equipment shall be allowed to remain in the public right-of-way at the close of business.

5. All pushcarts and equipment associated with the business shall be maintained so as to enhance the aesthetic and overall appearance of the area in which the pushcart is operated.



6. Pushcart vendors agree to indemnify and hold harmless the City from and against any and all loss, cost, damages or claims to persons or property, including property of the City, arising out of or claimed to have arisen out of the operation of a pushcart. In addition, pushcart vendors agree to defend, at no cost to the City, any such claims or lawsuits. The City may, at its option, join the defense of such claim or lawsuit without relieving the pushcart vendor from its obligations to indemnify, hold harmless and defend the City.
7. Pushcarts may operate anywhere within a designated mobile food unit zone on a paved surface, designated parking space or sidewalk subject to the other requirements of this chapter. In addition, a pushcart may operate at a requested location on private property provided application has been made for permission to operate the requested location and that application is accompanied by a verifiable letter from the owner or person in control of the property granting permission to operate on the premises. Permission by the owner/person in control of property may be rescinded at any time by notifying the City Building and Zoning Department in writing that permission is rescinded. If permission is rescinded, no fees or portion of fees paid will be refunded.
8. No pushcart shall conduct business in areas of the City at which they are not permitted or authorized.
9. Pushcarts shall be subject to the same permit and fee structure as all other mobile food units.

#### **183.07 MOBILE FOOD UNIT SPECIFIC REGULATIONS.**

1. Sales shall be conducted on the sidewalk side of the mobile food unit wherever possible away from moving vehicles.
2. No mobile food truck should provide or allow any dining area, tables, chairs, booths, benches, bar stools, stand-up counters, or similar furniture unless allowed by a private lease on private property.
3. No mobile food unit shall be used for any purpose other than as a mobile food unit offering food and/or beverage to customers.

**183.08 ENFORCEMENT AND PENALTIES.** The Polk County Health Department, the Windsor Heights Police Department, the Windsor Heights Fire Department and the Windsor Heights Building and Zoning Department of the City of Windsor Heights are authorized to enforce this chapter. The Polk County Health Department may elect to pursue enforcement under the provision of this chapter or under applicable state laws and regulations with the sanctions available thereunder.

The performance of any action contrary to the provisions of this chapter may be cited as a municipal infraction offense. Additionally, failure to adhere to the regulations is cause for revocation or suspension of a license to operate as a mobile food unit or pushcart.

*(Ch. 183 – Ord. 18-10 – Jun. 18 Supp.)*

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## CHAPTER 185

# FLOODPLAIN MANAGEMENT

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**185.01 DEFINITIONS.** Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

1. Appurtenant structure – A structure which is on the same parcel of the property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.
2. Base flood – The flood having one (1) percent chance of being equaled or exceeded in any given year. (Also commonly referred to as the “100-year flood”).
3. Base flood elevation (BFE) – The elevation floodwaters would reach at a particular site during the occurrence of a base flood event.
4. Basement – Any enclosed area of a building which has its floor or lowest level below ground level (subgrade) on all sides. Also see “lowest floor.”
5. Development – Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials. “Development” does not include “minor projects” or “routine maintenance of existing buildings and facilities” as defined in this section. It also does not include gardening, plowing, and similar practices that do not involve filling or grading.
6. Enclosed area below lowest floor – The floor of the lowest enclosed area in a building when all the following criteria are met:
  - A. The enclosed area is designed to flood to equalize hydrostatic pressure during flood events with walls or openings that satisfy the provisions of 185.07(2)(D)(1) of this ordinance, and
  - B. The enclosed area is unfinished (not carpeted, drywalled, etc.) and used solely for low damage potential uses such as building access, parking or storage, and
  - C. Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one (1) foot above the base flood elevation, and
  - D. The enclosed area is not a “basement” as defined in this section.
7. Existing construction – Any structure for which the “start of construction” commenced before the effective date of the first floodplain management regulations adopted by the community.

8. Existing factory built home park or subdivision – A factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management regulations adopted by the community.
9. Expansion of existing factory built home park or subdivision – The preparation of additional sites by the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
10. Factory-built home – Any structure, designed for residential use which is wholly or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation, on a building site. For the purpose of this ordinance factory-built homes include mobile homes, manufactured homes, and modular homes; and also include “recreational vehicles” which are placed on a site for greater than 180 consecutive days and not fully licensed for and ready for highway use.
11. Factory-built home park – A parcel or contiguous parcels of land divided into two or more factory-built home lots for sale or lease.
12. Five hundred (500) year flood – A flood, the magnitude of which has a two-tenths (0.2) percent chance of being equaled or exceeded in any given year or which, on average, will be equaled or exceeded at least once every five hundred (500) years.
13. Flood – A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.
14. Flood insurance rate map (FIRM) – The official map prepared as part of (but published separately from) the Flood Insurance Study which delineates both the flood hazard areas and the risk premium zones applicable to the community.
15. Flood insurance study (FIS) – A report published by FEMA for a community issued along with the community’s Flood Insurance Rate Map(s). The study contains such background data as the base flood discharge and water surface elevations that were used to prepare the FIRM.
16. Floodplain – Any land area susceptible to being inundated by water as a result of a flood.
17. Floodplain management – An overall program of corrective and preventive measures for reducing flood damages and promoting the wise use of floodplains, including but not limited to emergency preparedness plans, flood control works, floodproofing and floodplain management regulations.
18. Floodproofing – Any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities, which will reduce or eliminate flood damage to such structures.
19. Floodway – The channel of a river or stream and those portions of the floodplains adjoining the channel, which are reasonably required to carry and discharge flood waters or flood flows so that confinement of flood flows to the floodway area will not cumulatively increase the water surface elevation of the base flood by more than one (1) foot.

20. Floodway fringe – Those portions of the Special Flood Hazard Area outside the floodway.
21. Highest adjacent grade – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
22. Historic structure – Any structure that is:
  - A. Listed individually in the National Register of Historic Places, maintained by the Department of Interior, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing of the National Register;
  - B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
  - D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by either i) an approved state program as determined by the Secretary of the Interior or ii) directly by the Secretary of the Interior in states without approved programs.
23. Lowest floor – The floor of the lowest enclosed area in a building including a basement except when the criteria listed in the definition of enclosed area below lowest floor are met.
24. Maximum damage potential uses – Hospitals and like institutions; buildings or building complexes containing documents, data, or instruments of great public value; buildings or building complexes containing materials dangerous to the public or fuel storage facilities; power installations needed in emergency or other buildings or building complexes similar in nature or use.
25. Minor projects – Small development activities (except for filling, grading and excavating) valued at less than \$500.
26. New construction – (new buildings, factory-built home parks) – Those structures or development for which the start of construction commenced on or after the effective date of the first floodplain management regulations adopted by the community.
27. New factory-built home park or subdivision – A factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the effective date of the first floodplain management regulations adopted by the community.
28. Recreational vehicle – A vehicle which is:
  - A. Built on a single chassis;

- B. Four hundred (400) square feet or less when measured at the largest horizontal projection;
  - C. Designed to be self-propelled or permanently towable by a light duty truck; and
  - D. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.
29. Routine maintenance of existing buildings and facilities – Repairs necessary to keep a structure in a safe and habitable condition that do not trigger a building permit, provided they are not associated with a general improvement of the structure or repair of a damaged structure. Such repairs include:
- A. Normal maintenance of structures such as re-roofing, replacing roofing tiles and replacing siding;
  - B. Exterior and interior painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work;
  - C. Basement sealing;
  - D. Repairing or replacing damaged or broken window panes;
  - E. Repairing plumbing systems, electrical systems, heating or air conditioning systems and repairing wells or septic systems.
30. Special flood hazard area (SFHA) – The land within a community subject to the “base flood.” This land is identified on the community's Flood Insurance Rate Map as Zone A, A1-30, AE, AH, AO, AR, and/or A99.
31. Start of construction – Includes substantial improvement, and means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement, was within 180 days of the permit date. The actual start means either the first placement or permanent construction of a structure on a site, such as pouring of a slab or footings, the installation of pile, the construction of columns, or any work beyond the stage of excavation; or the placement of a factory-built home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.
32. Structure – Anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, cabins, factory-built homes, storage tanks, grain storage facilities and/or other similar uses.
33. Substantial damage – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. Volunteer labor and donated materials shall be included in the estimated cost of repair.
- Substantial damage also means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of

such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. Volunteer labor and donated materials shall be included in the estimated cost of repair.

35. Substantial improvement – Any improvement to a structure which satisfies either of the following criteria:

A. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either (i) before the “start of construction” of the improvement, or (ii) if the structure has been "substantially damaged" and is being restored, before the damage occurred.

Any repair, reconstruction or improvement of a structure taking place during a 10-year period, the cumulative cost of which, equals or exceeds fifty (50) percent of the market value of the structure either (i) before the “start of construction” of the first improvement of the structure, or (ii) if the structure has been “substantially damaged” and is being restored, before the damage occurred.

The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions. The term also does not include any alteration of an “historic structure,” provided the alteration will not preclude the structure’s designation as an “historic structure.” An alternative to exempting substantially improved/damaged historic structures from the elevation requirements of the ordinance by definition would be to handle them individually through the variance process. This option provides the community an opportunity to require that all reasonable measures are used to reduce the structure’s flood damage potential (e.g., by relocating utilities above the base flood elevation, using flood resistant materials where practicable, etc.), provided those measures do not preclude the structure’s designation as an “historic structure.” If this alternative is preferred, the last sentence of the previous paragraph (referring to “historic structures” should be deleted.

B. Any addition which increases the original floor area of a building by 25 percent or more. All additions constructed after the effective date of the first floodplain management regulations adopted by the community shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

35. Variance – A grant of relief by a community from the terms of the floodplain management regulations.

36. Violation – The failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

**185.02 STATUTORY AUTHORITY, FINDINGS OF FACT AND PURPOSE.**

1. The Legislature of the State of Iowa has in Chapter 414, *Code of Iowa*, as amended, delegated the power to cities to enact zoning regulations to secure safety from flood and to promote health and the general welfare.
2. Findings of Fact.
  - A. The flood hazard areas of the City of Windsor Heights are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare of the community.
  - B. These flood losses, hazards, and related adverse effects are caused by: (i) the occupancy of flood hazard areas by uses vulnerable to flood damages which create hazardous conditions as a result of being inadequately elevated or otherwise protected from flooding and (ii) the cumulative effect of obstructions on the floodplain causing increases in flood heights and velocities.
  - C. This ordinance relies upon engineering methodology for analyzing flood hazards which is consistent with the standards established by the Department of Natural Resources.
3. Statement of Purpose. It is the purpose of this ordinance to protect and preserve the rights, privileges and property of the City of Windsor Heights and its residents and to preserve and improve the peace, safety, health, welfare, and comfort and convenience of its residents by minimizing those flood losses described in 185.02(2)(A) of this ordinance with provisions designed to:
  - A. Reserve sufficient floodplain area for the conveyance of flood flows so that flood heights and velocities will not be increased substantially.
  - B. Restrict or prohibit uses which are dangerous to health, safety or property in times of flood or which cause excessive increases in flood heights or velocities.
  - C. Require that uses vulnerable to floods, including public facilities which serve such uses, be protected against flood damage at the time of initial construction or substantial improvement.
  - D. Protect individuals from buying lands which may not be suited for intended purposes because of flood hazard.
  - E. Assure that eligibility is maintained for property owners in the community to purchase flood insurance through the National Flood Insurance Program.

**185.03 GENERAL PROVISIONS.**

1. Lands to Which Ordinance Apply. The provisions of this ordinance shall apply to all lands within the jurisdiction of the City of Windsor Heights shown on the Official Floodplain Zoning Map as being within the boundaries of the Floodway, Floodway Fringe, General Floodplain and Shallow Flooding (Overlay) Districts, as established in 185.03.



2. Establishment of Official Floodplain Zoning Map. The Flood Insurance Rate Map (FIRM) for Polk County and Incorporated Areas, City of Windsor Heights, Panels 19153C0326F, 0327F, 0329F, dated February 1, 2019, which were prepared as part of the Flood Insurance Study for Polk County, is (are) hereby adopted by reference and declared to be the Official Floodplain Zoning Map. The flood profiles and all explanatory material contained with the Flood Insurance Study are also declared to be a part of this ordinance.
3. Rules for Interpretation of District Boundaries. The boundaries of the zoning district areas shall be determined by scaling distances on the Official Floodplain Zoning Map. When an interpretation is needed as to the exact location of a boundary, the Building Official shall make the necessary interpretation. The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Building Official in the enforcement or administration of this ordinance.
4. Compliance. No structure or land shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations which apply to uses within the jurisdiction of this ordinance.
5. Abrogation and Greater Restrictions. It is not intended by this ordinance to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provision of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
6. Interpretation. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State statutes.
7. Warning and Disclaimer of Liability. The standards required by this ordinance are considered reasonable for regulatory purposes. This ordinance does not imply that areas outside the designated Floodplain (Overlay) District areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Windsor Heights or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.
8. Severability. If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

#### **185.04 ADMINISTRATION.**

1. Appointment, Duties and Responsibilities of Local Official.
  - A. The Building Official is hereby appointed to implement and administer the provisions of this ordinance and will herein be referred to as the Administrator.
  - B. Duties and responsibilities of the Administrator shall include, but not necessarily be limited to the following:

- (1) Review all floodplain development permit applications to assure that the provisions of this ordinance will be satisfied.
  - (2) Review floodplain development applications to assure that all necessary permits have been obtained from federal, state and local governmental agencies including approval when required from the Department of Natural Resources for floodplain construction.
  - (3) Record and maintain a record of (i) the elevation (in relation to North American Vertical Datum 1988) of the lowest floor (including basement) of all new or substantially improved structures or (ii) the elevation to which new or substantially improved structures have been floodproofed.
  - (4) Notify adjacent communities/counties and the Department of Natural Resources prior to any proposed alteration or relocation of a watercourse and submit evidence of such notifications to the Federal Emergency Management Agency.
  - (5) Keep a record of all permits, appeals and such other transactions and correspondence pertaining to the administration of this ordinance.
  - (6) Submit to the Federal Insurance Administrator an annual report concerning the community's participation, utilizing the annual report form supplied by the Federal Insurance Administrator.
  - (7) Notify the Federal Insurance Administration of any annexations or modifications to the community's boundaries.
  - (8) Review subdivision proposals to insure such proposals are consistent with the purpose of this ordinance and advise the Planning and Zoning Commission of potential conflict.
  - (9) Maintain the accuracy of the community's Flood Insurance Rate Maps when:
    - a. Development placed within the Floodway (Overlay) District results in any of the following:
      - An increase in the base flood elevations, or
      - Alteration to the floodway boundary.
    - b. Development place in Zones A, AE, AH, and A1-30 that does not include a designated floodway that will cause a rise of more than one foot in the base elevation; or
    - c. Development relocates or alters the channel.
- Within 6 months of the completion of the development, the applicant shall submit to FEMA all scientific and technical data necessary for a Letter of Map Revision.
- (10) Perform site inspections to ensure compliance with the standards of this ordinance.
  - (11) Forward all requests for variances to the Board of Adjustment for consideration. Ensure all requests include the information

ordinarily submitted with applications as well as any additional information deemed necessary to the Board of Adjustment.

2. Floodplain Development Permit.

A. Permit Required. A Floodplain Development Permit issued by the Administrator shall be secured prior to any floodplain development (any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, filling, grading, paving, excavation or drilling operations), including the placement of factory-built homes.

B. Application for Permit. Application shall be made on forms furnished by the Administrator and shall include the following:

(1) Description of the work to be covered by the permit for which application is to be made.

(2) Description of the land on which the proposed work is to be done (i.e., lot, block, track, street address or similar description) that will readily identify and locate the work to be done.

(3) Location and dimensions of all buildings and building additions.

(4) Indication of the use or occupancy for which the proposed work is intended.

(5) Elevation of the base flood.

(6) Elevation (in relation to North American Vertical Datum 1988) of the lowest floor (including basement) of buildings or of the level to which a building is to be floodproofed.

(7) For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.

(8) Such other information as the Administrator deems reasonably necessary (e.g., drawings or a site plan) for the purpose of this ordinance.

A. C. Action on Permit Application. The Administrator shall, within a reasonable time, make a determination as to whether the proposed floodplain development meets the applicable standards of this ordinance and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, of the specific reasons therefore. The Administrator shall not issue permits for variances except as directed by the County Board of Adjustment.

B. D. Construction and Use to be as Provided in Application and Plans. Floodplain Development Permits based on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this ordinance. The applicant shall be required to submit certification by a professional engineer or land surveyor, as appropriate, registered in the State of Iowa, that the finished fill, building floor elevations, floodproofing, or other flood protection measures were

accomplished in compliance with the provisions of this ordinance, prior to the use or occupancy of any structure.

**185.05 ESTABLISHMENT OF ZONING (OVERLAY) DISTRICTS.** The floodplain areas within the jurisdiction of this ordinance are hereby divided into the following districts.

1. Floodway (Overlay) District (FW) – those areas identified as Floodway on the Official Flood Plain Zoning Map;
2. Floodway Fringe (Overlay) District (FF) – those areas identified as Zone AE on the Official Flood Plain Zoning Map but excluding those areas identified as Floodway.
3. General Floodplain (Overlay) District (GF) – those areas identified as Zone A on the Official Flood Plain Zoning Map, and;

The boundaries shall be as shown on the Official Floodplain Zoning Map. Within these districts, all uses not allowed as Permitted Uses are prohibited unless a variance to the terms of this ordinance is granted after due consideration by the Board of Adjustment.

**185.06 FLOODWAY (OVERLAY) DISTRICT (FW).**

1. Permitted Uses. All uses within the Floodway District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet applicable performance standards of the Floodway District.
2. Performance Standards. All Floodway District uses allowed as a permitted shall meet the following standards:
  - A. No use shall be permitted in the Floodway District that would result in any increase in the base flood elevation. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
  - B. All uses within the Floodway District shall:
    - (1) Be consistent with the need to minimize flood damage.
    - (2) Use construction methods and practices that will minimize flood damage.
    - (3) Use construction materials and utility equipment that are resistant to flood damage.
  - C. No use shall affect the capacity or conveyance of the channel or floodway of any tributary to the main stream, drainage ditch or any other drainage facility or system.
  - D. Structures, buildings and sanitary and utility systems, if permitted, shall meet the applicable performance standards of the Floodway Fringe District and shall be constructed or aligned to present the minimum possible resistance to flood flows.
  - E. Buildings, if permitted, shall have a low flood damage potential and shall not be for human habitation.
  - F. Storage of materials or equipment that are buoyant, flammable, explosive or injurious to human, animal or plant life is prohibited. Storage of

other material may be allowed if readily removable from the Floodway District within the time available after flood warning.

G. Watercourse alterations or relocations (channel changes and modifications) must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, such alterations or relocations must be approved by the Department of Natural Resources.

H. Any fill allowed in the floodway must be shown to have some beneficial purpose and shall be limited to the minimum amount necessary.

I. Pipeline river or stream crossings shall be buried in the streambed and banks or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering or due to the action of flood flows.

#### **185.07 FLOODWAY FRINGE (OVERLAY) DISTRICT FF.**

1. Permitted Uses. All uses within the Floodway Fringe District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet applicable performance standards of the Floodway Fringe District.

2. Performance Standards. All uses must be consistent with the need to minimize flood damage and meet the following applicable performance standards. Where 100-year flood data has not been provided on the Flood Insurance Rate Map, the Iowa Department of Natural Resources shall be contacted to compute such data. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determination.

A. All structures shall:

- (1) Be adequately anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) Use construction methods and practices that will minimize flood damage.
- (3) Use construction materials and utility equipment that are resistant to flood damage.

B. Residential structures. All new or substantially improved residential structures shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation. Construction shall be upon compacted fill which shall, at all points, be no lower than 1.0 ft. above the base flood elevation and extend at such elevation at least 18 feet beyond the limits of any structure erected thereon. Alternate methods of elevating (such as piers or extended foundations) may be allowed subject to favorable consideration by the Board of Adjustment, where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstand the various forces and hazards associated with flooding.

All new residential structures located in areas that would become isolated due to flooding of surrounding ground shall be provided with a means of access that will be passable by wheeled vehicles during the base flood. However, this criterion shall not apply where the Administrator determines there is sufficient flood warning time for the protection of life and property. When estimating

flood warning time, consideration shall be given to the criteria listed in 567-75.2(3), Iowa Administrative Code.

C. Non-residential structures. All new or substantially improved non-residential structures shall have the lowest floor (including basement) elevated a minimum of one (1) foot above the base flood elevation, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood; and that the structure, below the base flood elevation is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to North American Vertical Datum 1988) to which any structures are floodproofed shall be maintained by the Administrator.

D. All new and substantially improved structures:

(1) Fully enclosed areas below the “lowest floor” (not including basements) that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. A minimum of two (2) openings, with positioning on at least two (2) walls, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. [Note: The NFIP’s Lowest Floor Guide requires that openings be located on “at least two walls.” While FEMA does not require the ordinance to contain this language, including it might help to ensure that the property owner will receive a lower flood insurance premium.]

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

Such areas shall be used solely for parking of vehicles, building access and low damage potential storage. Where the distance between the floor and ceiling of the fully enclosed area below the “lowest floor” is five (5) feet or more, the applicant shall be required to sign and record with the Polk County Recorder a Non-Conversion Agreement that ensures the lower enclosed area remains compliant with the criteria outlined in Section 185.06(2)(D).

(2) New and substantially improved structures must be designed (or modified) and adequately anchored to prevent flotation, collapse,

or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(3) New and substantially improved structures shall be constructed with electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities elevated or floodproofed to a minimum of one (1) foot above the base flood elevation. New and substantially improved structures shall be constructed with electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities (including ductwork) elevated or floodproofed to a minimum of one (1) foot above the base flood elevation.

E. Factory-built homes.

(1) All factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of one (1) foot above the 100-year flood level.

(2) All factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. Anchorage systems may include, but are not limited to, use of over-the-top or frame ties to ground anchors as required by the State Building Code.

F. Utility and Sanitary Systems.

(1) On-site waste disposal and water supply systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.

(2) All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system as well as the discharge of effluent into flood waters. Wastewater treatment facilities (other than on-site systems) shall be provided with a level of flood protection equal to or greater than one (1) foot above the 100-year flood elevation.

(3) New or replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. Water supply treatment facilities (other than on-site systems) shall be provided with a level of protection equal to or greater than one (1) foot above the 100-year flood elevation.

(4) Utilities such as gas or electrical systems shall be located and constructed to minimize or eliminate flood damage to the system and the risk associated with such flood damaged or impaired systems.

G. Storage of Materials and Equipment. Storage of materials and equipment that are flammable, explosive or injurious to human, animal or plant life is prohibited unless elevated a minimum of one (1) foot above the base flood elevation. Other material and equipment must either be similarly elevated or (i) not be subject to major flood damage and be anchored to prevent

movement due to flood waters or (ii) be readily removable from the area within the time available after flood warning.

H. Flood Control Structural Works. Flood control structural works such as levees, flood walls, etc. shall provide, at a minimum, protection from the base flood with a minimum of 3 ft. of design freeboard and shall provide for adequate interior drainage. In addition, the Department of Natural Resources shall approve structural flood control works.

I. Watercourse Alterations or Relocations. Watercourse alterations or relocations must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, the Department of Natural Resources must approve such alterations or relocations.

J. Subdivisions. Subdivisions (including factory-built home parks and subdivisions) shall be consistent with the need to minimize flood damages and shall have adequate drainage provided to reduce exposure to flood damage. Development associated with subdivision proposals (including the installation of public utilities) shall meet the applicable performance standards of this ordinance. Subdivision proposals intended for residential use shall provide all lots with a means of access which will be passable by wheeled vehicles during the base flood. Proposals for subdivisions greater than five (5) acres or fifty (50) lots (whichever is less) shall include base flood elevation data for those areas located within the Floodplain (Overlay) District.

K. Accessory Structures to Residential Uses.

(1) Detached garages, sheds, and similar structures that are incidental to a residential use are exempt from the base flood elevation requirements where the following criteria are satisfied. Accessory structure must comply the elevation requirements as outlined in Section 185.07(2)B.

a. The structure shall be designed to have low flood damage potential. Its size shall not exceed 600 sq. ft. in size. Those portions of the structure located less than 1 foot above the BFE must be constructed of flood-resistant materials.

b. The structure shall be used solely for low flood damage potential purposes such as vehicle parking and limited storage. The structure shall not be used for human habitation.

c. The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.

d. The structure shall be firmly anchored to resist flotation, collapse and lateral movement.

e. The structure's service facilities such as electrical and heating equipment shall be elevated or floodproofed to at least one foot above the base flood elevation.

f. The structure's walls shall include openings that satisfy the provisions of 185.07(2)(D)(1) of this ordinance.



(3) Exemption from the 100-year flood elevation requirements for such a structure may result in increased premium rates for flood insurance coverage of the structure and its contents.

O. Recreational Vehicles.

(1) Recreational vehicles are exempt from the requirements of 185.07(2)(E) of this ordinance regarding anchoring and elevation of factory-built homes when the following criteria are satisfied.

a. The recreational vehicle shall be located on the site for less than 180 consecutive days, and,

b. The recreational vehicle must be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system and is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

(2) Recreational vehicles that are located on the site for more than 180 consecutive days or are not ready for highway use must satisfy requirements of 185.07(2)(E) of this ordinance regarding anchoring and elevation of factory-built homes.

M. Pipeline River and Stream Crossings. Pipeline river and stream crossings shall be buried in the streambed and banks, or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering.

N. Maximum Damage Potential Uses. All new or substantially improved maximum damage potential uses shall have the lowest floor (including basement) elevated a minimum of one (1) foot above the elevation of the 500-year flood, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 0.2% annual chance flood; and that the structure, below the 0.2% annual chance flood elevation is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to North American Vertical Datum 1988) to which any structures are floodproofed shall be maintained by the Administrator. Where 0.2% chance flood elevation data has not been provided in the Flood Insurance Study, the Iowa Department of Natural Resources shall be contacted to compute such data. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determinations.

**185.08 GENERAL FLOODPLAIN (OVERLAY) DISTRICT FP.**

1. Permitted Uses.

A. All uses within the General Floodplain District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet the applicable performance standards of the General Floodplain District.

- B. Any uses which involve placement of structures, factory-built homes, fill or other obstructions, storage of materials or equipment, excavation or alteration of a watercourse shall be reviewed by the Department of Natural Resources to determine (i) whether the land involved is either wholly or partly within the floodway or floodway fringe and (ii) the base flood elevation. The applicant shall be responsible for providing the Department of Natural Resources with sufficient technical information to make the determination.
- C. Review by the Iowa Department of Natural Resources is not required for the proposed construction of new or replacement bridges or culverts where:
- (1) The bridge or culvert is located on a stream that drains less than one hundred (100) square miles, and
  - (2) The bridge or culvert is not associated with a channel modification that constitutes a channel change as specified in 567-71.2(1)b, Iowa Administrative Code.
2. Performance Standards.
- A. All uses, or portions thereof, to be located in the floodway as determined by the Department of Natural Resources shall meet the applicable provisions and standards of the Floodway (Overlay) District 185.06.
- B. All uses, or portions thereof, to be located in the floodway fringe as determined by the Department of Natural Resources shall meet the applicable provisions and standards of the Floodway Fringe (Overlay) District 185.07.

#### **185.09 APPOINTMENT AND DUTIES OF BOARD OF ADJUSTMENT.**

1. Appointment and Duties of Board of Adjustment. A Board of Adjustment is hereby established which shall hear and decide (i) appeals and (ii) requests for variances to the provisions of this ordinance, and shall take any other action which is required of the board.
2. Appeals. Where it is alleged there is any error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance, the aggrieved party may appeal such action. The notice of appeal shall be filed with the Board of Adjustment and with the official from whom the appeal is taken and shall set forth the specific reason for the appeal. The official from whom the appeal is taken shall transmit to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.
3. Variance. The Board of Adjustment may authorize upon request in specific cases such variances from the terms of this ordinance that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship. Variances granted must meet the following applicable standards.
  - A. Variances shall only be granted upon: (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local codes or ordinances.

B. Variances shall not be issued within any designated floodway if any increase in flood levels during the 100-year flood would result. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.

C. Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

D. In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this ordinance, the applicant shall be notified in writing over the signature of the Administrator that: (i) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction increases risks to life and property.

E. All variances granted shall have the concurrence or approval of the Department of Natural Resources.

4. Hearings and Decisions of the Board of Adjustment.

A. Hearings. Upon the filing with the Board of Adjustment of an Appeal or a request for a variance, the board shall hold a public hearing. The board shall fix a reasonable time for the hearing and give public notice thereof, as well as due notice to parties in interest. At the hearing, any party may appear in person or by agent or attorney and present written or oral evidence. The board may require the appellant or applicant to provide such information as is reasonably deemed necessary and may request the technical assistance and/or evaluation of a professional engineer or other expert person or agency, including the Department of Natural Resources.

B. Decisions. The board shall arrive at a decision on an appeal or variance within a reasonable time. In passing upon an appeal, the board may, so long as such action is in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision, or determination appealed from, and it shall make its decision, in writing, setting forth the findings of fact and the reasons for its decision. In granting a variance, the board shall consider such factors as contained in this section and all other relevant sections of this ordinance and may prescribe such conditions as contained in 185.09(4)(B)(2).

(1) Factors upon which the decision of the Board of Adjustment shall be based. In passing upon applications for variances, the board shall consider all relevant factors specified in other sections of this ordinance and:

a. The danger to life and property due to increased flood heights or velocities caused by encroachments.

b. The danger that materials may be swept on to other land or downstream to the injury of others.

c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.

- d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- e. The importance of the services provided by the proposed facility to the City.
- f. The requirements of the facility for a floodplain location.
- g. The availability of alternative locations not subject to flooding for the proposed use.
- h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- i. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- j. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- k. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.
- l. The cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities (sewer, gas, electrical and water systems), facilities, streets and bridges.
- m. Such other factors which are relevant to the purpose of this ordinance.

(2) Conditions Attached to Variances. Upon consideration of the factors listed above, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose of this ordinance. Such conditions may include, but not necessarily be limited to:

- a. Modification of waste disposal and water supply facilities.
- b. Limitation of periods of use and operation.
- c. Imposition of operational controls, sureties, and deed restrictions.
- d. Requirements for construction of channel modifications, dikes, levees, and other protective measures, provided such are approved by the Department of Natural Resources and are deemed the only practical alternative to achieving the purpose of this ordinance.
- e. Floodproofing measures shall be designed consistent with the flood protection elevation for the particular area, flood velocities, duration, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood.

The Board of Adjustment shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

5. Appeals to the Court. Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

#### **185.10 NONCONFORMING USES.**

1. A structure or the use of a structure or premises which was lawful before the passage or amendment of this ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the following conditions:

A. If such use is discontinued for six (6) consecutive months, any future use of the building premises shall conform to this ordinance.

B. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

C. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the market value of the structure before the damage occurred, unless it is reconstructed in conformity with the provisions of this ordinance.

2. Except as provided in 185.10(1)(B), any use which has been permitted as a variance shall be considered a conforming use.

**185.11 PENALTIES FOR VIOLATION.** Violations of the provisions of this ordinance or failure to comply with any of the requirements (including violations of conditions and safeguards established in connection with grants of variances) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 (five hundred) or imprisoned for not more than thirty (30) days. Each day such violation continues shall be considered a separate offense. Nothing herein contained prevent the City of Windsor Heights from taking such other lawful action as is necessary to prevent or remedy violation.

**185.12 AMENDMENTS.** The regulations and standards set forth in this ordinance may from time to time be amended, supplemented, changed, or repealed. No amendment, supplement, change, or modification shall be undertaken without prior approval of the Department of Natural Resources.

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**CODE OF ORDINANCES**  
**CITY OF WINDSOR HEIGHTS, IOWA**

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