

CITY OF DEEPHAVEN
CHAPTER 13
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SECTION 1300 ZONING REGULATIONS

1300.01 Interpretation. Words and phrases used in Sections 1300 through 1350 will have the definitions and meanings given them in Section 1345.

1300.02 Districts.

Subd. 1. Classes of Districts. For purposes of this Section, land within the limits of the City is divided into the following districts:

- R-1 Residential District 1: single family detached dwellings on lots containing 60,000 square feet or more.
- R-2 Residential District 2: single family detached dwellings on lots containing 40,000 square feet or more.
- R-3 Residential District 3: single family detached dwellings on lots containing 20,000 square feet or more.
- C-1 Commercial District 1: retail sales and service businesses directly oriented to the consumer.
- C-2 Commercial District 2: sales and service businesses not directly oriented to the consumer.

PUD – Planned Unit Development District 1

Lot 1 and Lot 2 of Deephaven Woods; Lot 1 shall consist of the existing church and associated uses. Lot 2 will be limited to a multiple unit, age restricted facility, components which include assisted living, independent living, care suites and memory care units not to exceed seventy-eight units within a two story structure. Developable lots within PUD 1 shall require a minimum parcel area of fourteen acres and a density not to exceed six units per acre.

PUD – Planned Unit Development District 2

Commonly known as the Sullivan property: Single family and multiple family dwellings and public uses on parcels containing a minimum of three acres, of the property owned at the adoption of this ordinance and a density not to exceed eight units per acre.

Subd. 2. Location of Districts. Districts are located and bounded as legally described in Section 1340, entitled “Legal Description of Districts”, and as shown in the map entitled “Zoning Map of the City of Deephaven, Minnesota”, which is on file in the office of the City Clerk.

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SECTION 1302 ZONING DISTRICTS

1302.01 COMMERCIAL DISTRICTS

Deephaven's commercial districts are generally intended to accommodate and promote retail, service, business and employment uses.

Subd. 1 Descriptions

- a) C-1, Downtown Commercial
The purpose of the Downtown Commercial (C-1) district is to provide for a mixture of commercial service, commercial retail, entertainment, institutional, and related public facilities in a pedestrian-oriented atmosphere. Standards are set forth in order to minimum negative impacts upon surrounding residential neighborhoods by limiting the uses permitted; provide adequate and conveniently located parking in public lots and on-street parking; minimize congestion within the district and surrounding neighborhoods; and promote high standards of building and site design which will foster compact commercial developments with pedestrian convenience and at a human scale.
- b) C-2, General Commercial
The purpose of the General Commercial (C-2) district is to accommodate retail and service businesses regulated so as to minimize adverse effects on neighboring residential districts and congestion of public streets.
- c) C-3, Highway Commercial
The purpose of the Highway Commercial (C-3) district is to accommodate commercial uses that are compatible with Highway 7 while also being regulated to minimize adverse effects on neighboring residential districts and congestion of public streets.

1302.02 Permitted Uses

The following table lists the permitted, Conditional and prohibited uses in the commercial districts. Uses that are not identified in the following table are prohibited in the Commercial Districts.

P = Permitted, C = Conditional Use Permit Required, X = Prohibited	C-1, Downtown Commercial	C-2, General Commercial	C-3, Highway Commercial
Public			
Public buildings and premises for governmental and public safety uses; heavy equipment or material storage or maintenance by the City only	P	P	P
Public utility buildings and structures	P	P	P
Library, museum or civic center	P	P	P
Facilities for water supply use	P	P	P
Church or other place of worship, parish house, convent, rectory, or other religious institution	C	C	C
School; public, religious or denominational	C	C	C

P = Permitted, C = Conditional Use Permit Required, X = Prohibited	C-1, Downtown Commercial	C-2, General Commercial	C-3, Highway Commercial
Services			
Automobile repair which is limited to minor repairs, replacement of parts, and limited engine service and maintenance, including transmission repair for automobiles and trucks not exceeding 1-1/2 ton capacity. No outdoor storage of vehicles or trailers on the property for a period to exceed 48 continuous hours	X	C	C
Bank or other financial institutions	P	P	P
Barber shop, hair salon, and/or day spa	C	C	C
Bicycle Repair and Sales	C	C	C
Business and Professional Offices	P	P	P
Furniture upholstery	C	C	C
Interior decorating service	C	C	C
Limited auto and home glass replacement and sales, and/or home window and door replacement, repair and cleaning services, with no outside storage of materials or refuse by the tenant	X	C	C
Mail delivery and mail pickup station with locked mail boxes and office for mail and small package delivery and series, telegraph series, wrapping, copying and related services	C	C	C
Medical Offices and Clinics	P	P	P
Nursery school or other use for the day care of children or a privately organized camp	C	C	C
Photography studio	C	C	C
Physical fitness establishments, martial arts facility/studio	C	C	C
Schools for teaching music, dance, or business vocations	C	C	C
Veterinary clinic and pet grooming services, with no boarding or sheltering except for medical purposes only	C	C	C
Retail			
Antique store, including the sale of antiques and semi-antiques, but not including pawnshops	C	C	C
Appliance store	X	X	C
Art gallery and/or picture framing store	C	C	C
Art supply and/or stationary store	C	C	C
Book and/or music store	C	C	C
China and/or glassware store	C	C	C
Clothing store	C	C	C
Floor covering, carpet and/or rug store	C	C	C
Florist	C	C	C
Furniture store	C	C	C
Gift store	C	C	C
Greenhouse or nursery, wholesale	X	C	X
Hardware store, tile store, household goods, plumbing supply, including locksmith and small repair services	C	C	C
Jewelry store	C	C	C

P = Permitted, C = Conditional Use Permit Required, X = Prohibited	C-1, Downtown Commercial	C-2, General Commercial	C-3, Highway Commercial
Kitchen, bath and cabinet store	C	C	C
Leather goods and/or luggage store	C	C	C
Office supply store	C	C	C
Optical goods store	C	C	C
Pharmacy and/or drug store	X	C	C
Rental of equipment all of which is stored within a building, including party or entertainment equipment, but excluding contractors equipment, heavy power equipment or other heavy equipment such as trailers, trucks or any other vehicles	C	C	C
Shoe store	C	C	C
Sporting goods store, including sales, rental and repair of bicycles and other sporting equipment	C	C	C
Toy store and/or hobby shop	C	C	C
Wallpaper and paint store	C	C	C
Food and Beverages			
Bakery, retail	C	C	C
Catering establishment	C	C	C
Coffee shop	C	C	C
Delicatessen store, without provision for consumption of food on the premises	C	C	C
Grocery store	C	C	C
Ice cream or frozen desert shop	C	C	C
Non-fast food restaurant, including the sale of wine and intoxicating malt beverages, located a minimum of 75 feet from a residentially zoned property line.	C	C	C
Off-Sale Liquor store, as licensed by Section 400 of the City Code	C	C	C
Miscellaneous			
Manufacturing, fabrication, processing, packaging or assembly shop	X	C	X
Cannabis Businesses	X	X	C
Laboratory	X	C	X
Any permitted use with a drive-in or drive-through	X	C	C
Seasonal plant, vegetable or fruit sales located in parking lots provided sufficient off-street parking is still available	C	C	C

Section 1302.03 Lot and Building Regulations

The following table establishes lot and building regulations for the commercial districts, except as otherwise expressly stated in this zoning ordinance.

	C-1	C-2	C-3
Lot and Density Standards			
Lot Area, minimum	10,000 SF	10,000 SF	10,000 SF
Lot Frontage, minimum	100'	100'	100'
Maximum Hardcover (for properties located in designated Shoreland Management District)	25%	25%	25%
Setbacks (minimums)			
Front Yard	15'	15'	15'
Side Yard, Interior	15'	15'	15'
Side Yard, Exterior	25'	25'	25'
Rear Yard	20'	20'	20'
Commercial Building Setback from Residential Property Line	50'	50'	50'
Structure Height			
Structure Height, maximum	30'	30'	30'

SECTION 1302.03 R-1 - RESIDENTIAL DISTRICT 1

Section 1302.03(1) R-1 Uses.

Subd. 1. Permitted Uses.

- a) Single family detached dwelling and accessory structure s.
- b) Home Occupations as Regulated by Section 1306.
- c) Uses mandated in state statutes as permitted uses.
- d) Temporary sign containing not more than 6 square feet of area pertaining to leasing or selling premises on which such sign is situated; permanent name sign or plaque identifying resident owners and containing not more than 4 square feet of area.
- e) Use lawfully existing (but only to the extent lawfully existing) on the effective date of this ordinance which is prohibited or allowed by conditional use permit under this ordinance.
- f) Public buildings and premises for governmental and emergency services use; including heavy equipment or material storage or maintenance.

Subd. 2. Conditional Uses.

a) Public utility buildings and structures.

Section 1302.03(2) R-1 Lot Dimensions. The following required lot area, width, depth, and coverage regulations shall be considered as minimum standards for buildings:

	Minimum Lot area (sq. ft.)	Minimum Road Frontage	Minimum Lake Frontage	Maximum Hardcover	Maximum Building Coverage (sq. ft.)
Single Family	60,000	100'	125'	25%	8,000

Section 1302.03(3) – Hardcover for R-1 residential lots may exceed 25% with a Conditional use permit if the following conditions are met:

- (i) Stormwater runoff does not negatively impact adjacent properties; and
- (ii) Effective hardcover is mitigated to below 25%; and
- (iii) The proposed stormwater management facilities shall retain one inch of runoff of that portion of the hardcover that exceeds 25%. Performance credit given for stormwater mitigation practices shall be 75% of the calculated volume retained; and
- (iv) The property owner enters into a maintenance agreement with inspections performed by the City at a minimum every five years. The property owner shall reimburse the City for stormwater facility inspections. The maintenance agreement shall be executed and recorded against the parcel.

Section 1302.03(4) R-1 Setbacks

The following front, side, rear and lakeshore setbacks shall be considered as minimum standards for buildings:

	Front Yard	Lot, Interior Side Yard	Exterior Side Yard	Rear Yard	Lake Minnetonka – 929.4 OHWL	Lakes Other Than Minnetonka
Single Family Principal Structure	50'	25'	25'	30'	100'	75'
Accessory Structure (> 120 sq. ft.)	50'	25'	25'	30'	100'	75'
Accessory Structure (< 120 sq. ft.)	50'	10'	25'	10'	100'	75'

Section 1302.03(5) R-1 Height Requirements

Structure Height defined in the Definitions Section of this Ordinance	
	Maximum Permitted Height
Single Family Principal Structure	36'
Detached Garages	23'
All Other Accessory Structures	15'

SECTION 1302.04 R-2 - RESIDENTIAL DISTRICT 2

Section 1302.04(1) R-2 Uses.

Subd. 1. Permitted Uses.

- a) Single family detached dwelling and accessory structures.
- b) Home Occupations as Regulated by Section 1306.
- c) Uses mandated in state statutes as permitted uses.
- d) Temporary sign containing not more than 6 square feet of area pertaining to leasing or selling premises on which such sign is situated; permanent name sign or plaque identifying resident owners and containing not more than 4 square feet of area.
- e) Use lawfully existing (but only to the extent lawfully existing) on the effective date of this ordinance which is prohibited or allowed by conditional use permit under this ordinance.
- f) Public buildings and premises for governmental and emergency services use; including heavy equipment or material storage or maintenance.

Subd. 2. Conditional Uses.

- a) Church or other place of worship, parish house, convent, rectory, or other religious institution.
- b) School; public, religious, or denominational, including schools for teaching music, dance, or business vocations.
- c) Public utility buildings and structures.

Section 1302.04(2) R-2 Lot Dimensions. The following required lot area, width, depth, and coverage regulations shall be considered as minimum standards for buildings:

	Minimum Lot area (sq. ft.)	Minimum Road Frontage	Minimum Lake Frontage	Maximum Hardcover	Maximum Building Coverage (sq. ft.)
Single Family	40,000	75'	125'	25%	6,000

Section 1302.04(3) – Hardcover for R-2 residential lots may exceed 25% with a Conditional use permit if the following conditions are met:

- (i) Stormwater runoff does not negatively impact adjacent properties; and
- (ii) Effective hardcover is mitigated to below 25%; and
- (iii) The proposed stormwater management facilities shall retain one inch of runoff of that portion of the hardcover that exceeds 25%. Performance credit given for

stormwater mitigation practices shall be 75% of the calculated volume retained; and

- (iv) The property owner enters into a maintenance agreement with inspections performed by the City at a minimum every five years. The property owner shall reimburse the City for stormwater facility inspections. The maintenance agreement shall be executed and recorded against the parcel.

Section 1302.04(4) R-2 Setbacks. The following front, side, rear and lakeshore setbacks shall be considered as minimum standards for buildings:

	Front Yard	Lot, Interior Side Yard	Exterior Side Yard	Rear Yard	Lake Minnetonka - 929.4 OHWL	Back Bay of Lake Minnetonka - 929.4 OHWL	Lakes Other Than Minnetonka
Single Family Principal Structure	50'	20'	25'	25'	100'	75'	75'
Accessory Structure (> 120 sq. ft.)	50'	20'	25'	25'	100'	75'	75'
Accessory Structure (< 120 sq. ft.)	50'	10'	25'	10'	100'	75'	75'

Section 1302.04(5) R-2 Height Requirements

Structure Height defined in the Definitions Section of this Ordinance	
	Maximum Permitted Height
Single Family Principal Structure	36'
Detached Garages	23'
All Other Accessory Structures	15'

SECTION 1302.05 R-3 - RESIDENTIAL DISTRICT 3

Section 1302.05(1) R-3 Uses.

Subd. 1. Permitted Uses.

- a) Single family detached dwelling and accessory structure s.
- b) Home Occupations as Regulated by Section 1306.
- c) Uses mandated in state statutes as permitted uses.
- d) Temporary sign containing not more than 6 square feet of area pertaining to leasing or selling premises on which such sign is situated; permanent name sign or plaque identifying resident owners and containing not more than 4 square feet of area.
- e) Use lawfully existing (but only to the extent lawfully existing) on the effective date of this ordinance which is prohibited or allowed by conditional use permit under this ordinance.

Subd. 2. Conditional Uses.

- a) Church or other place of worship, parish house , convent, rectory, or other religious institution.
- b) School; public, religious, or denominational, including schools for teaching music, dance, or business vocations.
- c) Public buildings and premises for governmental use; heavy equipment or material storage or maintenance by the City only.
- d) Public utility buildings and structures.
- e) Library, museum or civic center.
- f) Public recreational or water supply use.
- g) Delicatessen store, including consumption of food on the premises (either inside or outside the building) and catering business, within a grocery operation as an existing use in a residential district as permitted by Section 1305.02, Subd. 2.

Section 1302.05(2) R-3 Lot Dimensions. The following required lot area, width, depth, and coverage regulations shall be considered as minimum standards for buildings:

	Minimum Lot Area (sq. ft.)	Minimum Road Frontage	Minimum Lake Frontage	Maximum Hardcover	Maximum Building Coverage (sq. ft.)
Single Family	20,000	50'	100'	25%	4,500

Section 1302.05(3) – Hardcover for R-3 residential lots may exceed 25% with a Conditional use permit if the following conditions are met:

- (i) Stormwater runoff does not negatively impact adjacent properties; and
- (ii) Effective hardcover is mitigated to below 25%; and
- (iii) The proposed stormwater management facilities shall retain one inch of runoff of that portion of the hardcover that exceeds 25%. Performance credit given for stormwater mitigation practices shall be 75% of the calculated volume retained; and
- (iv) The property owner enters into a maintenance agreement with inspections performed by the City at a minimum every five years. The property owner shall reimburse the City for stormwater facility inspections. The maintenance agreement shall be executed and recorded against the parcel.

Section 1302.05(4) R-3 Setbacks. The following front, side, rear and lakeshore setbacks shall be considered as minimum standards for buildings:

	Front Yard	Lot, Interior Side Yard	Exterior Side Yard	Rear Yard	Lake Minnetonka – 929.4 OHWL	Lakes Other Than Minnetonka
Single Family Principal Structure	35'	Sum Total of 25' with a Minimum of 10'	25' with a 10' interior side yard	15'	100'	75'
Accessory Structure (> 120 sq. ft.)	35'	Sum Total of 25' with a Minimum of 10'	25'	15'	100'	75'
Accessory Structure (< 120 sq. ft.)	35'	4'	25'	4'	100'	75'

Section 1302.05(5) R-3 Height Requirements

Structure Height defined in the Definitions Section of this Ordinance		
	Maximum Permitted Height	
	Lot area	Permitted Height
Principal Structures	20,001+ sq.ft.	36'
	18,001-20,000 sq.ft.	35'
	16,001-18,000 sq.ft.	34'
	14,001-16,000 sq.ft.	33'
	12,001-14,000 sq.ft.	32'
	10,001-12,000 sq.ft.	31'
	Up to 10,000 sq.ft.	30'
Detached Garages	23'	
All Other Accessory Structures	15'	

SECTION 1302.06 PUD 1 – PLANNED UNIT DEVELOPMENT DISTRICT 1

Section 1302.06(1) PUD 1 Uses.

Subd. 1. Permitted Uses.

- a) Church or other place of worship, parish house, convent, rectory, or other religious institution.
- b) School; public, religious, or denominational, including schools for teaching music, dance, or business vocations.
- c) Public buildings and premises for governmental use; heavy equipment or material storage or maintenance by the City only.

- d) Single family detached dwelling and accessory structure s.
- e) Multiple family dwellings including senior citizen housing and accessory structure s.
- f) Temporary sign containing not more than 6 square feet of area pertaining to leasing or selling premises on which such sign is situated; permanent name sign or plaque identifying resident owners and containing not more than 4 square feet of area.

Subd. 2. Conditional Uses.

- a) Public utility buildings and structure s.
- b) Library, museum or civic center.
- c) Public recreational or water supply use.
- d) Nursery school or other use for the day care of children or a privately organized camp.
- e) A facility providing assisted living, independent living and memory care services for individuals aged fifty-five and older and care suites providing temporary physical rehabilitative services not to exceed twelve weeks.

Section 1302.06(2) PUD 1 Lot Dimensions. The following required lot area, width, depth, and coverage regulations shall be considered as minimum standards for buildings:

	Minimum Lot area	Minimum Road Frontage (ft.)	Minimum Lake Frontage (ft.)	Maximum Hardcover*	Maximum Building Coverage (sq. ft.)
Residential	14 Acres	N/A	N/A	N/A	N/A

*Property not currently in Shoreland Management District.

Section 1302.06(3) PUD 1 Setbacks. The following front, side, rear setbacks shall be considered as minimum standards for buildings:

	Front Yard (ft.)	Lot, Interior Side Yard (ft.)	Exterior Side Yard (ft.)	Rear Yard (ft.)
Principal Structure	50'	30'	30'	30'

Section 1302.06(4) PUD 1 Structure Height. The maximum permitted structure height in the PUD1 is thirty (30) feet as defined in the definitions section of this ordinance.

SECTION 1302.07 PUD 2 – PLANNED UNIT DEVELOPMENT DISTRICT 2

Section 1302.07(1) PUD 2 Uses.

Subd. 1. Permitted Uses.

- a) Church or other place of worship, parish house, convent, rectory, or other religious institution.
- b) School; public, religious, or denominational, including schools for teaching music, dance, or business vocations.
- c) Public buildings and premises for governmental use; heavy equipment or material storage or maintenance by the City only.

- d) Single family detached dwelling and accessory structure s.
- e) Multiple family dwellings including senior citizen housing and accessory structure s.
- f) Temporary sign containing not more than 6 square feet of area pertaining to leasing or selling premises on which such sign is situated; permanent name sign or plaque identifying resident owners and containing not more than 4 square feet of area.

Subd. 2. Conditional Uses.

- a) Public utility buildings and structure s.
- b) Library, museum or civic center.
- c) Public recreational or water supply use.
- d) Nursery school or other use for the day care of children or a privately organized camp.

Section 1302.07(2) PUD 2 Lot Dimensions. The following required lot area, width, depth, and coverage regulations shall be considered as minimum standards for buildings:

	Minimum Lot area	Minimum Road Frontage (ft.)	Minimum Lake Frontage (ft.)	Maximum Hardcover*	Maximum Building Coverage (sq. ft.)
Residential	3 Acres	N/A	N/A	N/A	N/A

*Property not currently in Shoreland Management District.

Section 1302.07(3) PUD 2 Setbacks. The following front, side, rear setbacks shall be considered as minimum standards for buildings:

	Front Yard (ft.)	Lot, Interior Side Yard (ft.)	Exterior Side Yard (ft.)	Rear Yard (ft.)
Principal Structure	50'	30'	30'	30'

Section 1302.07(4) PUD 2 Structure Height. The maximum permitted structure height in the PUD2 is thirty (30) feet as defined in the definitions section of this ordinance.

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SECTION 1305 ZONING USES

1305.01 Scope. Use of land within the jurisdictional limits of the City may be made only in conformity with this Section. Any use not specifically enumerated in this Section is disallowed, except such use as may be allowed by Conditional Use permit and except such use as may be allowed by valid superseding state or federal law. Use of such land must also conform with other applicable provisions of this Code and applicable state or federal law.

1305.02 Temporary Family Health Care Dwellings. Pursuant to authority granted by Minnesota statutes section 462.3593, subdivision 9, the City of Deephaven opts out of the requirements of Minnesota statutes section 462.3593, which defines and regulates temporary family health care dwellings.

1305.03 Business Hours.

- (1) Businesses which sell goods and services to consumers may be open for the sale of goods and services only between the hours of 6 AM and 9:30 PM. This restriction will not apply to office uses.
- (2) Normal business hours for establishments legally licensed to sell intoxicating beverages shall be 8:00 AM to 9:30 PM unless amended by the City Council as part of the Conditional Use permit review.
- (3) Businesses on property adjacent to a residential district may be open for loading or shipment only between the hours of 7:00 AM and 9:30 PM.
- (4) Interior and exterior lighted signs permitted to businesses may operate during business hours only.

1305.04 Performance Standards. Permitted uses, uses by conditional permit, and accessory uses in the various districts must conform to the following standards:

Subd. 1. Noise. All uses must be conducted in a manner which will control the intensity, shrillness and frequency of noise resulting from the use to the degree that it is not detrimental to the public health, safety, comfort or welfare. Uses must be conducted such that noises resulting from the use comply with the noise level standards of the Minnesota Pollution Control Agency adopted pursuant to Minnesota Statutes. This standard will not apply to noises from incidental traffic, parking, loading, temporary construction, or maintenance operations.

Subd. 2. Air Pollution. All uses must be conducted in a manner which will control the emission of air contaminants to the degree that emissions are not detrimental to the public health, safety, comfort or welfare. Uses must be conducted such that emissions of air contaminants comply with the air quality standards of the Minnesota Pollution Control Agency adopted pursuant to Minnesota statutes.

Subd. 3. Toxic or Noxious Matter. All uses must be conducted so as not to discharge across property lines, or beyond property lines through percolation into the subsoil, hazardous wastes or toxic or noxious matter in concentrations which are detrimental to the public health, safety, comfort or welfare. Uses must be conducted such that hazardous waste discharges comply with the standards of the Minnesota Pollution Control Agency adopted pursuant to Minnesota

statutes.

Subd. 4. Odors. No use may cause the discharge of toxic, noxious or odorous matter or fumes beyond property lines of the site on which the use is located in concentrations which are detrimental to the public health, safety, comfort or welfare, or which would be detrimental to the use and enjoyment of other property in the area.

Subd. 5. Vibrations. Any use creating periodic earth-shaking vibrations is prohibited if such vibrations are perceptible beyond the property lines of the site on which the use is located. This standard will not apply to vibrations created during the process of construction.

Subd. 6. Heat. Any use producing intense heat transmission must be performed with shielding sufficient to prevent heat from being transmitted beyond the property lines of the site on which the use is located in amounts which are detrimental to the public health, safety, comfort or welfare.

Subd. 7. Waste Material. Waste material will not be permitted to enter the public sewer systems without an appropriate permit from the City. Waste may not be collected, stored or disposed of contrary to solid waste control standards of the Minnesota Pollution Control Agency adopted pursuant to Minnesota statutes.

Subd. 8. Lighting. Sources of artificial light located in a parcel of property may not increase illumination on property owned by another to an extent which is detrimental to the public health, safety, comfort or welfare.

Subd. 9. Refuse and Litter. All uses of property in a commercial district must be conducted so as to prevent refuse or litter from being visible on the property. Refuse containers must be kept and maintained in a neat and clean condition in and about the premises. The exterior areas of the premises must be cleaned with sufficient frequency to avoid any accumulation of refuse or litter except in closed containers maintained for such purpose. No person may place any refuse or litter in any street, alley or other public place, or upon any private property, whether owned by such person or not, except in containers maintained for such purpose.

Subd. 10. Traffic Studies.

The city may require a traffic analysis to be prepared by a registered traffic engineer approved by the city to assess potential traffic impacts on local streets and highways. If impacts on service levels of roadways and intersections are anticipated, the project will be approved only contingent upon a traffic management plan that adequately mitigates those impacts. The plan may include travel demand management strategies, use of transit facilities or other appropriate measures to reduce traffic generation, and necessary improvements to road systems. The developer shall have the responsibility to install all necessary road system improvements.

1306 HOME OCCUPATIONS

1306.01 Purpose. The purpose of this Section is to maintain the character and integrity of residential areas and to provide a means through the establishment of specific standards and procedures by which home occupations can be conducted in residential neighborhoods, without jeopardizing the health, safety, and general welfare of the surrounding neighborhood. In addition, this Section is intended to provide a mechanism enabling the distinction between permitted home occupations and special or non-conforming home occupation.

1306.02 Permitted Home Occupation. Any permitted home occupation as defined in the Ordinance, and subject to the performance standards of this Section, may be conducted solely within a single family detached dwelling (excluding attached garage space and/or any accessory structure) without permit or special approval of the City.

1306.03 Special Home Occupation.

Subd. 1. Permit Required. Any home occupation which does not meet the specific requirements for a permitted home occupation as defined in this Section shall require a “special home occupation permit” which shall be applied for reviewed and disposed of in accordance with the procedural provisions of Conditional Use permit pursuant to Section 1320 of this Ordinance.

Subd. 2. Declaration of Conditions. The Planning Commission and City Council may impose such conditions on the granting of a Conditional Use permit as may be necessary to carry out the purpose and provisions of this Section.

Subd. 3. Transferability. Permits shall not run with the land and shall not be transferable.

Subd. 4. Lapse of Conditional Use Permit by Non-Use. Whenever within one (1) year after granting a permit the use as allowed by the permit shall not have been initiated, then such permit shall become null and void unless a petition for extension of time in which to complete the work has been granted by the City Council. Such extension shall be requested in writing and filed with the Zoning Coordinator at least thirty (30) days before the expiration of the original permits. There shall be no charge for the filing of such petition. The request for extension shall state facts showing a good faith attempt to initiate the use. Such petition shall be presented to the Planning Commission for a recommendation and to the City Council for a decision.

Subd. 5. Reconsideration. Whenever an application for a permit has been considered and denied by the City Council, a similar application for a permit affecting substantially the same property shall not be considered again by the Planning Commission or City Council for at least six (6) months from the date of its denial unless a decision to reconsider such matters is made by not less than four-fifths (4/5) vote of the entire City Council.

Subd. 6. Inspections. The City of Deephaven hereby reserves the right upon issuing any Conditional Use permit for a home occupation to inspect the premises in which the occupation is being conducted to insure compliance with the provisions of this Section or any conditions additionally imposed.

1306.04 General Provisions.

Subd.1. No home occupation shall produce light glare, noise, odor or vibration that will in any way have an objectionable effect upon adjacent or nearby property.

Subd.2. No equipment shall be used in the home occupation, which will create electrical interference to surrounding properties.

Subd.3. Any home occupation shall be clearly incidental and secondary to the residential use of the premises, should not change the residential character thereof, and shall result in no incompatibility or disturbance to the surrounding residential uses.

Subd.4. No home occupation shall require internal or external alterations or involve construction features not customarily found in dwellings except where required to comply with local and state fire and police recommendations.

Subd.5. There shall be no exterior storage of equipment or materials used in the home occupation, except personal automobiles used in the home occupation may be parked on the site.

Subd.6. All vehicle parking required for conduct of the home occupation shall be off- street. Parking/storage of all commercial or non-passenger vehicles used in the home occupation shall be within a fully enclosed building.

Subd.7.The home occupation shall meet all applicable fire and building codes.

Subd.8. No home occupation activity of a non-residential character shall be discernable from any private or public street. There shall be no exterior display or exterior signs or interior display or interior signs related to the home occupation that are visible from outside the dwelling.

Subd.9. No equipment, machinery or materials other than of a type normally found in or compatible with a dwelling unit shall be allowed.

Subd.10. Shipments and delivery of products, merchandise or supplies shall be limited to the hours of 8:00 AM and 6:00 PM and shall regularly occur only in single rear axle straight trucks or smaller vehicles used to serve residential areas.

Subd.11. All home occupations shall comply with the provisions of the City Nuisance Ordinance.

Subd.12. No home occupation shall be conducted between the hours of 6:00 PM and 7:00 AM unless said occupation is contained entirely within the principal building, excluding attached garage space and will not include any on-street parking facilities.

Subd.13. No retail sales and delivery of products or merchandise to the public shall occur on the premises except when incidental to the services provided.

Subd.14. Not over twenty-five (25) percent of any structure shall be used for a home occupation.

Subd.15. Product sales associated with private social events (i.e., "Tupperware" parties) shall be exempted from this section provided they occur no more than four (4) times per year at any given residence.

Subd.16 Home occupations must be owned and operated by the owner of the property and the owner must demonstrate that the property is homesteaded in their name.

Subd.17. In house instrument instruction and/or educational tutoring shall be exempt from the provisions of this code.

1306.05 Requirements for Permitted Home Occupations.

Subd.1. Only one (1) employee, who does not reside on the premises, shall be employed.

Subd.2. Customers and/or clients from the general public shall not come to the premises in question for purposes pertaining to the conduct of the home occupation. Subd.3. All permitted home occupations shall be conducted entirely within the principal structure, excluding attached garage space, and may not be conducted in an accessory building.

1306.06 Requirements for Conditional Use Home Occupation.

Subd. 1. Only two (2) employees, who do not reside on the premises, shall be employed.

Subd. 2. Home Occupations granted a Conditional Use permit must be issued an annual home occupation license. The fee shall be \$50.00 annually.

1306.07 Prohibited Home Occupations.

Subd.1. Service, repair or painting of any motorized vehicle, including but not limited to motor vehicles, trailers, boats, personal watercraft, recreation vehicles and snowmobiles.

Subd.2. Dispatch centers where persons come to a site and are dispatched to other locations.

Subd.3. Medical or dental clinic. Subd.4. Rental businesses.

Subd. 5. Contracting, excavating, welding or machine shops. Subd. 6. Commercial kennels and veterinary clinics.

Subd. 7. Tow truck services.

Subd. 8. The sale, lease, trade or other transfer of firearms or ammunition.

Subd. 9. Sale or use of hazardous materials in excess of consumer quantities which are packaged for consumption by individual households for personal care or household use.

Subd. 10. Any other use of residential property deemed to be detrimental or inconsistent with the residential character of the neighborhood.

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SECTION 1310 DIMENSIONS AND DESIGN STANDARDS

1310.01 Scope. The “Schedule of Dimensional Requirements” and the other requirements set forth in this Section 1310 will apply to every structure, except to the extent provided under Section 1310.11 or Section 1315 of this Code relating to variances. No new structure in any district may be built nor may any existing structure in any district be altered, extended, restored or enlarged in such a way that it does not conform to the dimensional or design requirements, except as otherwise provided in this Section and Section 1315 of this Code relating to variances.

1310.02 Non-Encroachments:

Subd. 1. The following shall not be considered as encroachments on yard setback requirements:

- (a) Roof overhangs will be permitted up to a distance of 3 feet measured on a horizontal line.
- (b) Belt courses, sills, pilasters, lintels, ornamental features, cornices, eaves, gutters, window boxes, and similar building elements will be permitted up to a distance of 2 feet.
- (c) Chimneys, flues, and utility chases will be permitted up to a distance of 2 feet, with a limit of one each per yard.
- (d) Steps, and landings not wider than associated steps, that lead directly into the primary structure and limited to the height of the ground floor level will be permitted up to a distance of 5 feet for front and rear yards, and up to a distance of 3 feet for side yards.
- (e) Exterior cladding and insulation extending beyond the outside of foundation wall will be permitted up to a distance of 4 inches.
- (f) Egress window wells will be permitted to the minimum extent required by building code.

Subd. 2. In no case shall any encroachment permitted by Subd. 1. of this ordinance be allowed to encroach such that the setback from property line is less than three feet.

1310.03 Single Family Residential Requirements.

Subd. 1. Width. A single family residential dwelling must be a minimum of 25 feet wide at its narrowest dimension. This shall not be construed to prohibit smaller individual room projections from the main dwelling or to restrict architectural design flexibility or integrity.

Subd. 2. Permanent Foundation. A single family residential dwelling must be placed on a permanent foundation which complies with the Uniform Building Code as adopted in Minnesota and which is solid for the complete circumference of the dwelling.

Subd. 3. Building Coverage.

- (a) The City of Deephaven shall not grant any permits, or accept any application or requests for any permits, for the construction of any building, or addition to or alteration of any building, which would cause the aggregate square foot ground area covered by all structures on the lot to exceed the following square foot amounts in the respective

Residential Districts, except as provided in Subd. 3(b) of this Section:

District	Minimum Lot Size	Maximum Ground Area Covered by Structures
R-1	60,000	8,000
R-2	40,000	6,000
R-3	20,000	4,500

(b) Exceptions. The Zoning Coordinator may approve the issuance of a building permit where the aggregate ground area covered by all building is between 4,500 and 6,000 square feet in the R-3 District or between 6,000 and 8,000 in the R-2 District if the following conditions are met:

- (1) If the property is in an R-3 District, the lot size is at least 40,000 square feet.
- (2) If the property is in an R-2 District, the lot size is at least 60,000 square feet.

Subd. 4. Short-term Rentals Prohibited. Short-term rental of any dwelling to third parties for less than 30 consecutive calendar days or to more than 2 tenant- occupant groups in any 12-month period is prohibited.

1310.04 Off-Street Parking Requirements.

Subd. 1. Basic Requirement. In any district where otherwise permitted, no use of premises may be authorized or extended, and no building or structure may be erected or enlarged, unless there is provided for such erection, extension, or enlargement, off- street automobile parking space within 300 feet of the principal building, structure, or use of the premises, in accordance with the following schedule of off-street parking requirements. An area of 300 square feet, 200 square feet of which may be parking stall, of appropriate dimensions for the parking of an automobile, including maneuvering area and aisles will be considered as one off-street parking space.

Subd. 2. Construction and Design. Off-street parking areas must be designed so that vehicles can be parked in a convenient and orderly fashion. Commercial, institutional and multiple family residential parking areas must be surfaced and maintained with an all weather durable, dust-free surfacing material and shall be properly drained. Each parking space must be clearly outlined or otherwise marked and must have a minimum width of nine feet and a length of 20 feet exclusive of aisles and maneuvering space but with access to an aisle. The wall or fence may not be used for advertising purposes.

Any lighting used to illuminate off-street parking areas must be so arranged as to deflect the light away from adjacent property. A screen planting approved by the Council may be substituted for the required wall or fence.

Subd. 3. Schedule of Minimum Off-Street Parking Requirements.

Permitted Use At least one *parking space for each		
* Where computation results in a fraction of a parking space, only fractions of 1/2 or more will be counted as one.		
(a)	Single family residence	½ dwelling unit

(b)	Multiple family residence	½ dwelling unit, each which must be enclosed. Additional spaces shall be required for visitor parking based upon the specific characteristics of the residential development as determined by the City Council.
(c)	Churches, libraries, and such public buildings	3 seats in main seating area or 300 square feet of gross floor area, whichever is greater
(d)	Schools	12 students or seats
(e)	Retail goods or services	150 square feet of gross establishment floor area
(f)	Offices	330 square feet of gross floor area, excluding storage area
(g)	Restaurants and places of assembly	3 employees and for each 3 seats in main seating area or 300 square feet of gross floor area, whichever is greater
(h)	Restaurants, including the sale of intoxicating beverage	1 space per 74 square feet of gross floor area and 1 space per 80 square feet of kitchen area
(i)	Automobile Service Stations	1/3 service bay and employee on-shift and service vehicle
(j)	Light industry and warehousing	750 square feet of gross floor area
(k)	Other commercial	300 square feet of gross floor area
(l)	Off-sale liquor store	1 space per 300 square feet of gross floor area

1310.05 Off-Street Loading Requirements.

Subd. 1. Basic Requirement. In any district where commercial or light industrial use of premises is authorized or extended, no building or structure may be erected or enlarged, unless there is provided for such extension, erection, or enlargement off- street loading facilities located entirely on the same lot as the building or use to be served, and with immediate and direct ingress to the building to be served in accordance with the following minimum specifications. An area of at least 400 square feet of appropriate dimensions, exclusive of drives and maneuvering space, will be considered one off-street loading bay.

Subd. 2. Minimum Standards. One loading bay for each 5,000 square feet or portion thereof in excess of one-half of gross floor area for any retail goods, wholesale, storage, distribution, manufacturing, public utility, or like establishment. One loading bay for each 10,000 square feet or portion thereof in excess of one-half of gross floor area of any consumer service establishment, office building, or school.

1310.06 Corner Lots. A corner lot must maintain a front yard requirement for one street and a side yard of not less than 25 feet for the other street; at least one of the remaining yards must be a rear yard.

1310.07 Visual Corner Clearance. No structure, fence, planting or off-street parking (except a transparent fence in which the solid area is not more than 5% of the total area) may be maintained between horizontal parallel planes 2 1/2 feet and 7 feet above street level, within the triangular area prescribed by the two street lines and a straight line connecting points on such lines 25 feet distant from the point of intersection.

1310.08 Fences and Walls. No fence or wall may be constructed or erected in violation of any of the following restrictions, unless a variance is obtained as provided in Section 1315. Any fence or wall existing on the date of adoption of this Section contrary to the following restrictions but in compliance with former regulations will be permitted to remain as a non-conforming use, but will not be extended or replaced contrary to the following restrictions. Fences and walls shall comply with the following requirements:

- (a) Shall not be higher than 6' unless it is a chain link or wire mesh fence used for athletic purposes such as tennis courts, racquetball courts and similar type of facilities.
- (b) Fences and walls over 3 - 1/2 feet in height shall be setback from the lot line a distance equal to two-thirds of the height, unless the owner of the adjoining property agrees in writing to a lesser setback. The agreement from the adjacent property owner must be submitted to the City prior to fence construction.
- (c) There shall be no storage of any type between a fence and the property line abutting the fence. Any such storage in place at the time of the adoption of this ordinance must be removed so as to be in compliance with the ordinance.
- (d) Except in cases of fences with identical appearance on both sides, all fences shall be constructed so that the side containing the framing, supports and crosspieces face the owner's lot interior and that the finished side or "face" is viewed by the abutting property.
- (e) Fencing typically used on a temporary basis shall not be permitted for use as permanent fencing. Temporary fencing shall include, but is not limited to, silt fencing and snow type fences.
- (f) All temporary fencing shall be removed after one year or upon completion of the construction project for which the fence was placed, whichever comes first. Snow fences must be removed no later than May 1st. Failure to do so within ten (10) day of written notice of the City will result in the removal of the fence by the City and the cost to do so shall be the responsibility of the property owner.
- (g) Shall comply with the visual clearance requirements of Section 1310.07.
- (h) Shall not be constructed in the lakeshore setbacks described in this section.

1310.09 Additional Requirements in Commercial Districts.

Subd. 1. Landscaping. All required yards in a commercial district not occupied by structures, parking areas, driveways or sidewalks must be landscaped with living greenery such as grass, shrubs, trees or other plantings, which must be kept neat, clean and uncluttered. At least 15% of the total area of a site in a commercial district must be landscaped. No landscaped area may be used for parking of vehicles or the storage or display of materials, supplies or merchandise.

Subd. 2. Screening. If land in a commercial district abuts land in a residential district, or is within 20 feet from land in a residential district, no building permit will be issued for improvements on the land in the commercial district unless:

- (a) Provision is made for a fence or dense evergreen hedge, or a combination of the two, not

less than 50% closed and at least 6 feet in height, to be erected along each property line abutting the land in the residential district.

- (b) A minimum of 20 feet adjoining the land in the residential district will be landscaped and will not be used for parking, storage or other purposes.
- (c) The fence or hedge will be installed as part of the initial construction.
- (d) All required screening will be designed to be architecturally harmonious with the principal structures on the site and with the adjacent residential property.
- (e) All screening will be properly maintained so as not to become unsightly, hazardous or less opaque than when originally installed. No fence used for such screening will be used for advertising purposes. For purposes of this section, property separated by a public street or road will not be considered abutting.

Subd. 3. Review of Site Plan. No building permit will be issued for improvements on land in a commercial district until the site plan has been reviewed by the Planning Commission and approved by the Council. The notices and procedures for such review and approval will be the same as those for consideration of an application for a Conditional Use permit. The site plan to be submitted must contain complete and detailed information as to the following:

- (a) Proposed site development, including identification signs, location (and intended use, if known) of buildings, and location of driveways, walkways and parking spaces, lot dimensions and area, and yard dimensions.
- (b) Landscaping plans, including species and showing planting size and mature size of trees and shrubs proposed.
- (c) Storm water drainage systems sufficient to drain and dispose of all surface water accumulations within the area.
- (d) Plans and specifications for exterior wall finishes proposed for all principal and accessory buildings.
- (e) Storage areas for waste and garbage.
- (f) Exterior lighting.
- (g) Screening, where the property abuts a residential district.
- (h) Building plans, including elevations of all sides.

Subd. 4. Security for Performance. No structure may be constructed until the screening and landscaping requirements of this Section have either been met or an agreement to meet such requirements has been entered into by the owner of the property with the performance of the agreement secured by a deposit, letter of credit or bond, acceptable to the City.

Subd. 5. Building Exteriors. The exterior of a building to be constructed, or to be remodeled with a new exterior, within a commercial district must be one of, or a combination of, the following:

- (a) Face brick.
- (b) Natural stone.
- (c) Specially designed precast concrete units, if the surfaces have been integrally treated with an applied decorative material or texture.
- (d) Approved wood which meets appropriate fire codes.
- (e) Any other exterior wall finish reviewed by the Planning Commission and approved by the Council.

Subd. 6. Architectural Compatibility. Building structure, design and exterior finish will be reviewed by the Planning Commission and the Council to determine architectural compatibility with the commercial district in which the site is located and to determine whether such items are in keeping with the predominantly residential character of the City. Building appearance will be considered from a 360 degree perspective.

Section 1310.10 Accessory Structures and Swimming Pools: No accessory structure or swimming pool may be constructed or erected prior to construction or erection of the main building or structure to which it is accessory. Outdoor play structures as defined by Section 1345(46) shall not be deemed as an accessory structure for the purposes of this Section.

Subd. 1. Accessory Structure Standards. The following standards shall apply to all accessory structures:

- (a) The height of a detached garage may not exceed 23 feet and be higher than the principal structure. The height of all other accessory structures may not exceed 15 feet.
- (a) No accessory structure may be closer to any principal structure, than a distance equal to the height of the accessory structure.
- (b) All accessory structures over 120 square feet in area must comply with the setbacks of the principal structure of the zoning district the structure is located within.
- (d) An accessory structure shall be considered as part of the principle structure if the connection between the accessory and principle structure is above grade, fully enclosed with a full frost footing and has a minimum width equal to twenty five percent of the longest dimension of the accessory structure to be attached. In no case shall the length of the connection exceed fifty percent of the longest dimension of the accessory structure to be attached.
- (e) All accessory structures under 120 square feet and containing walls and/or a roof must comply with the setback standards of the zoning district in which it is located except that one structure may be constructed with the setback modifications noted below:

Zoning District Side and Rear Yard Setbacks

R-1 10 feet

R-2 10 feet

R-3 4 feet

- (f) The total number of accessory structures that contain walls and/or a roof on a property shall not exceed 1,000 square feet on property zoned R-1 or R-2, and 700 square feet on property zoned R-3.
- (g) All accessory structures shall be architecturally compatible with the principal structure on

the property and maintained in a manner that complies with Section 1100 of this Code.

- (h) Storage containers, storage pods, shipping containers, and other similar type of storage units shall not be deemed accessory structures, and shall be regulated by Chapter 5. Public Health and Safety of the City Code of Ordinances.

Subd. 2. Swimming Pool Standards. The following standards shall apply to all swimming pools, spas and hot tubs:

- (a) All swimming pools, spas and hot tubs must comply with the setback standards of the zoning district in which they are located as measured to the outside edge of the pool decking. In no instance shall the setback be less than fifteen feet.
- (b) No swimming pool, spa or hot tub shall be visible from any adjacent street.
- (c) All equipment related to the operation or maintenance of a swimming pool, spa or hot tub must comply with the setback standards of the zoning district. In no instance shall the setback be less than fifteen feet.
- (d) Any application for a swimming pool, spa or hot tub must include provisions for screening in the form of a fence or other natural screening, or a combination of the two, not less than 50% closed and at least six feet in height, to be erected along each property line abutting adjacent residential properties and/or adjacent streets and extending a minimum distance equal to the length of the pool decking or the length of the pool itself if no decking will be installed.

1310.11 RESERVED FOR FUTURE USE

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SECTION 1311 WIRELESS COMMUNICATIONS TOWERS

1311.01 Council Findings. The Communications Act of 1934 as amended by the Telecommunication Act of 1996 grants the Federal Communications Commission jurisdiction over many aspects of telecommunications services. The City's regulation of Towers and Wireless Telecommunications Facilities (WTFs) in the City will not have the effect of prohibiting any person from providing wireless telecommunications services in violation of the Act.

1311.02 Purpose. The general purpose of this Section is to regulate the placement, construction, and modification of Towers and WTFs in order to protect the health, safety, and welfare of the public, while at the same time encouraging the development of the competitive wireless telecommunications marketplace in the City. The specific purposes of this Section are:

- (a) To allow the location of telecommunication Towers and WTFs in the City;
- (b) To protect residential areas from potential adverse impact of Towers and WTFs;
- (c) To minimize adverse visual impact of Towers and WTFs through careful design, siting, landscaping, and innovative camouflaging techniques;
- (d) To require the collocation of Towers and Antenna support structures as a primary option rather than construction of additional single-use Towers;
- (e) To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support WTFs;
- (f) To avoid potential damage to property caused by Towers and WTFs by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound;
- (g) To ensure that Towers and WTFs are compatible with surrounding land uses;
- (h) To overcome the potential adverse impacts that poorly or unregulated Towers and WTFs could have on public health, safety and welfare;
- (i) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently.

1311.03 Definitions. For the purposes of this Section, the following terms, phrases, words, and their derivatives shall have the meanings stated below:

Subd. 1. "Antenna" Any exterior transmitting or receiving device mounted on a Tower, building or other structure and used in communications that radiate or capture electromagnetic waves, digital signs, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals or other

communication signals.

Subd. 2. "Collocations" The sharing of structures by two or more wireless service providers on a single support structure or otherwise sharing a common location.

Subd. 3. "Dish Antenna" A parabolic shaped antenna (including all supporting apparatus) which is used for transmitting or receiving telecommunication, television or radio signals, which is located on the exterior of, or outside of, any building or structure.

Subd. 4. "Height" When referring to a Tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the Tower or other structure, including the base pad and any Antenna.

Subd. 5. "Monopole" A slender self-supporting tower used to support telecommunications equipment.

Subd. 6. "Tower" Any pole, spire, or other structure, including supporting lines, cables, wires, braces and masts, intended primarily for the purpose of mounting an Antenna or similar apparatus above grade.

Subd. 7. "Wireless Telecommunications Facility (WTF)" Any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications (other than radio or television broadcast communications) which a person seeks to locate or have installed upon or near a Tower, building or structure, but shall not include:

- (a) Any satellite earth station reception Antenna one meter or less in diameter, regardless of zoning district;
- (b) Automatic meter reading systems;
- (c) Military, federal, state and local government communications Towers and Antennas used for navigational purposes, emergency preparedness or public safety purposes;
- (d) A WTF to the extent that a permit issued by the Federal Communications Commission or state authority specifically provides that such WTF is exempt from local regulation.

1311.04 Towers and Wireless Telecommunication Facilities Building and Design Standards. All Towers and WTFs must be constructed in accordance with the following standards:

Subd. 1. Siting. WTFs located on or attached to existing structures are regulated by the provisions of the zoning district for each parcel. WTFs may only be located on the following parcels owned and controlled by the City of Deephaven, with the exact location determined at the sole discretion of the City Council:

<u>Property Name</u>	<u>Property Identification Number</u>
Chowen's Corner Parking Lot	18-117-22 31 0097

Pump Park
Site 12
Village Hall

18-117-22 31 0009
19-117-22 32 0009

Subd. 2. Color and Architecture. All WTFs shall be concealed or camouflaged and shall utilize materials, colors, textures, screening and landscaping to blend in with the surrounding natural setting and built environment. If a WTF is proposed on any part of a building or structure, it must blend with such structure's design, architecture and color, including exterior finish. The term "camouflage" shall not mean invisible, but rather appearing as part of another structure, such as a building, wall or roof, or designed to appear as another structure, such as a building, clock tower, chimney, flag pole, light pole or tree.

Subd. 3. Landscaping. The following requirements shall govern the landscaping surrounding Towers; provided, however, that the City Council, after considering the recommendation of City Staff, may waive such requirements if the visual impact of a proposed Tower or WTF would be minimal or if the purposes of this Section would otherwise be better served thereby.

- (a) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the Tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.
- (b) Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as Towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer. Existing mature trees and other vegetation at the site shall be preserved to the maximum extent possible.

Subd. 4. Signs. The use of any portion of a Tower or WTF for signs advertising other than warning or equipment information signs is prohibited.

Subd. 5. Lighting. WTFs and Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority. When incorporated into the approved design of a WTF, light fixtures used to illuminate ball fields, parking lots or similar areas may be attached to the Tower.

Subd. 6. Monopole. New Towers shall be of a monopole design, without guide wires, unless the City Council determines that an alternative design would better blend into the surrounding environment.

Subd. 7. Setbacks. Towers and WTFs shall comply with the principal structure setbacks of the underlying zoning district and the following additional standards:

- (a) The Tower or WTF is set back from all residential dwellings at least one (1) foot for each foot in height.
- (b) Towers and WTFs shall not encroach upon any easements unless

permission is obtained from the underlying property owner of the easement.

- (c) Towers and WTFs shall not be located between a principal structure and a public street.
- (d) The required setbacks may be reduced or the location in relation to a public street modified, at the sole discretion of the City, when the WTF is integrated into an existing or proposed structure such as a building, light or utility pole.

Subd. 8. Height.

- (a) The height of any Tower shall not exceed one hundred (100) feet.
- (b) Antenna located on an existing structure that is taller than the limit allowed in the underlying zoning district may extend up to five (5) feet above the height of the structure.

Subd. 9. Safety and Environmental Standards.

- (a) Building codes; safety standards. To ensure the structural integrity of Towers, the owner of a Tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for Towers that are published by the Electronics Industries Association, as amended from time to time. If, upon inspection, the City concludes that a Tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the Tower, the owner shall have thirty (30) days to bring such Tower into compliance with such standards. Failure to bring such Tower into compliance with such thirty-day period shall constitute grounds for the removal of the Tower or Antenna at the owner's expense.
- (b) Interference with Public Safety Telecommunications. No Tower or WTF shall interfere with public safety telecommunications. All Towers or WTFs shall comply with FCC regulations and licensing requirements.
- (c) Security Fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the City Council, after considering the recommendations of City Staff, may waive such requirements, as it deems appropriate.
- (d) Noise. If the proposed WTF includes equipment that causes or a WTF otherwise causes significant increased sound levels, sound buffers may be required including but not limited to, baffling, barriers, enclosures, walls and plantings.
- (e) Radio Frequency Emissions and Interference. WTFs must comply with Federal Communication Commission standards for radio frequency emissions and interference.

- (f) Risk of Danger. Towers and WTFs shall not pose an unreasonable risk of explosion, fire or other danger due to its proximity to volatile, flammable, explosive or hazardous materials.
- (g) Maintenance. All commercial Towers or WTFs shall at all times (i) be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life or property of any person, and (ii) allow sufficient access for service vehicles and personnel.

Subd. 10. Co-location Requirements. To every extent possible:

- (a) All proposed WTFs shall be placed on an existing Tower, building or structure locate within one-half mile of the desired location for proposed WTF;
- (b) All wireless telecommunication providers shall cooperate with each other in collocating WTFs and shall exercise good faith in collocating with other licensed carriers and in the sharing of sites, including the sharing of technical information necessary to evaluate the feasibility of collocation. In the event a dispute arises as to a collocation issue, the City may require a third-party technical study to evaluate the feasibility of collocating at the expense of either or both wireless telecommunications providers;
- (c) All new Towers and any pre-existing Tower owned by a wireless telecommunications provider shall be made available for use by the owner or initial user thereof, together with as many other licensed carriers as can be technically located thereon;
- (d) If determined by the City, all new Towers shall be designed and constructed in such a manner as to accommodate at least one other comparable WTF in addition to the applicants;
- (e) All new wireless telecommunications Towers that are less than one hundred (100) feet shall be designed and constructed in a manner that allows such Tower to be expanded to a height of one hundred (100) feet in order to allow for future co-location.

Subd. 11. Exceptions to Collocation. The City may waive any or all the collocation requirements if it is determined that:

- (a) The planned WTF would exceed the structural capacity of the existing or approved Tower, building or structure, as documented by a qualified and licensed professional engineer, and the existing or approved Tower, building or structure cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment.
- (b) The planned WTF would cause interference materially impacting the usability of other existing or planned WTFs at the structure as documented by a qualified radio frequency engineer selected by the City and the interference cannot be prevented.

- (c) No existing Tower, building or structure within an applicant's search radius can or will accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified radio frequency engineer selected by the City.

1311.05 Permitted Conditional Uses.

Subd. 1. General. All Towers and WTFs shall be permitted only if a Conditional Use permit has been issued for that use by the City Council. The following provision shall govern the issuance of Conditional Use permits for Towers or WTFs by the City Council:

- (a) Applications for Conditional Use permits under this Section shall be subject to the procedures and requirements of Section 1320 of this Code, with the exception that the notification radius for all wireless communications towers shall be expanded to five hundred (500) feet.
- (b) In granting a Conditional Use permit, the City Council may impose conditions to the extent necessary to minimize any adverse effect of the proposed Tower or WTF on adjoining properties.
- (c) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
- (d) An applicant for a Conditional Use permit shall submit the information described in this Section and a non-refundable fee as established by resolution of the City Council to reimburse the City for costs of reviewing the application.

Subd. 2. Towers. In addition to any information required for applications for Conditional Use permits pursuant to Section 1320 of this Code, applicants for a Conditional Use permit for a Tower shall submit the following information:

- (a) A scaled site plan clearly indicating the location, type and height of the proposed Tower, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed Tower and any other structures, topography, parking and other information deemed by the City Staff to be necessary to assess compliance with this Section.
- (b) The legal description of the property on which the proposed Tower is to be constructed.
- (c) The setback distance between the proposed Tower and the nearest residential property.
- (d) The separation distance from other Towers and, if known, the type of construction of the existing Tower(s) and the identity of the owner(s)/operator(s) of the existing Tower(s).

- (e) A landscape plan showing specific landscape materials.
- (f) Method of fencing, and finished color and, if applicable, the method of camouflage.
- (g) A statement of compliance with all applicable federal, state or local laws.
- (h) A notarized statement by the applicant as to whether construction of the Tower will accommodate collocation of additional Antennas for future users.
- (i) A description of the suitability of the use of existing Towers, other structures or alternative technology not requiring the use of a Tower or new structure to provide services to be provided through the use of the proposed new Tower.
- (j) A description of the feasible location(s) of future Towers or WTFs within the City based upon existing physical, engineering, technological or geographical limitations in the event the proposed Tower is erected.

Subd. 3. Factors considered in granting Conditional Use permits for Towers. In addition to any standards for consideration of a Conditional Use permit, applications pursuant to Section 1320 of this Code, the City Council shall consider the following factors in determining whether to issue a Conditional Use permit, no one of which shall be conclusive, although the City Council may waive or reduce the burden on the applicant of one or more of these criteria if City Staff or City Council concludes that the goals of this chapter are better served thereby:

- (a) Height of the proposed Tower;
- (b) Proximity of the Tower to residential structures and residential district boundaries;
- (c) Nature of uses on adjacent and nearby properties;
- (d) Surrounding topography;
- (e) Surrounding tree coverage and foliage;
- (f) Design of the Tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (g) Proposed ingress and egress;
- (h) Availability of suitable existing Towers, other structures, or alternative technologies not requiring the use of Towers or structures.

Subd. 4. No New Tower Permitted. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the City Council, that there is no existing Tower, structure or alternative technology not requiring a Tower or

structure, that can accommodate the applicant's proposed WTF or Tower. An applicant shall submit information requested by the City Council related to the availability of suitable existing Towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing Tower, structure or alternative technology can accommodate the applicant's proposed WTF may consist of any of the following:

- (a) No existing Tower or structure is located within the geographic area that meets applicant's engineering requirements.
- (b) Existing Towers or structures are not of sufficient height to meet the applicant's engineering requirements.
- (c) Existing Towers or structures do not have sufficient structural strength to support the applicant's proposed WTF and related equipment.
- (d) The applicant's proposed WTF would cause electromagnetic interference with one or more WTFs on existing Towers or structures, or a WTF on the existing Towers or structures would cause interference with the applicant's proposed WTF.
- (e) The fees, costs, or contractual provisions required by the owner in order to share an existing Tower or structure or to adapt an existing Tower or structures for sharing are unreasonable. Costs exceeding new Tower development are presumed to be unreasonable.
- (f) The applicant demonstrates that there are other limiting factors that render existing Towers and structures unsuitable.
- (g) The applicant demonstrates that an alternative technology that does not require the use of Towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new Tower or Antenna development shall not be presumed to render the technology unsuitable.

Subd. 5. Separation. All Towers for which a Conditional Use permit is required shall be separated by a minimum of seven hundred fifty (750) feet between the proposed Tower and any pre-existing Tower; provided, however, that the City Council, after considering any recommendations of City Staff, may reduce the standard separation requirements if the purposes of this Section would be better served thereby. The separation distance shall be measured by drawing or following a straight line between the base of the existing Tower and the proposed base, pursuant to a site plan, of the proposed Tower.

1311.06 Applications for Towers and WTFs.

Subd. 1. Application. In addition to an applicant's name, address, proposed site for a WTF Antenna or Tower, site plan, grading and landscaping plans, written permission of the property owner, and other such similar information, an application for a Conditional Use permit, building or other permit relating to the installation or

construction of a WTF or Tower, the applicant shall include the following:

- (a) A statement indicating that failure to comply with the conditions of approval shall result in the revocation of the permit and removal of the WTF and/or Tower.
- (b) A statement indicating that the expenses incurred by the City to enforce the provisions of the permit shall be reimbursed by the applicant.
- (c) A statement which requires the applicant to utilize the procedures established by the Federal Communications Commission to resolve any complaints received relating to interference allegedly caused by the facility.
- (d) A statement indicating the applicant will cooperate in good faith and fair dealing in collocating WTFs.
- (e) A statement indicating that the WTF or Tower will be maintained in good and safe condition and its original appearance and concealment, disguise or camouflage elements incorporated into the design at the time of approval shall be preserved. Such maintenance shall include, but is not limited to, painting, repair of equipment, and maintenance of landscaping.
- (f) A statement authorizing the City to enter the property for the purpose of periodic inspections to determine that the site complies with the provisions of this Section, any conditions of approval and all safety and building codes and permits issued. This statement shall give the City the right to conduct such inspections at any time upon reasonable notice to the property owner(s), and that all expenses related to such inspections shall be borne by the applicant.
- (g) A statement indicating that the applicant understands that a Tower or WTF which has not been used for twelve (12) successive months shall be deemed abandoned and may, at the sole discretion of the City, be required to be removed in the same manner and pursuant to the same procedures as for dangerous or unsafe structures established by Minnesota Statutes, Section 463.16.
- (h) A written acknowledgement of the property owner indicating that the removal or any unused or abandoned Tower or WTF or portions of any such Towers or WTFs are ultimately the responsibility of the property owner.
- (i) A statement requiring the applicant to notify the City that the WTF continues to be in operation. The notice of continuing operation shall be hand delivered or sent to the City Administrator annually by certified mail during the last two weeks of the month of December.

Subd. 2. Assessments. In the event the City incurs charges relating to the enforcement of this Section, including without limitation expenses relating to third-party consultants and removal of abandoned Towers and WTFs, the City reserves the right to assess the property owner for such charges in the same manner in

which the City assesses and collects real property taxes.

1311.07 Nonconforming Uses.

Subd. 1. Collocation of Additional Antennas. Antennas that are collocated, in accordance with the provisions of this Section, shall not be deemed to constitute the expansion of a nonconforming use or structure.

Subd. 2. Preexisting Towers. Preexisting Towers shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such preexisting Towers. New construction other than routine maintenance on a preexisting Tower shall comply with the requirements of this Section.

Subd. 3. Rebuilding damaged or destroyed nonconforming Towers or Antennas. A nonconforming Tower, Antenna or WTF that is damaged or destroyed by wind, storm, fire or similar acts of God may be rebuilt without having to first obtain a Conditional Use permit. The type, height and location of the Tower or WTF shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the Tower or Antenna shall be deemed abandoned as specified in Section 1311.08.

Subd. 4. Nonconforming Use/Abandonment. A nonconforming Tower or WTF that becomes nonfunctional for thirty (30) consecutive days shall be deemed abandoned.

1311.08 Removal of Abandoned Towers and WTFs. Any Tower or WTF that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such Tower or WTF shall remove the same within ninety (90) days of receipt of notice from the City of such abandonment. Failure to remove an abandoned Tower or WTF within such 90-day period shall be grounds for the City to remove the Tower or WTF at the property owner's expense. If there are two or more users of a single Tower, then this provision shall not become effective until all users cease using the Tower for a continuous period of twelve (12) months.

1311.09 Variances. No new Tower or WTF may be built or may any existing Tower or WTF be altered, extended, restored or enlarged in such a way that it does not conform with the provisions of this ordinance except as otherwise provided in Section 1315 of this code relating to variances.

SECTION 1312 CONSTRUCTION REGULATIONS

1312.01 Permit required. No person, firm, or corporation will erect, alter, construct, enlarge, repair, move, improve, convert, demolish, equip, use any building, structure, or any portion of it, without a valid building permit issued by the city. No building permit or other permit pertaining to the use of land or buildings will be issued unless such land or building is designed and arranged to conform to the provisions of the zoning code.

1312.02 Application. Application for a building permit shall be made to the Zoning Coordinator on forms to be furnished by the city. Each application for a permit to construct or alter a building shall be accompanied by a survey showing the information required in Section 1312.03 of this Code. Applications shall contain any other such information deemed necessary for the proper enforcement of this or any other code enforced by the city.

1312.03 Surveys required. Every application for a building permit for new structures and additions increasing the existing footprint of a structure greater than 20%, must be accompanied by a certified site survey (excluding interior remodels, re-roofs, re-siding and general maintenance) at a scale and in quantities deemed necessary by the Zoning Coordinator.

(a) Surveys will be used to determine whether an application is in conformance with city code. It will be the responsibility of the applicant to ensure information provided on the survey corresponds to submitted building plans (including existing and proposed topography). A building permit and/or land alteration permit will authorize only land alterations identified on a survey at the time of its issuance. Surveys will include all information as deemed necessary by the Zoning Coordinator for enforcement of the zoning code. An original signature is required on the certificate of survey and shall provide the following information unless otherwise approved in writing by the Zoning Coordinator:

1. Graphic scale of not less than one inch to 20 feet and north arrow;
2. Legal description of property;
3. Dimensions and bearing of front, rear, and side property lines;
4. Parcel size in acres and square feet;
5. Location and dimensions of all the existing improvements, including but not limited to; buildings, structures, retaining walls or timbers, riprap, seawall, steps, parking areas, driveways, storage areas, utilities, septic systems, wells and known underground structures; including but not limited to sanitary and storm manholes, hydrants, catch basins, power poles, phone boxes, fences, and any encroachments;
6. Location and dimension of all proposed buildings and structures;
7. Outside dimensions of proposed structure(s) including decks, porches, retaining walls (include elevations at bottom of footing and top of wall), stoops, stairs, cantilevers, fireplaces, bay and bow windows, egress window wells;
8. Hardcover calculations - existing and proposed - % and square footage (if applicable);
9. "Building pad" setbacks on the survey according to the zoning code and show the closest distance between the buildings and front lot line(s), side lot line(s), rear lot line(s), and, if applicable, Ordinary High Water Level, elevation of 929.4 feet above sea level, and shoreline improvements, including but not limited to riprap, seawall, or retaining timber;
10. Distance between principal buildings and accessory buildings and structures, and shoreline improvements;

11. Delineate Ordinary High Water Levels of all Lakes and easements;
 12. Location of all easements of record including but not limited to tree preservation, wetland conservation, cross-access, etc.;
 13. Topographic contours at 2 foot intervals of existing and proposed elevations;
 14. Lowest floor level, first floor elevation, top of block, and garage slab;
 15. Indication of direction of surface water drainage by arrows and hardcover calculations for the lot or parcel;
 16. Tree removal, tree preservation and grading plan if required by the city;
 17. Wetland boundaries with ordinary high water level and 100-year flood elevation if applicable;
 18. Driveway grade (minimum 0.50 percent, maximum ten percent);
 19. All custom-graded lots and lots deviating from the approved grading plan shall require an as-built survey submitted to the city prior to issuing a certificate of occupancy;
 20. Location and type of erosion and sediment control measures to be installed by permit holder;
 21. Other information as required by the city.
- (b) Applications for all new structures will provide to the city an as-built foundation survey upon completion of work to the foundation unless exempted in writing by the Zoning Coordinator. The as-built foundation survey prepared by a Minnesota Registered Land Surveyor will certify both the final (front, side, rear, lakeshore and wetland) setbacks of the structure being built and the elevations at which the new structure exists. Failure to provide a foundation survey upon foundation completion will result in the builder continuing with construction at the builder's own risk. Expenditures incurred beyond the construction of the foundation will not be considered in determining the actions required to bring the building back into conformance if not built to approved plans. The foundation survey will be submitted to the city before proceeding with the framing or further construction inspection is done and approved by the building official.
- (c) Applications for all new structures and additions increasing the existing footprint of the structure greater than 20%, will provide to the city an as-built survey, prepared by a Minnesota Registered Land Surveyor and submitted to the city for review and approval upon the completion of all structures and additions to the buildings, unless exempted in writing by the Zoning Coordinator. The as-built survey will certify both the final (front, side, rear, lake and wetland) setbacks of the structure being built and the elevations at which the new structure exists. The city reserves the right to withhold the certificate of occupancy for a dwelling until a final as-built survey has been submitted and approved.
- (d) Applications for all new structures and additions increasing the existing footprint of the structure greater than 20%, will provide to the city an as-built grading survey, signed by a licensed engineer or land surveyor and certified that the grades and elevations are in conformance with the city approved grading plan and that permanent iron monuments are in place at each lot corner, upon completion of work unless exempted in writing by the Zoning Coordinator. The as-built grading survey will certify the final topography of the site and verify the drainage patterns existing upon completion of work and provide hardcover calculations. The city reserves the right to withhold the certificate of occupancy for a dwelling until final grading addresses all problems that may be detrimental to adjacent properties.
- (e) In the event that weather or other conditions prevent the completion of an as- built survey

at the time the Certificate of Occupancy is requested, the city may issue a temporary Certificate of Occupancy provided that applicant provide a \$2,500 escrow fee to ensure completion of the as-built survey. The escrow fee shall be returned to the permit applicant, without interest upon successful completion and submission to the city.

- (f) Surveys will include all information as deemed necessary by the Zoning Coordinator and City Engineer to provide for the enforcement of this chapter and the zoning code. Specific provisions of this ordinance may be waived by written waiver by the Zoning Coordinator based on the scope and duration of the specific construction project.

1312.04 Grading or Filling. The purpose of this section is to establish reasonable limitations and controls for land alterations within the city. The regulations will allow the city to better manage stormwater discharge, ensuring drainage does not negatively impact neighboring properties, manage hauling traffic and noise, and prevent erosion issues onto adjacent properties, wetlands, lakes and roads.

Subd. 1. Grading Prohibited. Unless approved by a variance as outlined in Section 1315, the following shall be prohibited:

- (a) any grading or filling in the bluff impact zone.
- (b) any land increase of more than three feet at any point.

Subd. 2. Permit Required. Unless approved as part of a project in which a permit has been issued, a separate grading permit shall be required for the following:

- (a) movement of more than 50 cubic yards
- (b) movement of more than 10 cubic yards on steep slopes inside the Shoreland Overlay District.

Subd. 3. Information Required. Required information for review includes, but not limited to, a scalable survey for the proposed alteration, showing the present and proposed elevations or contours, the existing and proposed drainage and watershed district comments.

Subd. 4. Review. The City Engineer and Zoning Coordinator will consider whether the alteration and any related structures will comply with the applicable provisions of this code, and the effects on drainage and destruction of ground cover, water holding areas and adjacent properties. The permit may be granted subject to the following:

- a) The smallest amount of bare ground is exposed for as short a time as feasible.
- b) Temporary ground cover, such as mulch, is used and permanent ground cover, such as sod, is established.
- c) Methods to prevent erosion and trap sediment are employed.
- d) Fill is stabilized to accepted engineering standards.

1312.05 Steep Slopes Prone to Severe Erosion. No structure, including driveways, retaining walls and support systems shall be allowed on slopes prone to severe erosion. These slopes shall be maintained in a natural state with additional vegetative cover as needed to minimize erosion. Development controls shall be required to minimize erosion on slopes between 12-30%.

1312.06 Construction Site Management. The purpose of these requirements is to ensure the preparation and implementation of construction site management in order to limit the impact of construction on the immediate neighborhood.

Subd. 1. General Regulations. All residential and commercial construction sites shall comply with the following:

- (a) Work at construction sites shall be limited to 7:00 a.m. to 8:00 p.m. Monday through Friday and 8:00 a.m. to 8:00 p.m. on Saturdays. Construction is not permitted on Sundays or holidays. Deliveries of equipment and material to the site and the operation of equipment, construction vehicles, or construction crew vehicles are allowed only during these construction hours.
- (b) Onsite parking of construction vehicles and equipment will be provided to the extent feasible. If on-street parking is necessary, it must be done in coordination with the city and subject to the approval of the Police Chief. Required submittal information shall include the proposed parking area, the number of anticipated vehicles, the anticipated duration of the project, the hours of operation, and any additional information necessary for the review of the parking plan.
- (c) No building material, temporary sanitary facilities or equipment may be placed within 10 feet from the edge of the street. All equipment shall be stored within the confines of the construction site. If necessary, a temporary property line fence will be required to ensure that no construction vehicles, materials or other debris encroaches onto adjacent properties. Public sidewalks must be left open and unobstructed at all times. Long-term (over five days) stockpiles of building supplies is prohibited. Temporary sanitary facilities shall be located no closer than 15 feet from an adjacent house.
- (d) The permit holder must repair any damage to public streets, sidewalks, boulevards (including trees), curbs, water shutoff valves, utility services, gutters, catch basins, manholes or sewers to the satisfaction of the Department of Public Works. If damage occurs to the foregoing, it must be repaired within three (3) working days after the damage occurs, unless the permit holder has received written permission from the Zoning Administrator to delay repairs to a later specified date.

Subd. 2. Regulations for all new buildings and major remodels. All un-occupied new buildings and major remodels shall comply with the following:

- (a) Prior to issuance of a building permit, permit holder shall submit a signed Construction Management Agreement.
- (b) The permit holder must furnish the City a cash escrow of \$5,000 prior to issuance of a building permit. The city may draw on the cash escrow to pay the costs it incurs in connection with the project, including but not limited to, repair to damaged streets and boulevards and boulevard trees, to remedy permit violations, or to reimburse the city for consultant fees. The City shall determine all of its costs, including both administrative and consulting services, at the rates normally charged by the City or its consultants according to City standards. If the City draws on the cash escrow, upon the City's demand the permit holder must deposit in escrow additional funds to restore the escrowed amount to

\$5,000. The cash escrow must remain in place until the issuance of a certificate of occupancy.

- (c) The City Engineer will document the condition of the road surface in the vicinity of the access to the proposed project: 1) prior to the commencement of construction and, 2) before the refund of the escrow.
- (d) Prior to issuance of a building permit, the applicant will notify all property owners within three hundred (300) feet of the proposed project regarding the building time frame, proposed parking, building plans and contact information for the applicant, along with an executed neighborhood acknowledgement form. A sign must also be posted on the project site at least five (5) days prior to issuance of a building permit identifying the permit holder, a contact name and phone number and the site address. The sign and the content of the sign must be visible from the street. The sign must be kept in place until the completion of the project.
- (e) Prior to issuance of a building permit, applicants shall provide evidence that the proper permits have been issued by the Minnehaha Creek Watershed District or the Riley-Purgatory-Bluff Creek Watershed District, whichever has jurisdiction over the subject property.
- (f) The applicant shall submit a Stormwater and Construction Management Plan as outlined in Subdivision 2 of this Section.
- (g) Dumpsters shall be located on site. If not possible, dumpsters on streets must be approved by Public Works. Dumpsters shall be removed only during approved construction hours.
- (h) Daily site clean-up of debris and garbage is required.
- (i) Permit holder must thoroughly dampen demolition materials with water during demolition so as to prevent dust.
- (j) Daily street cleaning is required to remove all dirt, mud and debris from public streets.
- (k) Electric service during construction will be provided by a temporary or permanent hookup by the electric service provider and the use of temporary generators will be permitted only as long as reasonably necessary to establish such temporary or permanent electrical power.

Subd. 3. Stormwater and Construction Management Plan. The Stormwater and Construction Management Plan is a stand-alone document and shall include the following:

- (a) A site plan showing:
 - 1) Site Address.
 - 2) Names, addresses and telephone numbers of persons responsible for preparing and implementing the construction site management plan.
 - 3) Site property lines.
 - 4) Location of proposed buildings and structures on site.
 - 5) Identification and location of all significant natural boundaries/buffers to neighboring properties.

- 6) Best Management Practices (BMPs) to minimize erosion and discharge of sediment and other pollutants.
 - 7) Location of soil stockpiling.
 - 8) Locations of the temporary toilet, if required, and dumpster.
 - 9) Site entrance and on-site parking areas, and/or proposed street parking plan
- (b) A document describing the following:
- 1) BMPs for dewatering activities.
 - 2) Schedule and procedures for site inspections and recording of rainfall events during construction.
 - 3) Schedule and procedures for maintenance of BMPs during construction.
 - 4) Management procedures for solid and hazardous waste.
 - 5) Schedules and procedures for final stabilization.
- (c) Waiver. Specific provisions of this ordinance may be waived by City Staff based on the scope and duration of the specific construction project.
- (d) Notification and Inspection. The applicant or its authorized agent shall notify the City upon completing the installation of all temporary property line and silt fencing. The applicant shall not proceed with site activity until the City has been notified and allowed two full business days to inspect the site and, as necessary, confer with the applicant.

1312.07 Work Started Without Permit. Where work for which a permit is required is started or proceeded with before obtaining a required permit, the fee to be paid for the permit will be the greatest of: (1) double the ordinary building permit fee specified by City ordinance, (2) \$100.00, or (3) an amount equal to the sum of all administrative costs in connection with the granting of the permit and in connection with the granting of any variance, special use permit, or rezoning necessary for the granting of the permit.

1312.08 Completion of Roof and Exterior. The roof and all exterior surfaces of any building (including all commercial, residential and accessory buildings) must be completely finished with exterior building materials permitted by the SBC and this Code within 12 months after the issuance of a building permit for any new construction, alteration, remodeling, addition or relocation. The city may, after proper notification of the property owner of an existing violation of this section, complete the required work and assess the cost associated with bringing the property into compliance with the ordinance to the subject property.

SECTION 1315 VARIANCES

1315.01 Scope. The City Council, sitting as the board of appeals, may grant variances from the literal provisions of this Ordinance in instances where their strict enforcement would cause a practical difficulties because of circumstances unique to the individual property under consideration.

No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.

1315.02 Practical Difficulties Standard Defined. "Practical difficulties," as used in connection with the granting of a variance, means:

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

Economic considerations alone do not constitute practical difficulties.

1315.03 Findings. The board, in considering all request for a variance, shall adopt findings addressing the following questions:

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

1315.04 Conditions. The board may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance. Violation of such conditions shall be a violation of the zoning code and subject to the enforcement provisions thereof.

1315.05 Procedure.

Subd. 1. Application. Written application for a variance is to be made to the Clerk and accompanied by the filing fee in the amount stated in Section 405.05.

Applications shall describe the practical difficulties and unique circumstances claimed as a basis for the variance. In addition, the following exhibits shall be submitted if required by the Zoning Administrator:

- (a) A boundary survey and/or site plan as required for building permits.
- (b) Other material as may be required by the zoning administrator.

Subd. 2. Notice.

- (a) The Clerk will mail notice of the variance application to all persons who own property within

350 feet of the perimeter of the parcel in question, at least ten days prior to the Planning Commission hearing. Failure of a property owner to receive notice shall not invalidate any proceedings on a variance request provided a bonafide attempt has been made to comply with the notice requirements of this ordinance.

(b) Shoreland Areas. Within all shoreland areas defined by 1350.03 Subd. 2. of this Ordinance, a copy of every variance application along with supporting materials required by 1315.7 Subd. 1, shall be submitted to the Minnesota Department of Natural Resources and also shall have received at least ten (10) days notice prior to the meeting date to consider the variance.

Subd. 3. Planning Commission Consideration and Recommendation. The Planning Commission will consider the application and hold a public hearing at their next regularly monthly meeting. The Planning Commission will make a recommendation to the Council as follows:

- (a) Recommend that the variance application be granted because the evidence considered at the meeting supports each of the findings required under Section 1315.03.
- (b) Recommend that the variance application be denied because the applicant did not present sufficient evidence for the Planning Commission to make all the findings required under Section 1315.03.

Subd. 4. Council Consideration. After the minutes of the Planning Commission meeting have been forwarded to the Council, the Council will consider the application at its next regular monthly meeting and at following regular or special meetings if further consideration is necessary.

Subject to limitations of Minn. Stats. § 15.99, if, upon receiving said reports and recommendations of the Planning Commission and city staff, the Council finds that the proposed plans have been substantially changed, the Council may, before taking final action, refer the matter back to the Planning Commission for further consideration. The Council shall provide the Planning Commission with a written record detailing the specific reasons for referral.

Within 60 days of the date of application, the Council will by motion grant or deny the application according to the provisions of Section 1315.03 and will make a record in the minutes stating its conclusions with respect to each of the findings required under Section 1315.05.

Subd. 5. Required Vote. No variance shall be granted by the board except upon an affirmative majority vote of the board of appeals.

Subd. 6. Reconsideration. Whenever an application for a variance has been considered and denied, a similar application for a variance affecting the same property by the applicant, their successors or assigns, shall not be considered a second time by the Planning Commission or the City Council, acting as the Board of Adjustments and Appeals, for at least six (6) months from the date of its denial; unless the Board of Adjustment and Appeals vote for reconsideration of the matter upon a vote of not less than four-fifths of the entire Board of Adjustments and Appeals.

Subd. 7. Recovery of Legal and Administrative Costs. In addition to the initial application fee as may be established from time to time by the city council, the applicant in making any application for variance agrees to pay all legal fees, engineering fees, consultant fees, and other administrative costs the city may incur in conjunction with the processing of the variance

application. No building permit shall be issued on a granted variance until such costs have been paid in full.

Subd. 8. Expiration. If a variance is granted for a property and the construction of the structure for which it was granted is not commenced within one year after the date of the Council Resolution approving the variance, the variance will expire and be of no further force or effect.

SECTION 1320 CONDITIONAL USE PERMITS

1320.01 Scope. This Section applies to all Conditional Use permits including additional uses not specifically designated in Section 1305.

1320.02 Conditional Use Permits for Additional or Permitted Uses. Under the procedure provided in this Section, additional and permitted uses allowed by Conditional Use permit may be allowed in a district by special permit and under limitation imposed by the Council when appropriate because of unusual characteristics of the use or the service provided to the public by the use. Such uses require special consideration regarding proper location in relation to adjacent or nearby existing or planned uses or in relation to the development of the community. The Council may grant Conditional Use permits for such uses, imposing limitations and safeguards in the permits.

1320.03 Evidence. In considering a request for a Conditional Use permit, the Council must be supplied with and consider evidence of the effect of the proposed use on the plan for development of the community; the character and development of the neighborhood; the health, safety, and welfare of occupants of surrounding lands; existing and anticipated traffic conditions, including parking facilities, on adjacent streets; and the effect on property values of the subject premises and in the surrounding area.

1320.04 Procedure.

Subd. 1. Application. Application for a Conditional Use permit will be made in writing on forms provided by the Clerk, and will be filed with the Clerk together with a filing fee in the amount required under Section 405.05.

Subd. 2. Planning Commission Consideration and Recommendation. The Planning Commission will consider the application and hold a public hearing at their next regularly monthly meeting. The Planning Commission will make a recommendation to the Council, sitting as the Board of Appeals, that the application be granted or denied. The recommendation must include findings conforming to the evidentiary requirements in Section 1320.03.

Subd. 3. Notice. The Clerk will mail notice of the Conditional Use application to all persons who own property within 350 feet of the perimeter of the parcel in question, at least ten days prior to the Planning Commission hearing.

Subd. 4. Council Consideration. After the minutes of the Planning Commission meeting have been forwarded to the Council, the Council will consider the application at its next regular monthly meeting and at following regular or special meetings if further consideration is necessary. Within 60 days of the date of application, the Council will by motion grant or deny the application according to the provisions of Section 1320.03 and will make a record in the

minutes stating its conclusions with respect to each of the findings required under Section 1320.03

Subd. 5. Council Decision. After the hearing, the Council will grant or deny the application by resolution which will include express and specific findings of fact and the specific conditions imposed in connection with the Conditional Use permit.

Subd. 6. Reconsideration. Whenever an application for a Conditional Use permit has been considered and denied, a similar application for a Conditional Use permit affecting the same property by the applicant, their successors or assigns, shall not be considered a second time by the Planning Commission or the City Council, acting as the Board of Adjustments and Appeals, for at least six (6) months from the date of its denial; unless the Board of Adjustment and Appeals vote for reconsideration of the matter upon a vote of not less than four-fifths of the entire Board of Adjustments and Appeals.

1320.05 Assignment. Applicants may not assign any application, evidentiary material or Conditional Use permit without consent of the Council.

SECTION 1321 PLANNED UNIT DEVELOPMENT

1321.01 Purpose. The purpose of this section is to provide procedures and standards for the review of residential and/or mixed use developments that allow for higher density housing and integration of housing and other compatible uses such as religious institutions in the Chowen's Corner and Highway 101 Commercial areas as designated in the City of Deephaven Comprehensive Plan. The PUD standards are specifically designed to allow flexibility in the application of setbacks, dimensional requirements and other provisions of this ordinance to encourage:

- A. Innovations in the type and design of residential developments to assist in meeting the demands for a variety of housing types and costs to meet the needs and desires of Deephaven's population.
- B. The preservation and enhancement of desirable environmental features on property such as mature trees, vegetative buffer areas, significant slopes and water-related features.
- C. Long or short term phased development that will plan for the orderly arrangement and site planning of specific complementary uses on property within the City and
- D. A desirable and attractive development that would not be possible through the strict application of the zoning and subdivision regulations of the City.

1321.02 Uses. Land uses that are permitted or allowed by Conditional Use permit within the PUD district as established in Section 1305 of this Ordinance. In addition, all development shall comply with the policies of the City of Deephaven Comprehensive Plan.

1321.03 Development Standards. The following standards shall apply to developments within the PUD District:

- A. Dimensional Requirements. Development shall comply with the requirements set forth in Section 1310 Dimensions and Design Standards unless modified by this section of the Ordinance.
- B. External Building and Parking Setback Requirements. External building setbacks shall meet the requirements for a PUD established in Section 1310.02 – Schedule of Dimensional Requirements. The external setback of parking areas from public streets and properties zoned for commercial uses shall be 20' and shall be 50' from any adjacent property line zone for residential uses.
- C. Internal Building and Parking Setback Requirements. Internal setback requirements shall be as follows:
 - 1. standards negotiated and agreed upon between the applicant and the City that are consistent with the policies of the Comprehensive Plan and the purposes of the PUD District, and
 - 2. general compatibility of the development with the surrounding area in which it is located.
- D. Accessory buildings and structures shall meet the setback requirements of buildings established in B. and C. above.
- E. Density. The maximum density shall be based upon the ability of the project to meet:

1. the requirements of Section 1310 – Dimensions and Design Standards,
 2. the requirements of this subsection (1321.03),
 3. standards negotiated and agreed upon between the applicant and the City that are consistent with the policies of the Comprehensive Plan and the purposes of the PUD District, and
 4. general compatibility of the development with the surrounding area in which it is located.
- F. Hardsurface Coverage. The maximum hardcover of buildings and driveways, or other hardcover within the total development shall be a maximum of 70%. Individual lots within a PUD may exceed 70% provided the overall average of all property within the PUD does not exceed 70%.
- G. Access. Access to the site shall only be allowed by roadways that are designated as collectors or minor arterials in the City of Deephaven Comprehensive Plan.
- H. Utility Placement. All utilities shall be placed underground including telecommunication facilities, electricity, gas and other similar facilities.
- I. Private Recreational Areas. PUD's must provide a minimum of 10% of the gross area designated for residential purposes in private recreational uses that are suited to the needs of the intended residents of the development. Examples of private recreational uses include but are not limited to gardens, nature areas, playgrounds or playfields, swimming pools, trails and picnic areas.
- J. Landscaping. All development within a PUD shall be landscaped in accordance with the following requirements:
1. All external or internal setback areas and open areas shall be landscaped with a combination of overstory trees, understory trees, shrubs, flowers and ground cover material unless an area is designated for tree and vegetative preservation on the Master Development Plan.
 2. The minimum size of all new trees to be planted within the development shall be as follows:
 - a. overstory deciduous trees – minimum diameter of 2.5"
 - b. coniferous trees – minimum height of 6'
 - c. ornamental trees – minimum diameter of 1.5"
 3. All site areas not covered by a hardsurface material shall be covered by sod or an equivalent ground cover to be approved by the City. This requirement shall not apply to areas is designated for tree and vegetative preservation in their natural state.
 4. All parking lot areas shall be landscaped to break up expanses of paved areas. Parking lot landscaping shall be contained in raised planting beds bordered by a raised concrete curb or equivalent to be approved by the City.
 5. All landscaping and related site improvements shall be maintained on a continual

basis. Maintenance shall mean that lawn areas are mowed on a regular basis, that dead or dying plant material is replaced with an equivalent number and size of new planting, and that landscaped areas are free of debris and other items that are of a non-natural material.

- K. Screening. Screening shall be required of any parking area or any non-residential building that directly abuts existing residential districts. Screening shall consist of fences, walls, earth berms, hedges, natural vegetation, other landscape materials or any combination to achieve an effective but reasonable visual barrier. All fences and walls shall meet the requirements of Section 1310.8 – Fences and Walls, be designed to be architecturally compatible with the surrounding development and shall be maintained on a continuous basis.
- L. Building Exterior and Architectural Compatibility. Exterior building materials and architectural compatibility of new buildings to be constructed within a PUD District shall be subject to final architectural review by the City Council.
- M. Signs. Signs shall be restricted to those that are permitted in a sign plan approved by the City Council and shall be regulated by permanent covenants.
- N. Application of Subdivision and Other City Ordinances. The City Council may approve subdivisions, streets, utilities and public facilities that are not in the compliance with the City of Deephaven Subdivision Ordinance requirements for property zoned PUD if it finds that strict adherence to such requirements is not required to meet the intent of this Section or to protect the health, safety or welfare of the residents of the PUD, the surrounding area, or the City as a whole.

1321.04 Procedure.

- A. Concept Plan Review. Prior to submission of a formal application for a Master Development Plan, the applicant shall submit a concept plan for review and comment by the Planning Commission and City Council. However, comments made by the Planning Commission and City Council shall not bind the City to approve subsequent applications for development of the property.
 - 1. A Concept Plan shall be scheduled for review by the Planning Commission within 30 days of submission of a completed application to the Zoning Administrator. An application shall be deemed complete when accompanied by the following information submitted by the applicant and found to be complete for review by the Zoning Administrator:
 - a. The name and address of the owner and applicant (if different) of the property,
 - b. Evidence (satisfactory to the City Attorney) that the applicant has a development interest in the property,
 - c. A map depicting the existing physical condition of the property including but not limited to all improvements, existing development, mature tree locations, and location of wetlands and any water feature,
 - d. Existing land uses and zoning of properties within 1500 feet of the property,

and

- e. General schematic drawings of the proposed and ultimate development of the entire site including approximate building, parking area and road/driveway locations; use, height, bulk, and area of buildings; the number of dwelling units; and location of open space.
2. The Planning Commission shall forward its comments regarding the Concept Plan to the City Council within 30 days of the Planning Commission meeting.
3. The City Council shall hold a public hearing to review the Concept Plan and Planning Commission comments and provide advisory direction to the applicant regarding the Concept Plan and application for a Master Development Plan. Prior to the City Council meeting, the City Clerk shall mail notice to residents within 350 feet perimeter of the property advising the date and time of the Council meeting that the Concept Plan review is scheduled at least 10 days prior to the meeting.

B. Master Development Plan Application

1. No permit shall be issued by the City for a property that is zoned PUD unless a Master Development Plan has been approved for development of the property.
2. The applicant shall submit an application for the review of a Master Development Plan to the City Clerk. The application shall be accompanied by the following documents that collectively represent the Master Development Plan:
 - a. Building location(s), height, bulk and gross square footage;
 - b. The location and design of parking areas, roadways, access drives, trails and walkways;
 - c. Type and square footage of specific land uses including the required open space and recreational areas;
 - d. Number and size of dwelling units;
 - e. Detailed grading and drainage plan, including the size of pipes, area of water storage areas and drainage calculations;
 - f. Detailed landscape plan indicating the species, size and planting specifications, and a screening plan (if required by the City);
 - g. Tree preservation plan depicting all trees on the property greater than 8" in diameter that will be saved or removed, and a narrative or drawing of a tree preservation plan;
 - h. Uniform signage and lighting plan;
 - i. Exterior elevations of the buildings (principal and accessory) to be constructed including the type and color of building materials, and floor plans;
 - j. The location and design of exterior heating and air conditioning units and storage areas for waste and garbage;
 - k. An environmental assessment worksheet or environmental impact statement, if required by law;
 - l. A preliminary plat of the property, as required;
 - m. Covenants or other restrictions proposed for the regulation of the development in a form acceptable to the City Attorney; and
 - n. A traffic impact analysis, if determined to be necessary by the City

4. The Planning Commission shall review the application and shall forward its recommendation including the reasons for its recommendation to the City Council unless the Commission votes to continue action on the application and the continuation has been agreed to by the applicant.
5. The City Clerk shall schedule a public hearing to review the Master Development Plan application at the next regularly scheduled or special meeting of the City Council following the Planning Commission meeting. Prior to the City Council meeting, the City Clerk shall mail notice to residents within 350 feet perimeter of the property advising the date and time of the Council meeting that the Master Development Plan review is scheduled at least 10 days prior to the meeting.
6. The City Council shall vote to:
 - a. approve,
 - b. approve with modifications to the Master Development Plan,
 - c. deny the application,
 - d. or continue action on the application if agreed to by the applicant;

Notwithstanding the above, the City Council may determine that an extension for the review is required prior to the end of a 60 day period that commences from the date of submission of a completed application. The City shall state the reasons for the extension and the anticipated length of the extension in a written notice to the applicant.

7. The City Council shall state its reasons for approval, approval with modifications or denial of the application with written notice of the action and reasons provided to the applicant. If approval or approval with modifications to the Master Development Plan of the application is granted, the City Council may attach reasonable conditions to ensure that development of the Master Development Plan is consistent with the representations made by the applicant to the Planning Commission and City Council for the project.
8. The Planning Commission shall base their comments and the City Council shall base their actions regarding the application for a Master Development Plan on consideration of:
 - a. the City of Deephaven Comprehensive Plan,
 - b. the effect of the development on the neighborhood and surrounding area of the City,
 - c. the impacts of the development on community facilities including but not limited to adjacent roadways and parks,
 - d. the compliance of the application with the purpose and requirements of the PUD District,
 - e. and other such factors as the City finds relevant to the evaluation of the application.
9. The approval of the Master Development Plan shall allow the applicant to proceed with the submittal of an application for City permits subject to conformance with any conditions on the approval and subject to other required approvals by governmental

agencies.

10. The applicant may request review and consideration of a combined Concept Plan and Master Development Plan by the Planning Commission and City Council by submitting all information required for both reviews simultaneously to the City. The same procedure as established in this subsection shall be followed.

1321.05 Compliance and Amendments. All development on the property shall substantially comply with the Master Development Plan approved by the City Council.

- A. Substantial compliance shall mean that the location and design of all site elements (including landscaping and exterior architecture) are in a similar location or design as that shown on the Master Development Plan, there is no increase in the number of residential units or an increase of more than five percent of the gross floor area of any non-residential building, and there is no decrease in the amount of open space.
- B. Financial security shall be submitted to the City in a form acceptable to the City Attorney prior to the issuance of any permits by the City to assure that all improvements are constructed in a manner consistent with the Master Development Plan and any conditions placed on the approval of the Master Development Plan by the Planning Commission and City Council. The financial security may be reduced by the City Council after completion of specific segments of the improvements on the property provided that such improvements are installed in a satisfactory manner as determined by the City.
- C. An amendment to the Master Development Plan shall be required for any subsequent phase of development of the property that will effect the Concept Plan.
- D. The review procedure shall be the same as the notification, process and review requirements for the original Master Development Plan.

SECTION 1325 WETLANDS DEVELOPMENT REGULATIONS

1325.01 Purposes. It is in the public interest to protect the wetlands, lowlands, watershed areas, lakes and water courses within the City from uncoordinated and unplanned development, pollution and other damage. In addition to such general purposes, this Section is intended to:

- (a) Reduce danger to health from impure surface and ground water supplies by providing safe and sanitary drainage.
- (b) Permit and encourage land uses compatible with preservation of natural vegetation and marshes, for the purposes of maintaining constant rates of water flow and sustaining wildlife and plant growth.
- (c) Encourage a system of ponding areas to avoid fast runoff of surface waters from developed areas and to avoid drainage of pollutants into streams and lakes.
- (d) Restrict development of structures which will adversely affect wetland areas and public waters.

1325.02 Wetlands Defined. The “wetlands” within the City which are subject to this Section are defined and established to be the areas shaded in blue on the half-section maps dated August, 1973, prepared by the City Engineers and on file at the City Hall (referred to in this Section as the “Deephaven Wetlands Maps”), and made a part of this Section by reference. This Section pertains only to the wetlands shown on the Deephaven Wetlands Maps, as the same may be modified from time to time by amendment of this Section.

1325.03 Pollution Prohibited. It is unlawful for any person to cause pollution of the wetlands or any body of water into which they drain, by depositing or discharging within the wetlands, or permitting to drain into such waters, contrary to then applicable state standards, sewage, chemical wastes, pesticides, insecticides, plant fertilizers, salt, or other substances which would render the wetlands or such waters unclean, noxious, or impure according to then applicable state standards.

1325.04 Certain Development Prohibited. No filling, grading, dredging, excavation or construction is allowed within the wetlands if such activity is incompatible with the purposes set forth in Section 1325.01 or would result in the pollution prohibited in Section 1325.03.

1325.05 Permit for Development. There may be no filling, grading, dredging, excavation or subdivision of the wetlands, and no structure or obstruction may be placed or erected within the wetlands, until an appropriate permit has been issued by the City.

Subd. 1. Application for Permit. An application for a permit under this Section is to be filed with the Clerk. The applicant must submit four copies of the application which include:

- (a) The name of the land owner.
- (b) The mailing address of the land owner.
- (c) The address and legal description of the land.
- (d) A description, including specific locations shown by map or survey, of any filling, grading,

dredging or excavation to be done.

- (e) A description, including specific locations shown by map or survey, of any structure or obstruction to be placed or erected;
- (f) Other changes which would be made in the natural condition of the area, including loss or change of ground cover, destruction of trees and grade changes, and their effects upon the wetlands and the lakes and water courses into which they drain.
- (g) Engineering and hydrological data as required by the City Engineers.
- (h) The applicant's reasons for proceeding with the items described in (d), (e), and (f) of this Subsection.
- (i) Provisions for drainage, sediment control, pollution control, water management, maintenance of landscaped features, and any additional matters intended to improve or maintain the quality of the environment.
- (j) an explanation of why issuance of the requested permit would be consistent with each of the purposes set forth in Section 1325.01.
- (k) The name of the watershed district, or districts, in which the subject property is located.

Subd. 2. Review by Watershed District. Upon filing of the application, a copy will be sent by the City to the watershed district, or districts, in which the property is located, for review and comment by the watershed districts. The watershed district will file its comments and recommendations, if any, with the City within 40 days after receipt of the application unless additional time is authorized by the City. If no response is received from a watershed district within the 40-day period, the City may assume that the district has no comments or recommendations.

Subd. 3. Review by Planning Commission. Within 45 days after filing the application, the Planning Commission will review the application and make its recommendations to the Council, including the reasons for its recommendations. Before its recommendations, the Planning Commission may refer the matter to the City Engineers for review and recommendations.

Subd. 4. Hearing by Council. The Council will, at its next regular meeting after receipt of the recommendations of the Planning Commission, set a date for a public hearing regarding the application for permit. At least 10 days before the hearing, a notice of the date, time, place, and purpose of the hearing will be published in the City's official newspaper. At the hearing, the Council will hear persons who wish to be heard in the matter. The Council will make its decision at the same meeting or at the next regularly scheduled meeting.

1325.06 Effect of Permit. The granting of a permit under the provisions of this Section will in no way affect the owner's responsibility to obtain all approvals required by any other ordinance of the City, or any statute, ordinance or regulation of the state or any State agency or subdivision, and any items authorized by the permit must comply with all other ordinances, statutes, and regulations.

1325.07 Platting. Wetlands may be platted only if: (a) the intended use is compatible with the

purposes set forth in Section 1325.01; (b) platting is not prohibited by state law; and (c) adequate easements are dedicated to the City for drainage, wildlife preservation, park purposes, or other purposes designed to maintain the wetlands and protect them from pollution, excessive drainage, water runoff, destruction of vegetation and wildlife, and to prevent damage to public waters. No streets, driveways, drainage openings, culverts or other items may be constructed within the wetlands area to be platted until the design has been approved by the City. For purposes of complying with the lot size requirements of the City's subdivision and zoning regulations, no portion of any wetlands in excess of 50% of the total area of a lot will be taken into account.

1325.08 Nuisance. Any filling, grading, dredging, or excavation within the wetlands, or any construction or placement of an obstruction within the wetlands, without a permit obtained in accordance with this Section is declared to be a public nuisance.

1325.09 Setback from Wetlands. No part of any building may be constructed or erected within a distance of 25 feet from any wetlands.

1325.10 Building Elevation. The basement floor of any building to be constructed or erected on any lot which includes wetlands must be at an elevation which is at least 2 feet above the high-water elevation of the wetlands.

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SECTION 1330 CERTIFICATE OF OCCUPANCY

1330.01 Application. No structure may be occupied or used in part for any purpose until a certificate of occupancy has been issued by the Clerk stating that the structure complies with all of the provisions of this Code. No use may be initiated on a vacant parcel of land until a similar certificate of occupancy has been issued.

1330.02 Issuance. A certificate of occupancy may be applied for with the application for building permit and will be issued within 10 days after the Clerk has determined that this Code has been complied with. The application will be accompanied by the filing fee required under Section use.

SECTION 1335 ADMINISTRATION AND ENFORCEMENT

1335.01 Voting. Voting will be conducted as follows:

<u>Purpose</u>	<u>Entity</u>	<u>Vote</u>
Amend Sections 1300 - 1350	Council	four-fifths
Grant Variance	Council	majority
Conditional Use Permit	Council	majority
Resolution	Council	majority
Motion	Council	majority
Recommendation to Council	Planning Commission	majority

1335.02 Board of Appeals. The Board of Appeals consists of the Mayor and Council and will function solely under Section 1315. The Mayor or Acting Mayor will chair the Board of Appeals which will be governed by the rules of procedure applicable to the Council and Section 1315.04.

1335.03 Planning Commission. The Planning Commission is constituted of seven residents of the City who are not employees of the City who are appointed by the Mayor for terms of three years each and one member of the Council without vote. The Commission will be chaired by one of the seven residents. The Commission will function under Sections 1315 and 1320. A majority of the voting members will constitute a quorum. Action will be by a majority vote. The Commission will be advisory to the Council.

1335.04 Enforcement.

Subd. 1. Council Enforces. It is the duty of the Council to enforce Sections 1300 through 1335 through the proper legal channels.

Subd. 2. Building Permit. No person may erect, alter, wreck, or move any building or part thereof, without first securing a building permit.

Subd. 3. Building Permit Application. Application for a building permit shall be made in accordance with the building code adopted by the City. Each application must state among other things, the lot dimensions, the size and location of any buildings to be erected, the use of such buildings, and any additional information deemed necessary for the proper enforcement of this Code. The fees for building permits are provided in the building code of the City. The City will issue a building permit only after determining that the building plans together with the application comply with the terms of Sections 1100 through 1116.

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SECTION 1337 NON-CONFORMING STRUCTURES, USES AND LOTS

Subd. 1 Purpose. It is the purpose of this section to accomplish the following:

- a) recognize the existence of uses, structures and lots which were lawful when established but which no longer meet all ordinance requirements;
- b) discourage the enlargement, expansion, intensification or extension of any non-conforming use or structure or any increase in the impact of a non-conforming use or structure on adjacent properties;
- c) encourage the elimination of non-conforming uses or structures or reduce their impact on adjacent properties.

Subd. 2 General.

- a) **Determination of Nonconformity Status**
 - 1. The burden of proving that a nonconformity exists (as opposed to a violation of this zoning ordinance) rests entirely with the subject owner.
 - 2. The Zoning Administrator is authorized to determine whether adequate proof of nonconforming status has been provided by the subject owner.
 - 3. The Zoning Administrator's determination of nonconforming status may be appealed to the City Council.
- b) **Repairs and Maintenance**
 - 1. Nonconformities must be maintained to be safe and in good repair.
 - 2. Repairs and normal maintenance necessary to keep a nonconformity in sound condition are permitted unless the work increases the extent of the nonconformity or is otherwise expressly prohibited by this zoning ordinance.
 - 3. Nothing in this article is intended to prevent nonconformities from being structurally strengthened or restored to a safe condition in accordance with an order from a duly authorized of a public official.
- c) **Change of Tenancy or Ownership**

Nonconforming status runs with the land and is not affected by changes of tenancy, owner-ship, or management.

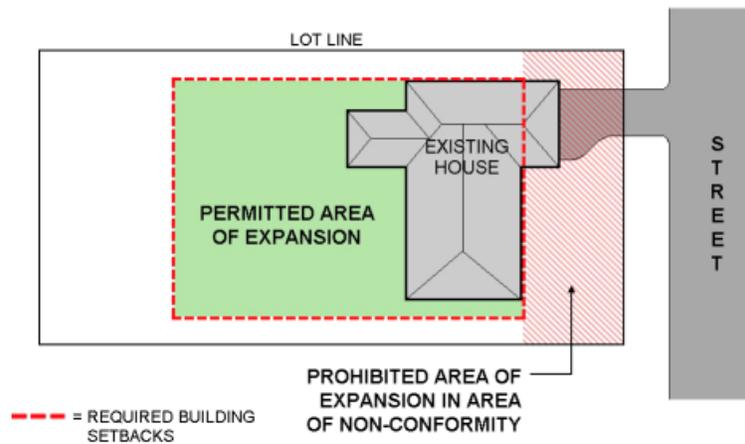
Subd. 3 Non-Conforming Lots. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located; however, in no case shall building be permitted on a vacant site less than 50 feet in width.

Subd. 4. Non-Conforming Uses. The Clerk will issue and maintain a record of each existing non-conforming use upon the effective date of this ordinance. The certificates will indicate the type of use, square footage in use, number of employees or units and other information

necessary to establish the size and scale of the non-conforming use. In the event that a non-conforming use of any building or premises is discontinued or its normal operation stopped for a period of one (1) year, the use shall thereafter conform to the regulations of the district in which it is located.

Subd. 5. Non-Conforming Structures

- a) Non-conforming structures may be altered or expanded if the proposed alteration or expansion complies with all applicable lot, building, dimensional and locational requirements and does not increase the extent of the structure's nonconformity (either vertically or horizontally). A building with a nonconforming front yard setback, for example, may be expanded to the rear as long as the rear expansion complies with applicable rear and side yard setback standards.



b) Loss of Non-Conforming Status

1. When a nonconforming structure is destroyed or damaged, the structure may be restored or repaired, provided that no new non-conformities are created and that the existing extent of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged structure must be obtained within 12 months of the date of occurrence of such damage.
2. When a nonconforming structure is demolished, damaged or destroyed by causes within the control of the owner and the extent of demolition, damage or destruction is more than 50% of the market value of the structure, the structure may be restored or repaired, provided that no new non-conformities are created and that the existing extend of non-conforming is not increased. A building permit to reconstruct a destroyed structure must be obtained within 180 days of the date of occurrence of such damage.

Subd. 6. Non-Conforming Hardcover

If a single-family lot exceeds the hardcover limit and the residence is demolished by causes within the control of the owner or the building footprint is enlarged with an addition, stormwater mitigation is required pursuant to Section 1353 unless the new house or addition conforms to the hardcover limits. If a single-family lot exceeds the hardcover limit, and site improvements (e.g. removal of a swimming pool or tennis court) result in a lower amount of hardcover but the amount still exceeds the maximum hardcover limit, then stormwater mitigation is not required.

SECTION 1340 LEGAL DESCRIPTION OF DISTRICTS

1340.01 Residential District 1. Those parts of the City known as Northome and Cedarhurst and described as that part lying West of the N 1/2 of Section 18, Township 117, Range 22 and West of Northome Road and West of the abandoned right-of-way of the CM& St.P RR.

1340.02 Residential District 2. All of the lands of the City not otherwise described.

1340.03 Residential District 3. That part of the City known as Shavers Lake and described as East of Maplewood Road and North of Minnetonka Boulevard.

That part of the City lying South of Northome Boulevard and East of Northome and Cedarhurst and North of Park Avenue to Minnetonka Boulevard, Minnetonka Boulevard to Virginia Avenue, Virginia Avenue to Lake Avenue, Lake Avenue to Minnetonka Boulevard, Minnetonka Boulevard to the South line of Fairhomes Addition, South line of Fairhomes Addition to East Village limits.

That part of the City known as Cottagewood and described as West of Carsons Bay and North of CNW RR right-of-way and East of the West line of Deephaven Heights and Cottonwood Lane in Ideville and its extension between Lots 2 and 18 in Ideville to the shore of Lake Minnetonka; except Lot 11 Cottagewood.

That part of the City lying West of Linwood Road and South of the South line of Registered Land Survey No. 1170, Files of the Registrar of Titles, Hennepin County, Minnesota.

1340.04 Commercial District 1. That part of Section 18, Township 117, Range 22, described as follows: Beginning at the NE corner of the NE 1/4 of the SW 1/4 of said Section: thence South to the North boundary line of Lot 1, Deephaven Park as the same would be if extended; thence West along said North boundary line of said Lot 1 to the NW corner of said Lot 1; thence North along the Easterly boundary lines of Lots 13 and 17 to 27 inclusive, Deephaven Park and along the North boundary line of the NE 1/4 of the SW 1/4 of said Section 18, thence East to the point of beginning.

That part of Section 18, Township 117, Range 22, described as follows: Beginning at a point on the West line of the SE 1/4 distant 329.7 feet South from the NW corner thereof; thence East 541.4 feet; thence North to a point in the North line of said SE 1/4 distant 544.85 feet East from the NW corner thereof; thence West to the NW corner of said SE 1/4; thence South to the point of beginning. Except the Easterly 5 feet front and rear thereof.

The West 664.85 feet of the South 250 feet of the NE 1/4 of Section 18, Township 117, Range 22.

Lots 1 to 12, inclusive, Deephaven Park.

Lots 4 and 5, Auditor's Subdivision 141, Hennepin County, Minnesota.

That part of Lot 22 lying Easterly of a line drawn parallel to and distant 165 feet Westerly of the Westerly line of Vine Hill Road, Auditor's Subdivision 141, Hennepin County, Minnesota; provided due to the residential character of the neighborhood all uses must be by Conditional Use permit only and in the event the buildings or any substantial part thereof may be condemned or destroyed or in any manner rendered unusable, all future use must comply with adjoining residential district regulations.

Lot 48, Minnetonka Groveland Park; the North half of vacated Jericho Road adjoining said Lot 48; Lot 5, Block 1, Minnetonka Groveland Park 2nd Addition and the South half of vacated Jericho Road adjoining Lot 5, Block 1, Minnetonka Groveland Park 2nd Addition; all according to the recorded plats thereof, Hennepin County, Minnesota.

1340.05 Commercial District 2. The Easterly 200 feet of Lot 57, "Minnetonka Groveland Park" and that part of said Lot 57 described as follows: Commencing at the most Northwesterly corner thereof; thence South along the West line thereof 182.76 feet to the actual point of beginning of the tract of land to be described; thence deflecting to the left from said West line at an angle of 106 degrees, 13 minutes and 30 seconds a distance of 145.08 feet; thence deflecting to the left at an angle of 26 degrees, 01 minutes and 30 seconds a distance of 94.65 feet; thence deflecting to the right at an angle of 27 degrees and 22 minutes a distance of 378.22 feet, more or less to its intersection with the West line of the East 200 feet of said Lot 57; thence South along said West line a distance of 154.96 feet, more or less, to the South line thereof; thence Westerly along said Southerly line to the most Southwesterly corner thereof; thence Northerly along the West line thereof 192.04 feet, more or less, to the actual point of beginning.

1340.06 PUD District 1. A parcel containing a minimum of three acres, but no more than six acres within the following described parcel: Com at the NE cor of NW $\frac{1}{4}$ of SE $\frac{1}{4}$ th S along E line thof to the NE cor of Highland Court th W along the most NLY line thof and same extended to the W line of SE $\frac{1}{4}$ th NO along said W line to a pt dis 329 $\frac{7}{10}$ ft S from NW cor thof th E 651 $\frac{4}{10}$ ft th S 40 ft th E 10 ft th S 180 $\frac{05}{100}$ ft th E to a pt dis 16 rods W from the E line of NW $\frac{1}{4}$ of SE $\frac{1}{4}$ th N to N line thof th E to beg ex roads and W 18 rods of E 34 rods of N 33 $\frac{1}{3}$ rods of NW $\frac{1}{4}$ of SE $\frac{1}{4}$ ex road.

PUD District 2. Block 1, Lot 7, Minnetonka Groveland Park Second Addition (Deephaven Portion) and Outlot 1, Leeman's Minnetonka Highlands Second Addition (Minnetonka Portion).

SECTION 1345 DEFINITIONS

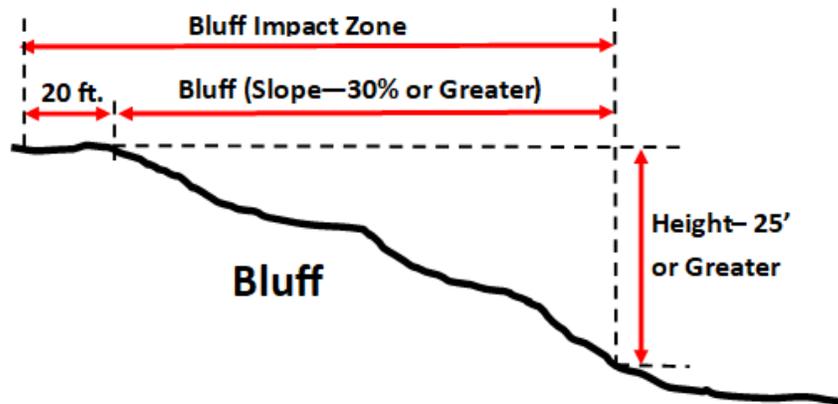
1345.01 “Accessory” means customarily incidental to.

1345.02 “Accessory Structure” means a structure the use of which is customarily incidental to the use of the principal structure.

1345.03 “Bluff” means a topographic feature such as a hill, cliff, or embankment having the following characteristics:

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

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



1345.04 “Bluff Impact Zone” means a bluff and land located within 20 feet from the top of a bluff.

1345.05 “Board of Appeals” means the Council as constituted pursuant to Minnesota Statutes, Chapter 462, under Section 1335.02 of this Code.

1345.06 “Boathouse” means a structure for storage of boats and attendant equipment.

1345.07 “Building” means a structure having a roof which may provide shelter or enclosure of persons, animals or chattels.

1345.08 “Building Line” means a line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.

1345.09 “Clear-Cutting” means the removal of an entire stand of trees.

1345.10 “Comprehensive Plan” means the long range plan for the City of Deephaven titled the *Deephaven Comprehensive Plan, adopted by the City on July 1, 2002*, or as hereafter revised or superseded by a new comprehensive plan.

1345.11 “Commercial” means carrying on a trade or business.

1345.12 “Conditional Use, Shoreland” means a use of shorelands which is permitted within a zoning district only when allowed by the City after a public hearing, if certain conditions are met which eliminate or minimize the incompatibility of the conditional use with other permitted used of the district.

1345.13 “Corner Lot” means a lot bounded on two or more sides by roadways or right- of-ways intersecting or curving together at right or approximately right angles.

1345.14 “Deck” means a horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending more than three feet above ground.

1345.15 “Density” means a number or quantity in a given area.

1345.16 “Dimension” means a quantitative measurement.

1345.17 “Dimensional Requirement” means a dimension characteristic which is a prerequisite to a use or uses.

1345.18 “District” means a regulated geographic area with a boundary line.

1345.19 “Dwelling” means a house or place of residence for persons, including principal and, if any, accessory buildings and structures.

1345.20 “Dwelling, Multiple Family” means a building designed or intended for occupancy by two or more families.

1345.21 “Dwelling, Single Family Detached” means a building designed or intended for occupancy exclusively by one family.

1345.22 “Dwelling Unit” means a dwelling for one family.

1345.23 “External” means outside of or contiguous with a parcel.

1345.24 “Family” means an individual person or two or more such persons related by blood, marriage or adoption living together exclusive of occasional guests or servants or a group of not more than five persons not related by blood, marriage or adoption living together in a single housekeeping unit in a single dwelling unit, exclusive of servants and occasional guests.

1345.25 “Farm” means a lot or parcel used for breeding, raising or feeding cattle, poultry, hogs or other livestock, customarily but not necessarily commercially; or breeding, raising or feeding horses, ponies or the like commercially; or food or truck gardening commercially.

1345.26 – Removed by ordinance 13-78, 3/5/2018

1345.27 “Frontage” means a line contiguous with, or parallel and next adjacent to, another line.

1345.28 “Front Setback” means the right angle distance of a structure from a road right- of-way.

1345.29 “Grade” means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five feet from the building, between the building and a line five feet from the building.

1345.30 “Hardcover” means the area of a lot occupied by buildings, accessory structures, all paved surfaces, and driveways and parking areas whether paved or not. Buildings shall be measured at the outer edge of the foundation line. Hardcover shall not include fences, retaining walls, and open-patterned decks and stairways that are installed over a permeable surface.

1345.31 “Height of Building” means the vertical distance between the highest existing or proposed grade elevation at the foundation of a structure or five feet above the lowest adjoining grade elevation for structures with an exposed look-out or walk-out, whichever is lower, and the highest point of any roof.

1345.32 “House” means a principal residential structure.

1345.33 “Intensive Vegetation Clearing” means the complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

1345.34 “Internal” means wholly or partially inside a parcel.

1345.35 “Jurisdiction or Jurisdictional” means lawful or legal area or scope.

1345.36 “Jurisdictional Limits” means the geographical area over which lawful authority to govern exists.

1345.37 “Junk Yard or Dump” means a commercial or non-commercial governmental or private accumulation of used or discarded objects consisting of refuse, garbage, trash or any other object or thing.

1345.38 “Light Industrial” means a manufacture or service where no heavy ‘ equipment is used.

1345.39 “Living Space” means the total of the floor area of rooms used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, toilets, laundries, pantries, foyers, communicating corridors, stairways, closets, storage spaces, any area with less than six feet clear headroom, garages, breezeways and carports.

1345.40 “Lot” means an area of land set aside for one dwelling unit, commercial unit, or multiple family development in accordance with the requirements of this Ordinance.

1345.41 “Lot Area or Lot Size” means the area within the lot lines exclusive of land below the ordinary high water line of a public water body.

1345.42 “Lot Width” means the shortest distance between lot lines measured at the midpoint of the building line.

1345.43 “Open Space” means an area not occupied by any structures except such structures as are customarily attendant to park or recreational activities, and used for recreational or park purposes.

1345.44 “Ordinary High Water Line” means a line delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water line is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

1345.45 “Outdoor Play Structure” shall mean any commercially advertised structure, except swimming pools, erected on a lot for the purpose of recreational use by children. Includes, but is not limited to, slides, swings and climbing equipment.

1345.46 “Parcel” means an area of land which is or may be occupied by one or more dwelling units or commercial units in accordance with the requirements of this Code.

1345.47 “Perimeter” means the whole outer boundary of an object or thing.

1345.48 “Permitted” means allowed.

1345.49 “Planning Agency” means the Planning Commission or planning department as created by the City.

1345.50 “Planning Commission” means the commission created and constituted under Section 1335.03.

1345.51 “Prohibited” means not allowed.

1345.52 “Public Building” means a governmental structure.

1345.53 “Public Utility” means a private or governmental supplier to the general public of residential or commercial electricity, sewer, water, drainage, refuse, postal, gas, oil or telephone goods or services or railroad, bus, streetcar service.

1345.54 “Public Waters” means any water of the State which serve a beneficial public purpose, as defined in Minnesota Statutes 103G.005 Subd. 15 & 18. However, no lake, pond or flowage of less than 10 acres in size and no river or stream having a total drainage area less than two square miles shall be regulated

for the purposes of these regulations. A body of water created by a private user where there was no previous shoreland as defined herein, for a designated private use authorized by the Commissioner of Natural Resources shall be exempt from the provisions of these regulations. The official determination of the size and physical limits of drainage areas of rivers and streams shall be made by the Commissioner of Natural Resources. The Official size of lakes, ponds, or flowages shall be the areas listed in the Division of Waters' Bulletin 25. An Inventory of Minnesota Lakes or in the event that lakes, ponds, or flowages are not listed therein, the official determination of size and physical limits shall be made by the Commissioner of Natural Resources in cooperation with the municipality.

1345.55 "Rear Setback" means the right angle distance of a structure to a lot line opposite the front; on corner lots, a designation of rear will be filed with the Clerk by the owner thereof.

1345.56 "Regulation" means a control or control measure.

1345.57 "Residential" means private non-commercial housing.

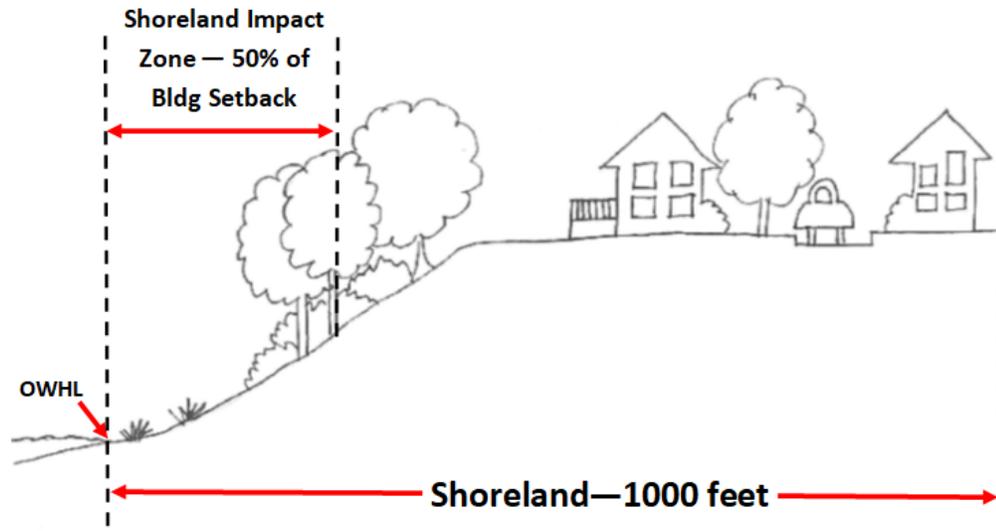
1345.58 "Right-of-way" means an area or strip of land over, under or across which a governmental or other entity has the right to construct and maintain a road, public park, public parking area or governmental structures; except private driveways or private roads which lead to no more than two dwelling units.

1345.59 "Scrap Metal Yard" means the commercial or non-commercial governmental or private accumulation of used or discarded objects consisting primarily of iron, steel and other metal materials.

1345.60 "Senior Citizen Housing" means multiple family dwelling designed for and occupied primarily by persons over 55 years of age, and which may include on-site services exclusively for the benefit of the residents.

1345.61 "Setback" means the minimum horizontal distance between a structure and the nearest property line or highway easement line; within shoreland districts shall also mean the minimum horizontal distance between a structure and the ordinary high waterline of lakes identified in Section 1350.04.

1345.62 “Shore Impact Zone” means land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.



1345.63 “Shoreland” means land located within the following distances from public waters; 1,000 feet from the normal high water mark of a lake, pond or flowage; and 300 feet from a river or stream, or the landward extent a flood plain designated by ordinance of such a river or stream, whichever is greater. The practical limits of shorelands may be less than statutory limits where such limits are designated by natural drainage divide lesser distances, shown on the official zoning map.

1345.64 “Side Setback” means the right angle distance of a structure from a lot line not identified as a front or rear.

1345.65 “Significant Historic Site” means any archaeological site, standing structure or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes, section 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota state archaeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

1345.66 “Slopes Prone to Severe Erosion” means slopes having an average slope of 30 percent or more as measured over a horizontal distance of fifty feet or more.

1345.67 “Conditional Use Permit” means formal written authorization allowing a particular use, granted and issued by the Council.

1345.68 “Steep Slope” means land within the shoreland overlay district having

average slopes over 12 percent, as measured over horizontal distances of 50 feet or more, which are not bluffs.

1345.69 "Street" means any road, highway, alley or other vehicular right-of-way within the City limits.

1345.70 "Structure" means anything constructed or erected, the use of which requires more or less permanent location on the ground or attached to something having a permanent location on the ground, except for retaining walls not having or requiring a railing and not exceeding 3 - 1/2 feet in height and fences not exceeding 6 feet in height excluding fences used for athletic purposes as described in Section 1310.08, Subdivision (b).

1345.71 "Toe of the Bluff" means the lower point of a 50-foot segment with an average slope exceeding 18 percent.

1345.72 "Top of the Bluff" means the higher point of a 50-foot segment with an average slope exceeding 18 percent.

1345.73 "Use" means the conduct relating to land or structures within the City; to be distinguished from dimension or dimensional requirement.

1345.74 "Variance" means any modification or variation from the literal requirements of this ordinance as specified in Section 1315 of this ordinance.

1345.75 "Yard" means an area containing no buildings on a lot or parcel between a structure and a lot line.

1345.76 "Zoning" means the governmental regulation of land use, including quantitative and qualitative prerequisites thereof.

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SECTION 1350 SHORELAND MANAGEMENT DISTRICT

1350.01 Authorization and Purpose.

Subd. 1. Authorization. This shoreland plan is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Sections 103F.201 through 103F.221, Minnesota Regulations, Parts 6120.2500 - 6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.

Subd. 2. Purpose. The uncontrolled use of shoreland in the City of Deephaven affects the public health, safety, and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interest of the public health, safety, and welfare to provide for the wise development of the shoreland of public waters. The Legislature of Minnesota has delegated responsibility to the municipalities of the state to regulate the subdivision, use, and development of the shoreland of public waters and thus preserve and enhance the quality of surface waters, preserve the economic and natural environmental values of shorelands, and provide for the wise utilization of waters and related land resources.

The responsibility is hereby recognized by the City of Deephaven; all public waters in this municipality have been given a shoreland management classification.

1350.02 Department of Natural Resources Notifications.

Subd. 1. Hearing Notices. Copies of all notices of any public hearings to consider variances, amendments or Conditional Use permits under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivision/plats must include copies of the subdivision/plat.

Subd. 2. Final Decisions. A copy of approved amendments and subdivisions/plats, and final decisions granting variances or Conditional Use permits under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of the final action. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance shall also include the Board of Adjustment's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.

1350.03 Shoreland Classification and Land Use.

Subd. 1. Shoreland Management Classification. In order to guide the development and utilization of shorelands of protected waters for the preservation of water quality, natural characteristics, economic values and the general health, safety and welfare, certain protected waters in the City have been given shoreland management classification.

These protected waters of the City have been classified by the Commissioner Natural Resources as follows:

General Development DNR I.D. #
Lake Minnetonka 27-133P

Recreational Development DNR I.D. #
Shavers Lake 27-86P
Lake Marion 27-87P
Lake William 27-142P

Subd. 2. Shoreland Overlay District. The shorelands of the City of Deephaven, are hereby designated as a Shoreland Overlay District. The purpose of the Shoreland Overlay District is to provide for the wise utilization of shoreland areas in order to preserve the quality and natural character of these protected waters of the City.

Subd. 3. Permitted Uses. All permitted uses allowed and regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the City.

Subd. 4. Conditional Uses. All Conditional Uses and applicable attached conditions allowed and regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the City.

Subd. 5. Prohibited Uses. Any uses which are not permitted or conditional uses as regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the City.

1350.04 Zoning Provisions.

Subd. 1. Standards - All Shorelands. The following standards shall apply to all shoreland of the protected waters within the City of Deephaven. Where the requirements of the underlying zoning district as shown on the official zoning map are more restrictive than set forth herein, the more restrictive standard shall apply .

Subd. 2. Sewered Areas. The entire City of Deephaven is classified as a sewered area and no use of a residential or commercial structure will be permitted without being serviced by a municipal sewer.

Subd. 3. Minimum Lot Size. All lots created after the date of enactment of the local shoreland controls must meet or exceed the following dimensions:

	R-1	R-2	R-3	C-1	C-2
Lot Area (sq.ft.)	60,000	40,000	20,000	10,000	10,000
Water frontage and lot width at building line	125'	125'	100'	N/A	N/A
Lake Minnetonka setback from Ordinary High Water Line	100'	100'	100'	N/A	N/A

Lakes other than Lake Minnetonka setback from the Ordinary High Water Line	75'	75'	75'	75'	75'
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Subd. 4. Substandard Lots. Lots of record in the office of the County Recorder or Registrar of Titles prior to the date of enactment of this chapter which do not meet the above requirements may be allowed as building site provided:

- (a) Such use is permitted in the zoning district, and
- (b) The lot is in separate ownership from abutting lands, and
- (c) All other sanitary and dimensional requirements of this shoreland ordinance are complied with insofar as practical.

Subd. 5. Additional Structure Setbacks. The following additional structure setbacks apply, regardless of the classification of the water body:

<u>Setback From</u>	<u>Setback</u>
Top of Bluff	30 feet
Unplatted Cemetery	50 feet

Subd. 6. Bluff Impact Zones. Structures and accessory facilities except stairways and landings shall not be placed within bluff impact zones.

Subd. 7. Stairways, Lifts and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:

- (a) Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties and public open-space recreational properties;
- (b) Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties and public open-space recreational properties;
- (c) Canopies or roofs are not allowed on stairways, lifts, or landings;
- (d) Stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion;
- (e) Stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical; and

- (f) Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of subitems (a) to (e) are complied with in addition to the requirements of Minnesota Regulations, Chapter 1340.

Subd. 8. Significant Historic Sites. No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been collected and documented in a public repository.

Subd. 9. Roads and Parking Areas. Roads and parking areas in the shoreland area shall be controlled in accordance with the following criteria:

- (a) No hardcover shall be placed within 50 feet of the ordinary high water mark.
- (b) Where feasible and practical, all roads and parking areas shall meet the setback requirements established for principal buildings in this ordinance.
- (c) Natural vegetation or other materials shall be used in order to screen parking areas when viewed from the water.
- (d) Must not be placed in bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to control erosion to public waters and minimize adverse impacts.

Subd. 10. Elevation of Lowest Floor. Structures shall be placed at elevations consistent with the City's flood plain management control. In areas not regulated by flood plain management controls, the elevation to which the lowest floor, including basements, shall be placed as follows:

For lakes, ponds, and flowages by (1) an evaluation of available flood information, and consistent with Statewide Standards and Criteria for Management of Flood Plain Area of Minnesota, or, (2) placing the lowest floor at a level three feet above the highest known water level. In those instances where sufficient dates on known high water levels are not available, the ordinary high water mark shall be used.

Subd. 11. Exceptions to Building Setback Requirements. Location of piers and docks shall be controlled by applicable state and local regulations.

1350.05. Shoreland Alterations.

Subd. 1. Removal of Natural Vegetation. The removal of natural vegetation shall be restricted to prevent erosion into protected waters, to consume nutrients in the soil and to preserve shoreland aesthetics. Removal of natural vegetation in the shoreland overlay district shall be subject to the following provisions:

- (a) Selective removal of natural vegetation is allowed, provided that sufficient

vegetation cover remains to screen cars, dwellings and other structures when viewed from the water.

- (b) Clear cutting of natural vegetation is prohibited.
- (c) Natural vegetation shall be restored insofar as feasible after any construction project is completed to retard surface runoff and soil erosion.
- (d) The provisions of this section shall not apply to permitted uses which normally require the removal of natural vegetation.
- (e) Use of fertilizer and pesticides in the shoreland management district must be done in such a way as to minimize runoff into the shore impact zone or public water by the use of earth, vegetation, or both.

Subd. 2. Grading and Filling. A permit is required for grading and filling activities as regulated in Section 1312.04.

Subd. 3. Excavations. Excavations on shorelands where the intended purpose is connection to a public water shall require a permit from the Zoning Administrator before construction is begun. Such permits may be obtained only after the Commissioner of Natural Resources has issued a permit for work on the beds of public waters.

- (a) Any work which will change or diminish the course, current or cross sections of a protected water or wetland shall be approved by the Commissioner of Natural Resources, and such approval shall be construed to mean the issuance by the Commissioner of Natural Resources of a permit under the procedures of Minnesota Statutes, 103G.245 and other related statutes.
- (b) Excavations made with the intention of establishing connection to public waters, such as boat slips, canals, lagoons, and harbors are prohibited above the ordinary high water level.

1350.06 Stormwater Management. The following general and specific standards shall apply:

Subd. 1. General Standards.

- (a) When possible, existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.
- (b) Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
- (c) When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used.

Subd. 2. Specific Standards.

- (a) Hardcover of lots in residential zones shall not exceed 25 percent of the lot area.
- (b) Hardcover of lots in the business zones shall not exceed 25 percent of the lot area. In business zones that are included within areas covered by an approved stormwater management plan, hardcover shall not exceed 75 percent of the total lot area.
- (c) When constructed facilities are used for stormwater, management documentation must be provided by a qualified individual that they are designed and installed consistent with the standards and regulations of the Minnehaha Creek Watershed District.
- (d) New stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.
- (e) Variances to exceed impervious surface coverage shall be obtained pursuant to Section 1315 of the City Code. Any persons may request variances from this ordinance in instances where their strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration.
 - (i) Variances to impervious surface coverage, if granted, shall be subject to stormwater management practices deemed appropriate by the city to offset the impacts generated by the proposed additional impervious surface coverage.
 - (ii) Plans, specifications, and calculations for stormwater management practices shall be submitted to the city and subject to the review and approval of the City Engineer prior to approval of any impervious surface coverage variance requests.
 - (iii) Performance credit given for stormwater mitigation practices shall be 75 percent of the calculated volume retained.
 - (iv) Approved stormwater management practices shall be subject to a maintenance agreement between the property owner and the city that documents all responsibilities for the long-term operation and maintenance of stormwater mitigation practices. The maintenance agreement shall be executed and recorded against the parcel.

1350.07 Sewage Treatment. Any premises intended for human occupancy shall provided with an adequate method of sewage treatment. Public or municipal collection and treatment facilities shall be used. Public or municipal sewer systems shall be designed to minimize infiltration by flood waters.

1350.08 Water Supply. Public or private suppliers of water for domestic purposes conform to Minnesota Department of Health standards for water quality.

Subd. 1. Public or Municipal Water Supply. Public or municipal water supplies shall

be used where available and where feasible. New and replacement water supply systems shall be designed to minimize infiltration from flood waters.

Subd. 2. Permits. No person, firm, or corporation shall install, alter repair, or extend any private well without first obtaining a permit therefore from the building official of the City.

- (a) Application for permits shall be made in writing upon printed blanks or forms furnished by the building official and shall be signed by the applicant.
- (b) Each application for a permit shall have thereon the correct legal description of the property on which the proposed installation, alteration, repair, or extension is to take place; a plan of the site of reasonable scale and accuracy showing the location of any proposed or existing buildings, sewage treatment facilities, property lines, and a complete plan of the water supply system showing the location, size, and design of the system to be installed, altered, repaired, or extended; the name of the person, firm, or corporation who is to install the system; any further information as required by the building official.

Subd. 3. Private Wells/Flooding.

- (a) Private wells shall be located in a manner to be free from flooding and the top shall be so constructed and located as to be above all possible sources of pollution. Wells already existing in areas subject to flooding shall be flood- proofed.
- (b) No private well shall be located closer than three feet (3') to the outside basement wall of the dwelling. The outside basement footing shall be continuous across the opening of the well alcove. No well shall be located closer than fifteen feet (15') to the property line.
- (c) Private wells shall be located in accordance with the standards of the Minnesota Health Department standard MDH217 "Location of Wells."

1350.09 Subdivisions and Administrative Procedures.

Subd. 1. Subdivisions. No land shall be subdivided which is held unsuitable by the City for the proposed use because of flooding, inadequate drainage, soil and rock formations with severe limitations for development, severe erosion potential, unfavorable topography, inadequate water supply or sewage treatment capabilities, or any other feature likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.

Subd. 2. Plats. Any proposed plat in shoreland areas which is inconsistent with the provisions of this Ordinance shall be reviewed by the Commissioner of Natural Resources before approval of the municipality may be granted. Such review shall require that proposed plats be received by the Commissioner of Natural Resources at least ten (10) days before a hearing is called by the municipality for consideration of approval of a final plat. Copies of all plats within shoreland areas shall be submitted to the Commissioner of Natural Resources within ten (10) days of final approval of the municipality.

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SECTION 1353 STORMWATER MANAGEMENT

1353.01 Purpose The purpose of this ordinance is to protect and safeguard the health, safety, and welfare of the public by regulating stormwater runoff rates and volumes that can lead to flooding, flood damage, and erosion.

This ordinance seeks to meet this purpose in order to:

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

1353.02 Applicability. This ordinance shall apply in the following circumstances:

- (a) Any construction, alteration, or improvement on a residentially-zoned property which would increase the hardcover of a lot to greater than 25%.
- (b) Any construction, alteration, or improvement on a commercially zoned property which would increase the hardcover of a lot to greater than 75%.
- (c) Any construction, alteration, or improvement which does not adequately manage on-site stormwater.

1353.03 Performance Criteria.

Unless determined by the city to be exempt, all applicable activities subject to 1353.02 of this ordinance shall establish permanent stormwater management practices according to the following standards:

- (a) Retain volume of one (1) inch of runoff on site from the lesser of:
 - i.) the proposed hardcover expansion; or
 - ii.) the portion of the proposed impervious surface expansion that exceeds 25% hardcover area for the lot; or
 - iii.) an amount deemed acceptable by the city to adequately control on-site runoff volumes.
- (b) Performance credit given for stormwater mitigation practices shall be 75% of calculated volume retained.

1353.04 General Standards.

- (a) When possible, all lots shall use existing natural drainageways, wetlands and vegetated soil surfaces to convey, store, filter and retain stormwater runoff before discharge onto adjacent properties and public rights-of-way.
- (b) When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities may be used. Preference will be given to

designs using surface drainage, vegetation, and infiltration.

- (c) In addition to the city's policies, stormwater management shall be provided according to the policies of the applicable watershed district.

1353.05 Approval Required Prior to Permit.

No landowner or land operator shall receive a building permit, grading permit, or approval for any construction, alteration, or improvement subject to this ordinance until first meeting the requirements of this ordinance prior to commencing the proposed activity.

1353.06 Application Requirements.

Unless otherwise exempted by this ordinance, an application shall be submitted to meet the required performance criteria under Section 1353.03. The application shall include the following as a condition of its consideration:

- (a) Certified site surveys, if subject to the requirements of Section 1312.03 of the City code;
- (b) For those activities not subject to the survey requirements of Section 1312.03 of the City code the following shall be provided:
 - i) A hardcover calculation worksheet with existing and proposed conditions;
 - ii) a site plan or drawing showing the location of proposed activities.
- (c) Plans, specifications, and calculations for all required stormwater management practices.

1353.07 Application Review Procedure.

Stormwater management applications meeting the requirements of section 1353.06 shall be submitted to the Zoning Coordinator and City Engineer for review.

- (a) For residentially-zoned properties, the City Council shall approve, approve with conditions, or deny the application through a Conditional User Process outlined in Section 1302.
- (b) For commercially-zoned properties, the Zoning Coordinator shall approve, approve with conditions, or deny the application. The application may be approved subject to compliance with conditions reasonable and necessary to ensure that the requirements contained in this article are met.

1353.08 Maintenance Agreement Required

Approved stormwater management practices shall be subject to a maintenance agreement between the property owner and the city that documents all responsibilities for the long-term operation and maintenance of the stormwater management practices. The maintenance agreement shall be executed and recorded against the parcel.

SECTION 1355 SHOWCASE EVENTS

1355.01. Purpose and Objectives. The purpose of this Section is to establish standards to protect the health, safety and general welfare of the public from the undesirable effects associated with the showcasing of residential property to the general public.

1355.02. Definitions. The term Showcase Event as used in this Section means the opening of a residential property for viewing by the general public for the purpose of marketing goods or services for commercial or charitable purposes. A Showcase Event shall not include an open house in connection with the sale of a residential property by a private owner, or an estate sale or garage sale by a private owner. Examples of Showcase Events shall include, but shall not be limited to, the Parade of Homes, Remodeler's Showcase, Luxury Home Tour or other similar events.

1355.03. Permit Required. No Showcase Event may occur at a residential property unless a Showcase Event permit has been procured from the city. A person seeking issuance of a permit shall file an application with the City. The application shall be accompanied by the fee provided in Section 405 of this Code. To ensure an orderly approval process, a permit application should be filed not less than sixty (60) days before the first date of the Showcase Event. The application shall set forth all such information as the City shall find necessary to properly evaluate the application. Failure to file a complete application in a timely manner may be grounds for denial of the permit.

1355.04. Limits on Showcase Events. Showcase Events may be held Thursdays through Sundays over a consecutive three-week period. Applicants are limited to obtaining one Showcase Event permit per calendar year at the same street address.

1355.05. Procedure

Subd. 1. Notice. The City shall send mailed notice of the date of the Council meeting at which the application will be heard at least ten days before the meeting. The notice will be published in the official city newspaper and mailed to all property owners within 350 feet of the property in which the proposed Showcase Event is to be held.

Subd. 2. Public Hearing. The Council shall hold a public hearing on the application at any regularly scheduled or special meeting. The public hearing may be continued after this first regular meeting to a subsequent regular or special meeting, but the continuance may not be more than 60 days after the first regular meeting at which the application was heard.

Subd. 3. Council Decision. After the public hearing, the Council will grant or deny the application by resolution. The resolution shall be supported by specific findings of fact. If a permit is approved, the resolution shall also include any specific conditions imposed in connection with the issuance of a Showcase Event permit.

1355.06. Required Submittal Information

- (a) A site plan that identifies buildings, driveways, local streets, parking locations for employees and the public, temporary structures, temporary restrooms, any cordoned off area(s) and the location of all proposed on-site and off-site signage.

- (b) Proposed shuttle pick-up point and route to the showcase property.
- (c) A letter of approval from the Police Department stating that all of their conditions have been met.
- (d) A Certificate of General Liability Insurance – The applicant shall provide public liability insurance in the amount of at least \$300,000 for injury of one person, \$500,000 for injury of two or more individuals, and \$50,000 for property damage. The city, its agents and employees must be named as additional insured.

1355.07. Review and Approval Process. The City shall consider the following criteria before issuing a permit:

- (a) the Showcase Event will not endanger the public health, safety or general welfare of its residents; and
- (b) the Showcase Event will not cause undue traffic hazards, congestion or parking shortages; and
- (c) the Showcase Event will not impose an excessive burden on the City or its residents or cause damage to private property, parks, streets, rights-of-way, or other public property.

1355.08. Conditions. The City may impose additional conditions upon the permit holder as deemed necessary for the protection of the public including the properties located in the vicinity of the Showcase Event and to ensure compliance with the requirements of this Section.

SECTION 1360.01 FLOODPLAIN ORDINANCE

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

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

SECTION 1360.02 GENERAL PROVISIONS

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

- (a) Where Floodway and Flood Fringe districts are delineated on the floodplain maps, the standards in Sections 4 or 5 will apply, depending on the location of a property.
- (b) Locations where Floodway and Flood Fringe districts are not delineated on the floodplain maps are considered to fall within the General Floodplain district. Within the General Floodplain district, the Floodway District standards in Section 4 apply unless the floodway boundary is determined, according to the process outlined in Section 6. Once the floodway boundary is determined, the Flood Fringe District standards in Section 5 may apply outside the floodway.

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

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

These materials are on file in the City Clerk's office.

Effective Flood Insurance Rate Map panels:
27053C0309F

27053C0316F
27053C0317F

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

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

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

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

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

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

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

- (a) Accessory Use or Structure – a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- (b) Basement – any area of a structure, including crawl spaces, having

its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

- (c) Development – any manmade change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- (d) Equal Degree of Encroachment – a method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.
- (e) Flood Fringe – the portion of the Special Flood Hazard Area (one percent annual chance flood) located outside of the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Study for Hennepin County, Minnesota.
- (f) Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
- (g) Flood Prone Area – any land susceptible to being inundated by water from any source (see “Flood”).
- (h) Floodplain – the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.
- (i) Floodproofing – a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.
- (j) Floodway – the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.
- (k) Lowest Floor – the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 Code of Federal Regulations, Part 60.3.
- (l) Manufactured Home – a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include the term “recreational vehicle.”
- (m) New Construction - Structures, including additions and improvements, and

placement of manufactured homes, for which the start of construction commenced on or after the effective date of this ordinance.

- (n) One Hundred Year Floodplain – lands inundated by the “Regional Flood” (see definition).
- (o) Recreational Vehicle – a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this ordinance, the term recreational vehicle is synonymous with the term “travel trailer/travel vehicle.”
- (p) Regional Flood – a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 1% chance or 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.
- (q) Regulatory Flood Protection Elevation (RFPE) - an elevation not less than one foot above the elevation of the regional flood.
- (r) Repetitive Loss: Flood related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.
- (s) Special Flood Hazard Area – a term used for flood insurance purposes synonymous with “One Hundred Year Floodplain.”
- (t) Start of Construction – includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit’s expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (u) Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, recreational vehicles

not meeting the exemption criteria specified in Section 1360.09(2)(b) of this ordinance and other similar items.

- (i) Substantial Damage - means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- (w) Substantial Improvement - within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:
 - (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
 - (2) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." For the purpose of this ordinance, "historic structure" is as defined in 44 Code of Federal Regulations, Part 59.1.

Subd.10. Annexations: The Flood Insurance Rate Map panels adopted by reference into Section 1360.02(3) above may include floodplain areas that lie outside of the corporate boundaries of the City of Deephaven at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the City of Deephaven after the date of adoption of this ordinance, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation.

SECTION 1360.03 ESTABLISHMENT OF ZONING DISTRICTS

Subd. 1. Districts:

- (a) Floodway District. The Floodway District includes those areas within Zones AE that have a floodway delineated as shown on the Flood Insurance Rate Map adopted in Section 1360.02(3), as well as portions of other lakes, wetlands, and basins within Zones AE (that do not have a floodway delineated) that are located at or below the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.
- (b) Flood Fringe District. The Flood Fringe District includes areas within Zones AE that have a floodway delineated on the Flood Insurance Rate Map adopted in Section 1360.02(3), but are located outside of the floodway. For lakes, wetlands and other basins within Zones AE that do not have a floodway delineated, the

Flood Fringe District also includes those areas below the 1% annual chance (100-year) flood elevation but above the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.

(c) RESERVED FOR GENERAL FLOODPLAIN DISTRICT.

Subd.2. Applicability: Within the floodplain districts established in this ordinance, the use, size, type and location of development must comply with the terms of this ordinance and other applicable regulations. In no cases shall floodplain development adversely affect the efficiency or unduly restrict the capacity of the channels or floodways of any tributaries to the main stream, drainage ditches, or any other drainage facilities or systems. All uses not listed as permitted uses in Sections 1360.04, 1360.05 and 1360.06 are prohibited.

SECTION 1360.04 FLOODWAY DISTRICT (FW)

Subd.1. Permitted Uses: The following uses, subject to the standards set forth in Subd. 2, are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:

- (a) Open space uses, including but not limited to picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, hunting and fishing areas.
- (b) Residential lawns, gardens.
- (c) Railroads, streets, bridges, utility transmission lines and pipelines, provided that the Department of Natural Resources' Area Hydrologist is notified at least ten days prior to issuance of any permit.

Subd.2. Standards for Floodway Permitted Uses:

- (a) The use must have a low flood damage potential.
- (b) The use must not obstruct flood flows or cause any increase in flood elevations and must not involve structures, obstructions, or storage of materials or equipment.

SECTION 1360.05 FLOOD FRINGE DISTRICT (FF)

Subd.1. Permitted Uses: Permitted uses are those uses of land or structures allowed in the underlying zoning district(s) that comply with the standards in Sections 1360.05(2) If no pre-existing, underlying zoning districts exist, then any residential or nonresidential structure or use of a structure or land is a permitted use provided it does not constitute a public nuisance.

Subd. 2. Standards for Flood Fringe Permitted Uses:

- (a) All structures, including accessory structures, must be elevated on fill so that the lowest floor, as defined, is at or above the regulatory flood protection elevation. The finished fill elevation for structures must be no lower than one foot below the regulatory flood protection elevation and the fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure.
- (b) Accessory Structures. As an alternative to the fill requirements of section 1360.05(2)(a), structures accessory to the uses identified in Section 1360.05(1) may be permitted to be internally/wet floodproofed to the FP3 or FP4 floodproofing classifications in the State Building Code, provided that:
 - (1) the accessory structure constitutes a minimal investment, does not exceed 576 square feet in size, and is only used for parking and storage.
 - (2) All portions of floodproofed accessory structures below the Regulatory Flood Protection Elevation must be: (i) adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls, (ii) be constructed with materials resistant to flood damage, and (iii) must have all service utilities be water-tight or elevated to above the regulatory flood protection elevation
 - (3) Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following criteria:
 - (i) *To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and*
 - (ii) *There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.*
- (c) The storage of any materials or equipment must be elevated on fill to the regulatory flood protection elevation.
- (d) All service utilities, including ductwork, must be elevated or water-tight to prevent infiltration of floodwaters.
- (e) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- (f) All fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.
- (g) All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation, or must

have a flood warning /emergency evacuation plan acceptable to the City Council.

- (h) Accessory uses such as yards, railroad tracks, and parking lots may be at an elevation lower than the regulatory flood protection elevation. However, any facilities used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.
- (i) Interference with normal manufacturing/industrial plant operations must be minimized, especially along streams having protracted flood durations. In considering permit applications, due consideration must be given to the needs of industries with operations that require a floodplain location.
- (j) Manufactured homes and recreational vehicles must meet the standards of Section 1360.09 of this ordinance.

SECTION 1360.06 RESERVED FOR GENERAL FLOODPLAIN DISTRICT

SECTION 1360.07 LAND DEVELOPMENT STANDARDS

Subd.1. Subdivisions: No land may be subdivided which is unsuitable for reasons of flooding or inadequate drainage, water supply or sewage treatment facilities. Manufactured home parks and recreational vehicle parks or campgrounds are considered subdivisions under this ordinance.

- (a) All lots within the floodplain districts must be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation.
- (b) All subdivisions must have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation, unless a flood warning emergency plan for the safe evacuation of all vehicles and people during the regional (1% chance) flood has been approved by the City Council. The plan must be prepared by a registered engineer or other qualified individual, and must demonstrate that adequate time and personnel exist to carry out the evacuation.
- (c) For all subdivisions in the floodplain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads must be clearly labeled on all required subdivision drawings and platting documents.
- (d) In the General Floodplain District, applicants must provide the information required in Section 1360.06(2) of this ordinance to determine the regional flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory

flood protection elevation for the subdivision site.

- (e) If a subdivision proposal or other proposed new development is in a flood prone area, any such proposal must be reviewed to assure that:
 - (1) All such proposals are consistent with the need to minimize flood damage within the flood prone area,
 - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
 - (3) Adequate drainage is provided to reduce exposure of flood hazard.

Subd. 3. Building Sites. If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of manufactured homes) must be:

- (a) Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (b) Constructed with materials and utility equipment resistant to flood damage;
- (c) Constructed by methods and practices that minimize flood damage; and
- (d) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

SECTION 1360.08 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES

Subd. 1. Public Utilities: All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be floodproofed in accordance with the State Building Code or elevated to the regulatory flood protection elevation.

Subd. 2. Public Transportation Facilities: Railroad tracks, roads, and bridges to be located within the floodplain must comply with Sections 1360.04 and 1360.05 of this ordinance. These transportation facilities must be elevated to the regulatory flood protection elevation where failure or interruption of these facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

Subd. 3. On-Site Water Supply and Sewage Treatment Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems and are subject to the provisions in Minnesota Rules Chapter 4725.4350, as amended; and 2) New or replacement on-site

sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, they must not be subject to impairment or contamination during times of flooding, and are subject to the provisions in Minnesota Rules Chapter 7080.2270, as amended.

SECTION 1360.09 MANUFACTURED HOMES, MANUFACTURED HOME PARKS, AND RECREATIONAL VEHICLES.

Subd. 1. Manufactured Homes: New manufactured home parks and expansions to existing manufactured home parks are prohibited in any floodplain district. For existing manufactured home parks or lots of record, the following requirements apply:

If allowed in the Flood Fringe District, placement or replacement of manufactured home units is subject to the requirements of Section 1360.05 of this ordinance and the following standards.

- (a) New and replacement manufactured homes must be elevated in compliance with Section 5 of this ordinance and must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.
- (b) New or replacement manufactured homes in existing manufactured home parks must meet the vehicular access requirements for subdivisions in Section 7.22.

Subd. 2. Recreational Vehicles: New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Placement of recreational vehicles in existing recreational vehicle parks or campgrounds in the floodplain must meet the exemption criteria below or be treated as new structures meeting the requirements of this ordinance.

- (a) Recreational vehicles are exempt from the provisions of this ordinance if they are placed in any of the following areas and meet the criteria listed in Section 1360.09(2)(b):
 - (1) Individual lots or parcels of record.
 - (2) Existing commercial recreational vehicle parks or campgrounds.
 - (3) Existing condominium-type associations.
- (b) Criteria for Exempt Recreational Vehicles:
 - (1) The vehicle must have a current license required for highway use.
 - (2) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks.

- (3) No permanent structural type additions may be attached to the vehicle.
- (4) The vehicle and associated use must be permissible in any pre-existing, underlying zoning district.

SECTION 1360.10ADMINISTRATION

Subd. 1. Zoning Administrator: A Zoning Administrator or other official designated by the City Council must administer and enforce this ordinance.

Subd. 2. Permit Requirements:

(a) Permit Required. A permit must be obtained from the Zoning Administrator prior to conducting the following activities:

- (1) The erection, addition, modification, rehabilitation, or alteration of any building, structure, or portion thereof. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in this ordinance.
- (2) The use or change of use of a building, structure, or land.
- (3) The construction of a dam, fence, or on-site septic system, although a permit is not required for a farm fence as defined in this ordinance.
- (4) The change or extension of a nonconforming use.
- (5) The repair of a structure that has been damaged by flood, fire, tornado, or any other source.
- (6) The placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.
- (7) Relocation or alteration of a watercourse (including new or replacement culverts and bridges), unless a public waters work permit has been applied for.
- (8) Any other type of "development" as defined in this ordinance.

(b) Application for Permit. Permit applications must be submitted to the Zoning Administrator on forms provided by the Zoning Administrator. The permit application must include the following as applicable:

- (1) A site plan showing all pertinent dimensions, existing or proposed buildings, structures, and significant natural features having an influence on the permit.
- (2) Location of fill or storage of materials in relation to the stream

channel.

- (3) Copies of any required municipal, county, state or federal permits or approvals.
 - (4) Other relevant information requested by the Zoning Administrator as necessary to properly evaluate the permit application.
- (c) Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. No building, land or structure may be occupied or used in any manner until a certificate of zoning compliance has been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this ordinance.
- (d) Certification. The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Floodproofing measures must be certified by a registered professional engineer or registered architect.
- (e) Record of First Floor Elevation. The Zoning Administrator must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the floodplain. The Zoning Administrator must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.
- (f) Notifications for Watercourse Alterations. Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statutes, Section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
- (g) Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning Administrator must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

Subd. 3. Variances:

- (a) Variance Applications. An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with applicable state statutes and Section 1315 of the zoning ordinance.
- (b) Adherence to State Floodplain Management Standards. A variance must not allow a use that is not allowed in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.

- (c) Additional Variance Criteria. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:
- (1) Variances must not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - (2) Variances may only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (3) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (d) Flood Insurance Notice. The Zoning Administrator must notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and 2) Such construction below the base or regional flood level increases risks to life and property. Such notification must be maintained with a record of all variance actions.
- (f) Submittal of Hearing Notices to the Department of Natural Resources (DNR). The Zoning Administrator must submit hearing notices for proposed variances to the DNR sufficiently in advance to provide at least ten days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- (g) Submittal of Final Decisions to the DNR. A copy of all decisions granting variances must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- (h) Record-Keeping. The Zoning Administrator must maintain a record of all variance actions, including justification for their issuance, and must report such variances in an annual or biennial report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.

Subd. 4. Conditional Uses:

- (a) Administrative Review. An application for a conditional use permit under the provisions of this ordinance will be processed and reviewed in accordance with Section(s) 1320 of the zoning ordinance.

- (b) Submittal of Hearing Notices to the Department of Natural Resources (DNR). The Zoning Administrator must submit hearing notices for proposed conditional uses to the DNR sufficiently in advance to provide at least ten days' notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- (c) Submittal of Final Decisions to the DNR. A copy of all decisions granting conditional uses must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

SECTION 1360.11 NONCONFORMITIES

Subd. 1. Continuance of Nonconformities: A use, structure, or occupancy of land which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 1360.02(9)(w)(2) of this ordinance, are subject to the provisions of Sections 1360.11(1)(a) – 1360.11(1)(e) of this ordinance.

- (a) A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its flood damage potential or degree of obstruction to flood flows except as provided in 1360.11(b) below. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.
- (b) Any addition or structural alteration to a nonconforming structure or nonconforming use that would result in increasing its flood damage potential must be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP1 thru FP4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 1360.11(c) and 1360.11(d) below.
- (c) If any nonconformity is substantially damaged, as defined in Section 1360.02(9)(v) of this ordinance, it may not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in Sections 1360.04 or 1360.05 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe, respectively.
- (d) If any nonconforming use or structure experiences a repetitive loss, as defined in Section 1360.02(9)(r) of this ordinance, it must not be reconstructed except in conformity with the provisions of this ordinance.
- (e) Any substantial improvement, as defined in Section 1360.02(9)(w) of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of Section 1360.04 or 1360.05 of this ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District.

SECTION 1360.12 PENALTIES AND ENFORCEMENT

Subd. 1. Violation Constitutes a Misdemeanor: Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) constitute a misdemeanor and will be punishable as defined by law.

Subd. 2. Other Lawful Action: Nothing in this ordinance restricts the City of Deephaven from taking such other lawful action as is necessary to prevent or remedy any violation. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses will constitute an additional violation of this ordinance and will be prosecuted accordingly.

Subd. 3. Enforcement: Violations of the provisions of this ordinance will be investigated and resolved in accordance with the provisions of Section 220 of the code of ordinances. In responding to a suspected ordinance violation, the Zoning Administrator and City Council may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The City of Deephaven must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

SECTION 1360.13 AMENDMENTS

Subd. 1. Floodplain Designation – Restrictions on Removal: The floodplain designation on the Official Zoning Map must not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources (DNR) if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.

Subd. 2. Amendments Require DNR Approval: All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner must approve the amendment prior to community approval.

Subd. 3. Map Revisions Require Ordinance Amendments. The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section 1360.02(3) of this ordinance.

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Chapter 1370 CONSTRUCTION SITE RUNOFF CONTROL

Subd. 1 Intent. To promote the health, safety and general welfare of the citizens of Deephaven, Minnesota and protecting the City's environmental resources by reducing the discharge of pollutants into receiving water bodies, by requiring a sediment & erosion control program for construction activity as required the City of Deephaven Storm Water Management Program Permit.

Subd. 2 Findings. The City of Deephaven hereby finds that uncontrolled land disturbing activity at construction sites are subject to soil erosion where sediment and other pollutants enter into receiving water bodies adversely affecting the public health, safety and general welfare by impacting water quality, creating nuisances, impairing or permanently damaging environmental resources and otherwise hindering the ability of the City of Deephaven to provide adequate water, sewage, flood control and other community services.

Subd. 3 Purpose. The purpose of the ordinance is to promote, preserve and enhance the natural resources within the City of Deephaven and protect them from adverse effects occasioned by poorly sited development or incompatible activities by regulating land disturbing activities that would have an adverse and potentially irreversible impact on water quality, environmentally sensitive land and surface water bodies; by minimizing conflicts and encouraging construction site runoff control through proper evaluation, assessment, design and implementation of a erosion and sediment control program for site disturbance or development.

Subd. 4 Definitions.

For the purpose of this ordinance, the following terms, phrases, words and their derivatives shall have the meaning stated below. When inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directive.

1. "Applicant" any person who wishes to obtain a building permit, zoning or subdivision approval.
2. "Best Management Practices (BMPs)" means erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.

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

3. "Commissioner" means the Commissioner of the Minnesota Pollution Control Agency or the Commissioner's designee.

4. "Common Plan of Development or Sale" means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.
5. "Construction Activity" includes construction activity as defined in 40 C.F.R. part 122.26(b)(14)(x) and small construction activity as defined in 40 C.F.R. part 122.26(b)(15). This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated storm water runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling and excavating. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more.
6. "Dewatering" means the removal of water for construction activity. It can be a discharge of appropriated surface or groundwater to dry and/or solidify a construction site. It may require Minnesota Department of Natural Resources permits to be appropriated and if contaminated may require other MPCA permits to be discharged.
7. "Energy Dissipation" means methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to: concrete aprons, riprap, splash pads, and gabions that are designed to prevent erosion.
8. "Erosion Prevention" means measures employed to prevent erosion including but not limited to: soil stabilization practices, limited grading, mulch, temporary or permanent cover, and construction phasing.
9. "Final Stabilization" means that either:
 - a. All soil disturbing activities at the site have been completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed;
 - b. For individual lots in residential construction by either:
 - (a) The homebuilder completing final stabilization as specified above, or
 - (b) The homebuilder establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization. (Homeowners typically have an incentive to put in the landscaping functionally equivalent to final stabilization as quick as possible to keep mud out of their homes and off sidewalks and driveways.); or
10. "General Contractor" means the party who signs the construction contract with the owner to construct the project described in the final plans and specifications. Where the construction project involves more than one contractor, the general contractor will be the party

responsible for managing the project on behalf of the owner. In some cases, the owner may be the general contractor. In these cases, the owner may contract an individual as the operator who would become the Co-Permittee.

11. "Impervious Surface" means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.
12. "National Pollutant Discharge Elimination System (NPDES)" means the program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345..
13. "Normal Wetted Perimeter" means the area of a conveyance, such as a ditch, channel, or pipe that is in contact with water during flow events that are expected to occur once every year.
14. "Notice of Termination" means notice to terminate coverage under this permit after construction is complete, the site has undergone final stabilization, and maintenance agreements for all permanent facilities have been established, in accordance with all applicable conditions of General Permit Authorization to Discharge Storm Water Permit Associated with Construction Activities (MN R100001). Notice of Termination forms are available from the MPCA.
15. "Operator" means the person (usually the general contractor), designated by the owner, who has day to day operational control and/or the ability to modify project plans and specifications related to the SWPPP. The person must be knowledgeable in those areas of the permit for which the operator is responsible, (MN R100001: Part II.B. and Part IV.) and must perform those responsibilities in a workmanlike manner.
16. "Owner" means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease holder, the party or individual identified as the lease holder; or the contracting government agency responsible for the construction activity.
17. "Permanent Cover" means final stabilization. Examples include grass, gravel, asphalt, and concrete.
18. "Permittee" means a person or persons, firm, or governmental agency or other institution that signs the application submitted to the MPCA and is responsible for compliance with the terms and conditions of this permit.
19. "Saturated Soil" means the highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information.
20. "Sediment Control" means methods employed to prevent sediment from leaving the site. Sediment control practices include silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.

21. "Small Construction Activity" means small construction activity as defined in 40 C.F.R. part 122.26(b)(15). Small construction activities include clearing, grading and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres.
22. "Stabilized" means the exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, wood fiber blanket, or other material that prevents erosion from occurring. Grass seeding is not stabilization.
23. "Standard Plates" means general drawings having or showing similar characteristics or qualities that are representative of a construction practice or activity.
24. "Storm water" is defined under Minn. R. 7077.0105, subp. 41(b), and includes precipitation runoff, storm water runoff, snow melt runoff, and any other surface runoff and drainage.
25. "Storm Water Pollution Prevention Plan" means a plan for storm water discharge that includes erosion prevention measures and sediment controls that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution.
26. "Surface Water or Waters" means all streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private.
27. "Temporary Erosion Protection" means methods employed to prevent erosion. Examples of temporary cover include; straw, wood fiber blanket, wood chips, and erosion netting.
28. "Underground Waters" means water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground. The term ground water shall be synonymous with underground water.
29. "Waters of the State" (as defined in Minn. Stat. § 115.01, subd. 22) 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.
30. "Water Quality Volume" means ½ inch of runoff from the new impervious surfaces created by this project and is the volume of water to be treated in the permanent storm water management system, as required by this permit except as provided in Appendix A.C.2.
31. "Wetland" or "Wetlands" is defined in Minn. R. 7050.0130, subp. F and includes those areas that are inundated or saturated by surface water or groundwater at

a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Constructed wetlands designed for wastewater treatment are not waters of the state. Wetlands must have the following attributes:

- a. A predominance of hydric soils;
- b. Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition; and
- c. Under normal circumstances support a prevalence of such vegetation.

Subd. 5 Scope and Effect

A. Applicability. Every applicant for a building permit, subdivision approval, or a permit to allow land disturbing activities greater than or equal to one acre or part of a larger common plan or development greater or equal to one acre or smaller area where the Zoning Administrator determines the activity poses a risk to water resources must submit a storm water pollution prevention plan to the Zoning Administrator. No building permit, Subdivision approval, or permit to allow land disturbing activities shall be issued until approval of the storm water pollution prevention plan or a waiver of the approval requirement has been obtained in strict conformance with the provisions of this ordinance. The provisions of Subd. 6.B of this ordinance apply to all land, public or private. Nothing in this ordinance shall relieve the applicant of other County, State, Federal or local watershed district requirements that may be applicable to the applicants proposed activities.

Land disturbing activities of 5,000 square feet or greater shall be governed by the rules of the Minnehaha Creek Watershed District or the Riley-Purgatory-Bluff Creek Watershed District, whichever has jurisdiction over the subject property. Copies of all applicable applications and permits required or issued by the watershed district must be submitted to the City prior to the issuance of a building permit.

B. Exemptions. The provisions of this ordinance do not apply to:

1. Any part of a Subdivision if a plat for the Subdivision has been approved by the City Council on or before the effective date of this ordinance.
2. A lot for which a building permit has been approved on or before the effective date of this ordinance.
3. Installation of fence, sign, telephone, utilities and electric poles and other kinds of posts or poles.
4. Emergency work to protect life, limb or property.
5. Tilling, planting, or harvesting of agricultural, horticultural, or silvicultural (forestry) crops.
6. Minor land disturbance activities such as home gardens and an individual's home landscaping, repairs and maintenance work.

7. Additions or modifications to existing single family structure which result in creating under five thousand (5,000) square feet of exposed soil or impervious surface and/or is part of a larger common development plan.

Subd. 6 Storm water pollution prevention plan submittal procedures

- A. Application. A copy of the written application for General Permit Authorization to Discharge Storm Water Permit Associated with Construction Activities (MN R100001) and all supporting documentation including a copy of the proposed storm water pollution prevention plan, including evidence of the permit fee payment, and/or the application requirements of the Minnehaha Creek Watershed District or the Riley Purgatory Bluff Creek Watershed District, as applicable shall be filed with the City and shall include a statement indicating the grounds upon which the approval is requested, that the proposed use permitted by right or as an exception in the underlying zoning district, and adequate evidence showing that the proposed use will conform to the standards set forth in this ordinance. Prior to applying for approval of a storm water pollution prevention plan, an applicant may have the storm water pollution prevention plan reviewed by the appropriate departments of the City.

Two sets of clearly legible blue or black lined copies of drawings and required information shall be submitted to the Zoning Administrator and shall be accompanied by a receipt from the City Clerk evidencing the payment of all required fees for processing and/or financial securities in accordance with the City. The permit letter and certification acknowledging permit coverage under General Permit MN R10001 from Minnesota Pollution Control Agency shall also be submitted upon receipt. Drawings shall be prepared to a scale appropriate to the site of the project and suitable for the review to be performed. At a minimum, the scale shall be 1 inch equals 100 feet.

- B. Storm water pollution prevention plan. At a minimum, the storm water pollution prevention plan shall fully comply with the requirement of Parts III and IV of General Permit Authorization to Discharge Storm Water Associated with Construction Activity, Permit No. MN R100001. All submissions and notifications required Permit No. MN R100001 shall also be submitted to the Zoning Administrator.

Subd. 7 Enforcement Procedures

- A. Right of Entry. The applicant shall promptly allow the city and their authorized representatives, upon presentation of credentials to:
 - 1) Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations, inspections or surveys.
 - 2) Bring such equipment upon the permitted site as is necessary to conduct such surveys and investigations.
 - 3) Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of this permitted site.
 - 4) Inspect the storm water pollution control measures.
 - 5) Sample and monitor any items or activities pertaining to storm water pollution control measures.

- 6) Any temporary or permanent obstruction to the safe and easy access of such an inspection shall be promptly removed upon the inspector's request. The cost of providing such access shall be born by the applicant.
- B. Warning letter. If upon inspection by the City or designated representative, the applicant fails to implement the erosion and sediment control practices outlined in the approved stormwater pollution prevention plan or minimum BMP standards outlined in Subd. 6B, the City will notify the applicant with a letter of warning which outlines the issues of noncompliance and a timeline for completion of any work to bring the site into compliance.
- C. Action Against the Financial Security. If appropriate actions by the applicant have not been completed within 7 days after notification by the City, the City may act against the financial security if any of the conditions listed below exist. The city shall use funds from this security to finance any corrective or remedial work undertaken by the City or a contractor under contract to the City and to reimburse the City for all direct cost incurred in the process of remedial work including, but not limited to, staff time and attorney's fees.
- 1) The applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of the city approved grading plan.
 - 2) The applicant fails to conform to any city approved grading plan and/or the storm water pollution control plan as approved by the city, or related supplementary instructions.
 - 3) The techniques utilized under the storm water pollution control plan fail within one (1) year of installation.
 - 4) The applicant fails to reimburse the city for corrective action taken.
 - 5) Emergency action under part D.
- D. Emergency Action. If circumstances exist such that noncompliance with this ordinance poses an immediate danger to the public health, safety and welfare, as determined by the city engineer, the city may take emergency preventative action. The city shall also take every reasonable action possible to contact and direct the applicant to take any necessary action. Any cost to the city may be recovered from the applicant's financial security.

Subd. 8 Penalty

Any person, firm or corporation violating any provision of this ordinance shall be fined not less than five dollars nor more than five hundred dollars for each offense and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Subd. 9 Severability

The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.