

## CHAPTER 13. ZONING AND LAND USE

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## CHAPTER 13. ZONING AND LAND USE

### 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, commonly known as the St. Therese property: single family and multiple family dwellings and public uses on parcels containing a minimum of three acres, but no more than six 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.

### 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 special 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 Regulations. The following “Key to Schedule” and “Schedule of Uses” govern use of land within the jurisdictional limits of the City.

Key to Schedule P - Permitted Use

O - Prohibited Use

A - Use allowed by Special Use Permit

Subd. 1. Schedule of Uses

Uses	District	R1	R2	R3	C1	C2	PUD1	PUD2
	<u>Public, Semi-Public, Institutional</u>							
(1)	Church or other place of worship, parish house, convent, rectory, or other religious institution,	A	A	A	P	P	P	P
(2)	School; public, religious, or denominational, except school for teaching music, dance, or business vocations.	A	A	A	P	P	P	P
(3)	Public buildings and premises for governmental and public safety uses; heavy equipment or material storage or maintenance by the City only.	A	A	A	P	P	P	P
(4)	Governmental heavy equipment storage or maintenance, except by the City.	O	O	O	O	O	O	O
(5)	Public utility buildings and structures.	A	A	A	P	P	A	A
(6)	Library, museum or civic center.	A	A	A	P	P	A	A
(7)	Public recreational or water supply use.	A	A	A	P	P	A	A
(8)	Country club, tennis club, or other non-profit social, civic or re-creational lodge or club, but not including any use the principal activity of which is one customarily conducted as a business.	O	O	O	O	O	O	O
(9)	Nursery school or other use for the day care of children or a privately organized camp.	A	A	A	A	A	A	A
(10)	Hospital, sanitarium, nursing home, rest home or convalescent home, charitable institution or similar non-correctional institutional use.	O	O	O	O	O	O	O
(11)	<u>Agricultural</u> Farm	O	O	O	O	O	O	O

(12) Sales room or stand for display or sale of agricultural or horticultural products, all of which are grown or produced within the City. A A A A A A A

(13) Sales room or stand for display or sale of agricultural or horticultural products not grown or produced on the premises by a resident proprietor. O O O O O O O

Residential

(14) Single family detached dwelling and accessory structures. P P P P P P P

(14a) Multiple family dwellings including senior citizen housing, and accessory structures. O O O O O P P

(15) Parking or storage of trucks, flatbed or semi-trailers in excess of 9000 pounds gross licensed weight. O O O A A A A

(16) Temporary sign containing not more than 6 square feet of area pertaining to leasing or selling pre-mises on which such sign is situated; permanent name sign or plaque identifying resident owners and containing not more than 4 square feet of area. P P P P P P P

(17) Use of camper, trailer, mobile home or any other temporary facility as a residence except for manufactured homes, as defined under M.S. 327.31, which meet the requirements for dwelling under this Code and all other requirements of this Code, and except for the temporary use permitted in Section 1120.08. O O O O O O O

Commercial

(18) Amusement or recreation establishment such as commercial bowling alley, pool hall, game room, swimming pool, or skating rink. O O O O O O O

(19) Animal hospital or kennel. O O O O O O O

(20) Antique shop. O O O P P O O

(21) Art gallery. O O O P P O O

(22)	Art studio.	O	O	O	P	P	O	O
(23)	Auto agency selling or displaying new or used vehicles, or salesroom for automobiles.	O	O	O	O	O	O	O
(24)	Automobile repair which is limited to minor repairs, replacement of parts, and limited engine service and maintenance 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.	O	O	O	A	A	O	O
(25)	Automobile repair which includes major repairs, such as: general vehicle overhauling; rebuilding or reconditioning of engines, vehicle bodies or trailers; collision service involving major body or frame repair; engine steam cleaning; major vehicle painting; or repair of trucks exceeding 1-1/2 ton capacity.	O	O	O	O	O	O	O
(26)	Automotive accessory store, excluding repairs and servicing.	O	O	O	A	A	O	O
(27)	Automotive "gasoline" or service station.	O	O	O	A	A	O	O
(28)	Bakery, retail.	O	O	O	A	A	O	O
(29)	Bank or other financial institution.	O	O	O	P	P	O	O
(30)	Barber shop.	O	O	O	P	P	O	O
(31)	Beauty parlor.	O	O	O	P	P	O	O
(32)	Bicycle, retail sales, non-motorized.	O	O	O	P	P	O	O
(33)	Blueprinting or Photostatting establishment	O	O	O	O	A	O	O
(34)	Boat or marine store	O	O	O	O	O	O	O
(34)	Book or stationery store.	O	O	O	P	P	O	O
(35)	Business machine sales and service shop.	O	O	O	A	P	O	O
(37)	Camera and photographic supply store.	O	O	O	P	P	O	O
(38)	Candy or ice cream store.	O	O	O	A	A	O	O
(39)	Car wash.	O	O	O	O	O	O	O
(40)	Card shop.	O	O	O	P	P	O	O
(41)	Catering establishment.	O	O	O	A	A	O	O
(42)	Clothing store.	O	O	O	P	P	O	O
(43)	Club or lodge hall.	O	O	O	O	O	O	O
(44)	Coin or stamp shop.	O	O	O	P	P	O	O
(45)	Commercial outdoor amusement or recreational establishment, temporary or permanent	O	O	O	O	O	O	O
(46)	Delicatessen store, without provision for consumption of food on the premises.	O	O	O	A	A	O	O
(47)	Drive-in or open air business and appurtenant buildings or structures.	O	O	O	O	O	O	O

(48)	Drive-in, or open air restaurant or other establishment providing food or beverage, including all establishments selling, serving or offering food directly to customers either waiting in parked vehicles or who return to their vehicles to consume the food while on the premises.	O	O	O	O	O	O	O
(49)	Drug store.	O	O	O	P	P	O	O
(50)	Dry cleaning and laundry receiving and pick-up station, excluding laundering and, dry cleaning processes.	O	O	O	P	P	O	O
(51)	Electrical and household appliance sales.	O	O	O	P	P	O	O
(52)	Employment agency.	O	O	O	P	P	O	O
(53)	Exterminating business.	O	O	O	O	A	O	O
(54)	Fabric store.	O	O	O	P	P	O	O
(55)	Florist shop.	O	O	O	P	P	O	O
(56)	Frozen food storage or rental or lockers.	O	O	O	O	O	O	O
(57)	Furniture store.	O	O	O	P	P	O	O
(58)	Furniture upholstering.	O	O	O	A	A	O	O
(59)	Furrier shop, including the storage and conditioning of furs when conducted as an incidental part of the principal use.	O	O	O	P	P	O	O
(60)	Garden supply, tool or seed store.	O	O	O	P	P	O	O
(61)	Gift shop.	O	O	O	P	P	O	O
(62)	Greenhouse, retail.	O	O	O	O	O	O	O
(63)	Greenhouse or nursery, wholesale.	O	O	O	O	A	O	O
(64)	Grocery store over 3800 square feet of gross floor space.	O	O	O	O	O	O	O
(65)	Grocery store less than 3800 square feet of gross floor area.	O	O	O	A	A	O	O
(66)	Hardware store, excluding lumber.	O	O	O	P	P	O	O
(67)	Hobby shop for the sale of goods to be	O	O	O	P	P	O	O

assembled and used on the premises.

(68)	Home repair, maintenance or building or remodeling supplies retail store.	O	O	O	O	O	O	O
(69)	Household furnishings, fixtures or accessories store.	O	O	O	P	P	O	O
(70)	Hotel or motel, tourist home, or overnight cabin.	O	O	O	O	O	O	O
(71)	Interior decorating store or shop.	O	O	O	P	P	O	O
(72)	Jewelry store.	O	O	O	P	P	O	O
(73)	Junk yard, dump, or scrap metal yard.	O	O	O	O	O	O	O
(74)	Laboratory.	O	O	O	O	A	O	O
(75)	Launderette or dry cleaning, establishment which provides automatic, self-service facilities.	O	O	O	O	O	O	O
(76)	Leather goods or luggage store.	O	O	O	P	P	O	O
(77)	Small fabrication, processing, packaging or assembly shop.	O	O	O	O	A	O	O
(78)	Liquor store.	O	O	O	O	O	O	O
(79)	Locksmith shop.	O	O	O	P	P	O	O
(80)	Medical or dental clinic.	O	O	O	P	P	O	O
(81)	Multiple commercial units in integrated design, including a structure or series of structures designed for occupancy by more than one business.	O	O	O	A	A	O	O
(82)	Musical instrument store.	O	O	O	P	P	O	O
(83)	Newsstand.	O	O	O	O	O	O	O
(84)	Office, business or professional.	O	O	O	P	P	O	O

(85)	Office supply store, retail.	O	O	O	P	P	O	O
(86)	Optical store.	O	O	O	P	P	O	O
(87)	Orthopedic and medical appliance store, excluding manufacturing or assembly.	O	O	O	P	P	O	O
(88)	Paint, or wallpaper store.	O	O	O	P	P	O	O
(89)	Parking lot or garage other than those accessory to a principal use.	O	O	O	O	O	O	O
(90)	Pawn shop.	O	O	O	O	O	O	O
(91)	Pet shop.	O	O	O	O	O	O	O
(92)	Phonograph, record and sheet music store.	O	O	O	P	P	O	O
(93)	Photography studio.	O	O	O	P	P	O	O
(94)	Physical culture and health services, reducing salons and masseurs.	O	O	O	A	A	O	O
(95)	Picture framing or picture store.	O	O	O	P	P	O	O
(96)	Rental agency for items other than real estate and other than the items referred to in subsection 1305.02 (118).	O	O	O	O	O	O	O
(97)	Repair garage for motor vehicles as a part of a “gasoline” or service station and limited to maintenance and minor repairs.	O	O	O	A	A	O	O
(98)	Repair or “fix-it” shop.	O	O	O	A	A	O	O

(99)	Restaurant, if located more than 50 feet from a residential district (other than residentially zoned land used for public, semipublic or institutional purposes), providing for table service or self service of food and nonalcoholic beverages, but excluding: (a) any drive-in or drive-up food service, (b) operation of a food service business of the type commonly known and referred to as a “fast food” business.	O	O	O	A	A	O	O
(99A)	Restaurant other than as described in Section 1305.02 (99)	O	O	O	O	O	O	O
(100)	Salesroom for motor vehicles, trailers, boats, farm implements or machinery.	O	O	O	O	O	O	O
(101)	School for teaching music, dance or business vocations.	O	O	O	A	A	O	O
(102)	Shoe or hat repair	O	O	O	P	P	O	O
(103)	Signs visible from the exterior of the premises, except as permitted by Section 1305.02 (16).	O	O	O	A	A	O	O
(104)	Sporting or camping goods store.	O	O	O	P	P	O	O
(105)	Storage of junk, building materials, supplies or business merchandise, which is not enclosed within a building, for a period of more than 30 days as to any individual items or class of items.	O	O	O	O	O	O	O
(106)	Tailor or dress making shop.	O	O	O	P	P	O	O
(107)	Tavern.	O	O	O	O	O	O	O
(108)	Taxidermist shop.	O	O	O	O	A	O	O
(109)	Theater.	O	O	O	O	O	O	O
(110)	Tobacco shop.	O	O	O	P	P	O	O
(111)	Toy shop.	O	O	O	P	P	O	O

(112)	Trading stamp redemption store.	O	O	O	O	O	O	O
(113)	Travel agency or transportation ticket office	O	O	O	P	P	O	O
(114)	Undertaking or funeral home establishment.	O	O	O	O	O	O	O
(115)	Variety store.	O	O	O	P	P	O	O
(116)	Vending machine as principal use.	O	O	O	O	O	O	O
(117)	Wholesale office or showroom.	O	O	O	O	A	O	O
(118)	Outpatient veterinary clinic and pet grooming services, with no kenneling or keeping of animals overnight.	O	O	O	A	A	O	O
(119)	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.	O	O	O	A	A	O	O
(120)	Mail delivery and mail pickup station with locked mail boxes and office for mail and small package delivery and services, telegraph services, wrapping, copying, and related services.	O	O	O	A	A	O	O
(121)	Automatic transmission repair facility.	O	O	O	A	A	O	O
(122)	Delicatessen store, including consumption of food on the premises (either inside or outside the building) and catering business, within a grocery operating as an existing use in a residential district as permitted by Section 1305.02, Subd. 2.	A	A	A	O	O	O	O

- |  |               |
|--|---------------|
| (123) 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.  | O O O A A O O |
| (124) Use lawfully existing (but only to the extent lawfully existing) on the effective date of this ordinance which is prohibited or allowed by special use permit under this ordinance.  | P P P P P P P |
| (125) Restoration or alteration of a use permitted only pursuant to Section 1305.02, Subd. 2(1) and if such use constitutes more than one dwelling on a single residential tract, extension or expansion of the dwelling determined by the City Council to be the principal dwelling on the tract. | A A A A A A A |
| (126) Extension or expansion of a use permitted pursuant to Section 1305.02 Subd. 2(1) and prohibited by this ordinance, except as permitted pursuant to Section 1305.02 Subd. 2(2).   | O O O O O O O |
| (127) Extension or expansion of a use permitted pursuant to Section 1305.02 Subd. 2(1) and allowed by special use permit under this ordinance.   | A A A A A A A |
| (128) Use permitted only pursuant to Section 1305.02 Subd. 2(1), allowed by special use permit under this ordinance and abandoned for a period of one year.  | A A A A A A A |
| (129) Use permitted only pursuant to Section 1305.02 Subd. 2(1) prohibited under this ordinance and abandoned for a period of one  | O O O O O O O |

year

1305.03 Business Hours. Businesses which sell goods and services to consumers may be open for the sale of goods and services only between the hours of 6 o'clock AM and 9:30 o'clock PM. This restriction will not apply to office use or use other than for the sale of goods and services. Businesses on property adjacent to a residential district may open for loading or shipment only between the hours of 7:00 o'clock AM and 9:30 o'clock PM. Lighted signs permitted to businesses may operate such interior and/or exterior lighted signs during business hours only.

1305.04 Performance Standards. Permitted uses, uses by special 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.

## 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 special 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 special 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 Special 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 special 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, which 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 Special 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 special 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.

**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.

Subd. 1. Existing Structures. An existing structure which does not conform to the dimensional or design requirements may be altered or restored without a variance if there is no exterior alteration, or if the alteration or restoration or enlargement itself meets the dimensional and design requirements. No variance will be required for interior alterations or for ordinary repairs and maintenance done in accordance with applicable building codes and regulations notwithstanding the fact that the structure does not conform to the dimensional or design requirements. Ordinary repairs and maintenances may include repair, replacement, or addition of roofing, siding, and windows so long as the same does not involve structural change.

Subd. 2. Undersized Lots. A structure may be built on any lot or tract of land of a size less than that required by this Section if such lot or tract of land is included in a plat or registered land survey filed for record after May 4, 1960 in accordance with all applicable laws, ordinances and regulations, and if there is compliance with all of the other dimensional requirements. If a new structure is to be built on any other lot or tract of land of a size less than that required by this Section, a variance must first be obtained in accordance with this Section.

1310.02 Schedule of Dimensional Requirements. The following dimensional requirements are stated in lineal feet (except for lot sizes, which are stated in square feet). Except as otherwise stated in the table, the dimensional requirements will apply to all structures except accessory structures for which a setback permit has been issued. Roof overhangs will be disregarded up to a distance of 3 feet measured on a horizontal line for purposes of determining setbacks.

Dimension	Districts						
	R1	R2	R3	C1	C2	PUD1	PUD2
Minimum Lot Size (square feet)	60,000	40,000	20,000	10,000	10,000	130,000	130,000
Minimum Yards						Footnote no. 2	Footnote no. 2
Front Setback:	50	50	35	15	15	50	50
Side Setback:	30	25	Foot-note no. 1	10	10	30'	30'
Rear Setback:	30	25	15	20	20	30'	30'
Minimum Road Frontage	100	75	50	100	100	--	--

Minimum Lake Frontage	125	125	100	--	--	--	--
Maximum Heights <sup>3</sup>	40	35	30	30	30	2 stories or 30 feet whichever is less	2 stories or 30 feet whichever is less
Minimum Widths of single family residential dwellings.	25	25	25	--	--	25	25
Lake Minnetonka Setback from 929.4 feet above sea level elevation.	100	100 <sup>4</sup>	100	--	--	--	--
Lakes other than Lake Minnetonka Setback from Shoreline.	75	75	75	75	75	--	--
Minimum building setback in commercial district from land in a residential district.	--	--	--	50	50	--	--

1. The side yard setback shall be no less than 15 feet on one side and no less than 10 feet on the other side. Corner lots must have a setback of at least 25 feet on the street side yard with a setback of at least 10 feet on the interior side yard.
2. As measured from the external property lines of the PUD
3. There shall be no maximum building height limitation for governmental structures and facilities (including water towers), chimneys, flag poles, church spires and belfries.
4. The lake yard setback shall be no less than 75 feet from the Ordinary High Water Level for those lots located on the natural shore line of Carson's Bay and are part of Block 2, Deephaven Shore Acres and Burton's First Addition.

### 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.

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 Council 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.
- (3) If the property consists of two or more separate parcels, the parcels have been combined with the approval of the Council so as to constitute a single lot or parcel by the recording of a new plat or a document approved by the Council in lieu of a plat.
- (4) The owner of the property, any contract for deed vendor and any mortgagee, have executed a development agreement in recordable form controlling development on the property in a manner which enables the Council to find that:

- (a) The configuration and locations of the buildings and other hard surfaces and the extent of total hard surface coverage do not have a material adverse effect on ground water retention, storm water drainage and runoff, or the water quality of lakes, ponds or wetlands.

(b) The locations, massing and heights of buildings and other structures on the property do not have an unreasonable effect on views, light, air or noise relative to neighboring properties, and do not otherwise have a material adverse effect on the values of neighboring properties and do not adversely effect the character of the neighborhood.

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

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(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 establishment floor area	150 square feet of gross
(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 feet of gross floor area, whichever is greater
(h) Automobile Service Stations	1/3 service bay and employee on shift and service vehicle
(i) Light industry and ware- housing	750 square feet of gross floor area
(j) Other commercial	300 square feet of gross floor area

\* Where computation results in a fraction of a parking space, only fractions of 1/2 or more will be counted as one.

#### 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 over 3 - 1/2 feet in height shall comply with the following requirements:

(a) Shall not be higher than 6' unless it is a chainlink or wire mesh fence used for athletic purposes such as tennis courts, racquetball courts and similar type of facilities.

(b) 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) Shall comply with the visual clearance requirements of Section 1310.07.

(f) 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 special 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 accessory structure may not exceed 15 feet, or be higher than the principle structure.
- (b) No accessory structure may be closer to any principal structure, than a distance equal to the height of the accessory structure.
- (c) 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) No detached accessory structure shall be used for human habitation.

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.

1310.12 Non-Conforming Use. 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.

1310.13 Construction Site Management. The purpose of these requirements is to ensure preparation and implementation of construction site management plans in order to limit the impact of construction on the immediate neighborhood.

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

- (a) Prior to issuance of a building permit, the applicant will be required to provide proof that they have contacted all adjacent property owners within one hundred (100) feet of the applicant's property to make them familiar with the proposed construction and to provide them with contact information for the applicant.
- (b) Work at construction sites shall be limited to 7:00 a.m. to 9:30 p.m. Monday through Friday and 8:00 a.m. to 8:00 p.m. on weekends and holidays.
- (c) The applicant shall submit a Construction Site Management Plan as outlined in Subdivision 2 of this Section.
- (d) Onsite parking of construction vehicles and equipment will be provided to the extent feasible. If street parking is necessary, it must be done in coordination with the city. Parking will be limited to one side of the street, preferably adjacent to the construction site.
- (e) All equipment shall be stored within the confines of the construction site. If necessary, a property line fence will be required to ensure that no construction vehicles, materials or other debris encroaches onto adjacent properties.
- (f) A functioning toilet and a minimum of one dumpster are required on the site prior to commencement of construction activity. These are to be considerably placed in relation to adjacent properties.
- (g) Daily site clean up of debris and garbage is required.
- (h) Weekly street cleaning is required to remove all dirt, mud and debris from public streets. City staff will monitor the condition of public streets and may require more frequent street cleaning.

Subdivision 2. Construction Site Management Plan. The Construction Site 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 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) All property line fencing and erosion control fencing.
- 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 requiring:

- 1) A statement that all garbage/debris on the site will be picked up daily.
- 2) A statement that the street will be swept clean once per week, and that the applicant will endeavor to have sweeping take place on Friday, so the street is clean for the weekend.
- 3) A statement that the applicant has communicated with adjacent property owners that the project will be commencing and have provided them with contact information.

(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 on completing the installation of all 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 applicant.

## 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. Towers may only be located on parcels owned and controlled by the City of Deephaven. Towers are not permitted in public rights-of-way.

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 of 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. Collocation 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 collocation.

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 Special Uses.

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

- (a) Applications for special use permits under this Section shall be subject to the procedures and requirements of Section 1320 of this Code, except as modified by this Section.
- (b) In granting a special 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 special 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 special use permits pursuant to Section 1320 of this Code, applicants for a special 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 special use permits for Towers. In addition to any standards for consideration of a special use permit, applications pursuant to Section 1320 of this Code, the City Council shall consider the following factors in determining whether to issue a special 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 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 special 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 special 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 special 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 1315 VARIANCES

1315.01 Scope. This Section applies to dimensional requirements for all residential and commercial uses. This Section does not apply to, or provide for, issuance of a special use permit or allowance of a use.

1315.02 Evidence. No variance will be granted unless the evidence presented discloses all of the following facts:

- (a) The subject matter of the application is within the scope of this section.
- (b) Strict enforcement would cause undue hardship because:
  - (1) The property cannot be put to a reasonable use without the variance.
  - (2) The circumstances causing the hardship were not created by the owner.
  - (3) The variance, if granted, will not alter the essential character of the locality.
  - (4) Economic considerations alone are not the basis of the hardship.

- (c) The circumstances causing the hardship are unique to the individual property under consideration.
- (d) The granting of the variance is in keeping with the spirit and intent of this Code.

1315.03 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.

Subd. 2. Planning Commission Recommendation. The Planning Commission will consider the application at any following regular or special meeting. The Planning Commission will make a recommendation to the Council, sitting as the Board of Appeals, 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 1315.02
- (b) Recommend that the variance application be denied because the applicant did not present sufficient evidence for the Planning Commission to make all of the findings required under Section 1315.02.

Subd. 3. Council Consideration. After the minutes of the Planning Commission meeting have been forwarded to the Council, the Council will consider the application and hold a public hearing on the matter at its next regular monthly meeting and at following regular or special meetings if further consideration is necessary. Within 60 days after its first consideration, the Council will by motion grant or deny the application according to the provisions of Section 1315.02 and will make a record in the minutes stating its conclusions with respect to each of the findings required under Section 1315.02.

Subd. 4. Notice. The Clerk will mail notice of the report of the Planning Commission and of the next Council meeting at which the variance application may be heard at least 10 days prior to the Council hearing. This notice will be mailed to all persons who own property within 250 feet of the perimeter of the parcel in question, to the applicant and to the Councilmembers.

Subd. 5. 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.

1315.04. 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, or if the property is conveyed to a different owner prior to the commencement of construction, the variance will expire and be of no further force or effect.

## SECTION 1320 SPECIAL USE PERMITS

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

1320.02 Special Use Permits for Additional or Permitted Uses. Under the procedure provided in this Section, additional and permitted uses allowed by special 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 special use permits for such uses, imposing limitations and safeguards in the permits.

1320.03 Evidence. In considering a request for a special 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 special 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 Recommendation. The Planning Commission will consider the application at any following regular or special meeting. After consideration, the Planning Commission will recommend to the Council 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 report of the Planning Commission and of the next Council meeting at which the application may be heard at least 10 days before the Council hearing. The notice will be mailed to all persons who own property within 350 feet of perimeter of the parcel in question, to the applicant and to Councilmembers.

Subd. 4. Council Hearing. The Council will consider the application at any following regular or special meeting. It will conduct a public hearing on any application at its next regular meeting held not sooner than 10 days after the

report of the Planning Commission. 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. 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 special use permit.

Subd. 6. Reconsideration. Whenever an application for a special use permit has been considered and denied, a similar application for a special 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 special 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 Chownen'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 special 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 impervious surface of buildings and driveways, or other impervious surfaces 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 Districts. 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.

#### 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
Special 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.

## 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 special 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.

1340.07 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 Finished Grade means the elevation of grade at the base of an existing structure or the existing grade of a vacant lot. Regulation of finished grade shall be as follows:
- a) Finished grade of construction shall not increase more than one foot above the grade of an existing structure for structures to be removed or expanded unless a Special Use Permit is granted by the City in accordance with Section 1320 of this code.

- b) Finished grade of construction on a vacant lot shall not increase more than one foot of the existing elevations on the property unless a Special Use Permit is granted by the City in accordance with Section 1320 of this code.

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

1345.28 Front Set-Back 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 Hardship means the same as that term is defined in Minnesota Statutes, Chapter 394 (for counties) or Chapter 462 (for municipalities).

1345.31 Height of Building means the vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a roof or average height of the highest gable of a pitched or hipped roof.

1345.32 House means a principal residential structure.

1345.33 Impervious Cover means any surface impervious or resistant to the free flow of moisture or surface water seeping into the ground. Impervious cover shall include but not be limited to all buildings, driveways and parking areas whether paved or not, tennis courts, sidewalks, walkways, patios, boardwalks, decks and swimming pools.

1345.34 Intensive Vegetation Clearing means the complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

1345.35 Internal means wholly or partially inside a parcel.

1345.36 Jurisdiction or Jurisdictional means lawful or legal area or scope.

1345.37 Jurisdictional Limits means the geographical area over which lawful authority to govern exists.

1345.38 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.

1345.39 Light Industrial means a manufacture or service where no heavy equipment is

used.

- 1345.40 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.
- 1345.41 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.
- 1345.42 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.
- 1345.43 Lot Width means the shortest distance between lot lines measured at the midpoint of the building line.
- 1345.44 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.
- 1345.45 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.
- 1345.46 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.
- 1345.47 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.
- 1345.48 Perimeter means the whole outer boundary of an object or thing.
- 1345.49 Permitted means allowed.
- 1345.50 Planning Agency means the Planning Commission or planning department as created by the City.
- 1345.51 Planning Commission means the commission created and constituted under Section 1335.03.
- 1345.52 Prohibited means not allowed.

- 1345.53 Public Building means a governmental structure.
- 1345.54 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.
- 1345.55 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.
- 1345.56 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.
- 1345.57 Regulation means a control or control measure.
- 1345.58 Residential means private non-commercial housing.
- 1345.59 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.
- 1345.60 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.
- 1345.61 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.
- 1345.62 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.

- 1345.63 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.
- 1345.64 Shoreland means land located within the following distances from public waters; 1,000 feet from the normal highwater 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.
- 1345.65 Side Setback means the right angle distance of a structure from a lot line not identified as a front or rear.
- 1345.66 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.
- 1345.67 Special Use Permit means formal written authorization allowing a particular use, granted and issued by the Council.
- 1345.68 Steep Slope means land where development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this ordinance. Where specific information is not available, steep slopes are lands 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 the following: (1) on-grade stairways and steps not exceeding 6 feet in width and landings connected to such stairways or steps not exceeding 6 feet in width and 6 feet in length; (2) driveways not exceeding 20 feet in width; (3) sidewalks not exceeding 6 feet in width; (4) retaining walls not having or requiring a railing and not

exceeding 3 . 1/2 feet in height which do not involve changes in existing grades; (5) 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 of official controls where it is determined that because of hardship, strict enforcement of official controls is impractical.
- 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.

## 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 special 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 special 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. Special Uses. All special 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:

	<u>R- 1</u>	<u>R-2</u>	<u>R-3</u>	<u>C- 1</u>	<u>C-2</u>
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'	NA	NA
Lake Minnetonka, Setback from Ordinary High Water Line	100'	100'	100'	NA	NA
Lakes other than Lake Minnetonka Setback from Ordinary High Water Line	75'	75'	75'	75'	75'

All newly created structures, portions of structures and or additions to existing structures, constructed after the date of enactment of the local shoreland controls, must not exceed the following dimensions:

<u>R- 1</u>	<u>R-2</u>	<u>R-3</u>	<u>C- 1</u>	<u>C-2</u>
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Maximum Building Height            30'    30'    30'    30'    30'

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 waterbody:

Setback From:            Setback

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 impervious surface 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. Grading and filling in shoreland areas or any alteration of natural topography where the slope of the land is towards a protected water or a watercourse leading to a protected water must be authorized by a permit. A permit will also be required before grading or filling on steep slopes or within shore or bluff impact zones involving the movement of more than ten cubic yards of material or anywhere else in shoreland area involving movement of more than 50 cubic yards of material. The permit may be granted subject to the following:

- (a) The smallest amount of base 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.

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) Impervious surface coverage of lots in residential zones shall not exceed 25 percent of the lot area.
- (b) Impervious surface coverage in 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, impervious surface coverage shall not exceed 7 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.

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 therefor 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.

### 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.

## 1360 FLOODPLAIN ORDINANCE

### **SECTION 1360.01 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE**

Subd. 1. Statutory Authorization. The Legislature of the State of Minnesota has, in Minnesota Statutes Chapters 103F and Chapter 462 delegated the authority to local governmental units to adopt regulations designed to minimize flood losses. Minnesota Statute, Chapter 103F further stipulates that communities subject to recurrent flooding must participate and maintain eligibility in the National Flood Insurance Program. Therefore the City of Deephaven, Minnesota does ordain as follows:

Subd. 2. Statement of Purpose. The purpose of this Ordinance is to maintain the Community's eligibility in the National Flood Insurance Program and to minimize potential losses due to periodic flooding including loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

Subd. 3. Warning of Disclaimer of Liability. This Ordinance does not imply that areas outside of the flood plain district or land uses permitted within such districts will be free from flooding and flood damages. This Ordinance shall not create liability on the part of the City of Deephaven or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decisions lawfully made thereunder.

Subd. 4. 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. Adoption of Flood Insurance Study and Flood Insurance Rate Map. The Flood Insurance Study, Volume 1 of 2 and Volume 2 of 2, Hennepin County, Minnesota, All Jurisdictions and the Flood Insurance Rate Map panels numbered 27053C0309 E, 27053C0316 E, and 27053C0317 E for the City of Deephaven, dated September 2, 2004, as developed by the Federal Emergency Management Agency, are hereby adopted by reference as the Official Flood Plain Zoning District Map and made a part of this ordinance.

Subd. 2. Lands to Which Ordinance Applies. This Ordinance shall apply to all lands designated as flood plain within the jurisdiction of city. Flood plain areas within city shall encompass all areas designated as Zone A, Zone AE, Zone AO, or Zone AH as shown on the Flood Insurance Rate Map adopted in Section 1360.02(1) of this Ordinance.

If a community is anticipating future annexations of floodplain areas, the community is similarly advised to adopt the flood insurance rate map panels for the adjoining community(ies) along with a statement that these maps, in concert with the regulatory language in this Ordinance, will be used for floodplain management floodplain management in the annexed area. )

Subd. 3. Interpretation. The boundaries of the flood plain district shall be determined by scaling distances on the Official FloodPlain Zoning District Map. Where interpretation is needed as to the exact location of the boundaries of the flood plain district, the Zoning Coordinator shall make the necessary interpretation based on the ground elevations that existed on the site at the time the community adopted its initial floodplain ordinance and the regional (100-year) flood profile, if available. If 100-year flood elevations are not available, the community shall: 1) Require a flood plain evaluation consistent with Section 1360.04(3) of this Ordinance to determine a 100-year flood elevation for the site; or 2) base its decision on available hydraulic/hydrologic or site elevation survey data which demonstrates the likelihood the site is within or outside of the flood plain.

Subd. 4. Definitions. Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in 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 principle use or structure.
- (b) Basement - means 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) Flood Fringe - that portion of the flood plain outside of the floodway.
- (d) Flood Plain - the channel or beds proper and the areas adjoining a wetland, lake or watercourse that have been or hereafter may be covered by the regional flood. Flood plain areas within city shall encompass all areas designated as Zone A, Zone AE, Zone AO, or Zone AH on the Flood Insurance Rate Map adopted in Section 1360.02(1) of this

Ordinance.

- (e) Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain that are reasonably required to carry or store the regional flood discharge.
- (f) Lowest Floor – the lowest floor of the lowest enclosed area (including basement).
- (g) 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.”
- (h) Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, dredged spoil, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, stockpile of sand or gravel or other material, or matter in, along, across, or projecting into any channel, watercourse, lake bed, or regulatory flood plain which may impede, retard, or change the direction of flow, either in itself or by catching or collecting debris carried by floodwater.
- (i) Recreational Vehicle – a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest projection, is designed to be self-propelled or permanently tow-able 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 shall be synonymous with the term travel trailer/travel vehicle.
- (j) Regional Flood - a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristics of what can be expected to occur on an average frequency in magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used on the Flood Insurance Rate Map.
- (k) Regulatory Flood Protection Elevation. The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.
- (l) 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, travel trailers/vehicles not meeting the exemption criteria specified in Section 1360.12(1) of this Ordinance and other similar items.
- (m) 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.
- (n) 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 an “historic structure,” provided that the alteration will not preclude the structure’s continued designation as an “historic structure.” For the purpose of this Ordinance, “historic structure” shall be as defined in Code of Federal Regulations, Part 59.1.

### SECTION 1360.03 CONFLICT WITH PRE-EXISTING ZONING REGULATIONS AND GENERAL COMPLIANCE

Subd. 1. The Flood Plain District as Overlay Zoning District. The flood plain zoning district shall be considered an overlay zoning district to all existing land use regulations of the Community. The uses permitted in Sections 1360.04 and 1360.05 of this Ordinance shall be permitted only if not prohibited by any established, underlying zoning district. The requirements of this Ordinance shall apply in addition to other legally established regulations of the Community and where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall apply.

Subd. 2. Compliance. No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, repaired, maintained, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway and Flood Fringe, all uses not listed as permitted uses in Section 1360.04 shall be prohibited. In addition, a caution is provided here that:

- (a) New manufactured homes, replacement manufactured homes and certain recreational vehicles are subject to the general provisions of this Ordinance and specifically Sections 1360.04 and 1360.12;
- (b) Modifications, repair and maintenance, additions, structural alterations or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this Ordinance and specifically Section 1360.09; and
- (c) As-built elevations for elevated structures must be certified by elevation surveys as stated in Section 1360.07 of this Ordinance.

### SECTION 1360.04 PERMITTED USES, STANDARDS, AND FLOOD PLAIN EVALUATION CRITERIA

Subd. 1. Permitted Uses in the Flood Plain. The following uses of land are permitted uses in the flood plain district:

- (a) Any use of land which does not involve a structure, a fence, an addition to the outside dimensions to an existing structure (including a fence) or an obstruction to flood flows such as fill, excavation, or storage of materials or equipment.
- (b) Any use of land involving the construction of new structures, a fence, the placement or replacement of manufactured homes, the addition to the outside dimensions of an existing structure (including a fence) or obstructions such as fill or storage of materials or equipment, provided these activities are located in the flood fringe portion of the flood plain. These uses shall be subject to the development standards in Section 1360.04(2) of this Ordinance and the flood plain evaluation criteria in Section 1360.04(3) of this Ordinance for determining floodway and flood fringe boundaries.
- (c) Recreational vehicles are regulated by Section 1360.12 of this Ordinance.

Subd. 2. Standards for FloodPlain Permitted Uses.

- (a) Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- (b) Storage of Materials and Equipment:
  - (1) 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.
  - (2) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning or if placed on fill to the regulatory flood protection elevation.
- (c) No use shall be permitted which will adversely affect the capacity of the channels or floodways of any tributary to the main stream, or of any drainage ditch, or any other drainage facility or system.
- (d) All structures, including accessory structures, additions to existing structures and manufactured homes, shall be constructed on fill so that the lowest floor, including basement floor, is at or above the regulatory flood protection elevation. The finished fill elevation must be no lower than one foot below the regulatory flood protection elevation and shall extend at such elevation at least 15' beyond the limits of the structure constructed thereon.
- (e) All Uses. Uses that do not have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation to lands outside of the flood plain shall not be permitted unless granted a variance by the Board of Adjustment.

In granting a variance, the Board of Adjustment shall specify limitations on the period of use or occupancy of the use and only after determining that adequate flood warning time and local emergency response and recovery procedures exist.

- (f) Commercial and Manufacturing Uses. Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four (4) upon occurrence of the regional flood.
- (g) On-site Sewage Treatment and Water Supply 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 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 and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.
- (h) All manufactured homes 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 to be 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.

Subd. 3. Flood Plain Evaluation.

- (a) Upon receipt of an application for a permit for a use or other approval within the Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the floodway or flood fringe.
  - (1) A typical valley cross-section(s) showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.*
  - (2) Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.*
  - (3) Photographs showing existing land use, vegetation upstream and downstream, and soil types.*
  - (4) Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.*
- (b) The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota

Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:

- (1) Estimate the peak discharge of the regional flood.
  - (2) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
  - (3) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than .5' shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
- (c) The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Governing Body. The Governing Body must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application. The Governing Body, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the Floodway and Flood Fringe District Boundaries have been determined, the Governing Body shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of this Ordinance.

## **SECTION 1360.05 UTILITIES, RAILROADS, ROADS AND BRIDGES IN THE FLOOD PLAIN DISTRICT**

All utilities and transportation facilities, including railroad tracks, roads and bridges, shall be constructed in accordance with state flood plain management standards contained in Minnesota Rules 1983 Parts 6120.5000 - 6120.6200.

## **SECTION 1360.06 SUBDIVISIONS\***

(\*Note: This Section is not intended as a substitute for a comprehensive city or county subdivision ordinance. It can, however, be used as an interim control until the comprehensive subdivision ordinance can be amended to include necessary flood plain management provisions.)

Subd. 1. No land shall be subdivided and no manufactured home park shall be developed or expanded where the site is determined to be unsuitable by City Council for reason of flooding, inadequate drainage, water supply or sewage treatment facilities. The City Council shall review the subdivision/development proposal to insure that each lot or parcel contains sufficient area outside of the floodway for fill placement for elevating structures, sewage systems and related activities.

Subd. 2. In the flood plain district, applicants for subdivision approval or development of a manufactured home park or manufactured home park expansion shall provide the information required in Section 1360.04(3)(a) of this Ordinance. The Zoning Coordinator shall evaluate the

proposed subdivision or mobile home park development in accordance with the standards established in Sections 1360.04(2), 1360.04(3) and 1360.05 of this Ordinance.

Subd. 3. For all subdivisions in the flood plain, the floodway and flood fringe boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

Subd. 4. Removal of Special Flood Hazard Area Designation: The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

## **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 up to one acre shall be governed by the rules of the Minnehaha Creek Watershed District. Copies of all applicable applications and permits required or issued by the Minnehaha Creek 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; or
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.

## SECTION 1360.07 ADMINISTRATION

Subd. 1. Permit Required. A Permit issued by the Zoning Coordinator shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building or structure or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system, prior to the change or extension of a nonconforming use, prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source, and prior to the placement of fill, excavation of materials or the storage of materials or equipment within the flood plain.

Subd. 2. State and Federal Permits. Prior to granting a permit or processing an application for a variance, the Zoning Coordinator shall determine that the applicant has obtained all necessary state and federal permits.

Subd. 3. Certification of Lowest Floor Elevations. The applicant shall be 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. The Zoning Coordinator shall maintain a record of the elevation of the lowest floor (including basement) for all new structures and alterations or additions to existing structures in the flood plain district.

Subd. 4. Notifications for Watercourse Alterations. The Zoning Administrator shall notify, in rivering situations, adjacent communities and the Commissioner of the Department of Natural Resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

Subd. 5. Notification to FEMA When Physical Changes Increase or Decrease the 100-year Flood Elevation. As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

## SECTION 1360.08 VARIANCES

Subd. 1. A variance means a modification of a specific permitted development standard required in an official control including this Ordinance to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship, practical difficulty or unique circumstance as defined and elaborated upon in a community's respective planning and zoning enabling legislation and this Ordinance.

Subd. 2. The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of

Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this Ordinance, any other zoning regulations of the Community, and the criteria specified in the respective enabling legislation which justified the granting of the variance. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- (a) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (b) Variances shall 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.
- (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Subd. 3. Variances from the provisions of this Ordinance may be authorized where the Board of Adjustment has determined the variance will not be contrary to the public interest and the spirit and intent of this Ordinance. No variance shall allow in any district a use prohibited in that district or permit a lower degree of flood protection than the regulatory flood protection elevation. Variances may be used to modify permissible methods of flood protection.

Subd. 4. The Board of Adjustment shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variance sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing. A copy of all decisions granting a variance shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

Subd. 5. Appeals. Appeals from any decision of the Board of Adjustment may be made, and as specified in this Community's Official Controls and also Minnesota Statutes.

Subd. 6. Flood Insurance Notice and Record Keeping. The zoning administrator shall 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 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. This Community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

## **SECTION 1360.09 NONCONFORMITIES**

A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 1360.02(4)(n)(2) of this Ordinance, shall be subject to the provisions of Sections

1360.09(1) – 1360.09(4) of this Ordinance.

Subd. 1. No such use shall be expanded, changed, enlarged, or altered in a way, which increases its nonconformity.

Subd. 2. A structural alteration within the inside dimensions of a nonconforming use or structure is permissible provided it utilizes flood resistant materials so as not to result in increasing the flood damage potential of that use or structure. A structural addition to a structure must be elevated to the regulatory flood protection elevation in accordance with Section 1360.04(2)(d) of this Ordinance.

Subd. 3. If any nonconforming use of a structure or land or nonconforming structure is substantially damaged, as defined by Section 1360.02(4)(m) of this Ordinance, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The City Council may issue a permit for reconstruction if the use is located outside the floodway and, upon reconstruction, is adequately elevated on fill in conformity with the provisions of this Ordinance.

Subd. 4. If a substantial improvement occurs, as defined in Section 1360.02(4)(n) of this Ordinance, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition (as required by Section 1360.09(2) above) and the existing nonconforming building must meet the requirements of Section 1360.04 of this Ordinance for new structures, depending upon whether the structure is in the floodway or flood fringe, respectively.

## **SECTION 1360.10 PENALTIES FOR VIOLATION**

A 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 variance) shall constitute a misdemeanor.

Subd. 1. In responding to a suspected ordinance violation, the Zoning Administrator and the Community 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 Community 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.

Subd. 2. When an ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources' and Federal Emergency Management Agency Regional Office along with the Community's plan of action to correct the violation to the degree possible.

Subd. 3. The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other Official Controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning

Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the Community. If the construction or development is already completed, then the Zoning Administrator may either (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls, or (2) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30-days.

Subd. 4. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition that existed prior to the violation of this Ordinance.

## **SECTION 1360.11 AMENDMENTS**

All amendments to this ordinance, including revisions to the Official Flood Plain Zoning District Map, shall be submitted to and approved by the Commissioner of Natural Resources prior to adoption. The flood plain designation on the Official Flood Plain Zoning District Map shall not be removed unless the area is filled to an elevation at or above the regulatory flood protection elevation and is contiguous to lands outside of the flood plain. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to this Ordinance and said notice shall include a draft of the ordinance amendment or technical study under consideration.

## **SECTION 1360.12 TRAVEL TRAILERS AND TRAVEL VEHICLES**

Recreational vehicles that do not meet the exemption criteria specified in Section 1360.12(1) below shall be subject to the provisions of this Ordinance and as specifically spelled out in Sections 1360.12(3)-(4) below.

Subd. 1. Exemption. Recreational vehicles are exempt from the provisions of this Ordinance if they are placed in any of the areas listed in Section 1360.12(2) below and further they meet the following criteria:

- (a) Have current licenses required for highway use.
- (b) *Are highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks and the recreational vehicle has no permanent structural type additions attached to it.*
- (c) *The recreational vehicle and associated use must be permissible in any preexisting, underlying zoning use district.*

Subd. 2. Areas Exempted For Placement of Recreational Vehicles:

*(a) Individual lots or parcels of record.*

*(b) Existing commercial recreational vehicle parks or campgrounds.*

*(c) Existing condominium type associations.*

Subd. 3. Recreational vehicles exempted in Section 1360.12(1) lose this exemption when development occurs on the parcel exceeding \$500 for a structural addition to the recreational vehicle or exceeding \$500 for an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation requirements and the use of land restrictions specified in Sections 1360.04 of this Ordinance. There shall be no development or improvement on the parcel or attachment to the recreation vehicle that hinders the removal of the recreational vehicle to a flood free location should flooding occur.

Subd. 4. New commercial recreational vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:

***(a) Any new or replacement recreational vehicle will be allowed in the floodway or flood fringe districts provided said recreational vehicle and its contents are placed on fill above the regulatory flood protection elevation determined in accordance with the provisions of Section 1360.04(3) of this Ordinance and proper elevated road access to the site exists in accordance with Section 1360.04 of this Ordinance. No fill placed in the floodway to meet the requirements of this Section shall increase flood stages of the 100-year or regional flood.***

(b) All new or replacement recreational vehicles not meeting the criteria of 1360.12(4)(a) above may, as an alternative, be allowed if in accordance with the following provisions. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100 year flood. Said plan shall be prepared by a registered engineer or other qualified individual, shall demonstrate that adequate time and personnel exist to carry out the evacuation, and shall demonstrate that the provisions of Sections 1360.12(1)(a) and 1360.12(1)(b) of this Ordinance will be met. All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section 1360.04(2)(g) of this Ordinance.