

# Ordinance 178

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## SECTION I - TITLE

This Ordinance shall be referred to and cited as the Motley Land Use, Zoning and Subdivision Ordinance, except herein where it shall be cited as the "Ordinance".

Updates. The following updates have been made to this Ordinance since its adoption on June 10<sup>th</sup>, 2003:

- January 12, 2004 - Amendment to Section 3.2, and 5.6 (3)
- December 13, 2004 - Amendment to Section 5.6 and 5.3 (6)
- December 13, 2004 - Amendment to Section 9.3 (1A)
- December 13, 2004 - Amendment to Sections 5.2 (5), 5.6 (6), and 5.7 (7)
- December 13, 2004 - Amendment to Sections 5.3 (6), 5.4 (6), 5.5 and 5.6
- January 1, 2005 - Amendment to Section 5.2 (5)
- January 11, 2005 - Amendment to Section 5.3 (5)
- January 11, 2005 - Amendment to Section 5.5 (6)
- January 11, 2005 - Amendment to Section 5.6 (6)
- January 11, 2005 - Amendment to Section 5.7 (6)
- January 11, 2005 - Addition to Section 5.3 (6)
- January 11, 2005 - Addition to Section 5.4 (6)
- January 11, 2005 - Addition to Section 5.7 (7)
- January 11, 2005 - Addition to all zones except Section 5.5
- January 11, 2005 - Amendment to Section 9.3 (1A)
- March 23, 2005 - Amendment to Section 5.6 (6)
- April 11, 2005 - Amendment to Section 5.5 (3)
- August 23, 2005 - Amendment to Section 5.5
- August 23, 2005 - Amendment to Section 5.6
- August 23, 2005 - Addition to Section 3.2
- August 23, 2005 - Addition to Section 7.6
- August 23, 2005 - Amendment to Section 4.4 (2 & 3)
- July 24, 2007 - Amendment to Section 4.4 (7)
- August 12, 2008 – Addition to Section 5.5 (2)
- September 23, 2008 – Addition of Section 7.7
- September 23, 2008 – Amendments to Section 3.2
- April 28, 2009 – Addition to Section 3.2 and of Section 5.10 and 5.11; Amendments to Section 5
- March 9, 2010 – Amendments to Sections 4.3 (1-5), 4.4 (1-6), Additions to Sections 9.5 (3, I-L), 9.6 (5), 9.7 (8) and 9.10.
- September 9, 2012 – Amendments to Section 9.3. (1).
- July 13, 2015 – Amendments to Section 3.2 and 5.11
- December 12, 2016 – Amendments to Sections 3.2, 5.1.6, 5.11 and adding a new Section 7.8.
- May 2018- Comprehensive update to code.
- December 2018, Addition of chickens and RV to Matrix and Performance standards. (addition to 5.11 and addition of 7.10 & 7.11)
- April 2019- Addition of farm animal standards 7.12
- July 2019- Update to Matrix to allow daycare centers in Public zone.
- May 2021 – Carport Standards (sections 3.2 and 4.5)
- April 2023 – Amendemnt to fence standards section 7.8

## SECTION II - INTENT AND PURPOSE

This Ordinance is established pursuant to the authority granted by Minnesota Statutes, in particular the Municipal Planning Act, Minnesota Statutes 1983 Sections 462.351 to 461.364, the Municipal Shoreland Act, Minnesota Statutes 1973 Section 379, Minnesota Statutes 1980 Sections 462.351 to 462.364, The Land Subdivision and Condominiums Acts, Chapters 462, 505, 515, 515A and 515B and Policies in Minnesota Statutes, Section 105,115 and 116, the City of Motley Flood Plain Management Ordinance 1989 and any Amendments thereto.

### **2.1 This Ordinance is adopted for the purpose of:**

- (1) Protecting the public health, safety, comfort, convenience and general welfare.
- (2) Inaugurating and effectuating the goals of the Comprehensive Plan.
- (3) Promoting order in development by dividing the area of the City into zones and regulating therein the location, construction, reconstruction, alteration and use of the structures and land.
- (4) Conserving the natural and scenic beauty and attractiveness of the City, for the health and welfare of the public.
- (5) Providing for adequate light, air and access to property by regulating the use of the land and buildings and the bulk of structures in relation to surrounding properties.
- (6) Providing for the administration of the provisions of the ordinance and defining the authority and duties of the Administrator, Planning Commission, Board of Adjustment and City Council under this ordinance.

## SECTION III - RULES AND DEFINITIONS

### **3.1 RULES**

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

1. The word person includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.
2. The masculine gender includes the feminine gender and the neuter gender.
3. The singular includes the plural and the plural includes the singular.
4. The present tense includes the past and future tenses and the future includes the present.
5. The word “may” is permissive. The word “shall” is mandatory. Mandatory compliance with the Ordinance shall allow for variances thereto.
6. All horizontal and vertical measured distances shall be expressed to the nearest tenth of a foot and its metric equivalent, unless specifically stated otherwise.
7. The words “lot,” “plot,” “piece” and “parcel” of land are interchangeable.
8. The words “used for,” shall include the phrases “arranged for,” “designed for,” “intended for,” “improved for,” “maintained for,” and “occupied for.”

### **3.2 DEFINITIONS**

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

1. **Abandoned Building.** A building as defined hereinafter on public or private property, which no longer serves a practical use and, due to its location or structural condition, is considered a safety hazard in the opinion of the Zoning Administrator.
2. **Abandoned Motor Vehicle.** A motor vehicle as defined in Minnesota Statutes Chapter 169.01 that (a) has remained on public property in an inoperable condition for more than 48 hours, or (b) has remained on private property for more than 48 hours without the permission of the owner, or (c) has remained on private property for more than thirty days and is inoperable or is unlicensed unless kept in a garage or other storage structure.
3. **Abutting.** Making direct contact with or immediately bordering.
4. **Accessory Dwelling Unit:** A second dwelling unit either within or added to a single-family detached dwelling, or in a separate accessory structure on the same parcel as the principal dwelling, that functions as a complete, independent living facility with provisions for cooking, eating, sanitation, and sleeping. See also "Dwelling, guest cottage".
5. **Accessory Structure:** A building or other structure that is supportive, secondary and subordinate in use and/or size to the principle structure on the same parcel or lot which, because of the nature of its use, can reasonably be located at or greater than minimum structure setbacks. Includes all structures not considered the principle structure including, but not limited to, T.V. towers antennas, dish antennas, outdoor swimming pools, outdoor hot-tubs, detached garages, sheds, guest cottage, accessory dwelling unit and boathouses.
6. **Accessory Use.** A use naturally and normally incident and subordinate to the main use of the premises.
7. **Addition.** A physical enlargement of an existing structure.
8. **Adjacent.** In close proximity to or neighboring, not necessarily abutting.
9. **Adult Body Painting Studio:** An establishment which provides the service of applying paint, ink or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude or the application of paint or other substance by a patron to the body of another person.
10. **Adult Bookstore:** An establishment distinguished or characterized the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape or motion picture film which are distinguished or characterized by an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas".
11. **Adult Cabaret:** A building or portion of a building which provides exotic dancing, striptease or other live entertainment, if such dancing or other live entertainment if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas".
12. **Adult Companionship/Conversation/Rap Establishment:** A companionship, conversation, rap establishment which provides the service of engaging in or listening to conversation, talk or discussion between and adult entertainment employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".
13. **Adult Entertainment Employee:** Any person who perform any service on the premises of a sexually-oriented business, on a fulltime, part-time or contract basis, whether or not the person is denominated and adult entertainment employee, independent contractor, agent or otherwise. Adult entertainment employee does not

include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

- 14. Adult Entertainment Facility:** A building or space in which an admission is charged for the entrance, or food or non-alcoholic beverages are being sold or intended for consumption, and in which may be regularly observed live presentation of entertainment distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas”.
- 15. Adult Hotel or Motel:** a hotel or motel that excludes minors by reason of age and that presents material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- 16. Adult Massage Parlor, Health/Sport Club:** A health club, sport club or massage parlor that provides services distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas”.
- 17. Adult Mini-Motion Picture Theater:** A building or portion of a building with a capacity for less than 5 persons used for presenting still or motion pictures if such pictures are distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas” for observation by patrons.
- 18. Adult Modeling Studio:** An establishment whose business is the provisions to customers of figure models who are provided with the intent of giving sexual stimulation or sexual gratification to customers and who engage in “specified sexual activities” or display “specified anatomical areas” while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.
- 19. Adult Motion Picture Arcade:** A building or portion of a building wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors, computers or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing “specified sexual activities” or “specified anatomical areas”.
- 20. Adult Motion Picture Theater:** A building or a portion of building with a capacity for fifty (50) or more persons used for presenting still or motion pictures if such pictures are distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas”.
- 21. Adult Novelty Business:** A building or portion of a building used for the barter, rental or sale of toys, instruments, devices, clothing or paraphernalia designed or used in connection with stimulation of human genitals or the presentation, display, depiction or description of “specified sexual activities” or “specified anatomical areas”.
- 22. Adult Sauna/Steam Room/Bathhouse:** A business which provides a steam bath or heat bathing room used for bathing, relations or reducing which utilizes steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna/steam room/bathhouse is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas”.
- 23. Adult Use, Accessory:** The offering of merchandise, whether for sale or rental or loan, characterized by an emphasis “specified sexual activities” or “specified anatomical areas” on a limited scale that are incidental to the primary activity and goods and/or services offered by the establishment. A business shall be classified as an accessory adult use if the merchandise for sale or rental occupies no more than ten (10%) of the floor area of the establishment in which it is located or 100 square feet, whichever is less, or comprises no more than twenty (20%) percent of the gross receipts of the entire business operation.
- 24. Adult Use, Principal:** The offering of merchandise, services and/or entertainment (live or via various forms of visual, auditory or other sensory media) characterized by an

emphasis on “specified sexual activities” or “specified anatomical areas” as a primary or sole activity of a business or establishment or where the business advertises, otherwise distinguishes or characterizes itself with an emphasis on the offering of such merchandise, services and/or entertainment. Any adult use establishment which does not meet the definition of an accessory adult use shall be considered a principal adult use.

- 25. Adult Use Establishment:** Adult use establishments include, but are not limited to the following list of activities or businesses: adult body painting studios, adult book stores, adult cabarets, adult entertainment facilities, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult health/sports clubs, adult sauna/steam room/bath houses/adult companionship establishments, adult rap/conversation parlors, adult novelty businesses, adult motion picture arcades, adult modeling studios and other premises enterprises, establishments, businesses or places open to some of or all member of the public and membership clubs at or in which there is an emphasis on the presentation, display, depiction or description or “specified sexual activities” or “specified anatomical areas”. This definition does not apply to the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry by State licensed register persons. Activities classified as obscene as defined by Minnesota Statutes 617.241 are not lawful and are not included in the definitions of adult uses.
- 26. Agent.** Any person acting on behalf of a landowner in dealing with activities under the jurisdiction of the Ordinance, including but not limited to realtors, contractors or attorneys.
- 27. Agricultural Use.** The use of land for agricultural purposes including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and animal and poultry husbandry and the necessary accessory uses used for packing, treating or storing the product, provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities. Residential garden plots on lots less than 2 acres in size shall not be considered agricultural use.
- 28. Airport.** Any premises used or intended for use for the landing and taking off of aircraft including any structures used or intended for use for aircraft services.
- 29. Alteration.** A change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or by moving from one location to another, of a building or a structure.
- 30. Animal.** Animal means any mammal, reptile, amphibian, fish, bird (including fowl and poultry) or other member commonly accepted as part of the animal kingdom including, but not limited to, cattle, horses, mules, sheep, goats, swine, ponies, ducks, geese, turkeys, chickens, guinea hens, dogs, cats and feathered fowl.

Animals shall be classified as follows:

**1. Domestic.** Domestic animals shall mean those animals commonly accepted as domesticated household pets. Unless otherwise defined, such animals shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians, and other similar animals.

**2. Non-Domestic.** Non-domestic animals means those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety and welfare of people. Unless otherwise defined, such animals shall include:

- a. Any member of the large cat family (family Felidae) including lions, cougars, bobcats, leopards and jaguars, but excluding accepted domesticated house cats.

- b. Any naturally wild member of the canine family (family Canidae) including wolves, foxes, coyotes, dingoes, and jackals, but excluding commonly accepted domesticated dogs.
- c. Any crossbreeds such as the crossbreed between a wolf and a dog or a coyote and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.
- d. Any member or relative of the rodent family including any skunk, raccoon, squirrel or ferret, but excluding those otherwise defined or commonly accepted as domesticated pets.
- e. Any poisonous, venomous, constricting, or inherently dangerous member of the reptile or amphibian families, including rattlesnakes, boa constrictors, pit vipers, crocodiles, and alligators.
- f. Any other animal which is not explicitly listed above, but which can be reasonably defined by these definitions, including, but not limited to: bears, deer, monkeys, and game fish.

- 31. **Animal, Farm.** Farm animal shall mean those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, such animals shall include members of the following families: equestrian (horses, mules); bovine (cows, bulls); sheep; poultry (chickens, turkeys); fowl (duck, geese); swine (including pot-bellied pigs); goats; bees; and other animals associated with a farm, ranch or stables.
- 32. **Animal Feedlot.** A lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. Pastures shall not be considered animal feedlots under these parts.
- 33. **Animals, Domestic.** Common household pets, such as dogs and cats, kept for amusement, companionship, decoration or interest.
- 34. **Animals, Food.** Fish, fowl, cattle, swine, sheep and others raised for the purposes of food consumption.
- 35. **Animals, Wild.** Animals, such as wolves, tigers, lions and snakes, that are not normally a domestic animal or farm animal and would ordinarily be confined in a zoo or found in the wild.
- 36. **Animal Boarding Facility/Kennel.** An establishment that houses animals, other than those belonging to the occupant, overnight or over an extended period of time.
- 37. **Animal Grooming Facility.** An establishment principally engaged in grooming animals.
- 38. **Animal Unit.** A unit of measure based on the approximate production of wastes from 1000 pounds of live weight of poultry or animals.

Animal Units

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

- 39. **Apartment.** A room or suite of rooms that is designed for, intended for, or occupied as a residence by a family or individual, and is equipped with sanitary facilities.



40. **Appeal.** An application for the review of an order, requirement, decision, determination or interpretation of this Ordinance made by an administrative officer in the application and/or enforcement of this Ordinance.
41. **Appliance Repair.** An establishment principally engaged in the repair of appliances, such as, but not limited to, refrigerators, freezers, ranges, stoves, dishwashers, clothes washers and dryers.
42. **Architectural Projection.** A non-functional or ornamental feature on a building or other structure that does not extend to, or from, the ground.
43. **Artist's Studio.** A fine arts workshop of a painter, sculptor, potter, weaver, carver, jeweler, photographer or other similar art that requires artistic skill, where the public is received or where the artist is engaging in retail sales. Not generally utilitarian, related to personal hygiene or adornment.
44. **Attached.** Two buildings or structures that combine to form one building or structure through the use of at least one common wall, not including a breezeway.
45. **Attorney.** The attorney duly appointed by the Council to represent the City of Motley.
46. **Auto Salvage Yard.** A lot or yard where four or more motor vehicles are stored while parts are removed, where crushing occurs or where storage pending crushing may occur.
47. **Auto Trip.** Transport in a vehicle that includes both an arrival and a departure from a location.
48. **Balcony.** Same as a deck.
49. **Bathroom.** A room containing a shower or bathtub or a sink and toilet.
50. **Basement.** The space below the first story of a structure which is greater than four (4) feet in height.
51. **Bed and Breakfast Dwelling.** A dwelling, single family, licensed through the Morrison County Public Health Services, where, for compensation, meals and lodging are provided for three or more unrelated persons, but not exceed eight persons. The owner of the parcel must live on the premises.
52. **Bedroom.** A portion of a dwelling unit intended to be used for sleeping purposes, which may contain closets and may have access to a bathroom.
53. **Billboards.** A commercial sign which directs attention to a business, activity, service, entertainment or a product not exclusively related to the premises or property where such sign is located.
54. **Block.** An area of land bounded by streets, exterior boundary lines and/or bodies of water.
55. **Bluff.** A topographic feature such as a hill, cliff or embankment having all of the following characteristics:
  - A. Part or all of the feature is located in a shoreland area.
  - B. The slope rises at least twenty-five (25) feet above the ordinary high water mark of the water body.
  - C. The grade of the slope from the toe of the bluff to a point twenty-five (25) feet above the ordinary high water level averages thirty (30) percent or greater.
  - D. The slope must drain towards the water body.
  - E. An area with an average slope of less than eighteen (18) percent over a distance for fifty (50) feet or more shall not be considered part of the bluff.
56. **Bluff Impact Zone.** A bluff and the land located within twenty (20) feet inland from the top of the bluff.
57. **Boat Access.** A ramp, road or other conveyance on a residential lot which allows the launching and removal of a boat with a vehicle and trailer.
58. **Boat House.** A structure designed and used solely for the storage of boats or boating equipment.
59. **Boarding House.** A single-family dwelling where more than two, but fewer than six rooms are provided for lodging for definite periods of times. Meals may or may not be

provided, but there is one common kitchen facility. No meals are provided to outside guests.

60. **Board of Adjustment.** The Board, appointed by the City Council, to hear appeals from actions of the Zoning Administrator, and variance requests.
61. **Breezeway.** A covered or enclosed walkway that physically connects two or more buildings or structures. Shall not materially connect the two or more buildings or structures.
62. **Buildable Area.** Any portion of a site, lot, parcel or any portion thereof that does not contain designated flood plain, wetlands or areas in excess of twenty-five (25) percent slope.
63. **Building.** Any structure used or intended for storage, shelter or occupancy.
64. **Building Height.** The vertical distance between the highest adjoining ground level at the building or ten (10) feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height between the eaves and the highest ridge of gable, hip or gambrel roofs or ten feet below the peak, whichever is greater.
65. **Building Line.** A line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.
66. **Building Permit.** A permit authorizing an Applicant under this Code to undertake construction or other development activity.
67. **Campground.** Any area, whether publicly or privately owned, consisting of designated campsites with appropriate facilities and management services designed for temporary occupation by tents or recreational vehicles.
68. **Camping.** Habitation of a temporary structure.
69. **Campsite.** A parcel within a resort or campground designated for the occupancy of one family on a periodic basis in a tent or recreational vehicle.
70. **Cannabis Cultivation, Manufacturing and Related Activity.** Cannabis mezzo businesses, industrial scale cannabis cultivation, outdoor cultivation of cannabis, cannabis and hemp product manufacturing, cannabis wholesale businesses, cannabis delivery service and cannabis transporters, and cannabis testing facilities.
71. **Cannabis Retail Dispensary.** A facility where cannabis or cannabis products, are offered, either individually or in combination, for retail sale, including an establishment that engages in delivery of cannabis or cannabis products as part of a retail sale.
72. **Cemetery, Unplatted.** Any human remains or burials found outside of platted, recorded or identified cemeteries pursuant to Minnesota Statutes, Chapter 307.08.
73. **Child Care, Center.** A facility that is maintained, for the whole or part of the day, for the care of five or more children who are eighteen (18) years of age or younger and who are not related to the owner, operator or manager thereof, whether such facility is operated with or without compensation for such care and with or without stated educational purposes. The term shall not include any facility licensed as a foster care home or any facility defined as a Child Care, Family Home.
74. **Child Care, Family Home.** A primary residence where, for the whole or part of the day, an owner of the residence, licensed as a child care provider, cares for five or more children who are eighteen (18) years of age or younger and who are not related to the owner, whether such facility is operated with or without compensation for such care.
75. **Church.** A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship and related community activities.
76. **City Clerk.** The appointed person responsible for administration of the City affairs.
77. **City Council.** The duly elected governing body of the City.

- 78. City Sewer or Water System.** A system of municipally maintained utilities, approved by the State, and serving more than one building or property.
- 79. Commercial Use.** The principle use of land or buildings for the sale, lease, rental, trade of products, goods or services.
- 80. Commissioner.** The Commissioner of the Department of Natural Resources.
- 81. Community Park.** A park designed to provide recreational opportunities to serve the entire community.
- 82. Comprehensive Plan.** Also referred to as Community Plan. A compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the City and its environs and may include, but is not limited to, the following items: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan and recommendations for plan execution.
- 83. Conditional Use.** A land use or development as defined by the Ordinance that would not be appropriate without restriction, but may specifically be allowed without restrictions of conditions as determined by the Planning Commission and the Council upon a finding that (a) the use or development is an appropriate conditional land use in the land use zone, (b) the use or development, with conditions, conforms to the comprehensive land use plan, (c) the use, with conditions, is compatible with the existing neighborhood and (d) the use, with conditions, would not be injurious to the public health, safety, welfare, morals, order, comfort, convenience, appearance or prosperity of the City.
- 84. Condominium Ownership or Common Interest Community.** A form of ownership within a multi-owner building or complex wherein the boundaries are defined by a condominium plan or common interest community in accordance with Minnesota Statutes 1980, Chapter 515A or 515B or subsequent revisions.
- 85. Contiguous.** The sharing of a common border at more than a single point. Lots, parcels or boundaries may be considered contiguous where separated by rights-of-way, rivers or streams.
- 86. Controlled Access Lot.** Any lot which is designated for the exclusive use by non-riparian landowners within a subdivision as a means to gain access to a lake, river or stream.
- 87. Council.** The City Council, as established by State Law.
- 88. Crawl Space.** The space below the first story of a structure not more than four feet high and not intended for human habitation.
- 89. Cul-de-sac.** A short local street terminating in a vehicular turnaround.
- 90. Deck.** An uncovered, unscreened structure or on grade patio not including on-grade walks four (4) feet wide or less.
- 91. Distinguished or Characterized by an Emphasis Upon:** Means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films” which are distinguished or characterized by an emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas”. “specified sexual activities” or “specified anatomical areas”, the films so described are those whose dominant or principal character and theme are the exhibition or description ““specified sexual activities” or “specified anatomical areas”.
- 92. Dock.** A platform extending water ward from the shoreline intended for ingress and egress for moored watercraft or to provide access to water for swimming, fishing or other water oriented activities.
- 93. Dormitory.** A building, or portion thereof, providing group sleeping accommodations in one room, with shared bath and toilet facilities.

- 94. Drive-in Window Facilities.** An establishment that contains an opening in the wall of a building or structure designed and intended to be used to provide for sales to and/or service to patrons who remain in their vehicles.
- 95. Drive-in Theater.** An open lot, or part thereof, with its appurtenant facilities devoted primarily to the showing of movie picture on a paid admission basis to patrons primarily seated in, or near, their vehicles.
- 96. Duplex, Triplex or Quad.** A structure on a single lot having two, three or four dwelling units respectively being attached by common walls, and each being equipped with separate sleeping, cooking, eating, living and sanitation facilities.
- 97. Dwelling.** One or more rooms forming a single habitable unit that functions as a complete, independent living facility with provisions for cooking, eating, sanitation, and sleeping.
- 98. Dwelling, Guest cottage.** A structure, not for sale or lease, used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling on the lot. Any accessory structure with kitchen or bathroom facilities shall be considered a dwelling, guest cottage. See also "Accessory dwelling unit".
- 99. Dwelling, Multi-Family.** Two or more dwelling units attached together by any point including duplexes, triplexes, townhouses and multi-level units regardless of type of ownership.
- 100. Dwelling, Single Family.** A dwelling unit totally separated from any other dwelling unit.
- 101. Dwelling, Townhouse.** A type of multi-family housing consisting of dwelling units attached by common party walls. Ownership may be defined by Plat or Condominium Plan.
- 102. Dwelling Site.** A designated location for residential use by one or more persons using temporary or movable shelter including camping and recreational vehicle sites.
- 103. Dwelling Unit.** A structure or portion of a structure or other shelter designed as a short or long term living quarters for one or more persons including rental or time share accommodations such as a motel, hotel resort rooms and resort cabins.
- 104. Dwelling Width.** The smallest horizontal dimension of the major portion of a dwelling.
- 105. Earth Tone.** A shade of color that, when viewed from a distance, is indistinguishable from the colors of the surrounding landscape.
- 106. Engineer.** The Engineer duly appointed by the Council to perform technical services for the City of Motley.
- 107. Exterior Storage.** Storage of goods, materials, equipment, manufactured products outside a fully enclosed building.
- 108. Extractive Use.** The use of land for removal of sand, gravel, rock, industrial minerals, other non-metallic minerals or peat not regulated under Minnesota Statutes Sections 93.44 to 93.51.
- 109. Family.** An individual, or two or more persons related by blood, marriage, adoption, or a relationship legally recognized in Minnesota, or not more than five unrelated persons maintaining a common household.
- 110. Fence.** A constructed barrier, including berms, intended to prevent escape or intrusion, or to mark a boundary, to shield or screen view, or to perform any similar function.
- 111. Filling.** The act of depositing any clean earthen material.
- 112. Final Floor Plan.** A drawing prepared by a Registered Architect, Registered Engineer, or Registered Land Surveyor depicting the condominium subdivision of real estate and related information conforming to the requirements of Minnesota Statutes 1980, Section 515A.2-110.

- 113. Final Condominium Plat.** A drawing prepared by a Registered Architect, Registered Engineer or Registered Land Surveyor depicting the condominium subdivision of real estate and related information conforming to the requirements of Minnesota Statutes 1980, Section 515A.2-110.
- 114. Final Plat.** A drawing, in final form, showing a proposed subdivision containing all information and detail required by state statutes and by the Subdivision Ordinance to be presented to the Planning Commission and the City Council for approval, and which, if approved, may be duly filed with the County Recorder.
- 115. Floodplain.** The areas adjoining a water course, intermittent or permanently flowing, which have been or will be covered by the runoff waters of a storm with a 1% chance of occurrence any year (100 year storm).
- 116. Floodway.** The channel of the water course and those portions of the adjoining floodplain which are reasonably required to carry and discharge the regional flood (100 year chance of occurrence.)
- 117. Footprint.** The horizontal extent to which a structure covers the ground plane as represented in a plan view including cantilevered building elements but excluding eaves and similar architectural projections of the roof plane.
- 118. Forest Land Conversion.** The clear cutting of forested lands to prepare for a new land use other than the re-establishment of a subsequent forest stand.
- 119. Foundation.** A concrete, concrete block or treated wood portion of a structure which totally encloses the perimeter of the structure, supports the bearing loads of the super-structure and penetrates the ground to provide frost protection.
- 120. Frontage.** The uninterrupted front boundary line of a lot, or the length of such line, that abuts on a street or protected water.
- 121. Garage, Attached.** A part of the principle structure which shall not exceed 1,280 square feet that is designed and used by the occupants of the principle structure for the storage of not more than four (4) motor vehicles.
- 122. Garage, Detached.** An accessory structure not attached to the principle structure on the property designed and used for the storage of not more than four (4) motor vehicles.
- 123. Gas Station.** Any building, structure, premises, enclosure, or other place within the city where a container, tank, either portable or stationary, containing in quantities exceeding one hundred (100) gallons either carbon bisulfide, gasoline, naphtha, benzol, hydrocarbon, liquefied petroleum, acetone, kerosene, turpentine, diesel fuel, or other inflammable liquids having a flash point below one hundred sixty five degrees Fahrenheit (165°F) are kept or located for the purpose of selling, offering for sale or otherwise using or distributing any such liquids therefrom, except where such inflammable liquids are kept or sold for medicinal purposes only.
- 124. Gazebo.** A freestanding accessory structure with no kitchen, sleeping, sanitary facilities or pressurized water intended as weather and insect protection for such activities as picnicking and lake viewing.
- 125. Grading.** The movement of dirt, by mechanical means, so as to alter the existing topography of a property.
- 126. Green Space.** Privately owned property permanently dedicated by covenant or deed restriction to vegetate ground coverage with allowance for use as recreational facilities, tree coverage, water course, sewage disposal or similar uses. Public property permanently dedicated to park, vegetative buffer, and tree coverage or water courses.
- 127. Group Care Facilities.** A facility which provides residential services for individuals that are handicapped, aged, disabled or undergoing rehabilitation. This includes uses such as homes for the physically handicapped, mentally retarded, chemically dependent, foster children, maternity shelters and half-way houses.
- 128. Hardship, Undue.** The property in question cannot be put to a reasonable use if used under conditions allowed by the official controls, the plight of the landowner is due to

circumstances unique to the property and were not created by the landowner, and a variance, if granted, would not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship if reasonable use exists under the terms of the Ordinance.

- 129.Home Occupation.** A use of commercial nature conducted by an occupant entirely within the dwelling or accessory buildings which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the residential character thereof.
- 130.Home Occupation, Low Activity (LAHO).** Any home occupation where there is effectively no evidence of the activity taking place on the property which is visible or audible from neighboring properties or from a public road right-of-way. Such uses shall be clearly incidental and secondary to the primary use of the property for residential purposes.
- 131.Home Occupation, Moderate Activity (MAHO).** Any home occupation where there is only indirect evidence of the activity taking place on the property which is visible or audible from neighboring properties or from a public road right-of-way. Such uses shall be clearly secondary to the primary use of the property for residential purposes.
- 132.Home Occupation, High Activity (HAHO).** Any home occupation where there is direct evidence of the activity taking place on the property which is visible or audible from neighboring properties or from a public road right-of-way or which generates regular and sustained nuisance characteristics beyond those normally associated with residential properties in the same or similar neighborhood.
- 133.Hotel.** A building containing three (3) or more individual rooms, without kitchens, used for overnight lodging by the general public on a short-term basis for a fee, with or without meals, and which has common reservation and cleaning services, combined utilities, and on-site management and reception services.
- 134.House of Worship.** Same as church.
- 135.Impervious Surface.** The horizontal area of buildings, patios, walks, driveways, accessory structures and other surfaces generally impervious to the penetration of stormwater, including gravel drives and parking.
- 136.Industrial Use.** The use of land or buildings for the production, manufacture, warehousing, storage or transfer of goods, products, commodities or other wholesale items.
- 137.Intensive Vegetation Clearing.** The complete removal of trees or shrubs in a continuous path, strip row or block.
- 138.Interval Ownership.** Form of ownership of real property, condominium land or space further defined by a reoccurring time interval, resulting in more than one owner of the same property, also known as "timeshare".
- 139.Junk Yard.** An area where used waste, discarded or salvaged materials are bought, sold, exchanged, stored, baled, cleared, parked, disassembled or handled, including but not limited to scrap iron and other metals, paper, rags, rubber products, bottles, and used building materials. Storage of materials in conjunction with the construction of a manufacturing process shall not be included. Three or more automobiles without current licenses constitute a junk yard. Such use shall not include putrid wastes such as garbage.
- 140.Kennel.** See "Animal Boarding Facility"
- 141.Lake Classification.** The formal classification provided by the Department of Natural Resources for each body of public waters within the City.
- 142.Landscaping.** Plantings such as trees, grass, shrubs, and decorative timbers, arbors, rocks and water displays.

- 143. Leaseback by Owner.** An arrangement between an owner of property and a leasing agent or resort to promote and operate the property for rental purposes.
- 144. Licensed Engineer.** A person licensed as a professional engineer by the State of Minnesota.
- 145. Licensed Surveyor.** A person licensed as a professional surveyor by the State of Minnesota.
- 146. Litter.** Waste materials including but not limited to, cans, bottles, plastic and paper wrappings or containers.
- 147. Livestock.** Any animal customarily kept in open fields or confined structures or areas by humans for the purpose of providing food, clothing, training, boarding, home use, sales, breeding, production or work, including but not limited to: poultry, cattle, riding and draft horses, hogs, sheep, goats, miniature horses, llamas, and alpacas. Household pets, such as but not limited to, domestic animals, and wild animals shall not be considered livestock.
- 148. Lot.** A parcel, piece or portion of land described by metes and bounds, registered land survey, auditor's plat, or subdivision plat and separated from other parcels or portions of land by said description for purposes of sale, lease, mortgage, building or separation.
- 149. Lot Area.** The horizontal area of a lot bounded by the lot lines and the ordinary high water line if bounded by water.
- 150. Lot, Corner.** A lot situated at the junction of and abutting on two or more intersecting streets or a lot at the point of deflection in alignment of one street with the internal angle less than 135 degrees.
- 151. Lot, Front.** The boundary of a lot which abuts on a public right of way, or if a corner lot, the shortest of the two boundaries. If the lot abuts public water, the lake side shall be considered the lot front.
- 152. Lot Line.** The property lines bounding a lot except that where the description extends into a public right of way, the right of way line shall be considered the lot line.
- 153. Lot, Pre-existing.** A lot which is one unit of a subdivision plat heretofore duly approved and filed or one unit of an auditor's subdivision, or registered land survey, or a lot created by metes and bounds that has been recorded in the office of the County Recorder prior to the effective date of this Ordinance.
- 154. Lot Tier Depth.** The lot depth of a normal lot conforming to the shoreland requirements; General Development Lake first tier - 200 feet, second and additional tiers - 267 feet; Recreational Development Lake - 267 feet, Natural Environmental Lake - 400 feet.
- 155. Lot Tiers.** Successive strips of land parallel with the ordinary high-water line, each one tier depth wide, and extending across the parcel.
- 156. Lot Width.** The shortest distance between lot lines measured at the midpoint of the building line.
- 157. Maintenance.** The normal upkeep of a structure including the replacement of windows, siding, roofs, nonbearing walls or interior remodeling that does not expand the footprint of the existing structure, add volume to the usable living space or intensify a non-conforming use.
- 158. Manufactured Home.** A structure, transportable in one or more sections, which, when erected on site, is a minimum of 640 square feet, is built on a permanent foundation, contains the heating, plumbing and electrical systems within and meets the requirements of the Uniform Building Code.
- 159. Manufacturing.** Making or processing raw materials into a finished product.
- 160. Marina.** A dock or set of docks on a single parcel that contains more than three slips or more slips than first tier dwelling units, whichever is greater.
- 161. Massage Therapy (Therapeutic):** The any business or establishment where any person for any consideration whatsoever applies massage therapy techniques including

rubbing, stroking, kneading, tapping, manipulation or use of friction or pressure, with the hand, any other part of the body, or any other instrument, upon the body of another, whether or not accompanied by the use of heat, light, water, alcohol, oils, lotions, ointments or other chemicals or preparations, and whether or not accompanied by any sauna, tub, shower or cabinet bath, or hot or cold pack or any combination thereof.

- 162.Mature Tree.** A living tree greater than four (4) inches in diameter.
- 163.Metes and Bounds.** A method of property description utilizing directions and distances commencing from and terminating at an identifiable point.
- 164.Mini-storage.** A building or group of buildings divided into individual, self-contained storage units which are leased to individuals or businesses for storage purposes only.
- 165.Mobile Home.** A factory-built dwelling designed intrinsically as a trailer.
- 166.Motel.** A building containing guest rooms or units, each of which has a separate entrance directly from the outside of the building, or corridor, with parking space reserved for each unit, and which is designed, used or intended to be used primarily for the accommodation of transient guests.
- 167.Multi-Level Dwelling.** A type of multi-family housing consisting of dwelling units stacked one above the other, creating a party floor or floors between units.
- 168.Natural Drainage way.** All land surface areas which, by nature of their contour or configuration, collect, store and channel surface or runoff water.
- 169.Neighborhood.** The area adjacent to or surrounding existing or proposed development characterized by common use or uses, density, style and age of structures and environmental characteristics.
- 170.Non-conforming.** The building, structure or land lawfully existing prior to and not in conformance with the provisions of this ordinance.
- 171.Nude or Nudity or State of Nudity:** Means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the showing of the female breast with less than fully opaque covering of any part of the areola.
- 172.Nuisance.** By authority and direction of Minnesota Statute, 1980, Section 412.221, Subdivision 23 and 24; and Section 429.31, Subdivision 8; and Section 145.22 and 145.23, nuisance is anything that interferes with the use or enjoyment of property, endangers personal health or public safety, or is offensive to the senses such as excessive smoke, odor, noise, heat, vibration, glare, traffic generation, visual impact and other similar interferences or offenses.
- 173.Nursery/Garden Store.** A business growing and selling trees, flowering or decorative plants, fruits and vegetables, shrubs and related equipment, supplies or tools.
- 174.Nursing Home.** Any institution or facility required to be licensed as such under Minnesota Statutes, Sections 144.50 to 144.56 by the State Board of Health.
- 175.Off-street parking.** A designated space or area of land with a paved or all-weather surface not within a public street or right-of-way and used for the parking of vehicles.
- 176.Open District.** A zoning district defined by natural features to be unsuitable for any dwelling and unsuitable for any other development except in accordance with the conditional use permit process. Corresponds to the DNR Special Protection District.
- 177.Open Storage:** Storage of material outside of a building.
- 178.Ordinary High Water Mark.** The boundary of public waters and wetlands consisting of an elevation delineating the highest water level which has been maintained for sufficient period of time to leave evidence on the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For water courses the ordinary high water level is the elevation of the top of the bank of the channel, for reservoir and flowages, the ordinary high water level is the operating elevation of the normal summer pool.



- 179.Owner.** An individual, firm, association, syndicate, partnership, corporation, trust or any other legal entity having proprietary interest in the land and/or building.
- 180.Parking lot.** An off-street, ground-level open area that provides temporary storage for motor vehicles with a paved or all-weather surface.<sup>1</sup>
- 181.Parking Space.** A 10 foot by 20 foot site off public right of way, maintained and sized to accommodate the parking of one automobile.
- 182.Party Wall or Floor.** A common wall which divides two independent dwelling units or businesses.
- 183.Pasture(s):** As defined in Minnesota Rules 7020, as amended, renumbered or revised.
- 184.Permitted Use.** A land use conforming to the character of a zoning district which is permitted by ordinance requiring only a zoning permit issued by the Zoning Administrator.
- 185.Pet.** An animal commonly associated with human habitation, not considered under animal units and not raised for production of income.
- 186.Planned Unit Development (P.U.D.).** A land use characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common green space, density increases, and mix of structure types and land uses. Does not include a duplex where specifically allowed in a zoning district on a single parcel of land.
- 187.Planned Unit Developments, Commercial.** Uses that provide transient, short-term lodging spaces, rooms, or parcels and their operation are essentially service orientated. These shall include but not be limited to hotel/motel accommodations, resorts, recreational vehicle and camping parks and other primarily service oriented activities.
- 188.Planned Unit Development, Residential.** Residential Planned Unit Development means a use where the nature of residency is nontransient and the major or primary focus of the development is not service-oriented. For example, residential apartments, manufactured home parks, townhouses, cooperatives and full fee ownership residences would be considered as Residential Planned Unit Developments. Includes time share condominiums not part of a resort.
- 189.Planning Commission.** The body duly appointed by the City Council to determine the development of the City and make recommendations to the City Council on comprehensive plans, zoning district boundaries, conditional use permits, subdivision of land and capital improvements.
- 190.Porch.** A covered platform attached to a structure with or without screening material, canvas or blind material, or regular pane glass intended for weather and insect protection. Contains no kitchen, permanent sleeping areas, or sanitary facilities. Treated the same as a deck for setback requirements.
- 191.Porch, Enclosed.** A covered platform attached to a structure with more permanent enclosures than those described in “porch”. If the enclosed porch contains any sleeping area, kitchen, laundry, sanitary facilities, heat, insulation, air conditioning, or considered in the opinion of the Planning Commission as a 3 season porch due to construction, it is an addition to the home, requiring a permit and subject to all bulk and density requirements applied to permanent structures.
- 192.Preliminary Plat or Plan.** A plan prepared in accordance with the Subdivision Ordinance depicting the proposed subdivision of property by Final Plat or Final Floor Plan.
- 193.Principal Structure or Use.** The single primary structure or use on a lot consistent with what would customarily be considered the principal use within the relevant zoning district where the property is located, as distinguished from accessory uses or structure.

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<sup>1</sup> Ordinance Resolution 2009-3, 4/28/2009

Recreational vehicles used as dwellings shall not be considered a principal structure or use.<sup>2</sup> Storage buildings, barns, water-oriented accessory structures or other structures customarily considered accessory structures or uses shall be considered accessory even if there is not a principal structure or use on the property.

**194.Processing.** Preparing, treating or converting a raw material into a finished product.

**195.Protective Covenants.** Restrictions placed on the property by the owner and duly filed with the County Recorder. These may also be used in planned unit developments to establish homeowners associations, restrict shoreline development and provide for common facilities.

**196.Public Waters.** Any waters as defined in Minnesota Statutes Sec. 105.37, Subd. 14 & 15. However no lake, pond or flowage of less than 10 acres in size in municipalities need be regulated for the purposes of the shoreland management rule. A body of water created by a private user where there was no previous shoreline may, at the discretion of the local government, be exempted from the shoreland management. The official determination of the size and physical limits of drainage areas of rivers and streams should be made by the DNR Commissioner.

**197.Recorder.** The County Recorder of Morrison and/or Cass County.

**198.Recreational Vehicle.** Vehicles for recreational use that can be driven, towed or hauled. These vehicles may be designed to be temporary living space for camping or travel use. RV's shall include travel trailers, camper trailers, truck campers, self-propelled motor homes and other similar vehicles.

**199.Resort.** Any buildings, structures or enclosures kept, used, maintained or advertised as, or held out to the public to be an enclosure where sleeping accommodations are furnished to the public and primarily to those seeking recreations, for periods of one day, one week or longer, and having for rent three or more cottages, rooms or enclosures along with any related facilities such as restaurants, bars, golf courses or other recreational amenities.

**200. Restaurant.** An establishment where the principle business is the preparation, service and sale of food and beverages to be consumed by customers at tables or counters located within the building on the premises.

**201.Right-of-Way.** A parcel of property dedicated to the public, connecting to other public right of ways, which affords primary access by pedestrians and vehicles to abutting properties.

**202. Screening.** Fencing, an earthen berm or vegetative growth that visually separates one object from another.

**203. Semi-Nude:** Means a state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple of the female breast, as well as portion of the body covered by supporting straps or devices.

**204. Semi Public Use.** The use of land by private non-profit organizations to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

**205. Sensitive Resource Management.** The preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over ground water or bedrock, highly erosive or expansive soils, steep slopes, acceptability to flooding or occurrence flora or fauna in need of special protection.

**206. Setback.** The minimum horizontal distance between a structure, sewage treatment system or other facility and an ordinary high water level, sewage treatment system, top of bluff, road, highway, property line or other facility. Three (3) feet of roof overhang,

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<sup>2</sup> Added December 2016

stoops not exceeding 30 square feet and steps from stoop to ground not over 4 feet wide may protrude into the setback.

- 207. Setback, Interior Lot.** In a planned unit development, the closest horizontal distance between the lot line and the foundation or wall of a structure when the lot line is not the exterior boundary of the development. Three (3) feet of roof overhang, stoops not exceeding 30 square feet and steps from stoop to ground not over 4 feet wide may protrude into the setback.
- 208. Setback, Side, Exterior.** The closest horizontal distance between the exterior boundary side lot line and the foundation or wall of a structure. This setback takes precedence over setback, interior lot, where any conflict exists. Three (3) feet of roof overhang, stoops not exceeding 30 square feet and steps from stoop to ground not over 4 feet wide may protrude into the setback.
- 209. Setback, Road.** The closest horizontal distance between the road right-of-way line and the foundation or wall of a structure. Three feet of roof overhang, stoops not exceeding 30 square feet and steps from stoop to ground not over 4 feet wide may protrude into the setback.
- 210. Setback, Waterfront.** The closest horizontal distance between the ordinary high water mark and the foundation or wall or edge of a structure. Three feet of roof overhang, stoops not exceeding 30 square feet and steps from stoop to ground not over 4 feet wide may protrude into the setback.
- 211. Sewage Treatment System.** A septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated in Chapter 7080 of the State Rules and Regulations.
- 212. Sewer System.** Pipe lines or conduits, pumping stations and forcemain and all other constructions, devices, appliances or appurtenances used for conducting sewage or industrial waste or other waste to a point of ultimate disposal.
- 213. Shore Impact Zone.** Land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50% of the normal structure setback.
- 214. Shoreland.** Land located within the following distances from public water: 1,000 feet from the ordinary high water level of a lake, pond or flowage; and 300 feet from a river or stream, or landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the water for lesser distances and when approved by the DNR Commissioner.
- 215. Shoreline Property.** A lot directly abutting a public water, generally located in the first lot tier adjoining the public water.
- 216. Sign.** Any letter, word or symbol, poster, picture, statuary, reading matter or representation in the nature of advertisement, announcement, message or visual communication, whether painted, posted, printed, affixed or constructed, including all associated brackets, braces, supports, wires and structures, which is displayed for informational or communicative purposes.<sup>3</sup>
- 217. Sign, Abandoned.** Any sign and/or its supporting sign structure which remains without a message or whose display surface remains blank for a period of one (1) year or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Signs applicable to a business temporarily suspended because of a change in ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of one (1) year or more. Any signs remaining after demolition of a principal structure shall be deemed to be abandoned. Signs which are present because of being legally established nonconforming signs or signs for which a Conditional Use Permit or a variance have

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<sup>3</sup> Amended 9/23/08

been approved shall also be subject to the definition of abandoned sign.<sup>4</sup>

**218. Sign, Awning.** A building sign or graphic printed on or in some fashion attached directly to the awning material.<sup>5</sup>

**219. Sign, Balloon.** A sign consisting of a bag made of lightweight material supported by helium, hot, or pressurized air which is greater than twenty-four (24) inches in diameter.<sup>6</sup>

**220. Sign, Building.** Any sign attached or supported by any structure used or intended for supporting or sheltering any use or occupancy.<sup>7</sup>

**221. Sign, Canopy.** Any sign that is part of or attached to a canopy, made of fabric, plastic, or structural protective cover over a door or entrance. A canopy sign is not a marquee and is different from service area canopy signs.<sup>8</sup>

**222. Sign, Changeable Copy.** A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. Changeable copy signs do not include signs upon which characters, letters or illustrations change or rearrange only once in a twenty-four (24) hour period.<sup>9</sup>

**223. Sign Digital Display.** A sign or portion thereof that displays electronic, static graphics or static pictures, with or without text information, defined by a small number of matrix elements using different combinations of light emitting diodes (LED's), fiber optics, light bulbs or other illumination devices with the display area where the message change sequence is accomplished immediately or by the means of fade, repixelization or dissolve modes. Digital display signs include computer programmable, microprocessor controlled electronic or digital displays. Digital display signs include projected images or messages with these characteristics onto buildings or other objects.<sup>10</sup>

**224. Sign, Directory.** A sign erected at an intersection that lists the residences or businesses that reside along the intersecting roadway.<sup>11</sup>

**225. Sign Face.** The surface of the sign upon, against, or through which the message of the sign is exhibited.<sup>12</sup>

**226. Sign, Flashing.** A directly or indirectly illuminated sign which exhibits changing light or color effect by any means, so as to provide intermittent illumination which includes the illusion of intermittent flashing light by means of animation. Also any mode of lighting which resembles zooming, twinkling, or sparkling.<sup>13</sup>

**227. Sign, freestanding.** Any sign which has a supporting framework that is placed on, or anchored in, the ground and which is independent from any building or other structure.<sup>14</sup>

**228. Sign Height.** The height of a sign shall be computed as the vertical distance measured from the grade immediately below the sign to the top of the highest attached component of the sign.<sup>15</sup>

**229. Sign, Illuminated.** Any sign which contains an element designed to emanate artificial light internally or externally.<sup>16</sup>

**230. Sign, Legally Established Nonconforming.** Any sign and its support structure

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<sup>4</sup> Amended 9/23/08

<sup>5</sup> Amended 9/23/08

<sup>6</sup> Amended 9/23/08

<sup>7</sup> Amended 9/23/08

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<sup>9</sup> Amended 9/23/08

<sup>10</sup> Amended 9/23/08

<sup>11</sup> Amended 9/23/08

<sup>12</sup> Amended 9/23/08

<sup>13</sup> Amended 9/23/08

<sup>14</sup> Amended 9/23/08

<sup>15</sup> Amended 9/23/08

<sup>16</sup> Amended 9/23/08

lawfully erected prior to the effective date of this ordinance which fails to conform to the requirements of this ordinance. A sign which was erected in accordance with a variance granted prior to the adoption of this ordinance and which does not comply with this ordinance shall be deemed to be a legally established nonconforming sign. A sign which was unlawfully erected shall be deemed to be an illegal sign.<sup>17</sup>

- 231. Sign, Marquee.** Any building sign painted, mounted, constructed or attached in any manner, on a marquee.<sup>18</sup>
- 232. Sign, Off-premise.** A sign which directs the attention of the public to a business, activity conducted, or product sold or offered at a location not on the same premises where such sign is located. For purposes of this ordinance, easements and other appurtenances shall be considered to be outside such plated parcel of land and any sign located or proposed to be located in an easement of other appurtenance shall be considered an off-premise sign.<sup>19</sup>
- 233. Sign, On-premise.** A sign which identifies an establishment, person, activity, goods, products or services located on the premises where the sign is installed.<sup>20</sup>
- 234. Sign, Pole.** See pylon sign.<sup>21</sup>
- 235. Sign, Portable.** Any sign which is manifestly designed to be transported, including by trailer or on its own wheels, even though the wheels of such sign may be removed and the remaining chassis or support is converted to another sign or attached temporarily or permanently to the ground since this characteristic is based on the design of such sign.<sup>22</sup>
- 236. Sign, Projecting.** Any sign which is affixed to a building or wall in such a manner that its leading edge extends more than two (2) feet beyond the surface of such building or wall face.<sup>23</sup>
- 237. Sign, Pylon.** Any freestanding sign which has its supportive structure(s) anchored in the ground and which has a sign face elevated above ground level by pole(s) or beam(s) and with the area below the sign face open.<sup>24</sup>
- 238. Sign, Rotating.** A sign or portion of a sign which turns about on an axis.<sup>25</sup>
- 239. Sign, Scrolling.** Any sign that uses changing lights or colors to form a sign message or messages wherein the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes.<sup>26</sup>
- 240. Sign, Shimmering.** A sign which reflects an oscillating sometimes distorted visual image.<sup>27</sup>
- 241. Sign Structure.** Any structure including the supports, uprights, bracing and framework which supports or is capable of supporting any sign.<sup>28</sup>
- 242. Sign, Temporary.** Any display device, constructed of cloth, canvas, light fabric, cardboard, wall board or other light materials, with or without frames, intended to be displayed for a limited period of time only. Temporary event signage includes but is not limited to balloons, banner, flags, pennants/streamers, wind animated devices, inflatable statuary, rigid portable signs, portable reader-boards, and searchlights. Other types of

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<sup>17</sup> Amended 9/23/08

<sup>18</sup> Amended 9/23/08

<sup>19</sup> Amended 9/23/08

<sup>20</sup> Amended 9/23/08

<sup>21</sup> Amended 9/23/08

<sup>22</sup> Amended 9/23/08

<sup>23</sup> Amended 9/23/08

<sup>24</sup> Amended 9/23/08

<sup>25</sup> Amended 9/23/08

<sup>26</sup> Amended 9/23/08

<sup>27</sup> Amended 9/23/08

<sup>28</sup> Amended 9/23/08

display devices will require the approval of the Zoning Administrator.<sup>29</sup>

- 243. Sign, Wall.** Any building sign attached parallel to, but within two (2) feet of a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one (1) sign surface.<sup>30</sup>
- 244. Sign, Window.** Any building sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is placed inside a window or upon the window or glass and is visible from the exterior of the window.<sup>31</sup>
- 245. Significant Historical Site.** Any archeological site, standing structure, or other /property that meets the criteria for eligibility to the National Register of Historical Places, or is listed in the State Register of Historical Sites or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes Sec. 307.08. A Historical Site meets this 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 Archeologist or the Director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historical sites.
- 246. Sketch Plan.** A plan drawn to scale used for planning and discussion purposes only.
- 247. Solar Energy Systems and Structures, Large Scale (Solar Farm).** A solar array composed of multiple solar panels on ground-mounted racks or poles which are the primary land use for the parcel on which it is located and is intended to provide electricity primarily to the electrical grid.
- 248. Solar Energy Systems and Structures, Individual.** A solar panel or array composed of solar panel(s) on ground-mounted rack(s) or pole(s) which are intended primarily to provide electricity to the land on which it is located.
- 249. Solar Energy Systems and Structures, Neighborhood.** A solar panel or array composed of solar panel(s) on ground-mounted rack(s) or pole(s) which are intended primarily to provide electricity to multiple properties within the immediate area.
- 250. Specified Anatomical Areas:** Anatomical areas consisting of a 1) less than completely and opaquely covered human genitals, pubic region or pubic hair, buttock, anus, for female breast or breast below the point immediately above the top of the areola or any combination of the foregoing; and 2) exposed or opaquely covered human male genitals in a discernibly turgid state.
- 251. Specified Sexual Activities:** Activities consisting of the following:
- A. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation or fondling of unclothed genitals, pubic region, buttock, or female breast, flagellation or torture in a sexual relationship, or any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, sodomy, zooerasty; or
  - B. Presentation, display, depiction, or description of human genitals in the state of sexual stimulation, arousal or tumescence; or
  - C. Use or acts of human or animal ejaculation, sexual intercourse, sodomy, oral copulation, coitus or masturbation; or

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<sup>29</sup> Amended 9/23/08

<sup>30</sup> Amended 9/23/08

<sup>31</sup> Amended 9/23/08

- D. Fondling or touching of human genitals, pubic regions or pubic hair, buttock, or female breast(s); or
  - E. Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such person; or
  - F. Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; or
  - G. Human excretion, urination, menstruation, vaginal or anal irrigation; or
  - H. Any combination of the above.
- 252. Steep Slope.** Land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness due to the site's soil characteristics as mapped and described in available County Soils Surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of these regulations. Where specific information is not available, steep slopes are lands having average slopes over 12% as measured over horizontal distances of 50 feet or more, but which are not bluffs.
- 253. Street.** A public right-of-way that provides primary vehicular access to abutting property and shall include avenue, road or highway. Street classifications are defined in the Comprehensive Plan unless defined in a roadway classification plan or other similar road specific plan.
- 254. Street, Arterial.** A street that has the primary function of rapidly move traffic to or through the City. May provide access to abutting land. Arterial streets are, in general, county or state highways that begin and terminate outside of the City limits or connect to other arterial streets within the City.
- 255. Street, Collector.** A street that has the primary function of receiving and distributing traffic to and from local streets and providing distribution of traffic within. May provide access to abutting lots. In general, collector streets begin and terminate at arterial streets or other collector streets.
- 256. Street, Local.** A street, the function of which is to provide localized access to individual parcels. Does not normally carry through traffic. Traffic volumes and traffic speeds are expected to be low.
- 257. Structure.** Any building, appurtenance including decks or other facility constructed, placed or erected by man except aerial or underground utility lines such as sewer, electric, telephone, telegraph, gas lines and except walks or steps on grade not more than 4 feet wide, stoops not exceeding 30 square feet, fenced, temporary furniture, planter, or decorative material and retaining walls consisting of wood or decorative block.
- 258. Subdivider.** The owner, agent, person, corporation, partnership or legal entity proposing to subdivide property under his control.
- 259. Subdivision.** The division of real estate into two or more parcels for the purpose of sale, rent or lease, including planned unit development.
- 260. Subdivision by Plat.** The subdivision into two or more parcels of any size by the authority of Minnesota Statutes, Chapter 505, with documents prepared by a Registered Land Surveyor and duly approved by the Planning Commission and Council.
- 261. Subdivision by Condominium Plan.** The subdivision of a building or the subdivision of real estate into two or more spaces or parcels of any size by the authority of Minnesota Statutes, Chapter 515A, with documents prepared by a Registered Land Surveyor and duly approved by the Planning Commission and Council.

262. **Subdivision by metes and bounds.** Any division of real estate resulting in two or more parcels which are not platted, but divided by description prepared and signed by a Registered Land Surveyor.
263. **Surface Water Oriented Commercial Use.** The use of land for commercial purposes where access to and use of a surface water feature is an integral part of the normal operation of business. Marinas, resorts and restaurants with transient docking facilities are examples of such use.
264. **Telecommunication Tower.** Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for cellular telephone, data, radio and similar commercial and/or public communications purposes, including self-supporting lattice towers, guyed towers, monopole towers, or camouflaged towers. The term includes radio and telelaion transmission towers, microwave towers, common carrier towers, cellular telephone towers and the like.
265. **Temporary.** A use or structure that lasts longer than three days and is discontinued within 14 days. Any use or structure existing longer than 14 days, except for signs, shall be considered permanent unless a specific date of discontinuation, agreeable to the Planning and Zoning Administrator to be reviewed by the Planning Commission, has been submitted, in writing, to the City.
266. **Temporary Structure.** A structure of a temporary character including but not limited to house boats, fish houses, recreational vehicles, tents or shacks, used as dwellings for more than a 5 day period per year. Any new dwelling constructed or placed after the date of this Ordinance and not on a permanent foundation shall be considered a temporary structure.
267. **Toe of Bluff.** a) The lower point of a 50 foot segment with an average slope exceeding 18%.
268. **Top of the Bluff.** The higher point of a 50 foot segment with an average slope exceeding 18%.
269. **Townhouse Dwelling.** A type of multi-family housing consisting of dwelling units attached by common party walls. Ownership may be defined by Plat or Condominium Plan.
270. **Tree.** A woody plant 4 inches or more in diameter or 8 feet or more in height.
271. **Variance.** A legally permitted deviation from the provisions of this ordinance as deemed necessary by the Board of Adjustment when the strict interpretation of the Ordinance would create undue hardship and be impractical because of circumstances, relating to lot size, shape, topography or other characteristics of the property, and when the deviation from the Ordinance, with any attached conditions, will still be in keeping with the spirit and intent of the Ordinance. Variances cannot create a land use not permitted in a zone.
272. **Vegetation Removal, Clear Cutting.** The removal of more then 75% and up to 100% of a stand of trees and brush over 10 feet in height on a lot or parcel of land up to 40 acres.
273. **Vegetation Removal, Open Cutting.** The removal of more than 25% and up to 75% of a stand of trees and brush over 10 feet in height on a lot or parcel of land up to 40 acres.
274. **Vegetation Removal, Select Cutting.** Removal of dead, diseased or damaged trees or shrubs, removal of trees for placement of structures and drives, and further removal of only individual trees to uniformly thin up to 25% of a stand, on a lot or parcel of land up to 40 acres. Complete brush removal is allowable including trees under 10 feet in height.
275. **Vegetation Removal, Steep Slopes.** Removal of dead, diseased or damaged trees or shrubs and further removal of only individual trees to uniformly thin up to 25% of a



stand, on a lot or parcel of land with a bluff. Brush removal is only allowable where required to accommodate stairways, lifts and landings.

- 276. Walkway.** A parcel of property dedicated to the public for non-vehicular access purposes.
- 277. Water Oriented Accessory Structure or Facility.** A small above ground building or other improvement, except stairways, fences, docks and retaining walls, which because of the relationship of its use to a surface water feature is located closer to public waters than the normal structure setback. Examples of such structures and facilities include boat houses, gazebos, screen houses, fish cleaning houses and detached decks.
- 278. Wetland.** Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this definition, wetlands must have the following three attributes:
1. have a predominance of hydric soils,
  2. are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, and
  3. under normal circumstances support a prevalence of such vegetation.
- 279. Warehousing.** The principle use is the storage of materials or equipment within an enclosed building.
- 280. Warehousing, Commercial.** The rental or sale of warehousing space.
- 281. Zoning Administrator.** The duly appointed person responsible for the enforcement and administration of this Ordinance.
- 282. Zoning District.** An area of the City of Motley defined on the zoning map, having uniform zoning provisions.
- 283. Zoning District Overlay.** A zoning district containing regulations superimposed upon other zoning district regulations and superceding the underlying zoning district regulations.
- 284. Zoning Map.** The map of the City of Motley, amended from time to time, which defines the boundaries of the zoning districts.
- 285. Zoning Permit.** A permit issued by the Zoning Administrator to allow the construction of a structure or to allow a land use when the provisions of this ordinance have been met, when approval of any conditional use permits or variances have been granted and when the fees are paid. A zoning permit may have administrative conditions specific to the subject site when called for by the Ordinance.

## SECTION IV - GENERAL PROVISIONS

### 4.1 Application of the Ordinance.

1. The provisions of this Ordinance shall be held to be the minimum requirements for the maintaining of the public health, safety and welfare of the inhabitants of the City of Motley, Minnesota.
2. Where the provisions of the Ordinance are either more restrictive or less restrictive than applicable provision of other laws, ordinances, statutes, resolutions, covenants or regulations of any kind, the more restrictive condition, standard or requirement shall prevail.
3. Except as this Ordinance specifically provides, no structure shall be erected, converted, enlarged, reconstructed or altered and no structure or land shall be used for any purpose nor

in any manner which is not in conformity with this ordinance.

4. The provisions of this Ordinance shall be applicable to any subdivision of property within the City after the effective date of this Ordinance.
  - a. Subdivision by Plat or Condominium Plat shall be approved by the Planning Commission and Council.
  - b. Subdivision by metes and bounds and lot line adjustments shall be approved by the Planning Commission and/or zoning administrator. The proposed legal description for subdivision of land by metes and bounds shall be prepared and certified by a Registered Land Surveyor. Approval shall be indicated by the stamp of approval affixed by the City Clerk to said legal description. The County recorder or Registrar of Deeds may accept each such Certificate for filing and recording upon compliance with these provisions.
5. Ambiguities in the Ordinance shall be resolved by interpretation of the Planning and Zoning Administrator. If an applicant wishes to appeal the interpretation of the Administrator, an appeal can be made, by a conditional application if applicable, through a hearing of the Planning Commission.

#### **4.2 Environmental Documents and Concurrent Permits.**

1. It shall be the property owner's responsibility to secure necessary concurrent permits such as Pollution Control Agency, State Waste Disposal Permits; Health Department Permits; DNR Planned Unit Development Permits; Corps of Engineers Permits, DNR Public Water Permits and DNR Water Appropriation Permits. Approval by the City does not imply approval by other agencies.
2. The City will prepare an Environmental Assessment Worksheet (EAW) where a proposed project exceeds the limits defined in the Environmental Quality Council's Rules and Regulations for Environmental review program or as requested by the Planning Commission or petitioned by the public.
3. The administration of an EAW or EIS shall be in accordance with the rules and regulations of the Minnesota Environmental Quality Board. The Zoning Administrator shall be responsible to the City Council and have the authority to administer the environmental document. The Planning Commission shall review each document and make recommendations to the City Council whose decision shall be final.

#### **4.3 Use of Pre-Existing Lots<sup>32</sup>.**

1. A nonconforming single lot of record may be allowed as a building site without variances from lot size requirements, provided that:
  - a. All structure and septic system setback distance requirements can be met;
  - b. A Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080 and the City of Motley SSTS regulations, can be installed or the lot is connected to a public sewer; and

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<sup>32</sup> Amended by Ordinance 153.05, 3/9/2010

- c. The impervious surface cover does not exceed the requirements of the underlying zone.
2. In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:
  - a. The lot must be at least 66 percent of the dimensional standard for lot width and lot size for the underlying zoning district and with the shoreland classification consistent with Minnesota Rules, chapter 6120 if located within a shoreland area;
  - b. The lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080 and the City of Motley SSTS regulations;
  - c. Impervious surface coverage must not exceed the requirements of the underlying zone; and
  - d. Development of the lot must be consistent with the City of Motley Comprehensive Plan.
3. A lot subject to Section 4.3(2) not meeting the requirements of Section 4.3(2) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.
4. Notwithstanding Section 4.3(2), contiguous nonconforming lots of record under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of Minnesota Rules, section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.
5. An existing nonconforming parcel may be enlarged by attachment of a portion of an adjacent lot provided that the lot or parcel being reduced in size remains conforming to all dimensional and sewage treatment requirements applicable to a newly created lot. The applicants shall provide a revised legal description for each resulting parcel or lot such that the lot line adjustment does not result in an increase in the number of saleable properties. The Zoning Administrator may require additional information as necessary in order to assure compliance with this section and the Zoning Ordinance.

#### **4.4 Non-conforming Structures and Uses<sup>33</sup>**

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

1. Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control, may be continued in the same physical location with a zoning permit, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion (except as allowed under paragraph 6 of this section), unless:
  - a. The nonconformity or occupancy is discontinued for a period of more than one year; or
  - b. Any nonconforming structure or use in a non-shoreland district is destroyed by fire

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<sup>33</sup> Amended by Ordinance 153.05, 3/9/2010

- or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged.
- c. Any nonconforming structure or use in the shoreland district with less than 50 percent of the required setback from the ordinary high water level is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage in which case the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.
  - d. For the purposes of this section, a structure shall not be considered to have expanded if it does not increase the amount of land covered by the structure being replaced and does not result in more than a 10 percent increase in the percentage of the structure being within a required setback, not to exceed an additional 100 square feet. The Zoning Administrator may require that the applicant submit reasonable evidence of the dimensions of the structure to be replaced, including but not limited to photos, surveys or building plans.
2. In cases where the requirements of Section 4.4 (1) are not met or applicable the landowner may apply for a conditional use permit and in the review of such request, the City may allow reconstruction and expansion of the structure that was destroyed, up to the dimensions allowed under paragraph 6 of this section. Such approval shall only be granted if the structure setback is increased where practicable and reasonable conditions are placed upon the zoning or building permit to mitigate created impacts on the adjacent property or water body, to prevent and abate nuisances and to protect the public health, welfare, or safety. This paragraph shall apply to the replacement of any water oriented accessory structure.
  3. Notwithstanding paragraphs 1 and 2 above, any repair, replacement, maintenance, improvement, or expansion of a nonconforming use or structure in floodplain areas shall be regulated to the extent necessary to maintain eligibility in the National Flood Insurance Program and to not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.
  4. A lawful, non-conforming use of a structure or parcel of land may be changed to lessen the non-conformity of use. Once a non-conforming use has been changed, it shall not thereafter be altered to increase the non-conformity.
  5. Sewage treatment systems shall be upgraded to a conforming status in conformance with the following schedule:
    - a. Upon issuance of any zoning permit, conditional use permit or variance for any improvement on, or use of, the property.
    - b. Upon determination that leakage to the surface or lake or into an adjacent well is occurring, or determination that the system is discharging into the ground at an elevation less than 3 feet above the highest known water table.
    - c. Upon determination by Zoning Administrator that a system is inadequate for a change in occupation or use in the structure.
    - d. Upon notice by the Zoning Administrator that the City's records indicate the system is non-conforming.
    - e. Upon availability of a community sewer system to the property, connection to that system shall be made regardless of the conformance or non-conformance of the

individual system.

6. A one-time addition/enlargement may be made to an existing non- conforming structure, subject to the following:
  - a. For water oriented accessory structures, no expansion shall be allowed except as permitted under subparagraph f below.
  - b. The addition is not within the shore impact zone.
  - c. The addition will not encroach further into any setback.
  - d. The size of the addition shall not exceed fifty percent of the size of the structure it is being added to.
  - e. For reasons of structural integrity, a basement may be allowed under the addition only where a basement exists in the original structure.
  - f. The height of the addition shall not exceed the height of the existing structure, except as may be necessary to achieve a roof pitch of no steeper than 4:12.
  - g. No permits shall be granted under this provision for homes constructed after June 10, 2003 or where a previous variance has been approved.
  - h. All other provisions of the Ordinance, except Section 4.5, Subdivision 2 must be complied with.

#### **4.5 Building Standards.**

1. All structures and appurtenances shall be constructed in accordance with the general standards of the building industry. The City does not examine plans nor assume liability for the structural stability or quality of any structures.
2. All dwelling units shall be a minimum of 18 feet wide and shall be placed on a foundation.
3. In accordance with the Minnesota State Building Code, in the absence of a determination by an engineer competent in soil mechanics, the minimum allowable footing depth in feet due to freezing is five feet.
4. Private sewage treatment systems, where allowed, shall conform to Minnesota Pollution Control Agency Standards as required in State rule or law.
5. Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health and the MPCA. Private wells must be located, constructed, maintained and sealed in accordance with the water well construction code of the Minnesota Department of Health. All wells must be installed by a well driller licensed in the State of Minnesota. A log of each well shall be filed with the City within 45 days of the well being drilled.
6. The provisions of the Ordinance were prepared to be at least as restrictive as the "Statewide Standards for 'Management of Shoreland Areas'" effective July 3, 1989. Where the conditions of the Shoreland Standards are more restrictive, or in case of oversight, exclusion, or question in this Ordinance, the Shoreland Standards shall govern, except for applications involving non-conforming uses.

#### **4.6 Building Standards.**

### **Carports**

A carport may be constructed with an approved land use permit. Carports are classified as an accessory structure.

Performance Standards:

1. Approved materials shall be metal or of wood construction.
2. Setback and impervious surface standards must be met;
3. Drainage from the carport or car cover shall not negatively impact adjacent properties;
4. Shall not exceed 12 feet in height;
5. Structures shall be firmly anchored to the ground and shall meet at least a wind 90-mph wind rating;
6. Shall be open on at least 2-sides;
7. Shall not be used for storage of any items that can be viewed from a public street, except motor vehicles and travel trailers.
8. Shall require a hard surface such as concrete, asphalt or gravel underneath the carport.

## SECTION V - ZONING DISTRICTS AND DISTRICT PROVISIONS

### 5.1 General

1. The City of Motley is hereby divided into Zoning Districts as shown on the official Zoning District map, which may be subsequently amended by the procedures of Section 11.4.
2. The boundaries are generally on the center of the streets, on lot lines, on shorelines, on the center of streams or rivers, and following the contour of the land for the Natural Resource Zoning District.
3. The following Districts are hereby established:

Shoreline Residential.....	R-1
Residential - Medium Density .....	R-2
Residential – High Density .....	R-3
Urban Commercial.....	C-1
Commercial .....	C-2
Industrial.....	I
Public Use.....	PU
Natural Resource .....	NR

4. The rivers in the City have been classified as follows:
  - A. Forested: Crow Wing River, Long Prairie River, and Mosquito Creek
5. The jurisdiction of this Ordinance shall include the shorelands of all the public waters in the

City listed in Sec. 5.1(4).

6. The following provisions apply to all zoning districts:
  - A. All accessory structures or uses require the establishment of a principle structure when placed on a lot less than 2.5 acres in size<sup>34</sup>.
  - B. Agricultural use is prohibited within 100 feet of the OHW.
  - C. There shall be no impervious coverage within 100 feet of the OHW excepts walks and steps on grade less than four feet wide as provided for in this Ordinance.
  - D. Water oriented accessory structures, including boathouses, are prohibited.
7. All uses are considered prohibited unless specifically allowed in this Code, even if they are not listed specifically under excluded uses.
8. Criteria for land use categories designations:
  - A. Preservation of natural sensitive areas.
  - B. Present ownership and development.
  - C. Shoreland soil types and their engineering capabilities.
  - D. Topographic characteristics.
  - E. Vegetative cover.
  - F. In-water physical characteristics.
  - G. Recreational use of surface water.
  - H. Road and service center accessibility.
  - I. Socio economic development needs of the public.
  - J. Availability of public sewer.
  - K. The necessity to reserve and restore certain areas having significant historical or ecological value.
  - L. Conflicts between land uses and impacts of commercial uses or higher densities on adjacent properties.
  - M. Alternative available for desired land use.
  - N. Prevention of spot zoning.
  - O. Conformance to the City of Motley Use Plan.

## **5.2 Shoreline Residential (R-1).**

1. Purpose: To establish and maintain a land use district on the shorelines of public waters that is residential in character and that is compatible with the natural resources of the public water. The provisions of this zone shall apply to the shorelands of the public water bodies as classified in Section 5.1(4) of this ordinance.
2. Permitted Uses. (R-1)<sup>35</sup>  
See Section 5.11
3. Conditional Uses. (R-1)<sup>36</sup>  
See Section 5.11
4. Excluded Uses. (R-1)<sup>37</sup>

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<sup>34</sup> Amended December 2016

<sup>35</sup> Ordinance 2009-3, 4/28/2009

<sup>36</sup> Ordinance 2009-3, 4/28/2009

<sup>37</sup> Ordinance 2009-3, 4/28/2009

See Section 5.11

5. Lot and Use Requirements. (R-1)

Lot width at OHW and building line - feet, minimum	200
Lot width with guest cottage, accessory dwelling unit or duplex – feet, minimum	300
Lot size - square feet, minimum	80,000
Lot size with guest cottage, accessory dwelling unit or duplex - square feet, minimum	120,000
Buildable area – square feet, minimum	17,400
Buildable area with guest cottage or duplex – square feet, minimum	24,800
Setback, right-of-way, local streets – feet, minimum	30
Setback, right-of-way, collector and arterial streets – feet, minimum	50
Setback, OHW – feet, minimum	150
Setback, bluff – feet, minimum	30
Setback, side - feet, minimum	10
Setback, corner side – feet, minimum	30
Setback, rear – feet, minimum	10 (20 if for vehicle storage and vehicle door faces an alley)
Impervious coverage – maximum	25%
Building height - feet, maximum	25
Building above highest known groundwater or lake level – feet, minimum	3
Maximum Density	1 unit/20,000 sq. ft.
SSTS setback from OHW – feet, minimum	100

6. Performance Standards. (R-1)

A. Dwelling, Guest cottage. A dwelling guest cottage must meet the following restrictions:

1. Shall be located along with the principal structure on the smallest lot meeting the above requirements.
2. Shall not cover more than 700 square feet of land and must not exceed 15 foot height (guest cottages may be allowed in the second floor of an accessory building provided the overall height of the structure does not exceed the maximum allowed a structure and the floor area and height of the guest cottage area itself do not exceed the amounts listed here).
3. Shall be located to reduce it's visibility as viewed from public waters and adjacent shorelands.
4. Shall be screened from adjacent parcels and public waters by vegetation, topographical location, increased setback, color or other methods assuming summer leaf on conditions.

B. 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:

1. Stairways and lifts must not exceed 4 feet in width on residential lots. Wider



stairways may be used for commercial properties, public open-space recreational properties, and planned unit developments.

2. Landings for stairways and lifts on residential lots must not exceed 32 square feet in area.
  3. Canopies or roofs are not allowed on stairways, lifts or landings.
  4. 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.
  5. Stairways, lifts and landing 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.
  6. 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 sub-items (1) to (5) are complied with.
- C. Fertilizer and Pesticides. 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.
- D. Duplexes. On Forested rivers, subdivisions of duplexes must also meet the following standards:
1. Each building must meet setback at least 200 feet from the Ordinary High Water Mark.
  2. When not connected to public water and sewer, each building must have common sewage treatment and water systems that serve both units in the building.
  3. Watercraft docking facilities for each lot must be centralized in location and serve all dwelling units in the subdivision.
  4. No more than 25% of river shoreline can be in duplex development.
- E. Docks. The landward end of all docks must meet a 10 foot setback from the nearest lot line. Docks must be placed so that no portion of the dock, including “L” extensions or additions, and no accessory or ancillary structures or equipment (including mooring buoys, boat lifts, shore trackers or swimming platforms), extends across the projection of the setback from the lot line into the river. Docks must also be placed so as not to block access from an adjacent property to open water. The storage of all docks, and all watercraft or water oriented items shall also be subject to this property setback rule.

Notwithstanding any provision of this section to the contrary, the 10-foot setback for docks shall not apply to the extent necessary to allow ingress or egress of a pre-existing boat house.

- a. This Ordinance shall apply to the use, maintenance and installation of any dock and accessory or ancillary structures or equipment at any time.

F. Grading and Filling

Grading and filling activities must comply with the provisions of this subsection except for the construction of public roads and parking areas if consistent with this ordinance.

Permit Requirements.

1. Grading, filling and excavations necessary for the construction of structures and sewage treatment systems, if part of an approved permit, do not require a separate grading and filling permit. However, the standards in Section 5.2 of this ordinance must be incorporated into the permit.

2. For all other work, including driveways not part of another permit, a grading and filling permit is required for:

- (a) the movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and
- (b) the movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.

3 Grading, filling and excavation activities must meet the following standards:

A. Grading or filling of any wetland must meet or exceed the wetland protection standards under Minnesota Rules, Chapter 8420 and any other permits, reviews, or approvals by other local state, or federal agencies such as watershed districts, the DNR or US Army Corps of Engineers;

B. Land alterations must be designed and implemented to minimize the amount of erosion and sediment from entering surface waters during and after construction consistently by:

- (1) Limiting the amount and time of bare ground exposure;
- (2) Using temporary ground covers such as mulches or similar materials;
- (3) Establishing permanent vegetation cover as soon as possible;
- (4) Using sediment traps, vegetated buffer strips or other appropriate techniques;
- (5) Stabilizing altered areas to acceptable erosion control standards consistent with the field office technical guides of the soil and water conservation district;
- (6) Not placing fill or excavated material in a manner that creates unstable slopes. Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30 percent or greater;
- (7) Fill or excavated material must not be placed in bluff impact zones;
- (8) Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minnesota Statutes, Section 103G;
- (9) Alterations of topography are only allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and
- (10) Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if:
  - (a) the finished slope does not exceed three feet horizontal to one foot vertical;
  - (b) the landward extent of the riprap is within ten feet of the ordinary high water level; and
  - (c) the height of the riprap above the ordinary high water level does not exceed three feet.

4. Vegetation Management.

Removal or alteration of vegetation must comply with the provisions of this subsection except for:

- A. Vegetation alteration necessary for the construction of structures and sewage treatment systems under validly issued permits for these facilities;
- B. The construction of public roads and parking areas if consistent with this ordinance;
- C. Forest management uses consistent with this ordinance; and
- D. Agricultural uses consistent with of this ordinance.

5. Intensive vegetation clearing in the shore and bluff impact zones and on steep slopes is prohibited. Intensive clearing outside of these areas is allowed if consistent with the forest management standards of this ordinance.

6. Limited clearing and trimming of trees and shrubs in the shore and bluff impact zones and on steep slopes, is allowed to provide a view to the water from the principal dwelling and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas, and permitted water-oriented accessory structures or facilities, provided that:

- A. The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;
- B. Existing shading of water surfaces along rivers is preserved;
- C. Cutting debris or slash shall be scattered and not mounded on the ground; and
- D. Perennial ground cover is retained.

7. Removal of trees, limbs, or branches that are dead, diseased, dying, or pose safety hazards is allowed without a permit.

8. Fertilizer and pesticide runoff into surface waters must be minimized through use of vegetation, topography or both.

### **5.3 Residential – Medium Density (R-2)**

1. Purpose: To establish and maintain a medium density land use Zoning District, which will provide a buffer between Residential – Low Density (R-1) and higher density residential and commercial is non-riparian.

2. Permitted Uses. (R-2)<sup>38</sup>  
See Section 5.11

3. Conditional Uses. (R-2)<sup>39</sup>  
See Section 5.11

4. Excluded Uses. (R-2)<sup>40</sup>  
See Section 5.11

5. Lot and Use Requirements. (R-2)

Lot Width – feet, minimum	50
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Lot Area - minimum	10,000 sq ft with city sewer/water, 2.5 acres with an ISTS
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Buildable Lot Area - minimum	7,400 sq ft with city sewer/water, 17,400 sq ft with an SSTs
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Setback, right-of-way, local streets – feet, minimum	15
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<sup>38</sup> Ordinance 2009-3, 4/28/2009

<sup>39</sup> Ordinance 2009-3, 4/28/2009

<sup>40</sup> Ordinance 2009-3, 4/28/2009

Setback, right-of-way, collector and arterial streets – feet, minimum	25
Setback, side - feet, minimum	10
Setback, corner side – feet, minimum	15
Setback, rear – feet, minimum	10 (20 if for vehicle storage and vehicle door faces an alley)
Impervious coverage - maximum	25%
Building height - feet, maximum	25
Accessory Structure Size – square feet, maximum, cumulative	1,280 for parcels 2.5 acres or less 2,560 for parcels 2.51-5 acres 4,000 for parcels larger than 5 acres.
Building above highest known groundwater lot lake level – feet, minimum	3
Maximum Density	1 unit/10,000 sq. ft.

#### 6. Performance Standards (R-2)

Side Yard Setback. The side-yard setback may be reduced by 50% provided one of the following is completed:

- a. The property owner has the lot line in question surveyed by a licensed surveyor. The survey monuments establishing the lot line must be clearly visible so a determination of the encroachment can easily be made.
- b. The property owner shall install flags, stakes or other devices establishing the location of the property line. The property owner and the adjacent property owner on the line to be encroached upon must both sign and have notarized an agreement stating that they both agree upon the property line, as marked by the property owner.

Impervious Coverage. The impervious coverage may be increased by 50% provided the following:

- a. A stormwater management plan that retains the 10-year, 24-hour rain event is provided. Upon approval, the plan must be fully implemented.
- b. Direct runoff to adjacent properties in a 10-year, 24-hour rain event is eliminated through the use of swales, berms, ditches, grading or other necessary means.

### **5.4 Residential - High Density (R-3).**

1. Purpose: To establish and maintain a land use District that will accommodate higher levels of residential density serviced by City sanitary utilities. This zone will also be used to enhance the diversity of housing opportunities for residents at a variety of income levels.

2. Permitted Uses. (R-3)<sup>41</sup>  
See Section 5.11

3. Conditional Uses. (R-3)<sup>42</sup>  
See Section 5.11

4. Excluded Uses. (R-3)<sup>43</sup>  
See Section 5.11

5. Lot and Use Requirements. (R-3)

Lot Width – feet, minimum	50
Lot Area - square feet, minimum	6,000
Buildable Lot Area - square feet, minimum	2,700
Setback, right-of-way, local streets – feet, minimum	20
Setback, right-of-way, collector and arterial streets – feet, minimum	20
Setback, side - feet, minimum	10
Setback, cornerside – feet, minimum	20
Setback, rear – feet, minimum	10 (20 if for vehicle storage and vehicle door faces an alley)
Impervious coverage – maximum	50%
Building height - feet, maximum	45
	1,280 for single-family dwellings.
Accessory Structure Size – square feet, maximum, cumulative	728 sq ft per dwelling unit for multi-unit dwellings (average)
Building above highest known groundwater lot lake level – feet, minimum	3
Maximum Density	1 unit/3,000 s.f.

6. Performance Standards (R-3)

Side Yard Setback. The side-yard setback may be reduced by 50% provided one of the following is completed:

- a. The property owner has the lot line in question surveyed by a licensed surveyor. The survey monuments establishing the lot line must be clearly visible so a determination of the encroachment can easily be made.
- b. The property owner shall install flags, stakes or other devices establishing the location of the property line. The property owner and the adjacent property owner on the line to be encroached upon must both sign and have notarized an agreement stating that they both agree upon the property line, as marked by the property owner.

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<sup>41</sup> Ordinance 2009-3, 4/28/2009

<sup>42</sup> Ordinance 2009-3, 4/28/2009

<sup>43</sup> Ordinance 2009-3, 4/28/2009

Impervious Coverage. The impervious coverage may be increased by 50% provided the following:

- a. A stormwater management plan that retains the 10-year, 24-hour rain event is provided. Upon approval, the plan must be fully implemented.
- b. Direct runoff to adjacent properties in a 10-year, 24-hour rain event is eliminated through the use of swales, berms, ditches, grading or other necessary means.

## **5.5 Urban Commercial (C-1)**

1. Purpose: To provide a zoning classification for high-density commercial uses. Development in this zone relies less on automobile traffic and more on walking, biking and other similar modes of transportation. Infrastructure must be in place to provide on-street parking and walkways as well as connection to municipal water and sanitary sewer utilities. The zone must be clustered to provide the maximum amount of interaction and accessibility between the different business establishments.
2. Permitted Uses. (C-1)<sup>44</sup>  
See Section 5.11
3. Conditional Uses. (C-1)<sup>45</sup>  
See Section 5.11
4. Accessory Uses. (C-1)<sup>46</sup>  
See Section 5.11
5. Excluded Uses. (C-1)<sup>47</sup>  
See Section 5.11

### 6. Lot and Use Requirements. (C-1)

Minimum lot size - square feet	6,000
Setback, right-of-way - feet	0
Setback, side - feet	0
Setback, rear - feet	0
Building height - feet, maximum	25
Building above highest known groundwater	3
Impervious surface coverage - maximum	85%

7. Performance Standards. (C-1)
  - A. Compatibility of Use. Use shall be compatible with the surrounding neighborhood. Uses shall not present noise, odor, light nuisances or any other nuisances.
  - B. Lighting. Lighting shall be minimal. Lighting shall be downward directional and

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<sup>44</sup> Ordinance 2009-3, 4/28/2009

<sup>45</sup> Ordinance 2009-3, 4/28/2009

<sup>46</sup> Ordinance 2009-3, 4/28/2009

<sup>47</sup> Ordinance 2009-3, 4/28/2009

shall be compatible with the surrounding development.

C. Fire Lanes. Fire lanes shall remain unobstructed at all times.

## **5.6 Commercial (C-2)**

1. Purpose: To provide a zoning classification for commercial uses oriented around the automobile. Parcels are larger than in the Urban Commercial zone in order to provide on-site parking, on-site stormwater facilities as well as on-site water supply and sewage treatment where municipal utilities are not immediately available.
2. Permitted Uses. (C-2)<sup>48</sup>  
See Section 5.11
3. Conditional Uses. (C-2)<sup>49</sup>  
See Section 5.11
4. Accessory Uses. (C-2)<sup>50</sup>  
See Section 5.11
5. Excluded Uses. (C-2)<sup>51</sup>  
See Section 5.11

### **6. Lot and Use Requirements. (C-2)**

Minimum lot size - square feet	20,000
Setback, right-of-way - feet	50
Setback, parking from lot line - feet	30
Setback, side - feet	10
Setback, rear - feet	10
Building height - feet, maximum	25
Building above highest known groundwater	3
Impervious surface coverage - maximum	50%

### **7. Performance Standards. (C-2)**

- A. Compatibility of Use. Use shall be compatible with the surrounding neighborhood. Uses shall not present noise, odor, light nuisances or any other nuisances.
- B. Parking. Adequate off-street parking shall be provided. On-street parking is not allowed under any circumstances.
- D. Screening. A landscaping and screening plan must be submitted and approved by the Planning Commission with each conditional use permit.

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<sup>48</sup> Ordinance 2009-3, 4/28/2009

<sup>49</sup> Ordinance 2009-3, 4/28/2009

<sup>50</sup> Ordinance 2009-3, 4/28/2009

<sup>51</sup> Ordinance 2009-3, 4/28/2009

- E. Lighting. Lighting shall be minimal. Lighting shall be downward directional and shall be compatible with the surrounding development.
- F. Side Yard Setback. The side-yard setback may be reduced by 50% provided one of the following is completed:
  - a. The property owner has the lot line in question surveyed by a licensed surveyor. The survey monuments establishing the lot line must be clearly visible so a determination of the encroachment can easily be made.
  - b. The property owner shall install flags, stakes or other devices establishing the location of the property line. The property owner and the adjacent property owner on the line to be encroached upon must both sign and have notarized an agreement stating that they both agree upon the property line, as marked by the property owner.
- G. Impervious Coverage. The impervious coverage may be increased by 50% provided the following:
  - a. A stormwater management plan that retains the 10-year, 24-hour rain event is provided. Upon approval, the plan must be fully implemented.
  - b. Direct runoff to adjacent properties in a 10-year, 24-hour rain event is eliminated through the use of swales, berms, ditches, grading or other necessary means.

## **5.7 Industrial. (I)**

1. Purpose: To provide a zoning classification for light-industrial and heavy commercial uses. Development in this zone requires high accessibility and municipal water and sanitary sewer service. Industrial zones should be clustered to control negative impacts of industrial activities and to efficiently facilitate maximum interaction between light-industrial and heavy commercial enterprises.
2. Permitted Uses. (I)<sup>52</sup>  
See Section 5.11
3. Conditional Uses. (I)<sup>53</sup>  
See Section 5.11
4. Accessory Uses. (I)<sup>54</sup>
5. Excluded Uses. (I)<sup>55</sup>  
See Section 5.11
6. Lot and Use Requirements. (I)

Minimum lot size - square feet	20,000
Setback, right-of-way - feet	50

<sup>52</sup> Ordinance 2009-3, 4/28/2009

<sup>53</sup> Ordinance 2009-3, 4/28/2009

<sup>54</sup> Ordinance 2009-3, 4/28/2009

<sup>55</sup> Ordinance 2009-3, 4/28/2009



Setback, parking from lot line - feet	30
Setback, side - feet	10
Setback, rear - feet	30
Building height - feet, maximum	25
Building above highest known groundwater	3
Impervious surface coverage - maximum	50%

7. Performance Standards. (I)

- A. Compatibility of Use. Use shall be compatible with the surrounding neighborhood. Uses shall not present noise, odor, light nuisances or any other nuisances.
- B. Parking. Adequate off-street parking shall be provided. On-street parking is not allowed under any circumstances.
- C. Screening. Outside storage shall be screened. A landscaping and screening plan must be submitted and approved by the Planning Commission with each conditional use permit.
- D. Lighting. Lighting shall be minimal. Lighting shall be downward directional and shall be compatible with the surrounding development.
- E. All proposed industrial uses shall be required to disclose any environmentally sensitive emissions, discharges or waste products at the time of a conditional use permit public hearing. The allowable level of these parameters shall be established in the conditional use permit to be at least as restrictive as the applicable State or Federal standards, and a testing program shall be established to monitor the facility. Exceeding the allowable level of any parameter shall constitute a failure to perform a condition of the conditional use permit.
- F. For new construction or additions/alterations, at least ten percent (10%) of the land area shall be landscaped with grass, shrubs, trees or other approved ground cover and ornamental landscaping. All landscaped areas shall be maintained and kept free of weeds and debris.
- G. All areas not used for buildings shall be graded to provide drainage and shall not drain unto abutting property. All areas not designated for structures, parking or driveways shall be landscaped and maintained. Landscaping shall be completed within nine months of the end of development construction.
- J. Impervious Coverage. The impervious coverage may be increased by 50% provided the following:
  - a. A stormwater management plan that retains the 10-year, 24-hour rain event is provided. Upon approval, the plan must be fully implemented.
  - b. Direct runoff to adjacent properties in a 10-year, 24-hour rain event is eliminated through the use of swales, berms, ditches, grading or other necessary means.

## **5.8 Public Use. (PU)**

1. Purpose: To establish and maintain a land use district that is publicly owned for public buildings and public facilities.
2. Permitted Uses. (PU)<sup>56</sup>  
See Section 5.11
3. Conditional Uses. (PU)<sup>57</sup>  
See Section 5.11
4. Excluded Uses. (PU)<sup>58</sup>  
See Section 5.11
5. Lot and Use Requirements. (PU)  
Requirements shall be as restrictive as the most restrictive adjacent zoning classification.
6. Performance Standards (PU)  
Impervious Coverage. The impervious coverage may be increased by 50% provided the following:
  - a. A stormwater management plan that retains the 10-year, 24-hour rain event is provided. Upon approval, the plan must be fully implemented.
  - b. Direct runoff to adjacent properties in a 10-year, 24-hour rain event is eliminated through the use of swales, berms, ditches, grading or other necessary means.

## **5.9 Natural Resource. (NR)**

1. Purpose: This zone contains the park and outdoor recreation system, wetlands and the flood plain areas of the city. The zone protects high quality outdoor recreation areas for city residents and visitors and maintains a high quality natural environment.
2. Permitted Uses. (NR)<sup>59</sup>  
See Section 5.11
3. Conditional Uses. (NR)<sup>60</sup>  
See Section 5.11
4. Accessory Uses. (NR)<sup>61</sup>  
See Section 5.11

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<sup>56</sup> Ordinance 2009-3, 4/28/2009

<sup>57</sup> Ordinance 2009-3, 4/28/2009

<sup>58</sup> Ordinance 2009-3, 4/28/2009

<sup>59</sup> Ordinance 2009-3, 4/28/2009

<sup>60</sup> Ordinance 2009-3, 4/28/2009

<sup>61</sup> Ordinance 2009-3, 4/28/2009

5. Excluded Uses. (NR)<sup>62</sup>  
See Section 5.11
6. Lot, Use and Density Requirements. (NR)  
Requirements shall be as restrictive as the most restrictive adjacent zoning classification.
7. Mixed Zone Lots. (NR)  
For a lot crossing the Natural Resource District boundary into another Zoning District, the minimum lot size shall be the same as the other Zoning District with no area credit given for the Open District area.
8. Performance Standard (NR)  
Impervious Coverage. The impervious coverage may be increased by 50% provided the following:
  - a. A stormwater management plan that retains the 10-year, 24-hour rain event is provided. Upon approval, the plan must be fully implemented.
  - b. Direct runoff to adjacent properties in a 10-year, 24-hour rain event is eliminated through the use of swales, berms, ditches, grading or other necessary means.

#### **5.10 Downtown Mixed Use (DMU)<sup>63</sup>**

1. Purpose and Intent: To provide a zoning classification for a mix of high-density residential and commercial uses. Development in this zone relies less on automobile traffic and more on walking, biking and other similar modes of transportation. Infrastructure must be in place to provide on-street parking and walkways as well as connection to municipal water and sanitary sewer utilities. Downtown Mixed-Use zones should be clustered to provide the maximum amount of interaction and accessibility between the different establishments.
2. Compatibility: The Downtown Mixed-Use zone is most compatible with and should be established next to the Residential, High Density zone, but it also may be adjacent to the Urban Commercial, Commercial and Public Use Zones.
3. Lot and Use Requirements. (DMU)

Lot width– feet, minimum	25
Buildable lot area – square feet, minimum	2,250
Maximum Density (units per acre)	20
Setback, right of way, City road- feet, minimum	1
Setback, right of way, County or State road, feet, minimum	10
Setback, side yard – feet, minimum	0
Setback, rear – feet, minimum	10
Setback, sign – feet, minimum	1
Setback, parking from building or lot line – feet, minimum	0
Setback, wetland – feet, minimum	50
Impervious Coverage with storm sewer available	90%
Impervious Coverage without storm sewer available	50%

<sup>62</sup> Ordinance 2009-3, 4/28/2009

<sup>63</sup> Ordinance 2009-3, 4/28/2009

Building height – feet, maximum	45
Building above highest groundwater level – feet, minimum	3

4. Performance Standards. (DMU)

A. Parking. Developments shall minimize the appearance of parking areas.

(1) Location. Parking and vehicle drives shall be located away from building entrances and street corners, and not between a building entrance and the street. Surface parking shall be oriented behind or to the side of a building when possible.

(2) Landscape Buffering. Suitable trees and shrubs shall be planted between parking lots and all adjacent sidewalks and buildings.

B. Pedestrian Amenities. Proposed developments shall provide for safe and comfortable sidewalks, paths, and resting areas for pedestrians, unless otherwise approved by the City. Sidewalks and paths shall connect the development to adjacent land uses and provide connections through the development to the public street right-of-way.

C. Lighting. All building entrances, pathways and other pedestrian areas shall be lit to two-foot candles with pedestrian-scale lighting including wall mounted, sidewalk lamps, bollards, or landscape up-lighting.

### 5.11 Land Use Matrix<sup>64</sup>

The following set of tables establishes the uses permitted, permitted by conditional or interim use permit, or not permitted. **All uses are subject to any other applicable requirements or performance standards of this ordinance.**

<b>ACCESSORY USES</b>	Accessory uses, buildings and structures customarily incidental and directly related to the uses allowed as permitted, interim or conditional uses are permitted in all districts.
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<b>GENERAL USES</b>	<b>NR</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>DM U</b>	<b>PU</b>	<b>C2</b>	<b>I</b>
Abandoned Buildings/Structures	E	E	E	E	E	E	E	E
Abandoned motor vehicles	E	E	E	E	E	E	E	E
Forest Land Conversion	C	C	C	C	C	C	C	C
Grading, greater than 50 cubic yards or which otherwise changes pre-existing drainage patterns.	C	C	C	C	C	C	C	C
Vegetation Removal, Clear Cutting	C	C	C	C	C	C	C	C

<sup>64</sup> Ordinance 2009-3, 4/28/2009

Vegetation Removal, Open Cutting	C	C	C	C	C	C	C	C
Vegetation Removal, Select Cutting	P	P	P	P	P	P	P	P

<b>AGRICULTURAL USES</b>	<b>NR</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>DM U</b>	<b>PU</b>	<b>C2</b>	<b>I</b>
Agricultural; limited, however, to plant husbandry and sale of plants and produce.	E	E	C	E	E	C	C	C
Keeping of farm animals up to 0.5 animal units on lots over 10 acres. See “animal unit” definition for help in calculations	E	C	C	E	E	C	C	C
Keeping of Chickens (see performance standards in 7.11)	E	E	P	E	E	E	E	E
Keeping of Horses (see performance standards in 7.12)	E	P	P	E	E	E	P	E
Animal Feedlot	E	E	E	E	E	E	E	E
Keeping of Non-Domestic Animals	E	E	E	E	E	E	E	E
Other uses of the same general character as those listed above, provided they are deemed fitting or compatible to the district by the Planning Commission	C	C	C	C	C	C	C	C

Key: A = Allowed, no permit required; P = A use allowed, but which may require a land use permit; CU = A use requiring a Conditional Use Permit; IU = A use requiring an Interim Use Permit; E = not permitted.

<b>RESIDENTIAL USES</b>	<b>NR</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>DM U</b>	<b>PU</b>	<b>C2</b>	<b>I</b>
Accessory Dwelling Unit	E	C	C	C	C	E	C	C
Bed and Breakfast Facilities	E	C	C	C	C	E	C	C
Dwelling								
Single Family	E	P	P	P	P	E	E	E
Second single family on a parcel (permanent) <sup>65</sup>	E	E	E	E	E	E	E	E
Second single family on a parcel (temporary) <sup>66</sup>	E	C	C	C	C	E	C	C

<sup>65</sup> Except as part of an approved planned unit development (PUD).

<sup>66</sup> Added 8/4/2014 (Resolution #14-02)

Multi-Family (2 units)	E	C	P	P	P	E	E	E
Multi-Family (3-4 units)	E	E <sup>67</sup>	C	P	P	E	E	E
Multi-Family (5+ units), including rental offices and private recreational facilities for the enjoyment of residents.	E	E <sup>68</sup>	C	C	C	E	E	E
Guest Cottage (riparian lots only)	E	C	N/A	N/A	N/A	E	N/ A	N/ A
Mobile/Manufactured Home Park	E	E	E	E	E	E	E	E
Travel Trailers/ Campers/ Recreational Vehicles (1 per lot)	E	P	P	P	P	E	P	P
Keeping of Domestic Animals (within a residence, accessory building or otherwise on a non-farm parcel which is not regulated as livestock)as pets.	E	P	P	P	P	E	P	P
Home Occupations, Low Activity	E	P	P	P	P	E	P	P
Home Occupations, Moderate Activity	E	C	C	C	P	E	P	P
Home Occupations, High Activity	E	E	E	E	P	E	P	P
Planned Unit Developments – Residential (R1 shoreland district)	E	C	N/A	N/A	N/A	E	N/ A	N/ A
Planned Unit Development – Single-Family	E	C	C	C	C	E	E	E
Planned Unit Development – Multi-Family	E	C	C	C	C	E	E	E
Solar Energy Systems and Structures, Individual	E	P	P	P	P	E	P	P
Solar Energy Systems and Structures, Neighborhood	E	C	C	C	C	E	C	C
Solar Energy Systems and Structures, Large Scale (Solar Farm)	E	E	E	E	E	E	C	C
Telecommunication antennas and towers, for personal use.	E	C	C	C	C	E	P	P

<sup>67</sup> Except as part of an approved planned unit development (PUD).

<sup>68</sup> Except as part of an approved planned unit development (PUD).

Other uses of the same general character as those listed above, provided they are deemed fitting or compatible to the district by the Planning Commission	E	C	C	C	C	C	C	C
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Key: A = Allowed, no permit required; P = A use allowed, but which may require a land use permit; CU = A use requiring a Conditional Use Permit; IU = A use requiring an Interim Use Permit; E = not permitted.

<b>COMMERCIAL USES</b>	<b>NR</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>DM U</b>	<b>PU</b>	<b>C2</b>	<b>I</b>
Adult Uses/Adult Oriented Business	E	E	E	E	E	E	E	C
Animal Boarding Facility/Kennel	E	E	C(2)	C(2)	C	E	C	C
Animal Feed Distribution	E	E	E	C	C	E	P	P
Animal Grooming Facility	E	E	E	E	P	E	P	P
Appliance Repair	E	E	E	E	C	E	P	P
Automobile accessory store with no outdoor storage	E	E	E	E	P	E	P	P
Automobile Repair (passenger vehicles) and Small Engine Repair, including body shops.	E	E	E	E	E	E	P	P
Auto Sales, New or Used	E	E	E	E	E	E	P	P
Banks and other financial service institutions	E	E	E	E	P	E	P	P
Boarding House	E	E	E	E	A	E	A	A
Bowling alley	E	E	E	E	P	E	P	P
Cabinet Shop	E	E	E	E	P	E	P	P
Campground	E	E	E	C	C	C	C	C
Cannabis cultivation, manufacturing, and related activity.	E	E	E	E	E	E	E	C
Cannabis Retail Dispensary	E	E	E	E	C	E	C	E
Carwash Facility	E	E	E	E	E	E	P	P
Car Washing (Temporary Event)	E	E	E	E	A	E	A	A
Child Care Center	E	E	E	E	P	P	P	C

Commercial uses which serve local permanent residents and the resort industry, such as grocery stores, marine supplies, equipment and service; recreational equipment sales and privately owned and licensed recreational activity.	E	E	E	E	P	E	P	P
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<b>COMMERCIAL USES</b>	<b>NR</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>DM U</b>	<b>PU</b>	<b>C2</b>	<b>I</b>
Contractors offices, shops and yards without outdoor storage	E	E	E	E	P	E	P	P
Contractors offices, shops and yards with outdoor storage	E	E	E	E	C	E	C	P
Drive-in Window Facilities	E	E	E	E	C	E	P	E
Fuel (pressurized tanks) storage and sale – propane, acetylene, helium, CO2 and similar (not including small tanks/bottles typically used or sold for medical purposes, filling of helium balloons, portable cooking/heating implements, etc...)	E	E	E	E	C	E	C	C
Gas and convenience store	E	E	E	E	E	E	P	P
Health/athletic/fitness center, and roller rinks	E	E	E	E	P	E	P	P
Hospitals	E	E	E	E	C	E	C	C
Financial institutions	E	E	E	E	P	E	P	P
Laboratories/Testing Facilities	E	E	E	E	P	E	P	P
Laundromat/Dry Cleaning Services	E	E	E	E	P	E	P	P
Lumber/Building Materials Yard	E	E	E	E	C	E	C	P
Machinery, equipment sales, storage and service	E	E	E	E	C	E	C	P
Massage Therapy (as the principal use of a building or business where the practitioner is required to obtain a massage therapist or massage enterprise license from the City, or in any other manner not otherwise listed in this ordinance)	E	E	E	E	C	E	C	C

<b>COMMERCIAL USES</b>	<b>NR</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>DM U</b>	<b>PU</b>	<b>C2</b>	<b>I</b>
Massage Therapy (as a use accessory to an otherwise approved <sup>69</sup> business or medical practice whose practitioners/employees are exempt from City requirements to obtain a massage therapist or massage enterprise license.)	E	E	E	E	A	E	A	A
Massage Therapy (as a home occupation).	E	C	C	C	C	E	C	C
Medical Clinic/Ethical Pharmacy	E	E	E	E	P	E	P	P
Mini-Storage	E	E	E	E	E	E	C	E
Motel/Hotel and other hospitality businesses, including convention/meeting facilities.	E	E	E	E	C	E	C	C
Nursery/Garden store	E	E	E	E	C	E	P	P
Nursing homes, assisted living and other similar group housing.	E	E	E	E	C	E	C	C
Offices	E	E	E	E	P	E	P	P

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<sup>69</sup> Approval of a medical, dental, or chiropractic clinic may require a conditional use permit or other approval procedure. Once such approval is received, a separate conditional use permit to add massage services is not necessary.

<b>COMMERCIAL USES</b>	<b>NR</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>DM U</b>	<b>PU</b>	<b>C2</b>	<b>I</b>
Planned Unit Development (PUD), Commercial/Mixed Use	E	E	E	E	C	E	C	C
Repair Services – jewelry, electronics, household items, furniture, shoe, locksmith and other similar uses.	E	E	E	E	P	E	P	P
Retail sales, rental and/or service, with no outdoor storage	E	E	E	E	P	E	P	P
Retail sales, rental and/or service, with outdoor storage	E	E	E	E	C	E	P	P
Restaurant, on/off sale liquor sales; supper club and fast food establishments, with or without outdoor seating.	E	E	E	E	P	E	P	P
Planned Unit Development – Storage Unit	E	E	E	E	C	E	C	C
Telecommunication services and utility towers including cellular phone/wireless internet towers and antennas and other wireless telecommunications towers.	C	C	C	C	C	C	C	C
Theater, Movie	E	E	E	E	C	E	P	P
Theater, Drive-In	E	E	E	E	C	E	C	C
Truck (semi) and other large vehicle repair, including body shops.	E	E	E	E	E	E	C	C
Veterinary Clinic	E	E	E	E	C	E	C	C
Other uses of the same general character as those listed above, provided they are deemed fitting or compatible to the district by the Planning Commission	C or IU	C or IU	C or IU	C or IU	C or IU	E	C or IU	C or IU

Key: A = Allowed, no permit required; P = A use allowed, but which may require a land use permit; CU = A use requiring a Conditional Use Permit; IU = A use requiring an Interim Use Permit; E = not permitted.

<b>INDUSTRIAL USES</b>	<b>NR</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>DMU</b>	<b>PU</b>	<b>C2</b>	<b>I</b>
Blacksmith Shop	E	E	E	E	C	E	C	P
Concrete/bituminous storage or recycling facilities (permanent) <sup>70</sup>	E	E	E	E	E	E	C	P
Concrete/bituminous storage or recycling facilities related to a specific project lasting less than 12 months. <sup>71</sup>	E	E	E	E	C	E	C	P
Hot mix plant, Temporary	E	E	E	E	C	E	C	P
Hot mix plant, Non-temporary	E	E	E	E	E	E	C	P
Manufacturing, processing and assembly (heavy)	E	E	E	E	E	E	C	P
Manufacturing, processing and assembly (light)	E	E	E	E	C	E	C	P
Mining/Extraction of gravel or other materials	E	E	E	E	E	E	C	C
Plumbing Shop	E	E	E	E	P	E	P	P
Print/Copy Shop	E	E	E	E	P	E	P	P
Ready-mix plant	E	E	E	E	E	E	C	C
Recycling facilities (including processing and transferring)	E	E	E	E	C	E	C	C
Salvage/Junk Yard	E	E	E	E	E	E	C	C
Studio – photography, decorating, art, music, dance or similar.	E	E	E	E	P	E	P	P
Transportation or Freight Terminal	E	E	E	E	C	E	C	C
Warehouse	E	E	E	E	C	E	C	C
Welding Shop	E	E	E	E	C	E	C	P
Wholesale Business	E	E	E	E	C	E	C	C
Other uses of the same general character as those listed above, provided they are deemed fitting or compatible to the district by the Planning Commission	E	E	E	E	C	E	C	C

Key: A = Allowed, no permit required; P = A use allowed, but which may require a land use permit; CU = A use requiring a Conditional Use Permit; IU = A use requiring an Interim Use Permit; E = not permitted.

<sup>70</sup> Added 12/15/08 (Resolution #08-16)

<sup>71</sup> Amended 12/15/08 (Resolution #08-16)

<b>PUBLIC/ SEMI-PUBLIC USES</b>	<b>NR</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>DMU</b>	<b>PU</b>	<b>C2</b>	<b>I</b>
Airport, Public or Private	E	E	E	E	E	C	C	C
Armories/Military Facilities	E	E	E	E	C	C	C	C
Campground (Permanent)	E	E	E	E	E	C	C	C
Camping (Temporary)	E	P	P	P	P	P	P	P
Cemetery	E	C	C	C	C	C	C	C
Churches, chapels, temples, synagogues and other places of worship, including related buildings and parsonage	E	C	C	C	C	E	C	C
Community center, including senior center.	E	C	C	P	P	C	C	C
Controlled Access Lot	E	C	C	C	C	C	C	C
Cultural facilities, such as museums, art centers or cultural education.	E	C	C	C	C	C	C	C
Educational institution/school and incidental uses when situated on the same site or unit of property	E	C	C	C	C	C	C	C
Essential services, governmental use buildings and storage.	E	C	C	C	C	C	C	C
Fairgrounds	E	C	C	C	C	C	C	C
Temporary Festivals/Carnivals, Sales and Promotional Events	E	P	P	P	P	P	P	P
Parking lot	E	A	A	A	A	A	A	A
Public or semi-public/club parks, playgrounds, sport courts, beaches, swimming pools, recreation areas, hiking trails and historic monuments	E	C	C	C	C	C	C	C
Other uses of the same general character as those listed above, provided they are deemed fitting or compatible to the district by the Planning Commission	E	C	C	C	C	C	C	C

Key: A = Allowed, no permit required; P = A use allowed, but which may require a land use permit; CU = A use requiring a Conditional Use Permit; IU = A use requiring an Interim Use Permit; E = not permitted

<b>SIGNAGE</b>	<b>NR</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>DMU</b>	<b>PU</b>	<b>C2</b>	<b>I</b>
<i>Sign, Digital Display</i>	E	E	E	E	C	C	C	C
<i>Sign, Directory</i>	E	C	C	C	A	A	A	A
<i>Sign, Awning</i>	E	E	E	E	P	P	P	P
<i>Sign, Flashing</i>	E	E	E	E	C	C	C	C
<i>Sign, Marquee</i>	E	E	E	E	C	P	P	P
<i>Sign, Off-premise</i>	E	E	E	E	E	E	C	E
<i>Sign, On-premise</i>	E	P	P	P	P	P	P	P
<i>Sign, Portable</i>	E	E	E	E	P	P	P	E
<i>Sign, Pylon</i>	E	E	E	E	C	C	P	P
<i>Sign, Scrolling</i>	E	E	E	E	C	C	C	C
<i>Sign, Shimmering</i>	E	E	E	E	C	C	C	C

## SECTION VI - SUBDIVISION STANDARDS

### **6.1 Sketch Plan.**

A sketch plan shall contain the following data:

1. Existing Conditions
  - A. Approximate exterior boundary drawn to a scale of not less than 1" = 100' with the scale and northerly direction shown thereon.
  - B. Indication of floodplains, wetlands, slopes over 12%, bluffs, tree cover and ordinary high water mark.
  - C. Use of adjoining properties including street locations, structure locations and property lines.
  - D. Significant historical sites.
2. Proposed Design
  - A. Proposed roads and walkways.
  - B. Proposed lots with building setbacks and bluff impact zones.
  - C. Proposed Green Space.
  - D. Proposed City sewer and water system connections or sewage treatment systems and well locations.

**8.2 Boundary Line Adjustment:** A boundary line adjustment is the division of land made for the purpose of adjusting the boundary lines of parcels of land to an abutting lot or to otherwise exchange property between adjacent lots which does not create any new lots, tracts, parcels, or sites. A boundary line adjustment must also not create or result in any lot, tract, parcel, or site which contains insufficient area and dimensions to meet minimum requirements for width, lot size, and area for building as required by this Ordinance. The newly acquired land must be combined on the same deed for recording purposes as the remainder of the owner's property.

- A. Application. An owner proposing to undertake a boundary line adjustment must submit a complete application to the City together with the applicable fees. The owner must submit the following additional information with its application in order for the application to be considered complete:
  1. A certificate of survey showing the current boundary lines and the proposed boundary lines after adjustment;
  2. The current legal descriptions of the lots; and
  3. The resulting legal descriptions of the altered lots.
- B. Procedure. Complete applications must be submitted to the Zoning Administrator or City Clerk. The Zoning Administrator shall review the application and make a determination. If a boundary line adjustment is approved, the City will send a letter to the County Recorder indicating its approval. The Applicant shall be required to prepare and record such documents with the County Recorder as may be needed to complete the boundary line adjustment.

### **8.3 Metes and Bounds Subdivision Approval – Minor Subdivision**

1. Where appropriate, under the provisions of this Ordinance, the subdivider shall submit documents containing the essential information of a proposed

subdivision or plan and including dimensions computed to one hundredth (1/100th) of a foot and bearing computed to equivalent accuracy to the Planning Commission for approval.

2. The Planning Commission may hold a public hearing, but it is not required.
3. The subdivider shall submit 9 copies of his proposal to the Zoning Administrator or city clerk 30 days prior to the normal Planning Commission meeting and pay the corresponding fee.
4. The Zoning Administrator shall review the proposed lot split for compliance with the Zoning Ordinance including a field review at his or her discretion.
5. The Planning Commission shall decide on the subdivision within the required time based on the resulting lots complying with the Ordinance, the feasibility of the resulting lots for their intended purpose, and the provision for access to adjacent properties. Conditions may be attached to an approval requiring appropriate improvements. No more than one (2) splits into two (3) parcels shall be allowed in a three (3) year period of time. An additional parcel for right of way or commonly owned driveway access may also be allowed.
6. All parcels shall have at least 33' of road frontage or at least a 33' easement to a public road if having road frontage is not feasible or practical, in the opinion of the commission.
7. The resulting land descriptions shall be prepared and signed by a Registered Land Surveyor and shall comply with all provisions of this Ordinance.
8. Failure of the subdivider to act after an approval of a Metes and Bounds subdivision within one (1) year shall void the approval unless extended by the Planning Commission. A second extension shall require a new review by the Planning Commission.

#### **6.4 Preliminary Plat or Preliminary Condominium Plat**

A Preliminary Plat or Preliminary Condominium Plat (except as waived by the Planning Commission); along with other reasonable information required by the Commission needed to make a proper evaluation of the proposal:

1. Existing Conditions
  - A. Boundary lines with lengths and bearings drawn to exact scale of no less than 1" = 100' taken from a boundary survey by a Registered Land Surveyor with the legal description of the property, total acreage, name of the fee owner, developer and surveyor. North arrow and scale.
  - B. Topography consisting of 2-foot contour intervals, or at the discretion of the Planning Commission during the sketch plan review, 10-foot contour intervals taken from the USGS mapping with additional field determined spot elevations added to define drainage ways, 100 year floodplains, wetlands, slopes and the Ordinary High Water Mark. Near shore aquatic conditions, including depths, types of bottom, sediments and aquatic vegetation.
  - C. Tree cover limits, specimen tree locations.
  - D. Soils as determined by hand borings on a random basis, to determine depth to ground water at lower elevations and suitability for sewage treatment systems. At least one boring for each unit unless waived by the Planning Commission.
  - E. Location of adjoining streets, wetlands, structure and property lines within 200-feet of subject parcel, including acreage of any property owned by the developer not included in the preliminary plat.
  - F. Significant historical sites.



- G. Date of boundary survey, topography and proposed plat.
- 2. Proposed Design
    - A. Layout of proposed streets, walkways, blocks, lots, buildings if known, drawn to same scale as existing data.
    - B. Dimensions scaled to nearest 5 feet of all lot lines, street widths, easement widths and waterfront lengths.
    - C. Areas of proposed lots.
    - D. Structure setback lines from streets, lot lines and Ordinary High Water Mark.
    - E. Proposed Green Space with area shown.
    - F. Proposed public dedication areas other than streets or walkways with the area shown.
    - G. Proposed City sewer or water system connections and extensions existing and proposed with grades shown.
    - H. Potential locations and estimated depth to water table for all proposed onsite sewage disposal systems, two per lot.
    - I. Information regarding adequacy of domestic water supply,
    - J. Proposed storm drainage system and erosion control, both during and after construction activities.
    - K. Proposed street standards and profiles.
    - L. Potential principal structure and accessory structure locations and elevations.
    - M. Extent of anticipated vegetation and topographic alterations.
    - N. Proposed covenants.
    - O. Name of Subdivision and proposed street names.
    - P. Stages of development proposed.
  - 3. Evidence of Authority to subdivide the parcel consisting of fee ownership or written concurrence of fee owners.

#### **6.5 Final Plat or Final Condominium Plat.**

A Final Plat or Final Condominium Plat shall contain all elements required by this Ordinance and Minnesota Statutes 505, 515A or 515B respectively, and the State Plat Manual including but not limited to the following:

- 1. Conformance with approved Preliminary Plat or agreed upon portion thereof.
- 2. Design standards in conformance with the Ordinance and the Motley Zoning and Subdivision Ordinance.
- 3. Preparation by a Registered Land Surveyor. Signatures of Mayor, Clerk, County Auditor, County Treasurer and all parties with legal interest in the fee ownership of the land.
- 4. Dedication to the public of easements, right-of-ways, walkways and land to become public.
- 5. Drainage and utility easements over natural drainage ways and significant wetlands.
- 6. Reservation of private streets in Out lots (Planned Unit Development).
- 7. Covenants: Covenants shall be filed concurrently with the plat and shall be required to create an association of homeowners if a privately maintained cluster sewer or water system is proposed for subdivision.
  - A. The Association shall consist of all benefited lot owners including the subdivider.
  - B. The Association shall be responsible for all costs of maintenance and

- replacement.
- C. The costs shall be uniformly divided by lots served.
- D. The costs shall be lien able against the lots by the Association if payment is not forthcoming.
- E. The status of the facility shall be clearly stated as subject to perpetual private maintenance.
- F. Provisions shall be made for emergency access or emergency maintenance by the City with subsequent reimbursement by the Association.
- 8. Concurrent documents
  - A. Title Opinion, less than 60 days old, acceptable to the City Attorney and showing conformance with those parties represented by signature on the plat as holding interest in the property being divided.
  - B. Evidence of plat check by an independent Registered Land Surveyor,
  - C. Financial security acceptable to the City Attorney in the amount of 125% of the cost estimated by the Engineer for the uncompleted required improvements.
  - D. Development contract acceptable to the City Attorney, if required.

#### **6.6 Design Layout Standards - Minimum.**

The following design standards shall be considered minimum acceptable requirements in the review of the proposed subdivision by the Zoning Administrator, City Attorney, City Engineer, Planning Commission and Council, except as waived by variance approved by the Board of Adjustment.

1. The land shall be properly zoned and suitable in its natural state for the intended purpose with minimal alteration. Land subject to flooding, land below the ordinary high water mark, wetlands, and areas with high water table, bluffs or land containing other significant constraint(s) upon future intended usage, shall not be considered in the minimum size of a lot. The suitability analysis for each lot shall also consider soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sights, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.
2. Each lot shall be adjacent to public sewer or shall have a minimum contiguous lawn area that is free of limiting factors sufficient for the construction of two standard soil treatment sewage systems.
3. Provisions for water based recreation where near shore aquatic conditions are unsuitable for direct access.
4. Lot areas and dimensions shall conform to the requirements of the Zoning Ordinance, without variance.
5. Lot layouts shall be compatible with the existing layout of adjoining properties.
6. Each lot shall have a minimum of 33 feet of frontage on a designated right of way. Commonly owned property or Green Space used for access in a Planned Unit Development shall have a minimum of 33 feet of frontage on a public right of way.
7. Proposed streets shall conform to the Comprehensive Plan of the City, County and State highway plans and existing boundary conditions.
  - A. Streets shall be related to the topography so as to produce useable lots and reasonable gradients not in excess of 10% for collector roads and 15% for minor roads.

- B. Public access shall be given to adjacent properties unless the topography clearly indicated future connection is not feasible.
- C. When parcels abutting arterial or collector roads are subdivided, no new access points shall be created unless an equal number of access points are removed.
- D. Half streets or connections of half streets to partial streets without providing for the full required right-of-way will not be permitted.
- E. Streets will be designed as collectors or local streets in accordance with the Comprehensive Plan of the City.
- F. The number of streets that terminate without a through connection shall be minimized and the street connected to a cul-de-sac (turnaround) and shall not exceed 1200 feet in length.
- G. Access shall be given to all adjacent properties when required by the Planning Commission. All streets intended to be extended to adjoining property, shall be provided with a temporary cul-de-sac with the sides on a temporary easement, which will revert to the adjoining lot owner when released by the City.
- H. Right of Way shall be dedicated to the public:
  - Cul-de-sac (turnaround) ..... 68' radius
  - Arterials....100' or as determined by Morrison and/or Cass Co
  - Collectors .....66'
  - Local Streets .....66'

Additional Right of Way may be required to promote public safety and convenience if special conditions require such as intersections, sight lines on corners or excessive cut or fill sections.
- I. Intersections
  - 1. Street centerlines shall intersect at not less than 75 degrees.
  - 2. Street jogs shall be no less than 200' from centerline to centerline.
  - 3. Gradients at intersections and for 50' approaching on each side of an intersection shall not exceed 2%.
- J. Roads, driveways and parking areas shall meet structure setbacks and shall not be placed within bluff and shore impact zones, when any other reasonable and feasible placement alternatives exist.
- K. Street names shall conform to the pattern of the City, continue an existing name on the same alignment and generally promote a direction in the community.
- 8. Easements shall be provided for public utilities or drainage where required by the Planning Commission and shall be following widths, minimum:
  - Water main ..... 20 feet
  - Sanitary Sewer ..... 40 feet
  - Storm Sewer ..... 20 feet
  - Electrical, telephone or cable television..... 10 feet
  - Drainage way ..... 10 feet
- 9. Lots requiring variances to allow their use for the intended purposes or requiring holding tanks for sewage shall not be allowed.

### **6.7 Survey Standards.**

Survey Standards shall be those required by Minnesota Statutes 505 including the placement of all monuments including block corners, lot corners, curve points and water survey line points on lot lines. All US, State, County and other official bench marks, monuments or triangulation points in or adjacent to the proposed subdivision shall be preserved in position unless relocation is approved by the controlling agency.

### **6.8 Street Improvement Standards.**

All streets within the subdivision shall be constructed by the sub divider or otherwise provided for by agreement in a Development Contract between the sub divider and the City Council with all expenses borne by the sub divider. Local streets and collector streets shall be constructed according with the established minimum standards.

### **6.9 Sanitary Provision Standards.**

No land shall be subdivided for building purposes unless two adequate sites are available on the newly created lot for a conforming onsite sewage treatment system, or the sub divider constructs a cluster system serving the lots to be owned and maintained by a property owner's association or the lot is provided with sanitary service by a municipal sewer system at the expense of the sub divider.

1. A municipal sewer system shall be extended to the lot at the sub divider's expense by agreement in a Development Contract between the sub divider and the City Council if the existing system is adjacent to the parcel being subdivided or reasonably close in the opinion of the Engineer and Planning Commission or if the density of the proposed development necessitates a municipal sewer connection. The sewer shall also be extended to the exterior boundary of the subdivision at locations designated by the Engineer.
2. Onsite systems or cluster onsite systems shall conform to Minnesota Pollution Control Agency Standards, Individual Sewage Treatment Systems Standard, Chapter 7080, and provide for two (2) treatment sites for drain fields.
3. Municipal sewage facilities shall be designed by a Registered Engineer approved by the City Engineer, approved by the Minnesota Pollution Control Agency, and installed according to "Standard Utilities Specifications", City Engineer's Association of Minnesota.

### **6.10 Water Supply Standards.**

The sub divider shall be responsible to provide the proposed subdivision with adequate spacing between building sites, onsite sewage disposal sites, and potential well locations to allow the well installations in conformance with the City of Motley Zoning Ordinance requirements or the sub divider shall provide the lot with a cluster water supply system to be owned and operated by a property owner's association or the sub divider shall provide municipal water service to the lot.

1. A municipal water system shall be extended to the lot at the expense of the sub divider by agreement in the Development Contract between the sub divider and the Council if the existing municipal system is adjacent to the parcel being subdivided or reasonably close in the opinion of the engineer and Planning Commission or if the density of the proposed development necessitates a municipal water connection. The water main shall also be extended to the exterior boundary at locations designated by the Engineer.
2. Onsite wells or cluster water systems shall conform to the Minnesota Department of Health Rules and Regulations MHD 210-230 "Water Well Construction Code", and the cluster system shall receive the approval of the City Engineer.
3. Municipal water facilities shall be designed by a Registered Engineer, approved by the City Engineer, approved by the Minnesota Department of Health and installed according to "Standard Utilities Specifications" City Engineer's Association of

#### **6.11 Drainage/Grading Standards.**

The sub divider shall consider the retention of natural stormwater/snowmelt drainage patterns in the design of his proposed subdivision. The sub divider shall be responsible to provide adequate drainage facilities for his development and upstream properties.

1. All natural drainage ways draining properties upstream from the subject property shall be preserved, and no structures shall be less than one (1) foot above the water level in the drainage way created by a storm of a 100-year, 24-hour rain event. No filling of areas inundated by the 100-year, 24-hour rain event shall be allowed except by Conditional Use Permit.
2. All streets, building sites and subsurface sanitary disposal sites shall be drained to a natural drainage way. The sub divider shall provide adequate grading or drainage structured so no inundation or ponding will occur from a storm of a 5-year, 24-hour rain event.
3. Natural or manmade storage areas shall be utilized where needed and shall be designated by drainage and utility easement by the sub divider. No storage area shall be considered part of the minimum lot area requirement. All storage areas shall be vegetated and designed to lower naturally after a storm.
4. All drainage structures provided shall be sufficient in size to pass a 5-year, 24-hour storm to a natural drainage way and to pass a 100-year, 24-hour storm along a drainage way.
5. All areas disturbed by grading, street construction or structure installation shall be covered with a 3 inch natural topsoil and seeded. Drainage ways over 2% in gradient shall, at a minimum, be sodded.
6. All parking areas, heavy use areas, storage areas and impervious area shall be diverted to a basin designed to allow entrapment of silts and nutrients prior to discharge to a natural drainage way or public water.
7. Erosion control measures shall be provided where necessary in the opinion of the Engineer.

#### **6.12 Dedication to the Public – Standards.**

1. In accordance with the provisions of Section 462.358 of the Minnesota Statutes, or amendments thereto, the sub divider shall dedicate, to the public, lands for highway right of ways, street right of ways, utility easements, wetland easements and similar lands required for perpetual and public improvements.
2. In addition, for every new subdivision of land involving three or more lots which are to be developed for residential purposes, the Planning Commission, with the concurrence of the City Council, shall require a payment to the City, in lieu of a land dedication for conservation purposes or for public use as parks, recreational facilities, playgrounds, trails, wetlands or open space, of a sum not to exceed ten percent (10%), of the fair market value of the land to be subdivided. The fair market value of the land to be subdivided shall be the value as determined by the Morrison and/or Cass County Assessor at the time of Final Plat approval by the City Council. The amount of the payment shall be set by the Planning Commission, with the concurrence of the City Council, after taking into consideration the open space, park, recreational or common

areas and facilities with the applicant proposes to reserve for public use within the subdivision. Funds received by the City, in lieu of land dedication, shall be placed in a special fund in accordance with Section 462.358, Subdivision 2b, of the Minnesota Statutes.

3. All dedications shall be included in the dedicated portion of the plat, included in the development contract, or received by the City in Warranty Deed prior to the approval of the final plat, without further restrictions or reservations.

#### 6.13 Procedure: Preliminary Plat or Preliminary Condominium Plat Approval.

1. Pre-Application Meeting. At the sub divider's option, a pre-application meeting shall be held including the sub divider, City Zoning Administrator, City Engineer, if requested by the Zoning Administrator, and the City Clerk. Discussion at this meeting shall be limited to procedure, Ordinance requirements and timing.
  - a. Sketch Plan Review Meeting with Planning Commission. At the sub divider's option, a review of a sketch plan will be made by the Planning Commission prior to a public hearing. Discussion at this meeting shall be limited to procedure, Ordinance requirements and timing.
  - b. The sub divider shall submit 9 copies of the sketch plan, 14 days prior to the normal Planning Commission meeting, and request a position on the formal agenda.
  - c. The Planning Commission shall not take action on the proposal, but may make suggestions to facilitate the preparation of an approvable preliminary plat or plan.
2. The Preliminary Plat or Preliminary Condominium plan approval constitutes formal approval of the concept and design of the subdivision. The Planning Commission review shall include a public hearing and may include a field review at their discretion. All reports of City staff, DNR and Road authorities shall be reviewed and included in the hearing record. Related variance requests, rezoning requests and conditional use requests shall be heard concurrently with a subdivision request.
  - a. The sub divider shall submit 9 copies of his proposed plat or condominium plat to the Zoning Administrator 30 days prior to the normal Planning Commission meeting, pay the required fees and request a public hearing.
  - b. The Zoning Administrator shall notify all property owner's within 350 feet, by regular mail and shall advertise the hearing once in the legal section of the official newspaper at least ten (10) days ahead of the public hearing, including sufficient legal property description in the advertisement. The Zoning Administrator shall distribute one (1) copy to each Planning Commission member, if the proposal is adjacent to a County Highway, one (1) copy to the County Engineer, and if the plat is in shorelands, one (1) copy to the DNR postmarked at least ten (10) days before the public hearing for review and comment.
  - c. The Zoning Administrator shall review the proposed plat or plan as to content standards, necessary variances, from the Zoning Ordinance and this Ordinance, necessary rezoning or necessary conditional use permits, and advise the sub divider and the Planning Commission of his findings.

- d. The sub divider shall make addition application for the necessary permits at least 30 days prior to the normal Planning Commission or Board of Adjustment meeting as applicable, if sub divider desires to have a concurrent public hearing for variance, conditional use or rezoning.
  - e. The Planning Commission shall hold the Public Hearing and may continue the hearing as it deems necessary to allow all factual input it deems necessary to allow a decision. Lack of submission of comments by outside agencies shall be construed to mean the agency has no objections.
  - f. The Planning Commission shall recommend the approval of the Preliminary Plat or Preliminary Condominium Plat to the Council within one hundred twenty (120) days of submission, and the findings shall be sent to the sub divider. The Planning Commission shall consider the following in it's decision:
    - i. Is the property properly zoned?
    - ii. Does the proposal conform to the requirements of the Zoning Ordinance?
    - iii. Does the proposal conform to the requirements of the Subdivision Ordinance?
    - iv. Have the concerns of the affected agencies been addressed?
      - g. The City Council shall review the findings and recommendations of the Planning Commission at their next regular meeting and make the final determination.
      - h. The City Council will hear any appeal within thirty (30) days of the Planning Commission action and will re-notify anyone noticed for the Public Hearing. Said appeals will be filed with the City Clerk within fifteen (15) days of the decision.
      - i. Failure of the sub divider to act after an approval of Preliminary Plat or Preliminary Condominium Plat within one (1) year shall void the approval unless extended by the Planning Commission. A second extension shall require a new public hearing.
3. Final Plat or Final Condominium Plat Approval. Upon approval by the Planning Commission, the sub divider shall cause the Final Plat or Final Condominium Plat, documents and concurrent documents to be prepared and submitted to the Planning Commission for recommendation to the City Council. All coincident variance requests, conditional use permit requests and/or rezoning requests shall either have been decided or be pending approval simultaneously with the Final Plat.
- a. The sub divider shall submit 9 paper copies of the Final Plat or Final Condominium Plat and concurrent documents to the Zoning Administrator 30 days prior to the Planning Commission meeting.
  - b. The Zoning Administrator shall distribute the information received to the City Attorney and City Engineer, who shall review the submission for conformance with the standards and comment thereupon to the Planning Commission. The Zoning Administrator shall compare the Final Plat or Final Condominium Plat to the Preliminary Plat or Preliminary Condominium Plat and comment thereupon. The Attorney shall ascertain that all parties with an interest in the parcel to be divided are indicated as signers of the documents. The Engineer shall determine that the

- improvements required have been completed or have been included in a development contract and that the required security has been posted with the City Council.
- c. The Planning Commission shall review the reports of the Attorney, Engineer and Zoning Administrator and make recommendation to the City Council within 45 days of submission. The Planning Commission shall consider the following:
    - i. Has the applicant compiled with all conditions and requirements upon which the preliminary approval is expressly conditioned wither through performance or execution of appropriate agreements assuring performance?
    - ii. Does the Final Plat or Final Condominium Plat agree with the Preliminary Plat or Preliminary Condominium Plat?
    - iii. Does the City Attorney agree that all parties with an interest in the property are shown as signers of the document?
    - iv. Does the City Engineer agree that all improvements required are satisfactorily completed or are guaranteed by contract with adequate financial security.?
    - v. Does an independent Professional Land Surveyor agree the final document meets the statutory requirements?
    - vi. Has financial security been posted in the appropriate amount
      - d. The City Council shall review the proposal at their next regular meeting and decide the approval within sixty (60) days of the submission of the Final Plat or Final Condominium Plat to the City.
      - e. Following approval by the City Council, the sub divider shall submit to the Zoning Administrator, two (2) double mounted cloth backed prints on card stock (hard-shells) and two (2) mylar prints of the Final Plat or Final Condominium Plat for signature by the Mayor and Clerk. The Zoning Administrator shall send one copy of any approved Final Plat within shorelands to the DNR postmarked within ten (10) days of approval.
      - f. Upon signature, the sub divider shall file all pertinent documents with the County Recorder. Failure to file a Final Plat or Plan, within two (2) years shall void the approval unless extended by the City Council.

## SECTION VII - SPECIAL PROVISIONS

### **7.1 Adult Oriented Businesses**

1. Purposes and Intent. In the development and adoption of this Section, it is recognized that:
  - A. There are some adult use establishments which have serious objectionable operational characteristics, particularly when located in close proximity to residential neighborhoods.
  - B. These establishments have deleterious impact upon property values.



- C. These establishments frequently become places of criminality.
- D. It is the intent of this Ordinance to protect the well-being of the youth of the community from objectionable operational characteristics of these uses by regulating the restricting their close proximity to established facilities such as, but not limited to churches, parks, schools, and residential areas.
- E. In recognition of the protections afforded to the citizens of the United States under the First and Fourteenth Amendments to the Constitution of the United States, it is neither the intent nor the effect of this ordinance to inhibit the freedom of speech or the press. The provisions herein have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually-oriented materials.
- F. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market. This Ordinance represents a balancing of the legitimate ends of the City by imposing an incidental, content-neutral place, time and manner of regulation of sexually-oriented entertainment to sexually-oriented establishments without limiting alternative avenues of communication, and at the same time, requiring the establishments to carry their financial share of the law enforcement activities. The special regulations deemed necessary to control the undesirable effects arising from these enterprises are set forth in this Ordinance.

2. Findings:

A. The Motley City Council, in adopting this Ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary side effects of adult use establishments in other communities, including but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Dallas, Texas; Newport News, Virginia; Benevue, Washington; New York, New York; and St. Croix County, Wisconsin; and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Business (June 5, 1989, State of Minnesota); on findings and recommendations in Everything You Always Wanted to Know about Regulating Sex Businesses, American Planning Association, Planning Advisory Service Report Number 495/496, December 2000; on decisions on these cases of City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986); Young v. American Mini Theaters, 426 U.S. 50 (1976); City of Erie v. Pap's A.M. 120 S. Ct. 1382 (2000); California v. LaRue, 409 U.S. 109, 111 (1972); Barnes v. Glen Theater, Inc., 501 U.S. 560 (1991); Knudtson v. City of Coates, 519 N.W.2d 166 (Minnesota 1994); S.O.B., Inc. v. County of Benton, 371F.3d 856 (8<sup>th</sup> Cir., Minnesota 2003); Jakes, Lt., Inc., v. City of Coates, 284 F.3d 884 (8<sup>th</sup> Cir., Minnesota 2002); and Kismet Investors v. County of Benton, 617 N.W.2d 85 (Minnesota App. 2000); and the City Council's knowledge of actual conditions within the City and surrounding communities.

B. Based on these studies, cases and other documentation, the City Council hereby finds:

- 1) Establishments exist, have existed, or may exist within the City and nearby communities where the primary or dominant theme, of all or part of the business, is the presentation, display, depiction, or description of specified anatomical areas or specified sexual activities, as those terms are defined in this Ordinance. These establishments include, but are not limited to those:

- a) Distinguished by an emphasis on or the promotion of dancers, entertainers, performers, or other individuals, who perform or are presented while displaying or exposing specified anatomical areas or are presented while simulating or engaging in specified sexual activities;
  - b) Where workers dance or perform in consideration for tips, remuneration or compensation from or on behalf of those customers, or offer, solicit or contract to do the same, and the product, service or entertainment is intended to provide sexual stimulation or sexual gratification to such customers;
  - c) Where straddle dancing, lap dancing, private modeling, prostitution, unlawful drug transactions, or lewd and lascivious touching occurs between customers and workers or performers;
  - d) Where sexually oriented media are offered for sale or rental;
  - e) Where sexually oriented adult toys or novelties are offered for sale.
- 2) Activities exist, have existed or may exist within the City and nearby communities where sexually oriented physical contact or escort services are offered for pecuniary gain. The people involved in such activities engage in physical contact or touching with customers, including acts of prostitution, or encourage or entice customers to engage in acts of lewdness.
  - 3) Adult uses, and the establishments in which they occur, are subject to regulation by the City in the interest of the health, safety, and general welfare of the people of the City.
  - 4) The general welfare, health and safety of the citizens of this City will be promoted by enactment of this ordinance.
  - 5) Adult use establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.
  - 6) When adult uses are present in establishments, activities which are illegal or unhealthful tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to prostitution, pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials, possession, distribution, and transportation of obscene materials, sale of possession of controlled substances, and violent crimes against persons and property. There is a higher correlation between incidents of crime and adult use establishments that involve on-premises entertainment of any kind, as compared to those that do not have on-premises entertainment. Crime statistics show that all types of crimes, specifically sex-related crimes, occur with more frequency in neighborhoods where adult entertainment establishments are located, See, e.g. studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.
  - 7) When adult uses are present within establishments they tend to attract an undesirable number of transients, blight neighborhoods, adversely affect neighboring businesses, lower real property values, and ultimately lead residents and businesses to move to other locations.
  - 8) Real estate professionals believe that there is a negative impact of adult use establishments on both nearby residential and business property value. There is an inverse correlation between the level of impact and the distance between the business

and other uses. In addition, the impacts on residential properties are greater than on non-residential properties.

- 9) The proximity and concentration of adult use establishments adjacent to residential, recreational, religious, education uses, as well as proximity to other adult use establishments can have adverse secondary effects on local establishments and residences.
- 10) The locational requirements established by this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult use establishments in the City, and a sufficient reasonable number of appropriate locations for adult use establishments are provided by this Ordinance.
- 11) The City Council in adopting operational standards, recognizes that these standards do not preclude reasonable alternative avenues of communication. The City Council takes note of the proliferation of adult material on the internet and its availability as an alternative avenue of communication. The City Council also considers and relies on published decisions examining the proliferation of communications on the internet. *Reno v. American Civil Liberties Union* (1997) 521 U.S. 844 (the principal channel through which many Americans now transmit and receive sexually explicit communication is the internet); see also: *Anheuser-Busch v. Schmoke*, 101 F.3d 325 329 (4<sup>th</sup> Cir.1996) rejecting First Amendment challenge to Baltimore Ordinance restricting alcohol advertisements on billboards and acknowledging that the internet is an available channel of communication); *U.S. v. Hockings*, 129 F.3d 1069 (9<sup>th</sup> Cir. 1997); and *U.S. v. Thomas*, 74 F.3d 701 (6<sup>th</sup> Cir. 1996) (cert. denied 519 U.S. 820). The emergence of the internet provides a virtually unlimited additional source of adult oriented sexual material available to persons without regard to geographical boundaries. An adult business no longer needs to be actually physically located within a community to be available to the community.
- 12) The City Council also finds that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of the City of Motley, and thus certain requirements with respect to the ownership and operation of adult use establishments are in the public interest. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blighting of areas in which such businesses are located, the City Council also takes legislative notice of the facts recited in the case of *Kev, Inc. V. Kitsap County*, 793 F.2d 1053 (1986), regarding how live adult entertainment results in secondary effects such as prostitution, drug dealing, and other law enforcement problems.
- 13) Alcohol consumption in adult use establishments increases the likelihood of crime, illegal drug use, and illegal sexual activity, and encourages undesirable behavior that is not in the interest of the public health, safety and welfare. See, e.g. *Artistic Entertainment, Inc. v. City of Warner, Robins*, 223 F.3d 1306, 1309 (11<sup>th</sup> Cir. 2000); *Sammy's Ltd. v. City of Mobile*, 140 F.3d 993, 996 (11<sup>th</sup> Cir. 1998), cert. denied, 529 U.S. 1052, 146 L. Ed. 2d 459, 120 S. Ct. 1553 (2000).
- 14) The concurrence of the sale and/or consumption of alcoholic beverages with adult uses is hazardous to the health and safety of those persons in attendance, depreciates the value of adjoining real property, harms the economic welfare of the City and adversely affects the public's interest in the quality of life in the City.

- 15) In order to preserve and safeguard the health, safety, morals, and general welfare of the people of the City, it is necessary and advisable for the City to prohibit the sale and consumption of alcoholic beverages at or near establishments where adult uses occur.
- 16) The potential dangers to health, safety, and general welfare of the citizens of the City posed by permitting adult use establishments to operate without first obtaining a license and securing a conditional use permit prior to their being allowed to operate. A thorough but prompt investigation and review of the permit will facilitate this public purpose. Suspension or revocation of adult entertainment licenses or conditional use permits at which violations of either the licensing ordinance or the land use ordinance occur, upon adequate proof at administrative proceedings of the occurrence of such acts, will serve to protect the community from such danger by deterring or ending the use of the establishment for future specified acts which are criminal or violate this Ordinance. Access to prompt judicial review for denial, suspension or revocation of a license or land use permit will protect the rights of the licensee of applicant.
- 17) Prohibiting adult use establishments from operating within set distances of areas zoned for residential use, religious institutions, and parks and other areas where minors are customarily found, will serve to protect minors from the adverse secondary impacts that accompany such establishments.
- 18) Adult use establishments involve activities that are pure conduct engaged in and for the purpose of making a profit, rather than speech or expressive activity, and therefore are subject to regulation to protect the health, welfare and safety of the community.
- 19) Operators or workers of adult entertainment establishments who have the authority to direct or control other workers at, or the operation of, an adult entertainment establishment, should be subject to penalties for allowing violations of either the licensing ordinance or the land use ordinance to occur. This will discourage such operators from allowing or encouraging violations of these ordinance the purpose of increasing profits at the establishment to the detriment of the community and contrary to the purposes of these ordinances.
- 20) Sexual acts, including masturbation, and or and anal sex, occur at adult entertainment establishments, especially those which provide private or semi-private booths or cubicles for viewing films, videos or live sex shows. See, e.g. *California v. LaRue*, 409 U.S. 109, 111 (1972); see also Final Report of the Attorney General's Commission on Pornography (1986) at 377.
- 21) Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. See, e.g. Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
- 22) Persons frequent certain adult theaters, adult arcades, and other adult entertainment establishments, for the purpose of engaging in sex within the premises of such adult entertainment establishments. See, e.g. *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698 (1986); see also Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
- 23) At least 50 communicable diseases may be spread by activities occurring in adult entertainment establishments including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, None A, None B amebiasis, salmonella infections, and shigella infections. See, e.g. Study of Fort Myers, Florida.

- 24) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of adult entertainment establishments where persons view “adult” oriented films. See, e.g. Final Report of the Attorney General’s Commission on Pornography (1986) at 377.
  - 25) Nude dancing in adult use establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity. See, e.g. Barnes v. Glen Theatre, 501 U.S. 560, 583 (1991).
  - 26) Nude dancing in adult use establishments increase the likelihood of drug-dealing and drug use. See, e.g. Kev, Inc. vs. Kitsap County, 793 F.2d 1053, 1056 (9<sup>th</sup> Cir. 1986).
  - 27) Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult use establishments.
  - 28) The disclosure of certain information by those persons ultimately responsible for the day-to-day operations and maintenance of the adult entertainment establishment, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.
  - 29) When more than one adult entertainment establishment use occupies the same location or business address, the secondary effects caused by such businesses are increased. Secondary effects are eliminated or controlled to a greater degree when only a single adult entertainment establishment use is allowed to occupy the same location.
3. License Requirement:
- A. No person, firm or corporation shall operate or allow the operation of an adult use establishment on property under the person’s ownership or control without a validly issued license as required by this Section. The license shall be one of two types:
    - 1) Principal Adult Use; or
    - 2) Accessory Adult Use.
  - B. The applicant for an adult use license shall complete an application on a form provided by the City. This application shall include:
    - 1) The parcel number and legal description of the property where the adult use establishment is proposed.
    - 2) A detailed floor plan, drawn to scale, showing the type of activities, which will be conducted in each area of the adult use establishment, including a statement of the total floor space occupied by the business.
    - 3) The proposed hours of operation.
    - 4) A sewage treatment system design that meets the requirements of the city. and the State of Minnesota.
    - 5) A statement of the type of adult use license (principal or accessory) being applied for.
    - 6) Sufficient evidence that all setback requirements in this Ordinance will be met. When deemed necessary, a survey of the property and proposed uses prepared by a qualified surveyor may be required.

- 7) Whether the applicant is a natural person, corporation, partnership or other form of organization.
- 8) The name and street address of the business. If the business is to be conducted under a designated name or style other than the name of the applicant, a certified copy of the certificate required by Minnesota Statute 333.01, as amended from time to time, shall be submitted.
- 9) Whether the applicant has had a previous adult use establishment license suspended or revoked.
- 10) If the applicant is a natural person:
  - a) The name, place and date of birth, street, city and mailing address, and phone number of the applicant.
  - b) Whether the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places where used.
  - c) The street and city addresses at which the applicant has lived during the preceding two years.
  - d) The type, name and location of every business or occupation in which the applicant has been engaged during the preceding two years and name(s) and address(es) of the applicant's employer(s) and partner(s), if any for the preceding two years.
  - e) Whether the applicant has ever been convicted of a gross misdemeanor or felony relating to sex offenses, obscenity offenses, or adult use establishments.
- 11) If the applicant is a partnership:
  - a) The name(s) and address(es) of the partnership, the name(s) and address(es) of all partners and all of the information concerning each partner that is required of applicants in Paragraph D of this Section.
  - b) Whether the partnership is general or limited.
  - c) A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to Minnesota Statute 333.01, as amended from time to time, a certified copy of the certificate shall be attached to the application.
- 12) If the applicant is a corporation or other organization:
  - a) The name of the corporation or business form, and if incorporated, the date and state of incorporation.
  - b) A true copy of the Certificate of Incorporation, Articles of Incorporation or Association Agreement and Bylaws shall be attached to the application. If the applicant is a foreign corporation, a Certified of Authority as required by Minnesota Statutes 303.06, as amended from time to time, shall be attached. If the entity is a limited liability company, then true and accurate copies of the Articles of Organization and any Membership Agreements shall be attached to the application.
  - c) The name of the manager(s), proprietor(s), or other agent(s) in charge of the business and all of the information concerning each manager, proprietor or agent that is required of the applicants in Paragraph D of this Section.

- d) Accurate and complete business records, showing the names, addresses and dates of birth of all officers, directors and controlling stockholders for the business.
- e) The name of the registered corporate agent and the address of the registered office for service of process.

C. License Issuance, Expiration, Renewal, Suspension and Revocation:

1) License eligibility:

- a) An applicant may qualify for a license:
  - (1) If they are at least twenty-one (21) years of age; and
  - (2) If they are not overdue in payments to a City, County, State or Federal Government of taxes, fees, fines or penalties or charges for municipal services and utilities assessed against them or imposed upon them; and
  - (3) If they have not been convicted of a misdemeanor, gross misdemeanor or felony relating to sex offenses, obscenity or adult use establishment; and
  - (4) If they are not an owner of five (5%) percent or more of a business entity which has been convicted of a misdemeanor, gross misdemeanor or felony relating to sex offenses, obscenity offenses, or adult use establishments; and
  - (5) If more than one year has elapsed in the case of a previous license revocation; and
  - (6) If more than two years have elapsed since the date of conviction or the date of release from confinement, whichever is later, in the case of a misdemeanor or gross misdemeanor offense; and
  - (7) If more than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is later, in the case of a felony offense; and
  - (8) If more than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is later, if the conviction is of two or more misdemeanor or gross misdemeanor offenses or combination of misdemeanor or gross misdemeanor offenses occurring within any 24-month period.

2) License Issuance:

- a) The City shall investigate all facts set out in the application. Each owner of the establishment be it individual, or in the case of business entity owner, any owner of five percent (5%) or more of the business entity, shall be subjected to a criminal history background check by the Police Chief or his designee. Costs of the criminal history investigations shall be borne by the applicant according to the fee schedule established by the City Council.
- b) The application for the adult use establishment license shall not be considered complete until all required information has been furnished, the investigation has been completed by the Police Chief, and a report provided to the City Administrator by the applicant.
- c) The City Council shall hold a public hearing with notification equivalent to the required for a conditional use permit within thirty (30) days after receiving a

complete application. At the hearing opportunity shall be given to any person to be heard relating to the granting of the license. The City Council shall grant or deny said adult use establishment licenses within thirty (30) days of the conclusion of the hearing.

- d) The City will issue a license to an applicant unless one or more of the following conditions exist:
  - (1) The applicant has not met the eligibility requirements as noted in this ordinance;
  - (2) The applicant failed to supply all of the information required on the license application;
  - (3) The applicant gives false, fraudulent or untruthful information on the license application;
  - (4) The adult use establishment is not in full compliance with the City Code and all provisions of County, State and Federal law;
  - (5) The applicant has not paid the required license fee;
  - (6) The applicant has been denied a license by the City of any other Minnesota municipal corporation to operate an adult use establishment or such license has been suspended or revoked within the preceding twelve (12) months;
  - (7) The applicant is not the proprietor of the establishment for which the license is issued; or
  - (8) The adult use establishment owner or operator holds an intoxicating liquor, beer or wine license applicable to the premises.
- 3) Expiration and Renewal:
  - a) An adult use establishment license expires on December 31 of each calendar year.
  - b) A licensee may renew a license by completing an application as required for a new license. The applicant will be allowed to continue business until the City has determined whether the applicant meets the criteria for renewal of the license. If the City denies the renewal, the applicant shall not be issued a license for one year from the date of denial.
- 4) Suspension:
  - a) The City may suspend a license beginning on January 1 if the licensee fails to make application for renewal of the license. The suspension shall remain in effect until such time as the applicant has made application and the license has been approved by the City, or until the license has been revoked in accordance with this Ordinance;
  - b) The City may suspend a license for a period not to exceed 30 days if it determines that the licensee or an employee of a licensee has:
    - c) Violated or is not in compliance with any provisions of this Ordinance;
    - d) Allowed or engaged in the sale or use of alcoholic beverages while on the adult use establishment premises other than at an Adult Hotel or Motel;
    - e) Refused to allow an inspection of the adult use establishment as authorized by this Ordinance;



- f) Knowingly permitted unlawful gambling by any person on the adult use establishment premises;
  - g) A suspension by the City shall be preceded by written notice to the licensee and, except in the case of failure to make application for renewal, a public hearing. The notice shall give at least ten (10) days' notice of the time and place of the hearing and shall state the nature of the alleged violations of the licensee or their employee. The notice may be served upon the licensee personally or by leaving the same at the licensed business premises with the person in charge thereof, or may mailing the notice by United State mail to the last known address of the owner or agent authorized to receive legal notices for the business as listed on its license application.
- 5) Revocation:
- a) The City may revoke a license if:
    - (1) A licensee fails to make application for renewal of the license by February 28 or of the year after the previous license has expired;
    - (2) A cause of suspension occurs and the license has been suspended at least once before within the preceding twelve (12) months;
    - (3) It determines that:
      - (a) A licensee gave false or misleading information in the material submitted to the City during the application process;
      - (b) A licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;
      - (c) A licensee or an employee has knowingly allowed prostitution on the premises; and
      - (d) A licensee has been convicted of an offense listed in Section 11.05.A. for which the time period required that same section has not elapsed; or
      - (e) Except in the case of an Adult Hotel or Motel, a licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.
  - b) The fact that a conviction for an offense listed in this Ordinance, is being appealed shall have no effect on the revocation of the licensee.
  - c) When the City revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult use establishment license for one (1) year from the date revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license is revoked due to a criminal conviction under Section 11.05.A., an applicant may not be granted another license until the appropriate number of years required under Section 11.05.A. has elapsed.
  - d) Procedures for Appeal: Nonrenewals, suspensions and revocations of an adult use establishment license are governed by the following:
    - (1) In the event that the City proposed to not renew, to suspend or to revoke a license, the City will notify the licensee in writing of the basis for the action.

The City will hold a hearing for the purpose of determining whether to not renew, to suspend or to revoke the license, except in the case of failure to apply for renewal of the license by February 28 following the date of the license expires. The hearing must be within thirty (30) days of the date of the notice. The City Council must determine whether to not review, to suspend or to revoke a license within 30 days after the close of the hearing or within sixty (60) days of the date of the notice, whichever is sooner. The City must notify the licensee of its decisions within that period.

- (2) If the City determines to suspend or revoke a license, the suspension or revocation is not effective until fifteen (15) days after notification of the decision to the licensee. If, within fifteen (15) days, the licensee files and serves an action in State or Federal court challenging the City's action the suspension or revocation is stayed until the conclusion of such action.
  - (3) If the City Council determines not to renew a license, the licensee may continue its business for fifteen (15) days after receiving notice of such nonrenewal, if the licensee files and serves an action in State or Federal court within the fifteen (15) days for the purpose of determining whether the City acted properly, the licensee may continue in business until the conclusion of the action.
  - (4) After denial of an application or a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such action in any court of competent jurisdiction.
- 6) Inspection:
- a) An applicant or licensee shall permit health officials, representatives of the police department, fire department and building inspector, to inspect the premises of an adult use establishment for the purpose of ensuring compliance with the law, at any time it is occupied or open for business. The licensee is at all times responsible for the conduct, activity and operation of the business.
  - b) Refusal to permit a lawful inspection of the premises by health officials, representatives of the police department and building inspector, to inspect the premises of an adult use establishment for the purpose of ensuring compliance with the law, at any time it is occupied or open for business is a violation of this Ordinance. Refusal to permit inspections may result in nonrenewal, suspension or revocation of the license.
  - c) The provisions of this Section do not apply to areas of an Adult Hotel or Motel that are currently being rented by a customer for use as a permanent or temporary habitation. Temporary habitation is defined as a period of time at least twelve (12) hours.
- 7) Transfer of License: A licensee shall not transfer this license to another, nor shall a licensee operate an adult use establishment under the authority of a license at any place other than the address designated in the application.
- 8) Changes in Design or Use:
- a) If an applicant makes any changes in the proposed design or use of the property, or any other changes to the information submitted in the application, before a license is issued, the applicant shall submit the proposed changes in writing to the City.

- b) If an adult use license proposes, changes in the design, construction or use of an already permitted adult use, the license holder must submit to the City a detailed description of the proposed change in writing and no change can be made unless and until the City issues a written opinion that the change complies to all requirements of this Ordinance.
- 4. Granting of Permit:
  - A. The City shall issue a license only to the owner of the real property or to an applicant who has express written permission from the owner to use the land for an adult use.
  - B. An adult use license shall be valid only for the specific building and type of use described in the application.
  - C. Adult uses are subject to the location restrictions, performance standards, and conditions listed in this Ordinance.
  - D. The license, if granted, must state on its face the name of the person or entity to whom is granted, the expiration date, and the address of the adult use establishment. The license must be posted in a conspicuous place at or near the entrance to the adult use establishment.
  - E. The license must keep itemized written records of all transactions involving the sale, rental or loan of any items or merchandise for at least twelve (12) months after the transaction. At a minimum those records must describe the date of the transaction, a description of the transaction, the purchase or rental price, and a detailed description of the item or merchandise that is being purchase or rented. These written records must be provided to the City or to law enforcement upon request.
  - F. Responsibility to Obtain Other Permits/Licenses: The granting of any permit or license pursuant to requirements of this Ordinance, or other applicable City Ordinances, shall not relieve applicants of their responsibility to obtain any required County, State and Federal permits and/or licenses.
- 5. License Fees: Each application for an adult use license shall be accompanied by the required fee. All fees shall be paid at the time of application.
  - A. The annual license fee for adult use establishment is set annual by the City Council by resolution. If eight (8) months of any licensing year have elapsed when an application is made, the fee shall be reduced to one-half of the regular amount. The fee is nonrefundable.
- 6. Restrictions: The City may issue an adult use license to businesses, subject the following conditions:
  - A. General Prohibitions:
    - 1) Activities classified as obscene as defined by Minnesota Statutes, Section 617.241, as amended from time to time, or successor statutes, are not permitted and are prohibited.
    - 2) No principal adult use shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the adult use establishment that is prohibited by any applicable ordinance of the City of Motley, Morrison & Cass County, the laws of the State of Minnesota or the United States of America. Nothing in this Ordinance shall be construed as authorizing or permitting conduct that is prohibited or regulated by other Statutes or ordinance prohibiting the exhibition, sale or distribution of obscene materials generally, or the exhibition, sale or distribution of specified materials to minors.

- 3) No principal adult use shall be conducted in any manner that permits the perception of observation from any property not containing a licensed adult use establishment of any materials depicting, describing or relating to “specified sexual activities” or specified anatomical areas” by any visual or auditory media, including display, decoration, sign, show window, sound transmission or other means.
- 4) A building owner or operator may not have more than one (1) adult use present in the same building or structure.

B. Location Restrictions:

- 1) All Adult Use Establishments (principal or accessory):
  - a) Adult use establishments may only be located in industrial zoned districts.
  - b) Adult uses shall be prohibited at any public show, movie, caravan, circus, carnival, theatrical or other performance or exhibition presented to the general public where minors are permitted or where such activity would reasonably be visible by minors.
- 2) Principal Adult Use:
  - a) A principal adult use shall be setback a minimum of 500 feet from the following land uses:
    - (1) Any other principal adult use or accessory adult use;
    - (2) Church;
    - (3) School;
    - (4) Public library;
    - (5) Public park;
    - (6) Pool hall, video arcade or other entertainment facility open to minors;
    - (7) Hotel or Motel;
    - (8) Licensed daycare/child care home or center;
    - (9) Licensed group family daycare home or center; or
    - (10) Any building that contains a business that sells or dispenses nonintoxicating or intoxicating liquors or holds a consumption and display permit.
  - b) An accessory adult use shall meet the same setback as is required for structures within the applicable zoning district.
- 3) If such setbacks effectively eliminate all areas within the City to locate an adult use establishment, the City shall reduce the required setback only so such as is necessary to reasonably allow for the use and may require fencing, screening or other conditions of the approval as deemed necessary to protect the public health safety and welfare. In no case shall the setback be reduced to less than what is required for a structure in the relevant zoning district, without application for and approval of a variance.
- 4) Measurements shall be made in a straight line, without regard to township, City or County boundaries, intervening structures or objects, from the nearest point of the building or structure used as a part of the premises where a principal adult use or

accessory adult use is conducted, to the nearest property line of the premises of the uses listed.

C. Liquor:

- 1) A principal adult use shall not sell or dispense nonintoxicating liquors or hold a consumption and display permit, as those terms are defined in Minnesota Statutes 340A, nor shall an adult use be located in a building that contains a business that sells or dispenses nonintoxicating or intoxicating liquors or holds a consumption and display permit.
- 2) A principal adult use shall not allow the consumption of nonintoxicating or intoxicating liquors anywhere on a parcel containing that use or business.

D. Building and Property Standards:

- 1) Lighting: All parking lots and exterior business premises shall be lit in such a way so that they are visible to law enforcement without the aid of flashlights and/or spotlights.
- 2) Entrances: All entrances to a principal adult use, with the exception of emergency fire exits that are not useable by patrons to enter the business, shall be visible from a public right-of-way.

E. Hours of Operation: Principal adult uses shall not be open at any time on Sunday nor between the hours of 12:00 a.m. (midnight) and 4:00 p.m. on the days of Monday through Saturday.

F. Adult Cabarets: The following additional conditions apply to adult cabarets:

- 1) No dancers, live entertainer, performer or patron shall be under 18 years of age.
- 2) All dancing or live entertainment shall occur on a platform intended for that purpose and which is raised at least two (2) feet from the level of the floor.
- 3) No dancer, live entertainers or performer shall perform or dance closer than ten (10) feet from any patron unless such dancer or performer is enclosed behind a floor to ceiling glass or other partition.
- 4) No dancer or performer shall fondle, caress or touch any patron and no patron shall fondle, caress or touch any dancer or performer.
- 5) An adult cabaret shall maintain and retain for a period of two (2) years the names, addresses and ages of all persons engaged, hired or employed as dancers or performers by a licensee.

G. Viewing Booths: The following additional regulations apply to viewing booths:

- 1) Individual motion picture viewing booths must be without doors and the occupant must be visible at all time.
- 2) Only one person may be in a viewing booth at a time.
- 3) Walls separating booths must be such that the occupants cannot engage in sexual activity.
- 4) Each booth must be kept clean and sanitary.
- 5) The booths shall be adequately lit such that the occupant is visible at all times.

H. Nudity Prohibited: No person may be nude on the premises of any adult use establishment.

I. Sign Restrictions: Signs identifying or advertising adult use establishments must comply with the following restrictions:

- 1) Signs shall be limited to the size, number of signs and other performance standards that are permitted in the district in which the use is located.
- 2) No photos, pictures, digital representations or visual depictions of any person, product, device or service relating to “specified sexual activities” or “specified anatomical area” shall be displayed on any sign.
- 3) No merchandise, photos, illustrations, representations or pictures of the sexually oriented products, activities or entertainment offered on the premises of the adult use may be displayed in an area where such items can be viewed from a sidewalk, public right-of-way or any building or structure adjoining or adjacent to the adult use establishment.

## **7.2 Mobile Home/Manufactured Housing Development.**

1. General. Manufactured housing development shall be administered as a Conditional Use in the zoning district where said use is allowed. Development of this type creates a heavy demand and reliance on municipal type facilities including roads, sewer, water and fire protection. In addition these developments are often the most dense in a community requiring heavier streets, more public recreation facilities and nearby shopping.

2. Minimum Standards:

- A. A Minnesota Department of Health Permit shall be required. Where Department of Health regulations are more restrictive than those in this section, the stricter regulations shall apply.
- B. Parcel size shall be a minimum of 20 acres.
- C. At least two (2) acres or 10 percent of the total parcel, whichever is greater, shall be set aside for parks and recreation.
- D. Minimum individual lot dimensions shall be 40’ x 100’ when served by an on-site sewage treatment system or 40’ x 70’ if the park is served by a municipal sewage system.
- E. At least 20% of the land shall be in common ownership not used for individual lots, which may include the area set aside for parks and recreation.
- F. The common roadway area, where private, shall be a minimum of 40-feet wide with a 24-foot wide bituminous surfaced road.
- G. There shall be a minimum of 2 and a maximum of three parking spaces for each unit.
- H. Each unit shall be a minimum of 640 square feet.
- I. All units must be skirted, unless placed on an enclosed foundation.
- J. Landscaping shall be required as per the direction of the Planning Commission.
- K. When served by public utilities, there shall be individualized sewer, water and electrical connection for each site.
- L. An adequate number of fly tight, watertight and rodent-proof containers must be provided for all garbage and refuse. Garbage must be collected for disposal as often as necessary to prevent nuisance conditions and at least once each week.
- M. Each unit must meet the requirements of the state building code, HUD standards and Minn. Stat. §§327.21 -327.35, as amended; and shall not be in disrepair or unsafe condition at time

of installation and have the required state seal attached.

- N. Sufficient storm shelter, or a plan for the evacuation and sheltering of residents in times of severe weather, shall be provided to accommodate all residents of the development. Such shelters or plans shall meet the requirements of the Minnesota Department of Health and any local requirements.
- O. Water meters shall be installed and maintained for each manufactured home unit.
- P. Each manufactured home unit must be placed on a concrete, or other hard-surface pad, as approved by the City.

### **7.3 Campgrounds/Campsites.**

1. General. Campgrounds/RV parks shall be administered as Conditional Uses in the zones where said use is allowed.
2. Minimum parcel size. No campground or recreational vehicle park shall be allowed on a parcel of less than 2.5 acres.
3. Dwelling site requirements. The dwelling sites must conform to the Minnesota Department of Health Standards and the following:
  - A. Campsites or recreational vehicle sites shall have a minimum of 3,000 square feet designated for each family unit, with a minimum of 40 feet, center to center.
  - B. A strip of land with a minimum width of 40 feet shall be reserved for a service road adjacent to each of the designated sites.
  - C. Parking shall be off the road.
  - D. A water system capable of providing 100 gallons per site, per day, at 20 psi at the most remote fixture for RV sites, or within 400 feet of each campsite for non RV sites.
  - E. Conforming onsite sewage collection and disposal system sized for 100 gallons per campsite per day.
  - F. Solid waste facilities consisting of one 30 gallon can for each 4 campsites or one dumpster for each 20 sites, constructed to prevent overturning or cover removal by animals, and screened.
  - G. Fire pit for each campsite.
  - H. Campsites for recreational vehicles shall have sewer connection, water connection and electric connection, or recreational vehicles shall be self-contained and a wastewater disposal station for the first and each 100 such vehicles at least 50 feet from the nearest campsite shall be provided.
  - I. Drinking water and restroom facilities with showers shall be provided, all within 400 feet of every site not served with full facilities.
  - J. Grass or other complete ground cover shall be maintained except in parking areas and roads.
  - K. Evidence shall be provided, prior to final approval, that the licenses and approval process of Minnesota Department of Health has been adhered to.
  - L. All sites shall be well drained.
  - M. Sufficient storm shelter shall be provided to accommodate all occupants of the campground.

#### **7.4 Extractive Uses and Restoration.**

1. **Extractive Uses.** Extractive uses, where allowed, shall be permitted only by Conditional Use Permit. Such permit shall include, as a condition: a site plan, a completion plan and a haul route with a provision for road restoration.
2. **Restoration.** Upon completion of mining or other extraction, the site shall be shaped and natural overburden replaced, then natural topsoil placed thereon and seeded. The haul road shall be restored to the condition prior to the beginning of the extraction operation.
3. No processing machinery shall be placed closer than 1,000 feet from any residence or 200 feet from the OHW of any lake, river or stream.

#### **7.5 Home Occupation.**

1. **General.** Each home occupation in the City shall require an interim use permit. Home occupation permits are not transferable to a new owner/renter/occupant, thus the permit will not run with the property, nor be transferable to a different property.
2. **Standards**
  - A. All business activities, including storage, shall be inside buildings or completely screened from adjacent properties, except where specifically allowed otherwise by the City.
  - B. All activities shall be clearly incidental to the use of the property for residential purposes. Not more than twenty-five percent (25%) of the gross floor area of the residence or 50% of the gross floor area of a garage or storage building shall be used for commercial purposes.
  - C. No home occupation shall be conducted between the hours of 10:00 p.m. and 7:00 a.m. unless said occupation is contained entirely within the principal building and will not require any on-street parking facilities.
  - D. Not more than two non-residents may be employed on the premises by the home occupation.
  - E. On the premises, retail sales will be allowed only of products manufactured on those premises unless specifically authorized by Conditional Use Permit.
  - F. No articles for sale shall be displayed so as to be visible from the street.
  - G. All activities will be controlled to prevent nuisance problems of noise, vibration, smoke, dust, fumes or litter.
  - H. The home occupation shall not generate more than two (2) customer vehicles at one time. Off-street parking shall be provided, but no more than two (2) spaces.
  - I. No mechanical or electrical equipment shall be used if the operation of such equipment interferes unreasonably with the desired quiet residential environment of the neighborhood or if the health and safety of the residents is endangered. No equipment shall be used in the home occupation which will create electrical interference to surrounding properties.
  - J. A person having a home occupation shall provide proof of meeting the above requirements upon request by the City.
3. **Yard Sales/Garage Sales.** Yard sales and garage sales do not require a home occupation



permit so long as they do not exceed seven cumulative days in one calendar year.

4. Private Automobile Sales. One automobile displayed for sale on a property shall not require a home occupation permit so long as not more than two automobiles are sold over thirty cumulative days per calendar year.

## **7.6 Proposed Telecommunication Towers**

1. Purpose and Intent.  
To establish predictable and balanced regulations that protect the public health, safety, and general welfare of the City.
  - A. Facilitate the provision of telecommunications services and facilities including commercial wireless telecommunication services in Motley.
  - B. Minimize adverse visual effects of towers through careful design standards.
  - C. Avoid potential damage to adjacent properties from tower or antenna failure and weather related occurrences through structural standards, careful siting, and setback requirements;
  - D. Encourage the use of existing towers and buildings to accommodate commercial wireless telecommunication service antennas in order to minimize the number of towers needed to serve the City.
2. Permits Required. It shall be unlawful for any person, firm or corporation to erect, construct in place, place or re-erect any tower, unless it shall replace a like tower, without first making application to the City and securing a permit. A change in construction, dimension, lighting design or design type shall also require a permit. The placement of antennae on previously approved towers may be administratively approved by the City.
3. Tower and Antenna Design Requirements. Proposed or modified towers and antennas shall meet the following design requirements:
  - A. Towers and antennas shall blend into the surrounding environment through the use of color and camouflaging architectural treatment except in instances where the color is dictated by federal or state authorities.
  - B. No tower shall have constructed thereon, or attached thereto, in any way, any platform, catwalk, crow's nest, or like structure, except during periods of construction or repair.
  - C. Towers and their antennas shall be certified by a qualified and licensed professional engineer to conform to applicable state structural building standards.
  - D. Towers and their antennas shall be designed to conform with accepted electrical engineering methods and practices and to comply with the provisions of the National Electrical Code.
  - E. Metal towers shall be constructed of, or treated with, corrosive resistant material.
4. Tower Setbacks. Towers and all accessory structures or buildings shall conform to the following minimum setback requirements:
  - A. Towers shall be set back from all property lines and existing structures an amount equal to the height of the structure.
  - B. Guy wires for towers shall be located no closer than twenty-five (25) feet to any property line and shall meet the setback of the underlying land use district with respect to the public road right of way.
  - C. Suitable protective anti-climbing fencing, with a minimum height of six (6) feet shall be provided around any tower and guy wires.

5. Tower Location. Towers less than two hundred (200) feet in height shall be located a minimum of one-half mile from the end of an airport clear zone as measured from the center point of the base of a free-standing tower. Towers that are 200 feet or more in height shall be located a distance of at least three miles from any public or private airport.
6. Co-Location Requirements. All commercial wireless telecommunication towers erected, constructed, or located within the City shall comply with the following requirements:
  - A. Documentation of the area to be served including maps demonstrating the size of communication cells and a search ring for the antenna location. A narrative describing a search ring for the request, with not less than one (1) mile radius clearly explaining why the site was selected, what existing structures were available and why they are not suitable as locations or co-locations.
  - B. Documentation that the communications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within the search ring of the service area due to one or more of the following reasons:
    1. The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned equipment at a reasonable cost.
    2. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer or qualified radio frequency engineer and the interference cannot be prevented at a reasonable cost.
    3. Existing or approved towers and buildings within the search radius that are sixty (60) feet or over in height that cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.
    4. Other unforeseen reasons that make it unfeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.
  - C. Any proposed tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the tower is over 99 feet in height, or for at least one additional user if the tower is between 35 and 99 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept mounting at varying heights.
  - D. An agreement stating that the site will be designed for not less than three users with applicant and property owner commitment to co-location, whereby, any prohibition of additional users on a tower will be considered a violation of the permit and city policy. The agreement shall also include a statement that any unused or abandoned tower shall be removed by the property owner and/or applicant. Said agreement shall be signed by the applicant and the property owner and shall be attached to and become a part of the permit.
7. Antennas Mounted on Existing Buildings or Towers. The placement of telecommunication antennas including wireless telecommunication antennas on existing buildings, towers or structures, shall meet the requirements of the underlying land use district and this section. A site plan and building plan must be submitted to the City as part of the land use permitting process. Where a tower is non-conforming due to the requirements of this section additional telecommunication antennas may be permitted to be placed on the tower after being reviewed by the Zoning Administrator.

8. Accessory Utility Buildings. All buildings and structures accessory to a tower shall:
  - A. Be architecturally designed to blend in with the surrounding environment and shall meet the height and setback limitations as established for each land use district.
  - B. Have ground mounted equipment screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.
9. Tower Lighting. A tower shall not be illuminated by artificial means and shall not have affixed or attached to it in any way except during time of repair or installation, any lights, reflectors, flashers, or other illuminating device, except as required by the Federal Aviation Administration or the Federal Communications Commission or state agency. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.
10. Abandoned or Unused Towers. Abandoned or unused towers and associated facilities shall be removed within twelve (12) months of the cessation of operations at the site unless a time extension is approved by the Zoning Administrator. In the event that a tower is not removed within the 12 months of the cessation of operations at a site, the tower and associated facilities may be removed by the City and the costs of removal assessed against the property.
11. Public Safety Telecommunications Interference. Commercial wireless telecommunications services shall not interfere with public safety telecommunications. All applications shall include adequate information that will be reviewed by the Planning & Zoning Commission before a permit may be issued. Before the introduction of new service or changes in existing service, telecommunication providers shall notify the City at least ten (10) calendar days in advance of any changes and allow the City to monitor interference levels during the testing process.
12. Signs and Advertising. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.
13. Non-conforming Towers. In order to avoid requiring new towers and to minimize the number of towers needed to serve the city, the following provisions shall apply to non-conforming towers. Telecommunication towers in existence at the time of this Ordinance may be permitted to increase tower height after being issued a conditional use permit. The Planning & Zoning Commission shall consider the following criteria as part of the conditional use permit process:
  - A. Tower safety concerns including tower collapse, falling ice, and airplane traffic.
  - B. Land use character and history of tower(s).
  - C. Comparative visual impact to the surrounding lands of the proposed tower height increase.
  - D. Disturbance or conflict with agricultural uses on the property.
  - E. Other factors which tend to reduce conflicts or are incompatible with the character and need of the area.
14. Screening and Landscaping Requirement. A screening and landscaping plan designed to screen the base of the tower, accessory utility buildings, utility structures, and security fencing shall be submitted. The plan shall show the location, size, quantity, and type of landscaping materials. Landscape materials shall be capable of screening all year and must be six (6) feet in height by the end of the second growing season. Gravel or other durable surface or other weed prevention measures shall be applied within the fenced area to prevent the growth of weeds. A maintenance plan for landscaped materials shall also be submitted.
15. Additional Submittal Requirements. In addition to the information required elsewhere, applications shall include the following information:

- A. A report from a licensed professional engineer that describes the commercial wireless telecommunication service tower's capacity, including the number and type of antennas that it can accommodate.
  - B. A letter of intent from the commercial wireless telecommunication service tower owner committing the tower owner and successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.
  - C. The location of all public and private airports within a three (3) mile radius of the tower site.
  - D. Applicant must obtain FAA approval and/or provide documentation that FAA approval is not needed.
  - E. Applicant must obtain FCC licensure and approval as required for various communications applications. No interference with local television and radio reception will be allowed.
  - F. An intermodulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems, only if that is the basis for not co-locating
  - G. The applicant must submit proof of Liability and Worker's Compensation.
  - H. For towers over five hundred (500) feet, an Environmental Assessment Worksheet (EAW) is required and the applicant shall be responsible to provide the city with all information required to complete the EAW prior to the issuance of a permit from the city.
  - I. The owner of the tower shall provide the city with an acceptable financial guarantee in an amount equal to one and one-half (1&1/2) times the cost to remove the tower and related infrastructure, including footings and other underground improvements to a depth of thirty-six (36) inches below existing grade, and to restore the site. Failure to remove the structure shall be cause for the City to remove the tower and associated equipment at the expense of the property owners.
16. Towers Not Requiring a Permit. Permits are not required for the following:
- A. A satellite earth station antenna four (4) feet in diameter or less, located in an industrial or commercial district, meeting required setbacks.
  - B. A satellite earth station antenna three (3) feet or less in diameter, meeting the required setbacks.
  - C. A tower less than fifty (50) ft. as measured from the ground.

## **7.7 Signs<sup>72</sup>**

### **1. Findings**

- A. Findings. The City hereby finds as follows:
  - 1. Exterior signs have a substantial impact on the character and quality of the environment.
  - 2. Signs provide an important medium through which individuals may convey a variety of messages.
  - 3. Signs can create traffic hazards, aesthetic concerns, and detriments to property values, thereby threatening the public health, safety, and welfare.
  - 4. The regulation of signs is an effort to provide adequate means of expression and to support the economic viability of the business

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<sup>72</sup> Amended 9/23/08

community, while at the same time protecting the city and its citizens from a proliferation of signs of a type, size, location and character that would adversely impact upon the aesthetics of the community and threaten the health, safety and welfare of the community. The regulation of the physical characteristics of signs within the city have a positive impact on traffic safety and the appearance of the community.

2. Purpose, Intent and Effect. It is not the purpose or intent of these sign standards to regulate the message displayed on any sign; nor is it the purpose or intent of this Ordinance to regulate any building design or any display not defined as a sign, or any sign which cannot be viewed from the outside of a building. The purpose, intent and effect of this Section is to:
  - A. Regulate the number, location, size, type, illumination, and other physical characteristics of signs within the City in order to protect and promote the public health, safety, and welfare.
  - B. Maintain, enhance, and improve the aesthetic environment of the City by preventing visual clutter that is harmful to the appearance of the community.
  - C. Improve the visual appearance of the City while providing for effective means of communication, consistent with constitutional guarantees and the City's goals of public safety and aesthetics.
  - D. Provide for fair and consistent enforcement of the sign regulations set forth herein under the zoning authority of the City.
  - E. Allow a wide variety of sign types in commercial and industrial zoned, and a more limited variety of signs in other zones, subject to the standards set forth in this section.
  - F. Allow certain small, unobtrusive signs incidental to the principal use of a site in all zones when in compliance with the requirements of this section or when required by federal, state or local law.
  - G. Prohibit signs whose location, size, type, illumination or other physical characteristics negatively affect the environment and where the communication can be accomplished by means having a lesser impact on the environment and the public health, safety and welfare.
  - H. Provide for the enforcement of the provisions of this section.
3. General Provisions.
  - A. Permit Requirement: No sign whose highest attached part is greater than seven (7) feet above the nearest adjacent ground surface or 16sq.ft. in size, except as otherwise specified herein, shall be erected, altered, reconstructed, maintained or moved in the city without first securing a permit from the city. Fees for such permits shall be established by the city council.
  - B. Permit Exemptions: The following signs shall be exempt from the requirements of this section. These exemptions, however, shall not be construed as relieving the owner of the sign from the responsibility of its erection and maintenance, and its compliance with the provisions of this section or any other law or ordinance relating to maintenance, repair and removal.
    1. Individual signs not exceeding four (4) square feet in any zoning district. Such signage shall not be counted against any overall square footage requirement applicable to a property.
    2. Individual signs which are located no closer than 100 feet to the edge or curb of any road within a public road right-of-way, provided such signs are not readily visible or readable from a public right-of-way.
    3. Signs erected within a public road right-of-way that are approved by the governmental agency with authority over the right-of-way.

4. The changing of the display surface on a sign(s), or complete replacement of a sign(s), when such change or replacement would be consistent with a previously issued permit or a sign considered to be a legal nonconformity and would not require compliance with applicable building codes, unless such sign(s) has been deemed abandoned.
  5. Flags, subject to the following (any flags in excess of these amounts shall be regulated as a sign): 1) up to 100 sq ft in the downtown mixed use district or any business or industrial zoning district; 2) up to 40 sq ft in any residential district.
  6. Signs located on the interior of any building, or attached to the inside or outside of an exterior window, provided it does not extend beyond the window itself or more than twelve (12) inches out from the window itself.
  7. Signs which are integrally attached to or part of waste roll-offs, dumpsters, garbage cans, portable storage units or other similar equipment owned and maintained by a commercial business for the purpose of waste storage or temporary storage; personal property or motor vehicles such as, but not limited to, passenger vehicles, snowmobiles, all-terrain vehicles, trucks, semi-tractors and trailers, recreational vehicles, fish houses, boats, boat lifts, and trailers; construction materials or equipment located on a property temporarily.
  8. Signs which are affixed on property owned by a city, county, state or federal governmental body or a public school district unless specifically prohibited by this ordinance.
  9. Signs required by law.
  10. Headstones, gravestones, gravemarkers or other similar signs attached to, or adjacent to, a burial plot, columbarium, mausoleum or the like.
- C. Electrical Signs. Electrical signs must be installed in accordance with the current electrical code and a separate electrical permit from the State must be obtained prior to placement.
- D. All flashing, revolving and intermittently lighted signs and all portable signs are prohibited, except as specifically allowed in this section.
- E. Temporary signs pertaining only to the construction, sale, or rental of the premises are allowable provided they do not exceed nine (9) square feet in any District and are removed within thirty (30) days of the completion of construction, sale, or rental.
- F. Temporary signs, including banners, streamers and portable signs, are allowed for special events such as grand openings and promotions provided they are not in place longer than fourteen (14) days.
1. Portable signs must be placed twenty (20) feet back from the Highway 210 / Highway 10 Intersection; and
  2. four (4) feet of clear space must be maintained in the center of the sidewalk for the passage of pedestrians.
- G. Prohibited Signs. The following signs are prohibited signs:
1. Any sign, signal, marking or device which purports to be or is an imitation of or resembles any official traffic control device or railroad sign or signal, or emergency vehicle signal, or which attempts to direct the movement of traffic or which hides from view or interferes

- with effectiveness of any official traffic-control device or any railroad sign or signal.
  - 2. All off-premise advertising, including billboards.
  - 3. Signs painted, attached, or in any other manner affixed to trees, rocks, or similar natural surfaces, or attached to public utility poles, bridges, towers, or similar public structures.
  - 4. Except as hereinafter provided, no signs shall be erected or maintained at any angle to a building or structure so that the sign extends or projects over the street, sidewalk, road right-of-way, or highway.
  - 5. No sign which is erected or maintained flat against any building or structure shall extend or project more than twelve inches from the building.
- H. Setbacks. Permanent signs can be allowed up to the right-of-way or other property lines as long as there are no safety or maintenance concerns as determined by the Zoning Administrator.
- I. Area. The area within the frame shall be used to calculate the square footage. If such letters or graphics are mounted directly on a wall of fascia or in such way as to be without a frame, the dimensions for calculating the square footage shall be the area within the periphery around such letters or graphics in a plane figure bounded by straight lines connecting the outermost points thereof. Each surface utilized to display a message or to attract attention shall be measured as a separate sign and shall be calculated in the overall square footage. Symbols, flags, pictures, wording, figures, or other forms of graphics painted on or attached to windows, walls, awnings, free-standing structures, suspended by balloons or kites or on persons, animals, or vehicles are considered a sign and are included in calculating the overall square footage.
- J. Canopies, Marquees, and Fixed Awnings. Canopies, marquees, and fixed awnings are an integral part of the structure to which they are attached. Where allowed, they shall meet the following requirements and the applicable square footage requirements.
- 1. An awning, canopy, or marquee may not extend out from the building more than thirty (30) inches.
  - 2. Awnings, canopies, or marquees may have no part of the structure other than supports nearer to the ground surface than seven (7) feet.
  - 3. Below Marquee. No sign, either illuminated or non-illuminated, may project below a marquee.
- K. Illumination. External illumination for signs shall be so constructed and maintained so that the source of light is not visible from the public right-of-way or neighboring residential properties.
- L. Height. The top of a sign, including its superstructure, if any, shall be no higher than fifty percent (50%) of the roof elevation of the building to which such sign may be attached or thirty (30) feet above ground level, whichever height is less.
- M. Non-commercial speech. Notwithstanding any other provision of this Ordinance, all signs of any size containing Non-commercial speech may be posted in any number from August 1 in a (state) general election year until ten (10) days following the (state) general election and thirteen (13) weeks prior to any special election until ten (10) days following the special election.
- N. Repairs: Any sign located in the city which may now, or hereafter, become out of order, rotten or unsafe, and every sign which shall hereafter be erected, altered, resurfaced, reconstructed or moved contrary to the provisions of this

section, shall be removed or otherwise properly secured in accordance with the terms of this section by the owners thereof or by the owners of the grounds on which said sign shall stand, upon receipt of proper notice to do so, given by the issuing authority. No rotten or unsafe sign shall be repaired or rebuilt except in accordance with the provisions of this section and upon a permit issued by the issuing authority.

- O. Removal. Signs which may be or may hereafter become rotted, unsafe or unsightly shall be repaired or removed by the owner or lessee of the property upon which the sign stands upon reasonable notice by the city. The owner, lessee or manager of any sign that contacts the ground and the owner of the land on which the same is located shall keep grass, weeds and other growth cut and shall remove all debris and rubbish from the area beneath the sign. If the owner, lessee or manager of the property fails to act in accordance with this paragraph, the city may seek injunctive relief through a motion for summary enforcement, or obtain an administrative search and seizure warrant for removal of the sign in question. All costs incurred for removal may be charged to the owner of the sign and/or property owner and if unpaid, certified to the County auditor as a lien against the property on which the sign was located.

4. Specific Regulations by Zoning District.

A. Residential Districts.

- 1. Within residential Zoning Districts where a property contains two (2) dwelling units or less, non-exempt signs are allowed as follows (whether or not a permit is required):
  - a. Maximum sign area for a single sign: 8 sq ft
  - b. Cumulative maximum sign area for all non-exempt signs: 16 sq ft
  - c. Maximum height of any sign: 4 feet
- 2. Within residential Zoning Districts where a property contains three (3) or more dwelling units, non-exempt signs are allowed as follows (whether or not a permit is required):
  - a. Within 30 feet of a traveled public road right-of-way: One sign up to 32 square feet in size, which may be externally illuminated, with a maximum height of 8 feet (properties which front upon more than one street may have up to one such sign per street frontage); and
  - b. For all other signs not allowed under a. above:
    - i. Maximum height of any sign: 4 feet
    - ii. Maximum sign area for a single sign: 8 sq ft
    - iii. Cumulative maximum sign area per parcel: 48 sq ft, except when otherwise allowed by interim use permit.
- 3. The following types of signs are not permitted in residential Zoning Districts:
  - a. Awning signs
  - b. Balloon signs
  - c. Digital Display Signs
  - d. Flashing signs
  - e. Marquee signs
  - f. Pole signs
  - g. Pylon signs
  - h. Neon signs
  - i. Scrolling signs



- j. Shimmering signs
  - B. Business Districts.
    - 1. Within the Downtown Mixed Use (DMU), any Commercial (C) and any Industrial (I) District, signs are permitted as follows:
      - a. Each property is allowed one freestanding sign over 7 feet in height per 100 feet of public road frontage, so long as the sign's placement does not create a safety hazard by obstructing lines of sight or pedestrian corridors. The maximum height of any such sign shall be thirty (30) feet.
      - b. Maximum sign area of a single sign is one hundred twenty-eight (128) square feet.
      - c. Up to ten percent (10%) of any principal structure facade area which directly abuts and lies generally parallel with the road right-of-way or publicly traveled roadway may be dedicated to signage.
      - d. The maximum sign area for the side of the principal structure not abutting the road right-of-way or publicly traveled road is thirty-two (32) square feet.
      - e. Signs which exceed the limits outlined in this section may be allowed by interim use permit.
- 5. Non-conforming Signs. It is recognized that signs exist within the Zoning Districts which were lawful before this Ordinance was enacted, which may be prohibited, regulated, or restricted under the terms of this chapter or future amendments. It is the intent of this Ordinance that non-conforming signs shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other signs or uses prohibited elsewhere in the same district. It is further the intent of this sign ordinance to permit legally established nonconforming signs existing on the effective date of this Ordinance, or amendments thereto, to continue as legally established nonconforming signs provided such signs are safe, are maintained so as not to be unsightly, and have not been abandoned or removed subject to the following provisions:
  - A. No sign shall be enlarged or altered in a way which increases its nonconformity.
  - B. Should such sign or sign structure be destroyed by any means to an extent greater than fifty percent (50%) of its replacement cost and no sign permit has been applied for within one hundred eighty (180) days of when the property was damaged, it shall not be reconstructed except in conformity with the provisions of this Ordinance.
  - C. Should such sign or sign structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the Zoning District in which it is located after it is moved.
  - D. No existing sign devoted to a use not permitted by the zoning ordinance in the Zoning District in which it is located shall be enlarged, extended, or moved except in changing the sign to a sign permitted in the Zoning District in which it is located.
  - E. When a structure loses its status as a legal non-conforming structure, all signs on the property shall be brought into conformance with this ordinance within sixty (60) days.
- 7. Substitution Clause. The owner of any sign which is otherwise allowed by this Ordinance may substitute non-commercial copy in lieu of any other commercial or non-commercial copy. This substitution of copy may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial message over

any other non-commercial message. This provision prevails over any more specific provisions to the contrary.

## **7.8 Fence Regulations**<sup>73</sup>

1. The requirements of this subchapter shall apply to all new or replacement fences, walls, or shrubbery erected or installed from and after the effective date of this subchapter, but shall not apply to the mere repair of existing fences.
2. General Requirements:
  - A. All fencing over 30 inches shall require a land use permit.
  - B. No fence shall contain barbed wire or charged with electric current, except where specifically allowed in this ordinance.
  - C. No fence, wall or other obstruction to vision above a height of 30 inches from the established street grades shall be permitted within the triangular area formed at the intersection of any street right-of-way lines by a straight line drawn between the right-of-way lines at a distance along each line of 25 feet from their point of intersection.
  - D. Fences must be maintained so as not to endanger life or property and any fence which, through lack of repair, type of construction or otherwise, that imperils health, life or property or the well-being of a neighborhood shall be deemed a nuisance.
  - E. All fences must be located on the private property of the person, firm or corporation constructing the fence.
  - F. All fences must comply with all other requirements of law or this code as it applies to fence installation and materials.
3. All Zoning Districts Regulations:

*Prohibited material.* No fence or wall shall be constructed of any electrically charged element or barbed wire, unless specifically allowed in this section.

*Approved material.* Allowable Materials. Fences must be made of stone, brick, finished wood, rigid plastic, chain link, treated or cedar wood, split rail fences, or other materials commonly used for fencing. Materials not expressly listed above may only be authorized by conditional use permit, except that the following types of fences are prohibited: barbed wire (except as authorized in section 5 of this Section), electrical fencing, razor wire, creosote lumber, chicken wire (unless used for the enclosure of gardens), concrete block or poured concrete, plastic webbing, plywood or pressed wood. Notwithstanding the above prohibitions, commercially available snow fencing may be allowed between November 1 and March 15 of each calendar year.

*Maximum height.* Height. No fence shall exceed six (6) feet in height on any property, measured from six inches above the adjacent ground surface.

*Maintenance.* Every fence or wall shall be maintained in a good and safe condition at all times. Every damaged or missing element of any fence or wall shall be prepared or replaced in a timely manner.

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<sup>73</sup> Added December 2016

*Setbacks.* 2 feet unless fence can be maintained entirely from 1 side, and then 0 feet measure from the property line. All fences along property boundary lines shall be located entirely upon the property of the person constructing or causing the construction of the fence. The property owner shall maintain both sides of the fence. Fences shall be installed with the finished side(s) facing the neighboring property or properties. No fence shall be installed so that it obstructs the view of vehicular or pedestrian traffic on adjacent streets or public ways. All fences shall be installed in a manner that allows necessary maintenance to be performed without trespass on a neighboring property. All fences shall be placed, a minimum of 10 feet from the ordinary high water mark of a lake, two (2) feet from an alley lot line unless the fence can be maintained entirely from the non-alley side, and 10 feet from any city, county or state road surface or out of the road right-of-way, whichever is more restrictive.

4. Submission Requirements. When requesting a certificate of compliance for a fence, as required in Section 7.8, a certificate of survey from a licensed surveyor showing the parcel and proposed fence must be submitted to the City, unless any of the following exceptions apply:
  - A. The proposed fence will clearly be located entirely on the subject property and meet all required setbacks, in the sole discretion of the City;
  - B. Staes from a previously completed survey are still in place and appropriately marked, in the sole discretion of the City; or
  - C. A signed, written statement from all neighboring property owners adjacent to the proposed fence is provided and indicates that said neighbors do not dispute the proposed fence location.
5. Commercial (C2) and Industrial Districts:

*Approved material.* Approved fencing materials include stone, brick, finished wood, rigid plastic, chain-link, treated of cedar wood, split rail fences or other materials commonly used for fencing. Other materials may only be approved by conditional use permit, except that the following types of fences are prohibited unless specifically allowed otherwise: barbed wire electrical fencing, razor wire, creosote lumber, chicken wire (unless used for the enclosure of gardens), concrete block or poured concrete, plastic webbing, plywood or pressed wood. Notwithstanding the above prohibitions, commercially available snow fencing may be allowed between November 1 and March 15 of each calendar year.. The use of barbed wire is allowed on the top portion of fencing on commercial (C2) or Industrial zoned property not to exceed 18-inches on barbwire.

*Maximum height.* Fences not exceeding 84 inches (7") in height may be constructed, As measured from 6 inches above the adjacent ground level.

*Setbacks.* 2 feet unless fence can be maintained entirely from 1 side, and then 0 feet measure from the property line.

## **7.9 Planned Unit Developments (PUD)**

- 1 **Purpose.** To protect and enhance the natural and scenic qualities of shoreland areas during and after development and redevelopment of high density residential and commercial uses.

2 **Types of PUDs Permissible.** Planned unit developments (PUDs) are allowed for new projects on undeveloped land, redevelopment of previously built sites, or conversions of existing buildings and land. Deviation from the minimum lot size standards of Section 5 of this ordinance is allowed if the standards in this Section are met.

3 **Processing of PUDs.** Planned unit developments must be processed as a conditional use and the application, review, and cost reimbursement procedures applicable to a major subdivision as expressed in Section 6.4 of this code, shall be followed to consider and act on a PUD. An expansion to an existing commercial PUD involving 6 or less new dwelling units or sites since the date this ordinance was adopted is permissible as a permitted use provided the total project density does not exceed the allowable densities calculated in the project density evaluation procedures in Section 10. Approval cannot occur until all applicable environmental reviews are complete.

4 Application for a PUD. The applicant for a PUD must submit the following documents prior to final action on the application request:

5. Site plan and/or plat showing:
- Locations of property boundaries;
  - Surface water features;
  - Existing and proposed structures and other facilities;
  - Land alterations;
  - Sewage treatment and water supply systems (where public systems will not be provided);
  - Topographic contours at ten-foot intervals or less; and
  - Identification of buildings and portions of the project that are residential, commercial, or a combination of the two (if project combines commercial and residential elements)

6 A property owners association agreement (for residential PUD's) with mandatory membership, and consistent with Section 11 of this ordinance.

- 7 Deed restrictions, covenants, permanent easements or other instruments that:
- a. Address future vegetative and topographic alterations, construction of additional buildings, beaching of watercraft, and construction of commercial buildings in residential PUDs; and
  - b. Ensure the long-term preservation and maintenance of open space in accordance with the criteria and analysis specified in Section 11 of this ordinance.

8 A master plan/site plan describing the project and showing floor plans for all commercial structures.

9 Additional documents necessary to explain how the PUD will be designed and will function.

10 **Density Determination.** Proposed new or expansions to existing planned unit developments must be evaluated using the following procedures.

A. Step 1. Identify Density Analysis Tiers. Divide the project parcel into tiers by drawing one or more lines parallel to the ordinary high water level at the following intervals, proceeding landward:

Classification	Tier Depth	
	No Sewer (ft)	Sewer (ft)
All Rivers	300	300

**B. Step 2. Calculate Suitable Area for Development.** Calculate the suitable area within each tier by excluding all wetlands, bluffs, or land below the ordinary high water level of public waters.

**C. Step 3. Determine Base Density:**

- A. For residential PUDs, divide the suitable area within each tier by the minimum single residential lot area for lakes to determine the allowable number of dwelling units, or base density, for each tier. For rivers, if a minimum lot area is not specified, divide the tier width by the minimum single residential lot width.
- B.
- C. For commercial PUDs:
  - (1) Determine the average area for each dwelling unit or dwelling site within each tier. Include both existing and proposed dwelling units and sites in the calculation.
    - (a) For dwelling units, determine the average inside living floor area of dwelling units in each tier. Do not include decks, patios, garages, or porches and basements, unless they are habitable space.:
    - (b) For dwelling sites (campgrounds), determine the area of each dwelling site as follows:
    - (c) For manufactured homes, use the area of the manufactured home, if known, otherwise use 1,000 sf.  
For recreational vehicles, campers or tents, use 400 sf.

Select the appropriate floor area/dwelling site area ratio from the following table for the floor area or dwelling site area determined in Section 10. Step 3 B. 1.

<b>Inside Living Floor Area or Dwelling Site Area (sf)</b>	<b>Floor Area/Dwelling Site Area Ratio</b>
	<b>General Development Lakes w/no sewer – all other tiers Recreational Development Lakes Forested and Transition Rivers</b>
≤ 200	.020
300	.024
400	.028
500	.032
600	.038
700	.042
800	.046
900	.050
1,000	.054
1,100	.058
1,200	.064
1,300	.068
1,400	.072
≥ 1,500	.075

- (3) Multiply the suitable area within each tier determined in Section 10 by the floor area or dwelling site area ratio to yield the total floor area or dwelling site area for each tier to be used for dwelling units or dwelling sites.
  - (4) Divide the total floor area or dwelling site area for each tier calculated in Section 10. step 3 B. 3 by the average inside living floor area for dwelling units or dwelling site area determined in 10. Step 3 B 1. This yields the allowable number of dwelling units or dwelling sites, or base density, for each tier.
- A. Allowable densities may be transferred from any tier to any other tier further from the waterbody, but must not be transferred to any tier closer to the waterbody.
  - B. All PUDs with densities at or below the base density must meet the design standards in Section 11.

**D. Step 4. Determine if the Site can Accommodate Increased Density:**

- A. The following increases to the dwelling unit or dwelling site base densities determined in Section 10 are allowed if the design criteria in Section 11 of this ordinance are satisfied as well as the standards in Section 10 step 4, item B:

Shoreland Tier	Maximum density increase within each tier (percent)
1 <sup>st</sup>	50
2 <sup>nd</sup>	100
3 <sup>rd</sup>	200
4 <sup>th</sup>	200
5 <sup>th</sup>	200

- B. Structure setbacks from the ordinary high water level:
  - (1) Are increased to at least 50 percent greater than the minimum setback; or
  - (2) The impact on the waterbody is reduced an equivalent amount through vegetative management, topography, or additional acceptable means and the setback is at least 25 percent greater than the minimum setback.

**11 Design Criteria.** All PUDs must meet the following design criteria.

General Design Standards.

- A. All residential planned unit developments must contain at least five dwelling units or sites.
- B. On-site water supply and sewage treatment systems must be centralized and meet the standards in Section 4.5 of this ordinance. Sewage treatment systems must meet the setback standards of this ordinance.
- C. Dwelling units or dwelling sites must be clustered into one or more groups and located on suitable areas of the development.
- D. Dwelling units or dwelling sites must be designed and located to meet the dimensional standards in Section 5 applicable zones:
- E. Shore recreation facilities:
  - (1) Must be centralized and located in areas suitable for them based on a suitability analysis.
  - (2) The number of spaces provided for continuous beaching, mooring, or docking of watercraft must not exceed one for each allowable dwelling unit or site in the first tier (notwithstanding existing mooring sites in an existing commercially used harbor).
  - (3) Launching ramp facilities, including a small dock for loading and unloading equipment, may be provided for use by occupants of dwelling units or sites located in other tiers.
- F. Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, color, or other means acceptable to the local unit of government, assuming summer, leaf-on conditions. Vegetative and topographic screening must be preserved, if existing, or may be required to be provided.
- G. Accessory structures and facilities, except water oriented accessory structures, must meet the required structure setback and must be centralized.

## 12 Open Space Requirements.

- A. Open space must constitute at least 50 percent of the total project area and must include:
  - (1) Areas with physical characteristics unsuitable for development in their natural state;
  - (2) Areas containing significant historic sites or unplatted cemeteries;
  - (3) Portions of the shore impact zone preserved in its natural or existing state as follows:

- (a) For existing residential PUD's, at least 50 percent of the shore impact zone
- (b) For new residential PUDs, at least 70 percent of the shore impact zone.
- (c) For all commercial PUD's, at least 50 percent of the shore impact zone.

B. Open space may include:

- (1) Outdoor recreational facilities for use by owners of dwelling units or sites, by guests staying in commercial dwelling units or sites, and by the general public;
- (2) Subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems; and Non-public water wetlands.

C. Open space shall not include:

- (1) Dwelling sites or lots, unless owned in common by an owners association;
- (2) Dwelling units or structures, except water-oriented accessory structures or facilities;
- (3) Road rights-of-way or land covered by road surfaces and parking areas;
- (4) Land below the OHWL of public waters; and
- (5) Commercial facilities or uses.

### 13 Open Space Maintenance and Administration Requirements.

a. Open space preservation. The appearance of open space areas, including topography, vegetation, and allowable uses, must be preserved and maintained by use of deed restrictions, covenants, permanent easements, public dedication, or other equally effective and permanent means. The instruments must prohibit:

- a. Commercial uses (for residential PUD's);
- b. Vegetation and topographic alterations other than routine maintenance;
- c. Construction of additional buildings or storage of vehicles and other materials; and
- d. Uncontrolled beaching of watercraft.
- e. Development organization and functioning. Unless an equally effective alternative community framework is established, all residential planned unit developments must use an owners association with the following features:
- f. Membership must be mandatory for each dwelling unit or dwelling site owner and any successive owner;
- g. Each member must pay a pro rata share of the association's expenses, and unpaid assessments can become liens on units or dwelling sites;
- (1) Assessments must be adjustable to accommodate changing conditions; and
- (2) The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.



14 Erosion Control and Stormwater Management.

- A. Erosion control plans must be developed and must be consistent with the provisions of Section 5.2F of this ordinance. Erosion control plans approved by a soil and water conservation district may be required if project size and site physical characteristics warrant.
- B. Stormwater management facilities must be designed and constructed to manage expected quantities and qualities of stormwater runoff. For commercial PUDs, impervious surfaces within any tier must not exceed 25 percent of the tier area, except that 35 percent impervious surface coverage may be allowed in the first tier of general development lakes with an approved stormwater management plan and consistency with Section 5.2F of this ordinance.

15 **Conversions.** Local governments may allow existing resorts or other land uses and facilities to be converted to residential PUDs if all of the following standards are met:

- A Proposed conversions must be evaluated using the same procedures for residential PUDs involving new construction. Inconsistencies between existing features of the development and these standards must be identified;
- B Deficiencies involving water supply and sewage treatment, structure color, impervious coverage, open space, and shore recreation facilities must be corrected as part of the conversion or as specified in the conditional use permit;
- C Shore and bluff impact zone deficiencies must be evaluated and reasonable improvements made as part of the conversion. These improvements must include, where applicable, the following:
  - A. 1. Removal of extraneous buildings, docks, or other facilities that no longer need to be located in shore or bluff impact zones;
  - B. 2. Remedial measures to correct erosion, improve vegetative cover and improve screening of buildings and other facilities as viewed from the water; and
  - C. 3. Conditions attached to existing dwelling units located in shore or bluff impact zones that preclude exterior expansions in any dimension or substantial alterations. The conditions must also provide for future relocation of dwelling units, where feasible, to other locations, meeting all setback and elevation requirements when they are rebuilt or replaced.

16 Existing dwelling unit or dwelling site densities that exceed standards in Section 10 of this ordinance may be allowed to continue but must not be allowed to be increased, either at the time of conversion or in the future. Efforts must be made during the conversion to limit impacts of high densities by requiring seasonal use, improving vegetative screening, centralizing shore recreation facilities, installing new sewage treatment systems or other means

#### **7.10 Travel Trailer and Recreational Vehicles**

**1. General.**

- A. This ordinance shall apply to all recreational vehicles defined as: (1) traditional RVs and campers (including tow behind campers); (2) trailers used for boats, snowmobiles, or all-terrain vehicles (ATVs), etc.; (3) passenger vehicles with a slide-in camper which are not used for day-to-day transportation; (4) snowmobiles, ATVs, and all types of watercraft (boats, jet-skis, etc.) such vehicles placed on a trailer, shall be, together with the trailer, considered a recreational vehicle; (5) hobby vehicles (passenger vehicles with antique or collector license plates, which are not primarily used for day-to-day transportation; (6) a trailer designed for carrying property or materials.
- B. All recreational vehicles must be designed to operate on state roads without a special permit and must have a current license. All recreational vehicles must be able to be moved readily.
- C. Recreational vehicles must meet dwelling setback requirements, unless in storage.
- D. Prior to placing a recreational vehicle, the occupant must have the permission of the property owner. The permission must be written when the property owner is not available on site.
- E. No recreational vehicle shall be used as a year-round living dwelling or living quarters for a period of time in violation of this ordinance.
- F. All recreational vehicles shall follow the City of Motley noise ordinance standards.
- G. No recreational vehicle shall be stored on a public street or block a public right-of-way.

## **2. Properties with principle structures.**

- A. There shall be a maximum of one recreational vehicle allowed at any one time actively used.
- B. No individual recreational vehicle may be placed for use longer than 14 days within any consecutive 60-day period.
- C. One recreational vehicle may be allowed in outside storage. That unit may be stored year-round.

## **3. Properties without principle structures.**

- A. There shall be a maximum of one recreational vehicle allowed at any one time.
- B. The recreational vehicle is allowed for 14 days in any one calendar year without a permit.
- C. A permit is required for recreational vehicle established for more than 14 days in any one calendar year.
- D. One permit per parcel is allowed, where a permit has been granted within the discretion of the City.
- E. A permit for a recreational vehicle requires installation of a permanent sewage treatment system, or to be connected to the city sewer system, connection to a well or city water, and electrical service.

## **4. Properties where a principle structure is being constructed.**

- A. A recreational vehicle is allowed in conjunction with a land use permit for construction of a principle structure.
- B. A recreational vehicle is allowed up to 12 months during construction, with extension for an additional 12 months in conjunction with extension of a zoning permit.

## **7.11 Keeping of Chickens**

### **1. Definitions.**

- a) **“Chicken”** means a female chicken or hen. A rooster or male chicken is expressly excluded from the definition of chicken and is prohibited.
  - b) **“At Large”** shall be intended to mean a chicken out of its chicken run, off the premises or not under the custody and control of the owner, or other person, either by leash, cord, or chain, or otherwise controlled or restrained.
  - c) **“Chicken Coop”** means a structure providing housing for chickens made of wood or other similar materials that provides shelter from the elements.
  - d) **Chicken Run”** means a fenced outside yard for the keeping and exercising of chickens.
  - e) **“Owner”** shall mean the resident, property owner, custodian or keeper of any chicken.
  - f) **“Premises”** means any platted lot or group of contiguous lots, parcels or tracts of land.
2. **Chickens Limited.** It is unlawful for any person to own, control, keep, maintain or harbor hen Chickens on any residential premises in the City unless issued a permit to do so as provided herein.
- a) **Residential Tenants.** In the case of rental residential property, including multi-family residential property, the property owner must obtain a permit and written permission must be given by the property owner to the tenant in order for a tenant to keep or harbor chickens on said residential premises.
  - b) **Property Size.** The keeping of chickens shall not be allowed on properties less than 2 acres in size.
  - c) **Number Limited.** No permit shall be issued for the keeping or harboring of more than 12 hen chickens.
  - d) **Roosters Prohibited.** The keeping of roosters or male chickens is prohibited.
3. **Permit.** The granting of a permit under this ordinance shall be in the sole discretion of the City. No person shall maintain a Chicken Coop and/or Chicken Run unless granted a permit by the City. The permit shall be subject to all terms and conditions of this Section and any additional conditions deemed necessary by the City to protect the public health, safety and welfare, including any state or federal laws. The necessary permit may be obtained from the City Clerk’s office. Included with the information required prior to issuance of the permit must be a scaled diagram that indicates the location of any Chicken Coop and Chicken Run, and the approximate size and distance from adjoining structures and property lines. The owner must also obtain written approval of the keeping of chickens from all abutting property owners. Such written approval from abutting property owners must be submitted to the City before a permit is granted. A permit for the keeping of chickens may be revoked or suspended by the Council for any violation of this Section following written notice and a public hearing.
4. **Chicken Confinement.** Every person who owns, controls, keeps, maintains or harbors hen chickens must keep them confined on the premises at all times in a Chicken Coop or Chicken Run while in the City. Any Chicken Coop and/or Chicken Run shall be screened with a solid fence or landscaped buffer with a minimum height of four (4) feet. Any Chicken Coop and Chicken Run shall be at least 25 feet from any residential structure or any other premises on any adjacent lots.
5. **Chicken Coops and Chicken Runs.**
- a) All Chicken Coops and Chicken Runs must be located within the rear yard subject to the required setbacks for the principal building and at least 25 feet from any dwelling or any other premises on any adjacent lots. All Chicken Coops must be a

minimum of 4 square feet per chicken in size, must not exceed 10 square feet per chicken in size and must not exceed 6 feet in total height. Attached fenced-in Chicken Runs must not exceed 20 square feet per chicken and fencing must not exceed six feet in total height. Chicken runs may be enclosed with wood and/or woven wire materials, and may allow chickens to contact the ground. Chicken feed must be kept in metal, predator proof containers. Chicken manure shall not be placed in yard compost piles.

- b) Chicken coops must either be:
  - i. Elevated with a clear open space of at least 24 inches between the ground surface and framing/floor of the coop; or,
  - ii. The coop floor, foundation and footings must be constructed using rodent resistant construction.
- c) Chicken Coops are not allowed to be located in any part of a home and/or garage.
- d) Chickens must be secured in a Chicken Coop from sunset to sunrise each day.

6. **Conditions and Inspection.** No person who owns, controls, keeps, maintains or harbors Chickens shall permit the premises where the Chickens are kept to be or remain in an unhealthy, unsanitary or noxious condition or to permit the premises to be in such condition that noxious odors are carried to adjacent public or private property. Any Chicken Coop and Chicken Run authorized by permit under this Section may be inspected at any reasonable time by the City Animal Control Officer or other agent of the City. Slaughter and breeding of Chickens on any premises within the City is prohibited.

7. **Violations.** Any person who owns, controls, keeps, maintains or harbors Chickens in the city limits without obtaining or maintaining a current permit or after a permit has been suspended or revoked by Council action shall be guilty of a petty misdemeanor. Violations of this ordinance may also constitute a nuisance and a person in violation may be liable for civil damages, including costs and attorney fees to remedy the nuisance.

### **7.12 Keeping of Horses**

#### **1. General Standards:**

- a) All animals shall be fenced in and the owner shall provide site plans depicting locations on an aerial photograph. Any animals allowed to free range shall be considered a violation of this ordinance.
- b) There shall be no pollution of any waters of the state.
- c) There shall be no manure accumulation that constitutes a public nuisance or threat to any water of the state.
- d) On parcels sized five (5) acres or larger, two horses shall be allowed.

### **7.13 Keeping of Farm Animals (except chickens and horses pursuant to 7.11 & 7.12)**

#### **1. General Standards:**

- a) All animals shall be fenced in and the owner shall provide site plans depicting locations on an aerial photograph. Any animals allowed to free range shall be considered a violation of this ordinance.

- b) b.If multiple commonly owned parcels are used in determining minimum acreage, all parcels shall be recorded to document the additional animal use. Any decrease in acreage below the allowed standards shall void the permit.
- c) The keeping of chickens and horses shall not be required to follow the below standards or be counted toward the animal unit densities below. See section 7.11 and 7.12 for their standards.

**2. In districts that are allowed, the following standards shall apply:**

- a) On parcels that are sized nine and nine tenths (9.9) acres or less, only animals typically considered house pets, horses and chickens per the use chart and lot size limitations in 7.11 and 7.12 are allowed.
- b) On parcels sized ten (10) acres or larger, in addition to animals typically considered house pets, chickens and horses, a property owner may be permitted to have farm animals, but in densities not to exceed one half (0.5) animal units.

**7.14 Cannabis**

**1. Cannabis retail dispensary:**

Any cannabis retail store selling adult use cannabis products, not including lower-potency hemp products, must comply with the following minimum standards:

- A. New dispensaries cannot be within 100 feet of a school, residential treatment facility, or an attraction within a public park that is regularly used by minors, including a playground or athletic field.
- B. Cannabinoid Product sales are only permitted between 8 a.m. and 9 p.m.
- C. All State Statutes and regulations governing such use are strictly adhered to and all required operating licenses are secured.
- D. Cannabis businesses must comply with state-mandated security measures, including surveillance systems, secure storage, and restricted access areas.
- E. Signage for cannabis businesses shall comply with the City's existing sign ordinance and shall not contain imagery or language appealing to minors.

**2. Cannabis cultivation, manufacturing and other cannabis-related activity:**

Any cannabis cultivation, manufacturing, and other cannabis-related businesses must comply with the following minimum standards:

- A. A wastewater plans that details how wastewater generated during the processing of cannabis products shall be disposed of in compliance with applicable state and local laws and regulation, including delineation of the measures that will be taken to contain the chemicals/wastewater onsite in the event of an accidental spill;
- B. A plant waste disposal plan that at a minimum detail how cannabis product waste will be destroyed or rendered into an unusable and unrecognizable form and

recorded in the statewide monitoring system. Disposal by on-site burning or via the sewer system is prohibited;

- C. All State Statutes and regulations governing such use are strictly adhered to and all required operating licenses are secured.

### **3. License or Permit Required for Temporary Cannabis Events**

- A. License Required
- A Special Event permit is required to be issued and approved by the City of Motley prior to holding a Temporary Cannabis Event on Public Property.
- B. Registration & Application Procedure
- A registration fee, as established in the City of Motley's fee schedule, shall be the same as the outdoor event fee and shall be charged to applicants for Temporary Cannabis Events.
  - Any person or establishment applying for cannabis related outdoor event shall only be limited two (2) events a year.
- C. Application Submittal & Review
- The City of Motley shall require an application for Temporary Cannabis Events.
  - An applicant for a retail registration shall fill out an application form, as provided by the City of Motley. Said form shall include, but is not limited to:
    - Full name of the property owner and applicant;
    - Address, email address, and telephone number of the applicant;
    - The applicant shall include with the form:
    - the application fee as required in Section 116.02(C)(1) of this ordinance;
    - a copy of the OCM cannabis event license application, submitted pursuant to 342.39 subd. 2.
  - The application shall be submitted to the City Administrator/Clerk, or other designee for review. If the designee determines that a submitted application is incomplete, they shall return the application to the applicant with the notice of deficiencies.
  - Once an application is considered complete, the designee shall inform the applicant as such, process the application fees, and forward the application to the City Council for approval or denial.
  - The application fee shall be non-refundable once processed.
  - A request for a Temporary Cannabis Event that meets the requirements of this Section shall be approved.
  - A request for a Temporary Cannabis Event that does not meet the requirements of this Section shall be denied. The City of Motley shall notify the applicant of the standards not met and basis for denial.
  - Temporary cannabis events shall only be held on private property/retail store and must work with the city of Motley's Police Department.
  - Temporary cannabis events shall only be held between the hours of 10 am and 4 pm.

## **SECTION VIII - IMPROVEMENTS**

- 8.1** Prior to the City Council approving a Final Plat or a metes and bounds split, the sub divider shall provide for the construction of the required improvements at his expense and shall

have the work completed or shall enter a Development Contract and give bond or other financial assurance satisfactory to the Council in an amount equal to 125% of the estimated cost of the uncompleted improvements except as provided in 9.3. The bond shall be released by the City Council upon the recommendation of the City Engineer indicating the improvements are satisfactorily complete.

- 8.2** The required improvements shall conform to the standards of Sections VI of this Ordinance and shall include City street signs and lighting in conformance with City standards.
- 8.3** All costs of the City Engineer, City Attorney, Bond Council, financial experts and other professional costs borne by the City in writing and/or executing Development Contracts, estimates of cost, inspectors, financial arrangements, assessments and pursuing legal remedies in event of default by the sub divider, shall be borne by the sub divider.

## **SECTION IX - ADMINISTRATION**

### **9.1 Zoning Administration.**

1. The Zoning Administrator shall be appointed by the City Council.
2. Duties of the Zoning Administrator:
  - A. Determine if applications are complete and comply with the terms of the Ordinance.
  - B. Direct or conduct inspections of building, sewage systems and other uses of the land to determine compliance with the terms of the Ordinance.
  - C. Maintain permanent and current records of the Ordinance including, but not limited to, maps, amendments, Zoning or Use Permits, Conditional Use Permits, Variances, appeals and applications, and a separate file for future conditions or expiration of permits.
  - D. Review, file and forward applications for appeals, Variances, Conditional Uses and Zoning amendments.
  - E. Enforce the provisions of this Ordinance by reviewing complaints and by pursuing contacts with any violator in accordance with standard procedures as adopted and modified from time to time and with the approval of the Planning Commission and City Council instituting with the City Attorney in the name of the City any appropriate actions or proceedings against any violator.
  - F. Attend meetings and provide research and findings to the Board of Adjustment/Planning Commission.
  - G. Issue permitted Zoning Permits upon application for structures on lots conforming to this Ordinance when the conditions of the Ordinance are met; to issue Conditional Use Permits when directed by the City Council; to issue notices of a Zoning change when directed by the City Council.
  - H. To mail a copy of the finding to an applicant.
  - I. To file copies of Conditional Use Permits and Variances with the County Recorder.
  - J. To communicate with the DNR where required by the Ordinance or State Law.
  - K. To ensure that the City Council, Planning Commission and Board Adjustment review land use application or public hearing applications as prescribed by State Statutes.

- L. To conduct periodic and final inspections with a member of the Planning & Zoning Committee, of property subject to conditions of approval relating to variances, conditional use permits and other land use applications.
- M. To issue *Land Use Certificates of Compliance*.

3. The Zoning Administrator and their duly authorized deputies shall have the right to enter private property within the City of Motley in the reasonable pursuit of their duties.

## **9.2 Board of Adjustment.**

1. The Board of Adjustment shall consist of the members of the Planning Commission, and shall hold its meetings concurrently with the Planning Commission meetings on a monthly or more frequent basis at the discretion of the Chairman.
2. Duties of the Board of Adjustment.
  - A. To consider appeals from the action of the Zoning Administrator wherein the Board will take the authority of the Administrator.
  - B. To hold hearings on Variances after proper public notice in the official newspaper and individual notice by regular mail to any property owners within a minimum of 350 feet distance of any Variance in question. Such notice shall be given at least 10 days before the hearing date.
  - C. To recommend action on Variances within the required time frame to the City Council with complete findings to justify the action.
  - D. To keep a record of its proceedings, notifications and justifications for its actions.

## **9.3 Planning Commission.**

1. Organization of the Planning Commission.<sup>74</sup>
  - A. The Planning Commission shall consist of five members. The members may include up to five members from the City Council. Each member other than council members shall be appointed by the City Council and shall hold office for three years and terms shall be staggered. Vacancies shall be filled for the remainder of the term by the City Council.
  - B. The Commission shall elect a chairperson from its members for a term of one year.
  - C. If the Commission does not include all members of the City Council, the Mayor may appoint those that shall serve, with the concurrence of the City Council, or a liaison to the City Council on an annual basis.
  - D. The Commission shall meet a minimum of eleven times a year, once each month except December, at a regular meeting unless the docket is empty in which case the Mayor can approve suspension of a meeting. Special meetings shall be advertised in the official newspaper and posted in the City Hall at least 10 days in advance of the meeting.
2. Duties of the Planning Commission under this Ordinance.

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<sup>74</sup> Amended 9/11/2012.



- A. To hold hearings after proper public notice in the official newspaper and individual notice by regular mail of any property owners within a minimum of 350 feet of any land use in question. Such notices shall be given at least 10 days before the hearing date.
- B. To decide within the required time frame the following:
  - 1. Recommendations to the City Council regarding requested Zoning District boundary changes or amendments to the Ordinance.
  - 2. To review and provide recommendations to the City Council on proposed plats or floor plans and to provide recommendations on final plats and final floor plans to the City Council.
  - 3. To review and approve all metes and bounds property divisions within the City.
  - 4. To review and provide recommendations to the City Council on requests for Conditional Use Permits and Interim Use Permits with complete findings to justify the decision.
  - 5. To periodically review the Zoning map and Ordinances and consider their role in shaping the growth of the community and to recommend changes to the City Council of these documents to guide growth and current land use toward the goals of the Comprehensive Plan.
  - 6. To recommend on a timely basis that the City Council review the Comprehensive Plan when appropriate.
- 3. It shall be the duty of each individual member to be present at all meetings of the Planning Commission and Board of Adjustment. More than 3 absences in any one year period shall be grounds for replacement by the City Council.

#### **9.4 City Council.**

- 2. The City Council shall have the following duties under this Ordinance:
  - A. Appoint or terminate the Zoning Administrator
  - B. Confirm the appointments of the Mayor to the Board of Adjustment/Planning Commission members.
  - C. To decide within the required time frame the following:
    - 1. Recommendations from the Planning Commission for changes in Zoning District boundaries.
    - 2. Recommendations from the Planning Commission for acceptance of proposed plats, Conditional Use Permits, Interim Use Permits, final plats and condominium plans.
    - 3. Recommendations from the Board Adjustment for acceptance of Variances from this Ordinance and the Subdivision Ordinance.
  - D. To hear appeals from the actions of the Board of Adjustment and the Planning Commission where their action is normally final.

#### **9.5 Conditional Use Permits.**

- 1. Conditional Use Permits shall be issued to the property for structures or other specified uses, as recommended by the Planning Commission after a public hearing and approved by the City Council. All applications for a Conditional Use Permit shall be submitted to

the Zoning Administrator **30** days ahead of the hearing date, accompanied by a certificate of survey (unless waived by the Zoning Administrator) showing the details of the proposal and an accurate legal description, along with the appropriate fee. The fee or contract owner of the property shall sign the application. The Zoning Administrator shall notify all property owners within a minimum of 350 feet by regular mail and shall advertise the hearing once in the legal section of the official newspaper at least 10 days ahead of the public hearing. The Zoning Administrator shall send the same notice 10 days in advance of this hearing to the DNR if the proposed is in shoreland. At the applicant's option, the applicant may request a sketch plan review with no action by the Planning Commission and with no fee by giving 14 days notice thereof to the Zoning Administrator, meeting time permitted.

2. Submissions for C.U.P. The applicant shall complete the Conditional Use Permit application approved by the City Council. The application shall contain submittal requirements, criteria for approval, procedure for consideration and City contact information. The City shall not accept applications where the applicant has past due fees or charges due to the City until the account is made current.
3. In permitting a new Conditional Use or alteration of an existing Conditional Use, the Planning Commission may impose, in addition to the standards and requirements expressly specified by this Ordinance, additional conditions that the Planning Commission considers necessary to protect the best interest of the surrounding area or the City as a whole. These conditions may include, but are not limited to the following<sup>75</sup>:
  - A. Increasing the required lot size or yard dimension.
  - B. Limiting the height, size or location of buildings.
  - C. Controlling the location and number of vehicle access points.
  - D. Increasing the street width.
  - E. Increasing or decreasing the number of required off-street parking spaces.
  - F. Limiting the number, size, location or lighting of signs.
  - G. Requiring berming, fencing screening, landscaping or other facilities to protect adjacent or nearby property.
  - H. Designating sites for open space.
  - I. Stormwater runoff management.
  - J. Reducing impervious surfaces.
  - K. Increasing setbacks.
  - L. Restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.
4. The Planning and Zoning Commission shall decide the issue with consideration to the following:
  - A. The following must be met:
    1. The use or development is an appropriate conditional use in the land use zone.
    2. The use or development, with conditions, conforms to the comprehensive land use plan.
    3. The use with condition is compatible with the existing neighborhood.
    4. The use with conditions would not be injurious to the public health, safety, welfare, decency, order, comfort, convenience, appearance or

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<sup>75</sup> Amended by Ordinance 153.05, 3/9/2010

prosperity of the City.

B. The following must be considered:

1. The conditional use should not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose permitted on that property, nor substantially diminishes or impairs values in the immediate vicinity.
  2. The conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
  3. The conditional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
  4. The conditional use will have vehicular approaches to the property which are so designed as not to create traffic congestion or indifference with traffic on surrounding public thoroughfares.
  5. Adequate measures have been taken to provide sufficient off-street parking and loading space to serve the proposed use.
  6. Adequate measures have been taken or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so none of these will constitute a nuisance and to control lights and signs in such a manner, that no disturbance to neighboring properties will result.
  7. The conditional use will not result in the destruction, loss or damage of a natural, scenic or historical feature of major significance.
  8. The conditional use will promote the prevention and control of pollution of the ground and surface waters including sedimentation and control of nutrients.
5. When costs to the City involved in processing and reviewing an application exceeds the original application fees, the applicant shall reimburse the City for any additional costs. Such expenses may include, but are not limited to, payroll, mailing costs, consultant fees and other professional services the City may need to retain in reviewing permits.
6. Conditional Use Permits may be transferable where requested by an applicant and approved by the Council.
7. Violations of the conditions of a Conditional Use Permit shall automatically suspend the permit. A review of the violation shall be conducted by the Planning Commission. The Planning Commission shall make a recommendation to the City Council on conditions for reinstating the permit or revocation. The City Council shall make the final decision on reinstating or revoking the suspended permit.
8. A conditional use permit shall remain in effect as long as the conditions agreed upon are observed, or until the City enacts or amends official controls to change the status of conditional uses.
9. Appeals from the action of the City shall be filed with District Court within 30 days after Council action.
10. The Conditional Use Permit shall be filed with the County Recorder within 45 days.

## **9.6 Interim Use Permits.**

### **1. General.**

- A. The purpose of an interim use permit is to allow a temporary use that is not designated as permitted or conditionally permitted but is acceptable for a limited period of time subject to conditions set forth in this section. An interim use is granted to a particular individual or other applicant and does not accrue to the subject property.
- B. An interim use is intended to allow a use that is presently acceptable but that, with anticipated development, will not be acceptable in the future, or will be replaced in the future by a permitted or conditional use allowed within the respective zoning district. Buildings and other improvements allowed by interim use shall be of a size and nature such that they can be easily removed from the property or will conform to zoning regulations for permitted or conditional uses should the interim use permit expire.
- C. Interim Use Permits shall be issued to the property for structures or other specified uses, as recommended by the Planning Commission after a public hearing and approved by the City Council. All applications for an Interim Use Permit shall be submitted to the Zoning Administrator **30** days ahead of the hearing date, accompanied by a certificate of survey (unless waived by the Zoning Administrator) showing the details of the proposal and an accurate legal description, along with the appropriate fee. The fee or contract owner of the property shall sign the application. The Zoning Administrator shall notify all property owners within a minimum of 350 feet by regular mail and shall advertise the hearing once in the legal section of the official newspaper at least 10 days ahead of the public hearing. The Zoning Administrator shall send the same notice 10 days in advance of this hearing to the DNR if the proposed is in shoreland. At the applicant's option, the applicant may request a sketch plan review with no action by the Planning Commission and with no fee by giving 14 days notice thereof to the Zoning Administrator, meeting time permitted.
- D. An application for an interim use permit shall follow the same procedures applicable to a conditional use permit, as outlined in this Ordinance.

### **2. Criteria for Granting Interim Use Permits.**

- A. In granting an interim use permit, the City shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety and general welfare of occupants or surrounding lands. The criteria used for reviewing conditional use permit shall also be used when considering interim use permits, along with the following additional considerations:
  - 1. The use will conform to the applicable zoning regulations, including any dimensional restrictions the regulations may impose on buildings or uses; and
  - 2. The use will terminate upon a date or event that can be identified with certainty and/or clarity; and
  - 3. The use will not impose additional costs on the public if it is necessary for the public to take the property in the future; and
  - 4. The use will be subjected to, by agreement with the property owner, any conditions that the City deems appropriate in allowing the proposed interim use, including a condition that the owner will provide an appropriate

surety to cover costs that would be necessary to eliminate the interim use from the property, including removal of buildings, equipment, restoration of the landscape to a suitable condition or other appropriate and necessary costs.

3. Termination of an Interim Use Permit

A. An interim use permit shall terminate upon the occurrence of any of the following events, whichever comes first:

1. Five (5) years from the initial approval of an interim use, unless a shorter time period is specified in the initial approval. After the initial approval period and if a renewal is approved by the City, the interim use permit shall terminate upon the date or event stated in the permit approval; or
2. When the use has been discontinued for one year or more; or
3. When there is a change in ownership of the property of any kind, unless the City approves such change in ownership as not substantially changing who is operating and/or managing the use and property. Such requests must be presented to the Planning Commission for a recommendation to the City, but need not require a public hearing; or
4. Within 24 months of the date of an amendment to the Zoning Ordinance that no longer allows the use as an interim or permitted use.
5. When any of the conditions have not been adhered to and the applicant has not corrected the violation upon written notice of the violation from the Zoning Administrator within the timeframe specified in such written notice; or
6. When there have been more than two separate violations of any condition of approval (such violations need not be of the same condition), even if the previous violations have been corrected upon written notice from the Zoning Administrator.

4. Renewal or Amendment of Interim Use Permit.

- A. Renewal: An application to extend an interim use permit may be renewed within 24 months prior to the date or event upon which it is to expire. The application shall be processed and administered as if it were a new application. Should such application to renew be denied, the applicant shall be allowed to continue the use until the expiration of the interim use permit provided all conditions of the original approval are being met. If the application to renew is approved, the City shall specify a new date or event on which the renewed permit will expire. There shall not be a limit on the number of times an interim use permit may be extended. Application fees for renewal of an interim use permit shall be as established in the fee schedule.
- B. Amendment: Any change in an approved interim use permit involving more than minor structural alterations, enlargement, intensification of use, or similar changes not specifically permitted by an interim use permit, as determined by the Zoning Administrator, shall require an amended interim use permit to be reviewed as if it were a new interim use permit.

5. Procedure.
  - A. An application for an interim use permit shall follow the same procedures applicable to a conditional use permit, as outlined in this Ordinance.
  - B. The City hereby reserves the right, upon approval of an interim use, to inspect the premises in which an interim use is being conducted to ensure compliance with the provisions of this section or any additional conditions imposed.
  - C. An interim use permit shall only be terminated by the City Council after the Planning Commission has provided its recommendation following a public hearing.

## **9.7 Variances.**

1. Variances shall not create a use not provided for in a zoning district.
2. Variances shall be issued to the property attach to and benefit the land, and are not limited to a particular landowner.
3. Variances shall be issued to the property for structures or other specified uses, as recommended by the Planning Commission after a public hearing and approved by the City Council. All applications for a Variance shall be submitted to the Zoning Administrator **30** days ahead of the hearing date, accompanied by a certificate of survey (unless waived by the Zoning Administrator) showing the details of the proposal and an accurate legal description, along with the appropriate fee. The fee or contract owner of the property shall sign the application. The Zoning Administrator shall notify all property owners within a minimum of 350 feet by regular mail and shall advertise the hearing once in the legal section of the official newspaper at least 10 days ahead of the public hearing. The Zoning Administrator shall send the same notice 10 days in advance of this hearing to the DNR if the proposed is in shoreland. At the applicant's option, the applicant may request a sketch plan review with no action by the Planning Commission and with no fee by giving 14 days notice thereof to the Zoning Administrator, meeting time permitted.
4. Submissions for Variances. The applicant shall complete the Variance application approved by the City Council. The application shall contain submittal requirements, criteria for approval, procedure for consideration and City contact information. The City shall not accept applications where the applicant has past due fees or charges due to the City until the account is made current.
5. In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions<sup>76</sup>.
6. Variances shall be decided within the required time frame with consideration for the following:
  - A. The strict interpretation of the Ordinance would create practical difficulties, and
  - B. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance, and
  - C. The plight of the landowner is due to circumstances unique to the property not

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<sup>76</sup> Amended by Ordinance 153.05, 3/9/2010

- created by the land owner, and
  - D. The deviation from the Ordinance with any attached conditions will still be in harmony with the general purposes and intent of the Ordinance and are consistent with the Comprehensive Plan, and
  - E. The variance will not create a land use not permitted in the zone, and
  - F. The variance will not alter the essential character of the locality, and
  - G. The variance is not for economic reasons alone, but reasonable use of the property does not exist under the Ordinance.
7. Failure by the owner to act within 6 months on a Variance unless extended by the Board of Adjustment shall void the Variance. A second extension shall require a new public hearing. This provision shall apply to any Variance outstanding at the time of the Ordinance adoption.

### **9.8 Zoning Permits.**

1. Zoning Permits shall be issued for all new structures and any change in structure exterior, plumbing or number of bedrooms, any construction or repair of a sewage system and any grading and filling in shoreland not exempted by this ordinance. No person shall assemble, install, repair, remodel, remove or construct any structure prior to applying for and receiving a Zoning Permit.
2. Where a proposed use requires action of the Board of Adjustment, Planning Commission or Council or posting of financial security, said action shall occur and the Conditional Use Permit, Variance, Zoning District change, final plat plan approval, approval of metes and bound division shall be issued or security posted before the Zoning Permit is issued.
3. The City shall not accept applications where the applicant has past due fees or charges due to the City or the County until the account is made current.
4. The Zoning Permit shall contain the parcel number of the property and the signature of the fee or contract owner of the property or his authorized agent.
5. Unless extended by the Zoning Administrator, where a Zoning Permit has been issued but no action has occurred within 12 months, the Zoning Permit shall be null and void. Exterior work on the structure shall be complete in 18 months from the issuance of the Zoning Permit. The time limit may be extended by the Zoning Administrator for good cause. A second extension shall be decided by the Planning Commission.
6. Granting of a Zoning Permit shall occur when all requirements of the Ordinance have been met, but shall not be considered a statement of compliance with regional, State or Federal codes, statutes or laws or approval of the design of the structure or accessories, or description of the property. Subsequent actions of the Zoning Administrator shall not be considered acceptance of structural components or workmanship, but rather shall be for the purpose of determining general compliance with the Ordinance.
7. If the Zoning Administrator determines that any violation of the permit or other section of the Ordinance has occurred, the permit shall become null and void.

## **9.9 Fees.**

The Council shall adopt a schedule of fees from time to time for all permits. No permit shall be issued, or request brought before the Board of Adjustment or Planning Commission until the fees are paid. All late applications shall require the payment of three times the normal fee unless specifically stated otherwise in the fee schedule.

The City shall not accept applications where the applicant has any past due fees or charges due to the City until the account is made current.

## **9.10 Financial Requirements**

Applications will not be accepted as complete where an applicant has any utility charges, delinquent taxes, delinquent assessments or other fees past due with the City or County. The past due account must be paid to bring the account current before an application will be accepted.

When costs associated with processing or reviewing any application submitted pursuant to this Ordinance exceed the original application fees, the applicant may be required to reimburse the City for any additional costs. Such expenses may include, but are not limited to, payroll, mailing costs, consultant fees and other professional services the City may need to hire in reviewing permits. Outstanding fees shall be paid before issuance of the permit and any construction of the project begins.

The City of Motley may require that an applicant establish an escrow account or other financial security for the purpose of reimbursing the City for direct costs relating to professional services provided during the review, approval and inspection of the project. The City may charge the applicant a rate equal to the value of the service to the City. Services provided by City staff or contract professionals will be billed at an established rate<sup>77</sup>.

## **9.11 Required Decision Making Time Frames.**

1. The City of Motley shall follow Minnesota Statutes, Chapter 15.99, as amended, for decision time frames, applications, extensions, and all other requirements of the statute on all land use requests before the City, including Variances, Conditional Use Permits, Zoning District Boundary Changes, Zoning Ordinance Amendments, Appeals of Decisions by the Zoning Administrator or Planning Commission and Zoning Permits.

## **SECTION X - ENFORCEMENT**

### **10.1 Violations and Penalties.**

The violation of any provision of this ordinance or the violation of the conditions or provisions of any permit issued pursuant to the Ordinance shall be a misdemeanor, and upon conviction thereof, the violation shall be subject to a fine of not more than \$500 or

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<sup>77</sup> Amended by Ordinance 153.05, 3/9/2010



imprisonment for a term not to exceed 90 days or both. Each act of violation and every calendar day on which such violation occurs or continues shall be a separate offense.

### **10.2 Liability of City Officials.**

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

### **10.3 Equitable Relief.**

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

## **SECTION XI - SEPARABILITY, SUPREMACY, EFFECTUATION, AMENDMENTS, NOTICES**

### **11.1 Separability.**

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

### **11.2 Supremacy.**

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

### **11.3 Effectuation.**

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

#### **11.4 Amendment.**

The City Council may adopt amendments by a majority vote to either the Zoning Ordinance or Zoning map in relation to the land uses within a District or the boundaries of the District(s), except that an amendment which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote. Such amendments shall not be issued indiscriminately, but shall only be used as a means to reflect changes in the goals of the community or changes in the conditions of the City.

1. Procedure.

- A. An amendment may be initiated by the Council, the Planning Commission or by any property owner.
- B. The Zoning Administrator shall review the proposed changes and make a recommendation to the Planning Commission.
- C. The Planning Commission shall make a reasonable attempt to cause all property owners within a minimum of 350 feet of proposed Zoning District change to be notified by regular mail and shall publish a hearing notice for either a Zoning District change or Zoning Ordinance change in the legal section of the official newspaper and shall provide notice to the DNR at least 10 days ahead of the public hearing. The Planning Commission shall hold the hearing and make a timely recommendation to the City Council. Adoption of a new Zoning map shall require published notice only. The Planning Commission shall consider the criteria for land use categories, Sec 5.1(8), in its decision.
- D. The City Council shall review the recommendations and shall make a timely decision. An amendment requires a majority vote to be enacted except that an amendment which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote.
- E. The City Clerk shall publish a summary of the text of the change or description of boundary change or a new Zoning map, whichever is appropriate, in the official newspaper within 30 days after action by the Council and shall send a copy to the DNR.

#### **11.5 Notices.**

Failure to receive notice called for by this Ordinance shall not invalidate any action taken by the City so long as the City acted reasonably in its attempt to provide such notice.

This Ordinance shall be in effect after publication as provided in law.

Adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**BY THE CITY COUNCIL**

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk