City of Dellwood Code of Ordinances

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ORDINANCE BOOK
CITY OF DELLWOOD
WASHINGTON COUNTY, MINNESOTA
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TITLE I: GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

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10.18	Supplemental Administrative Penalties
10.19	General Penalty
10.20	Adoption of Rice Creek Watershed Rules for Shoreland and Wetland Areas

10.01 TITLE OF CODE.

A. All ordinances of a permanent and general nature of the city, as revised, codified, rearranged, renumbered and consolidated into component codes, titles, chapters and sections, shall be known and designated as the “City Code.”

B. All references to codes, titles, chapters, and sections are to the components of the code unless otherwise specified. Any component code may be referred to and cited by its name, such as the “Traffic Code”. Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

10.02 RULES OF INTERPRETATION.

A. Generally. Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this code as those governing the interpretation of Minnesota State law.

B. Specific rules of interpretation. The construction of all ordinances of this city shall be by the following rules, unless that construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance:
    1. AND/OR. Either conjunction shall include the other as if written “and/or, whenever the context requires.
    2. Gender; singular and plural tenses. Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

10.03 APPLICATION TO FUTURE ORDINANCES.

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted which amend or supplement this code unless otherwise specifically provided.

10.04 CAPTIONS.

Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

10.05 DEFINITIONS.

A. **General rule.** Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

B. **Definitions.** For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

CITY. The area within the corporate boundaries of the city as presently established or as amended by ordinance, annexation or other legal actions at a future time. The term CITY when used in this code may also be used to refer to the City Council and its authorized representatives.

CODE, THIS CODE or THIS CODE OF ORDINANCES. This city code as modified by amendment, revision, and adoption of new titles, chapters, or sections.

COUNTY. The county or counties in which the city is located.

MAY. The act referred to is permissive.

MONTH. A calendar month.

OATH. An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in those cases the words ***SWEAR*** and ***SWORN*** shall be equivalent to the words ***AFFIRM*** and ***AFFIRMED***. All terms shall mean a pledge taken by the person and administered by an individual authorized by state law.

OFFICER, OFFICE, EMPLOYEE, COMMISSION, or DEPARTMENT. An officer, office, employee, commission, or department of this city unless the context clearly requires otherwise.

PERSON. Extends to and includes an individual, person, persons, firm, corporation, co-partnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms ***PERSON*** or ***WHOEVER*** as

applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

PRECEDING or ***FOLLOWING.*** Next before or next after, respectively.

SHALL. The act referred to is mandatory.

SIGNATURE or ***SUBSCRIPTION.*** Includes a mark when the person cannot write.

STATE. The State of Minnesota.

SUBCHAPTER. A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have subchapters.

WRITTEN. Any representation of words, letters, or figures, whether by printing or otherwise.

YEAR. A calendar year, unless otherwise expressed.

10.06 SEVERABILITY.

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

10.07 REFERENCE TO OTHER SECTIONS.

Whenever in one section reference is made to another section hereof, that reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

10.08 ERRORS AND OMISSIONS.

If a manifest error is discovered, consisting of the misspelling of any words, the omission of any word or words necessary to express the intention of the provisions affected, the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No

alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

10.09 REASONABLE TIME.

A. In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

B. The time within which act is to be done, as herein provided, shall be computed by excluding if the first day and including the last. If the last day is a legal holiday or Sunday, it shall be excluded.

10.10 ORDINANCES REPEALED.

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

10.11 EFFECTIVE DATE OF ORDINANCES.

All ordinances passed by the legislative body requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided.

10.12 REPEAL OR MODIFICATION OF ORDINANCE.

A. Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the publication of the ordinance repealing or modifying it when publication is required to give effect to it, unless otherwise expressly provided.

B. When any ordinance repealing a former ordinance, clause, or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause, or provision, unless it is expressly provided.

10.13 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

A. If the City Council shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

B. Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of the chapter or section. In addition to this indication as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

10.14 PRESERVATION OF PENALTIES, OFFENSES, RIGHTS AND LIABILITIES.

All offenses committed under laws in force prior to the effective date of this code shall be prosecuted and remain punishable as provided by those laws. This code does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this code. The liabilities, proceedings and rights are continued; punishments, penalties, or forfeiture shall be enforced and imposed as if this code had not been enacted. In particular, any agreement granting permission to utilize highway rights-of-way, contracts entered into or franchises granted, the acceptance, establishment or vacation of any highway, and the election of corporate officers shall remain valid in all respects, as if this code had not been enacted.

10.15 COPIES OF CODE.

The official copy of this code shall be kept in the office of the City Clerk for public inspection. The Clerk shall provide a copy for sale for a reasonable charge.

10.16 ADOPTION OF STATUTES AND RULES BY REFERENCE.

It is the intention of the City Council that, when adopting this Minnesota Basic Code, all future amendments to any state or federal rules and statutes adopted by reference in this code or referenced in this code are hereby adopted by reference or referenced as if they had been in existence at the time this code was adopted, unless there is clear intention expressed in the code to the contrary.

10.17 ENFORCEMENT.

A. The County sheriff, or any Deputy sheriff shall have the authority to enforce any provision of this Code.

B. As permitted by M.S. 626.862, as it may be amended from time to time, the City Clerk shall have the authority to administer and enforce this code. In addition, under that statutory authority, certain individuals designated within the code or by the Clerk or City Council shall have the authority to administer and enforce the provisions specified. All and any person or persons designated may issue a citation in lieu of arrest or continued detention to enforce any provision of the code.

C. The City Clerk and any City official or employee designated by this code who has the responsibility to perform a duty under this code may with the permission of a licensee of a business or owner of any property or resident of a dwelling, or other person in control of any premises, inspect or otherwise enter any property to enforce compliance with this code.

D. If the licensee, owner, resident, or other person in control of a premises objects to the inspection of or entrance to the property, the City Clerk, Sheriff, or any employee or official charged with the duty of enforcing the provisions of this code may, upon a showing that probable cause exists for the issuance of a valid search warrant from a court of competent jurisdiction, petition and obtain a search warrant before conducting the inspection or otherwise entering the property. This warrant shall be only to determine whether the provisions of this code enacted to protect the health, safety and welfare of the people are being complied with and to enforce these provisions only, and no criminal charges shall be made as a result of the warrant. No warrant shall be issued unless there be probable cause to issue the warrant. Probable cause occurs if the search is reasonable. Probable cause does not depend on specific knowledge of the condition of a particular property.

E. Every licensee, owner, resident or other person in control of property within the city shall permit at reasonable times inspections of or entrance to the property by the City Clerk or any other authorized city officer or employee only to determine whether the provisions of this code enacted to protect the health, safety and welfare of the people are being complied with and to enforce these provisions. Unreasonable refusal to permit the inspection of or entrance to the property shall be grounds for termination of any and all permits, licenses or city service to the property. Mailed notice shall be given to the licensee, owner, resident or other person in control of the property, stating the grounds for the termination, and the licensee, owner, resident or other person in control of the property shall be given an opportunity to appear before the City Clerk to object to the termination before it occurs, subject to appeal of the Clerk's decision to the City Council at a regularly scheduled or special meeting.

F. Nothing in this section shall be construed to limit the authority of the City to enter private property in urgent emergency situations where there is an imminent danger in order to protect the public health, safety and welfare.

10.18 SUPPLEMENTAL ADMINISTRATIVE PENALTIES.

A. In addition to those administrative penalties established in this code and the enforcement powers granted in 10.17 the City Council is authorized to create by resolution, adopted by a majority of the members of the Council, supplemental administrative penalties. The resolution may be in the form established in Appendix I of this Chapter.

B. These administrative penalty procedures in this section are intended to provide the public and the city with an informal, cost effective and expeditious alternative to traditional criminal charges for violations of certain provisions of this code. The procedures are intended to be voluntary on the part of those who have been charged with those offenses.

C. Administrative penalties for violations of various provisions of the code, other than those penalties established in the code or in statutes that are adopted by reference, may be established from time to time by resolution of a majority of the members of the City Council. In order to be effective, an administrative penalty for a particular violation must be established before the violation occurred.

D. In the discretion of the peace officer, City Clerk, or other person giving notice of an alleged violation of a provision of this code, in a written notice of an alleged violation, sent by first class mail to the person who is alleged to have violated the code, the person giving notice may request the payment of a voluntary administrative penalty for the violation directly to the City Treasurer within 14 days of the notice of the violation. A sample notice is contained in Appendix II of this chapter. In the discretion of the person giving the notice of the alleged violation, the time for payment may be extended an additional 14 days, whether or not requested by the person whom the notice has been given. In addition to the administrative penalty, the person giving notice may request in the notice to the alleged violator to adopt a compliance plan to correct the situation resulting in the alleged violation and may provide that if the alleged violator corrects the situation resulting in the alleged violation within the time specified in the notice, that the payment of the administrative penalty will be waived.

E. At any time before the payment of the administrative penalty is due, the person who has been given notice of an alleged violation may request to appear before the City Council to contest the request for payment of the penalty. After a hearing before the Council, the Council may determine to withdraw the request for payment or to renew the request for payment. Because the payment of the administrative penalty is voluntary, there shall be no appeal from the decision of the Council.

F. At any time after the date the payment of the administrative penalty is due, if the administrative penalty remains unpaid or the situation creating the alleged violation remains uncorrected, the City, through its attorney, may bring criminal charges in accordance with state law and this code. Likewise, the City, in its discretion, may bring criminal charges in the first instance, rather than requesting the payment of an administrative penalty, even if a penalty for the particular violation has been established by Council resolution. If the administrative penalty is paid, or if any requested correction of the situation resulting in the violation is completed, no criminal charges shall be initiated by the City for the alleged violation.

10.19 GENERAL PENALTY.

A. Any person, firm or corporation who violates any provision of this code for which another penalty is not specifically provided, shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor under this code, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days or a fine of not more than $1,000, or both. This penalty may be increased or decreased by statutory enforcement, in which case the applicable statute is hereby adopted by reference.

B. Any person, firm or corporation who violates any provision of this code, including Minnesota Statutes specifically adopted by reference, which is designated to be a petty misdemeanor shall, upon conviction be guilty of a petty misdemeanor. The penalty which may be imposed for any petty offense which is a petty misdemeanor shall be a sentence of a fine of not more than $300.

C. In either the case of a misdemeanor or a petty misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

D. The failure of any officer or employee of the city to perform any official duty imposed by this code shall not subject the officer or employee to the penalty imposed for a violation.

E. In addition to any penalties provided for in this section or in 10.19, if any person, firm or corporation fails to comply with any provision of this code, the Council or any city official designated by it, may institute appropriate proceedings at law or at equity to restrain, correct or abate the violation.

10.20 ADOPTION OF RICE CREEK WATERSHED RULES FOR SHORELAND AND WETLAND AREAS.

A. The Rice Creek Watershed District (District) is a political subdivision of the State of Minnesota established under the Minnesota Watershed Law. The District is also a watershed management organization as defined under the Minnesota Metropolitan Surface Water Management Act, and is subject to the directives and authorizations of that act. Under the Watershed Law and the Metropolitan

Surface Water Management Act, the District exercises a series of powers to accomplish is statutory purposes. The District's general statutory purpose is to conserve natural resources through development planning, flood control, and other conservation projects, based upon sound scientific principles.

As required under the Metropolitan Surface Water Management Act, the District has adopted a Watershed Management Plan, which contains the framework and guiding principles for the District in carrying out its statutory purposes. It is the intent of the City of Dellwood (City) to implement the Plan's principles and objectives in these rules.

By adopting these rules the City seeks to protect the public health and welfare and the natural resources of the City by providing reasonable regulation of the modification or alteration of the City's lands and waters to reduce the severity and frequency of flooding and high water, to preserve floodplain and wetland storage capacity to improve the chemical, physical and biological qualify of surface water, to reduce sedimentation, to preserve waterbodies' hydraulic and navigational capacity, to preserve natural wetland and shoreland features, and to minimize public expenditures to avoid or correct these problems in the future.

The District rules include certain rules adopted to implement area-specific resource management plans (RMP's) developed by the District. RMP's are designed to achieve identified water resource management needs within specific drainage areas of the watershed. Each set of such rules (labeled sequentially as Rule RMP-1, Rule RMP-2, and so on) applies to a delineated geographic area. Activity within an area governed by an RMP rules will be subject to that rule in place of the general District rules. Accordingly, a property owner intending an activity subject to District permitting requirements first should determine whether the activity will be governed by an RMP rule or by the general District rules.

B. **Appointment of Regulatory/Permitting Authority.**
The City of Dellwood designates the Rice Creek Watershed District as the regulatory/permitting authority for the City with regard to all land use project within the City which involve shoreland and wetland areas (as defined in Dellwood's Shoreland Management Ordinance).

C. **Adoption of Rules.**
The rules, policies and regulations of the Rice Creek Watershed District, adopted by the District on February 13, 2008, three copies of which are on file in the Office of the Dellwood City Clerk, are hereby adopted as the rules, policies and regulations of the City of Dellwood applicable to all land use requests and projects which involve shoreland or wetland areas (as defined in Dellwood's Shoreland Management Ordinance).

Every provision contained in the Rules of the Rice Creek Watershed District adopted on February 13, 2008 are hereby adopted and made a part of this Ordinance as if fully set forth herein.

D. **Penalties.**
Any person who violates any provision of this Ordinance is guilty of a misdemeanor offense and upon conviction thereof, may be punished by a fine and imprisonment, or both, according to law.

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

CHAPTER 30: GENERAL PROVISIONS

Section:

30.01	City Council meetings
30.02	Presiding officer
30.03	Minutes
30.04	Order of business
30.05	Voting
30.06	Ordinance, resolutions, motions, petitions and communications
30.07	Suspension or amendment of rules
30.08	Compensation of Mayor and Council Members
30.09	Compensation of officers and employees
30.10	Quorum for conducting business
30.11	Fees and charges
30.12	Application of state laws
30.13	Background information
30.14	Clerk/Treasurer
30.15	Elections
30.16	Administrative Citations

30.01 CITY COUNCIL MEETINGS.

A. **Regular meetings.** Regular meetings of the City Council shall be held at least once each month, at a date, time and place as established by the City Council. Any regular meeting falling upon a holiday shall be held on the next following business day at the same time and place. All meetings, including special and adjourned meetings, shall be held in the city hall unless the City Council decides otherwise at a prior meeting, or meeting in the city hall is impractical.

B. **Special meetings.** The Mayor or any two members of the City Council may call a special meeting of the City Council upon at least 24 hours written notice to each member of the City Council. This notice shall be delivered personally to each member or shall be left at the member's usual place of residence with some responsible person. Written notice of any special meeting shall be posted giving

the date, time, place and purpose of the meeting at least three days before the meeting. Written notice shall be mailed at least three days before the meeting to anyone who has filed a written request for notice of special meetings. In calculating the three days, if the last day falls on a Saturday, Sunday or legal holiday, the next regular business day shall be counted as the third day.

C. **Emergency meetings.** Notice of emergency meetings shall be given as required by M.S. Ch. 16D, as it may be amended from time to time. An emergency meeting is a meeting defined by M.S. Ch.16D, as it may be amended from time to time.

D. **Initial meeting.** At the first regular City Council meeting in January of each year, the City Council shall:

1. Designate the depositories of city funds;

2. Designate the official newspaper;

3. Choose one of the Council Members as Acting Mayor, who shall perform the duties of the Mayor during the disability or absence of the Mayor from the city or, in case of a vacancy in the office of Mayor, until a successor has been appointed and qualifies;

4. Appoint officers and employees and members of departments, boards, commissions and committees as may be necessary;

5. Establish and appoint Council Members to those City Council committees as are deemed appropriate for the efficient and orderly management of the city.

E. **Public meetings.** All City Council meetings, including special, emergency and adjourned meetings and meetings of City Council committees, as well as meetings of City Commissions and Boards, shall be conducted in accordance with the Minnesota Open Meeting Law, M.S. Ch. 16D, as it may be amended from time to time.

30.02 PRESIDING OFFICER.

A. **Who presides.** The Mayor shall preside at all meetings of the City Council. In the absence of the Mayor, the Acting Mayor shall preside. In the absence of both, the City Clerk shall call the meeting to order and shall preside until the Council Members present at the meeting choose one of their number to act temporarily as presiding officer.
B. **Procedure.** The presiding officer shall preserve order, enforce any rules of procedure adopted by the City Council, and determine without debate, subject to

the final decision of the City Council on appeal, all questions of procedure and order.

C. **Appeal procedure.** Any member may appeal to the City Council a ruling of the presiding officer. If the appeal is seconded, the member may speak once solely on the question involved and the presiding officer may explain the ruling, but no other Council Member shall participate in the discussion. The appeal shall be sustained if it is approved by a majority of the members present, including the presiding officer.

30.03 MINUTES.

A. **Generally.** Minutes of each City Council meeting shall be kept by the City Clerk or by the City Attorney. In the absence of both, the presiding officer shall appoint a secretary pro tem. Ordinances, resolutions and claims need not be recorded in full in the minutes if they appear in other permanent records of the City Clerk and can be accurately identified from the description given in the minutes.

B. **Approval.** The minutes of each meeting shall be reduced to typewritten form, shall be signed by the City Clerk and copies thereof shall be delivered to each Council Member as soon as practicable after the meeting. At the next regular City Council meeting following the delivery, approval of the minutes shall be considered by the City Council. The minutes need not be read aloud, but the presiding officer shall call for any additions or corrections. If there is no object to the proposed addition or correction, it may be made without a vote of the City Council. If there is an objection, the City Council shall vote upon the addition or correction. If there are no additions or corrections, the minutes shall stand approved.

30.04 ORDER OF BUSINESS.

A. **Order established.** Each meeting of the City Council shall convene at the time and place appointed therefore. City Council business shall be conducted in the following order unless varied by the presiding officer or by-laws or other procedures adopted by Council resolution:

1. Call to order
2. Roll call
3. Approval of Minutes
4. Consent agenda
5. Public hearings
6. Petitions, requests and communications
7. Ordinances and Resolutions
8. Unfinished business
9. New Business
10. Reports of Commissioners and Staff

11. Miscellaneous
12. Adjournment

B. **Petitions and Agenda.** Petitions and other papers addressed to the City Council shall be read or copies distributed by the City Clerk upon presentation of the same to the City Council. All persons desiring to present new business before the City Council shall inform the City Clerk thereof at least 72 hours before new business is heard. The City Clerk may prepare an agenda of the new business for submission to the City Council on or before the time of the next regular meeting.

30.05 VOTING.

The votes of the Council Members on any question may be taken in a manner which signifies the intention of the individual members, and the votes of the Council Members on any action shall be recorded in the minutes. The vote of each Council Member shall be recorded on each appropriation of money, except for payment of judgments, claims and amounts fixed by statute. If any Council Member is present but does not vote, the minutes, as to his or her name, shall be marked “Present-Not Voting.”

30.06 ORDINANCE, RESOLUTIONS, MOTIONS, PETITIONS AND COMMUNICATIONS.

A. **Signing and Publication Proof.** Every ordinance and resolution passed by the City Council shall be signed by the Mayor, attested by the City Clerk, and filed by the City Clerk in the Ordinance or Resolution Book. Proof of publication of every ordinance shall be attached and filed with the ordinance.

B. **Repeals and Amendments.** Each ordinance or resolution repealing a previous ordinance or resolution or section or subdivision thereof shall give the number, if any, and the title of the ordinance or code number of the ordinance or resolution to be repealed in whole or in part. Each ordinance or resolution amending an existing ordinance or resolution or part thereof shall set forth in full each amended section or subdivision as it will read with the amendment.

30.07 SUSPENSION OR AMENDMENT OF RULES.

These rules may be suspended only by a two-thirds vote of the members present and voting.

30.08 COMPENSATION OF MAYOR AND COUNCIL MEMBERS.

The compensation of the Mayor and the compensation of each Council Member shall be established from time to time by City Council ordinance pursuant to M.S. 415.11 as it may be amended from time to time. The compensation established by the ordinance

shall not take effect until after the next city election after the ordinance was adopted and published. At the time of the enactment of this Ordinance, the salary of the Mayor is $49.00 per month and the salary of each Councilperson is $25.00 per month.

30.09 COMPENSATION OF OFFICERS AND EMPLOYEES.

Officers and employees of the city shall be compensated at a rate as established from time to time by Resolution of the City Council.

30.10 QUORUM FOR CONDUCTING BUSINESS.

A. A quorum shall consist of a majority of the entire City Council, including the Mayor. A quorum shall be necessary to transact the business of the City Council.

B. If no quorum is present, the City Council shall not thereby stand adjourned, but the members present shall adjourn or recess the City Council by a majority vote ofthose present.

30.11 FEES AND CHARGES.

The City Council may adopt resolutions establishing those fees and charges that are authorized by this code. Until a fee becomes effective, all fees and charges established by ordinance or resolution prior to the adoption of this code shall remain in effect. Once a fee has become effective any previous fee is no longer in effect. License fees are annual fees and permit fees are for each permit, unless specified otherwise. The following license fees and permit fees shall be paid to the City Clerk together with the application for license or permit:

A. General Fees. For all licenses and permits not listed below: $30

B. Administrative Fees.
   1. Copies: $0.25 per sheet (residents free within reason)
   2. Return Check Fee: $30

C. Business & License Fees.
   1. Garbage License (Section 50.12): $200
   2. Vendor License Application Fee: $1 per application
   3. Vendor License: $200
   4. Liquor License (Chapter 112): $600
   5. Temporary Liquor License: $0 per permit
   6. Cigarette License (Chapter 114): $40

D. Animal Control Fees.
   1. Animal License (Section 91.03): $10.00 for two years
   2. Animal Control Impound Fee (Section 91.07): $90 per occurrence plus $22 daily impound and any veterinary costs. All fees incurred by the City shall be borne by the animal owner.
   3. Limited Keeping of Chickens (annual): $100 initial, $50 renewal
   4. Limited Keeping of Bees (annual): $100 initial, $50 renewal
   5. Limited Keeping of Goats: $200

E. General Permit Fees.
   1. Gambling Permit (Chapter 116): $0
   2. Fireworks Application Permit Fee (Section 130.03): $200
   3. Open Burning Permit (Section 130.09): Amount required by White Bear Lake Fire Department
   4. Public Dance Permit (Section 118.03): $200

F. Building Permits & Fees.
   1. Building Permits: – on valuation & .0005% State Surcharge
   2. Plan Check Fee: 65% of building permit fee
   3. Recurring Plan Check Fee: 25% of building permit fee
   4. Plumbing (residential): $100.00 & $1.00 surcharge
   5. Mechanical (residential): $100.00 & $1.00 surcharge
   6. Air Conditioning Installation: $100.00 & $1.00 surcharge
   7. Air Conditioning (part of mechanical installation): $100.00 & $1.00 surcharge
   8. Gas piping (that is not part of mechanical installation): $100.00 & $1.00 surcharge.
   9. Fireplace (gas or wood): $100.00 & $1.00 surcharge
   10. Re-roofing (residential): on valuation & .0005% State Surcharge
   11. Re-siding: on valuation & .0005% State Surcharge
   12. Window replacement (in existing opening): on valuation & .0005% State Surcharge
   13. Demolition: $100.00 & $1.00 surcharge
   14. Other maintenance of minor projects as determined by the Building Official: $80.00 & $1.00 surcharge
   15. Other Inspections and Fees:
      a. Inspections outside of normal business hours $47.00 per hour*
      b. Re-Inspection fees: $47.00 per hour*
      c. Inspections for which no fee is specifically indicated: $47.00 per hour* (minimum charge one-half hour)
      d. Additional plan review required by changes, additions or revisions to plans: $47.00 per hour*
      e. For use of outside consultants for plan checking and inspections or both: Actual costs**

      *Or the total hourly cost to the jurisdiction, whichever is the greatest. The cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

      **Actual costs including administrative and overhead costs.

16. Septic Permit: $800
17. Septic Maintenance Report Fee: $30

G. Land Use & Zoning Fees.
1. Variance, Appeal, Conditional Use Permit, Interim Use Permit, Amendment, Minor Subdivision, Preliminary Plat, Final Plat (Section 152.13), Excavation, Grading & Filling Permits (Section 152.06.H), Stormwater Management Plan (Section 53.07): $225 base fee plus $1100 escrow. Escrow may be reduced to $600 by the City Clerk for minor applications in the sole judgment of the City Clerk.
2. Antenna/Tower Conditional Use Permit (Section 155.05): $1000 with a $2000 escrow.
3. Antenna/Tower Annual Inspection Fee: $300
4. WECS Annual Inspection Fee (Section 155.15.1.4): $100
5. Zoning Permit (including Pool Permit in Section 153.04): $75
6. Septic Site Plan Review: $200
7. Zoning and Engineering Site Plan Review: $125
8. Right-of-Way or Public Easement Vacation: $225 plus $800 escrow

H. Right-of-Way Use Fees.
1. Right-of-Way Registration Fee (Section 56.05): $100
2. Right-of-Way Excavation Permit (Section 56.13): $500
3. Right-of-Way Construction Escrow (Section 55.01): $1000
4. Right-of-Way Permits (Section 56.13): $25

I. Public Safety & Enforcement Fees.
1. False Alarm Fees (Sections 135.03 and 135.05): Alarms 3-6 $50, 7+ $100
2. Administrative Penalties (Section 30.16)
   a. Building Code (Chapter 90): $300
   b. Sewer Ordinance (Chapter 51): $300
   c. Sign Ordinance (Chapter 94): $100
   d. Parking Regulations (Chapter 71): $75
   e. Road Escrow (Chapter 55): $200
   f. Fence (Chapter 93): $200
   g. Exterior Storage (Chapter 95): $200
   h. Peddlers (Chapter 113): $200
   i. Excavation/Filling (Chapter 152): $150
   j. Animal Licensing & Control (Chapter 91): $150
   k. All other offenses: $75

30.12 APPLICATION OF STATE LAWS.

The provisions of the Government Data Practices Act, M.S. Ch. 13, the Opening Meeting Law, M.S. Ch. 13D, and the laws relating to Gifts to Local Officials, M.S. 471.895, as these laws may be amended from time to time, apply to the City Council and all boards and commissions of this city and their members

30.13 BACKGROUND INFORMATION.

Upon request of the City Clerk or designee, Sheriff's Department, or the Bureau of Criminal Apprehension is authorized to provide certain criminal history data contained in the Minnesota Criminal Justice Information System. The data to be provided must only be about finalists for City positions of employment. The City Clerk or designee must obtain the consent of the finalists, in writing, before requesting the data, but an applicant's failure to provide consent may disqualify the applicant from the prospective position.

30.14 CLERK / TREASURER.

A. The office of Clerk/Treasurer created by Ordinance Number 10 passed June 8, 1971 is abolished.
B. The separate office of Clerk and the separate office of Treasurer were established by Ordinance Number 10.01 enacted on February 11, 1975.
C. The Clerk shall perform all of the duties imposed upon the Clerk as prescribed by law, and by the constitution, Ordinances and By-Laws of the City of Dellwood. The Treasurer shall perform all of the duties imposed said office as prescribed by law and by the Ordinances of the City.
D. Said officers shall be appointed by the Council for indefinite terms, and neither shall be members of the Council; each officer so appointed may appoint a deputy with the approval of the Council.
E. The Clerk and the Treasurer shall each keep separate and complete books of account and records of all financial transactions of the City.

30.15 CITY ELECTIONS.

The regular City election shall be held on the first Tuesday after the first Monday in November.

30.16 ADMINISTRATIVE ENFORCEMENT OF CODE REGULATIONS; ADMINISTRATIVE CITATIONS AND PENALTIES.

A. **Purpose and intent.** The administrative enforcement procedures established within this Chapter are intended to provide the City of Dellwood with an informal, cost-effective and more efficient supplement or alternative to criminal prosecution or civil litigation for certain violations of the adopted City Code. The City of Dellwood retains the right, at its sole discretion, to enforce provisions of this Code by bringing criminal charges or commencing civil litigation in any case where the City determines it is appropriate or necessary but finds that an administrative process is beneficial to the residents of the City and further finds that that such a process is a legitimate and necessary alternative method of enforcing Code violations.

B. **General provisions.**
   1. Administrative Offenses. Violations of any section or chapter of the City Code, and any violation of the terms and/or conditions of any license, permit, or other approval issued pursuant to the City Code, are administrative offenses

that may be subject to an administrative citation and administrative fines.

2. Continuing Violations. Each day a violation exists constitutes a separate and distinct offense for which a separate penalty can be imposed. The City Code Enforcement officer can exercise discretion in imposing an administrative fine for more than one day of a continuing offense.

3. Schedule of Fines. The City Council shall adopt as part of the fee schedule in Section 30.11, a schedule of administrative fines for offenses for which an administrative citation may be issued.

4. No Limitation on Remedies. Nothing herein is intended or shall require the City to utilize the administrative citation process or otherwise pursue the remedies outlined in this section. The City retains the right to pursue any and all other remedies authorized by law to enforce the City Code or penalize violations of city ordinances, including, but not limited to, issuance of a stop work order, abatement, criminal prosecution, and/or application for civil penalties or injunctive relief.

5. Code Enforcement Officer. The Code Enforcement Officer shall be any person so appointed to carry out such duties so assigned by the City Council or their designee.

C. **Procedure.**

1. Administrative Notice. A Code Enforcement Officer or designee may issue, either in person or by United States first class mail, an administrative notice to a person suspected, alleged or known to have committed a code offense and/or to be the owner of property upon which a code offense is being committed. The Administrative Notice shall identify the code offense, the location upon which the code offense is alleged to have occurred or is occurring, and the corrective action for the code offense. The administrative notice may also state that the alleged violator has, at the discretion of the Code Enforcement Officer, no more than twenty (20) days to correct or abate the code offense. Immediate compliance may be required upon the existence of a condition which may constitute a threat to public health or safety. If the alleged violator and/or owner of property upon which a code offense is being committed is unable to correct or abate the code offense within the prescribed time, that person may request in writing an extension of no more than thirty (30) additional days from the Code Enforcement Officer. Any extension granted shall be in writing and shall specifically state the date of expiration, which shall be determined at the discretion of the Code Enforcement Officer. If the code offense is not corrected or abated, as outlined in the administrative notice, within the prescribed time or any extension thereto, the Code Enforcement Officer may issue a citation.
2. Exceptions to Administrative Notice. For violations of any of the following sections, the City shall not be required to issue an administrative notice and may proceed directly to an administrative citation.

a. Repeat Offenders. If the same owner or person commits a subsequent violation within twelve (12) months of after an administrative notice or citation has been issued for the same or similar offense, administrative notice shall not be required for the new violation.

b. License and Permit Violations. For any license violations, including not having a license or for violations of Permits and/or Variances, administrative notice shall not be required.

3. Citation. Upon receiving no response or compliance following issuance of the administrative notice, the Code Enforcement Officer may issue a citation. The citation shall be given to the person responsible for the violation and/or to the owner of the property upon which the alleged violation has occurred, either by personal service or by United States first class mail. Said citation shall state the nature of the .code offense, the time and date said alleged code offense occurred, the civil penalty applicable to that code offense as set forth in a schedule of civil penalties which shall be adopted by resolution of the City Council from time to time, and the manner for paying the civil penalty, or requesting a review before the City Council.

4. Responding to a Citation. Once a citation is issued, the alleged violator and/or the owner of the property upon which the alleged violation has occurred shall, within ten (10) days of the time of issuance of the citation, either pay the civil penalty set forth in the citation or request a hearing in writing according to the procedure set forth below. The civil penalty may be paid either in person at City Hall, or by United States first class mail, postage prepaid and postmarked within said prescribed fourteen (14) days. Payment of the civil penalty shall be deemed to be an admission of the code offense.

5. Payment of Penalty.

a. Payment of a Penalty and Correction of Violation. If within the prescribed time limits, the owner pays the administrative civil penalty and corrects the City Code violation, no further action will be taken against the owner or the owner's real property for that same violation.

b. Payment of Penalty without Correction of Violation. If the owner pays the administrative civil penalty but fails to correct the City Code violation, the City may issue subsequent administrative citations, initiate criminal proceedings, or initiate any other proceeding or remedies available in order to enforce correction of the City Code violation.

c. No Payment of Penalty and No Correction of Violation. If the owner fails to pay the administrative civil penalty and fails to correct the City Code violation, the City may do any of the following, or any combination thereof

(1) Assess the administrative civil penalty against the property

pursuant to Minnesota Statutes Chapter 429.

(2) Issue a subsequent administrative citation.
(3) Initiate criminal proceedings.
(4) Initiate any other enforcement action authorized by law including abatement actions.

D. **Appeal and Hearing.**

1. Requesting a Hearing. Any person receiving an administrative citation may contest the alleged violation and the amount of the administrative civil penalty. In order to contest any part of the administrative citation, the owner or individual contesting the citation must notify the City Clerk in writing within ten (10) calendar days after the citation is mailed or otherwise delivered. The written request shall state the name of the individual, indicate whether they are contesting the alleged violation, the amount of the. penalty, or both and must also specify the reason and facts upon which the individual is contesting the citation.

2. City Council Review. The City Council shall conduct an informal hearing to determine if a violation has occurred. The Council shall consider the record and any additional evidence presented at the hearing before making a determination. The Council shall receive and give weight to evidence, including hearsay evidence that has probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. The City will have the burden of proving the existence of a violation and the reasonableness of any required corrective action by a preponderance of the evidence. The determination of the enforcement officer will be given substantial weight by the Council in determining the reasonableness of any required corrective action.

3. Authority of City Council: The Council has the authority to do any of the following, or a combination thereof:

   a. Make a finding that a violation has occurred;
   b. Reduce, stay, or waive a scheduled administrative civil penalty either unconditionally or upon compliance with reasonable conditions;
   c. Require compliance with the City Code within a specified timeframe;
   d. Make a finding that no violation has occurred and dismiss the administrative citation.

4. Owner/Individual Found in Violation. If the violation is sustained by the Council, the violator shall pay the penalty imposed plus an additional administrative hearing fee as prescribed by the City to cover the cost incurred by the City associated with the hearing within fourteen (14) days of the date of the decision.

E. Judicial review. The City Council's decision is final without any further right of administrative appeal. Further appeal shall be to the Minnesota Court of Appeals

under the Minnesota Rules of Civil Procedure.

F. **Violation a misdemeanor.** The following are misdemeanors, punishable in accordance with state law:

1. Failure to pay an administrative fine imposed by administrative citation within fourteen (14) days after it has been imposed unless the matter is contested to the City as provided herein.

2. Failure to pay an administrative penalty imposed by the City Council unless an appeal has been taken to the Court of Appeals. If the final determination in the administrative penalty process is a finding that no violation occurred, then the City may not prosecute a criminal violation in district court based on the same set of facts. This does not preclude the City from pursuing a criminal prosecution for a violation for the same provision based on a different set of facts. A different date of violation will constitute a different set of facts.

G. **Traffic Related Ordinance Violations; Vehicle Equipment Violations.** The City may not issue Administrative Citations or impose administrative penalties to enforce any offense listed in Appendix A to Minnesota Statute Section 169.999, even though a similar offense may be a violation of an Ordinance of the City, unless such offense is a violation of a separate Ordinance enacted by the City pursuant to M.S.169.999, as amended.

CHAPTER 31: DEPARTMENTS, BOARDS AND COMMISSIONS

Section:

31.01 Police Protection

31.02 Fire Protection, Medical Emergencies

31.03 Establishment of Planning Commission

31.04 Composition of Planning Commission

31.05 Organization, Meetings, Minutes and Expenditures

31.01 POLICE PROTECTION

The City contracts with the Washington County Sheriff's Department to provide all police services in the City under a Joint Powers Agreement with other nearby Cities.

31.02 FIRE PROTECTION, MEDICAL EMERGENCIES

Fire protection, Medical and Rescue Services. The City contracts with the City of White Bear Lake to provide fire protection services, and medical emergency and rescue services.

31.03 ESTABLISHMENT OF THE PLANNING COMMISSION.

The Planning Commission shall be the City Planning Agency authorized by M.S. 462.354 Subdivision 1 as it may be amended from time to time. The Planning Commission at the time of the adoption of this code is continued.

31.04 COMPOSITION OF PLANNING COMMISSION.

A. The Planning Commission shall consist of five members from the resident population of the city to be appointed by the Mayor with the approval of the City Council. The appointees shall be appointed to serve staggered terms of three years, except as noted below, commencing on the first day of January in the year of appointment. Upon expiration of a term, the appointee shall continue until reappointed or a successor is appointed. In the event of any vacancy, the Mayor,

with the approval of the City Council, shall appoint a person to complete the unexpired term.

B. Of the members of the commission first appointed, two shall be appointed for the terms of two years and three for the term of four years. Their successors shall be appointed for terms of four years. All members shall serve without compensation.

C. Each of the five regular Planning Commission members shall have equal voting privileges.

D. Any member may be removed for cause by majority vote of the City Council.

E. In addition to 31.04.D, the removal of a Planning Commission member may occur when (a) the member has more than 3 unexcused absences (b) has three consecutive absences or (c) more than four absences in a calendar year.

31.05 ORGANIZATION, MEETINGS, MINUTES AND EXPENDITURES.

A. At the first regular meeting in January, the Planning Commission shall elect a Chairperson, a Vice-Chairperson and a Secretary from among its appointed members, each for a term of one year. The Planning Commission may create and fill other offices as it may determine.

B. The Planning Commission shall hold at least one meeting each month at the time and place as set by the City Council unless there is no business scheduled for any particular month. Special meetings may be called at any time by the City Council or the Chair of the Planning Commission provided proper notice is given.

C. Written minutes of meetings shall be kept and filed with the City Clerk prior to the next regularly scheduled City Council meeting, but shall be subject to the approval at the next Planning Commission meeting.

D. No expenditures by the Planning Commission shall be made unless and until authorized for the purpose by the City Council.

CHAPTER 50: GARBAGE AND RUBBISH

Section:

50.01	Definitions
50.02	Sanitation Collection Service Required
50.03	Container Required; Placement
50.04	Meddling with Trash Receptacles Prohibited
50.05	Containers to be Kept Sanitary and Secure
50.06	Unauthorized Private Collections Prohibited
50.07	Sanitation Service: City Options.
50.08	Removal of Building Materials
50.09	Prohibited Acts
50.10	Nonresidential Customers; Container Types; Collection Schedules
50.11	Manner of Collection and Transportation
50.12	Licensing for Collection
50.13	Collection of Leaves, Tress or Tree Limbs

50.01 DEFINITIONS.

For this purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GARBAGE. Organic refuse resulting from the preparation of food, and decayed and spoiled food from any source.

RUBBISH. All inorganic refuse matter such as tin cans, glass, paper, ashes and the like.

50.02 SANITATION COLLECTION SERVICE REQUIRED.

Every person owning, managing, operating, leasing or renting any premises or any place where garbage or rubbish accumulates shall subscribe to a sanitation collection service.

50.03 CONTAINER REQUIRED; PLACEMENT.

A. It shall be the duty of every person whose garbage and refuse is collected by a sanitation collection service to provide a container or containers for garbage and refuse, sufficient in size and number to accommodate and securely keep all garbage and refuse that may accumulate between collections. Garbage containers shall be watertight and constructed of a solid and durable grade of metal or plastic.

B. It shall be the duty of every person whose garbage and refuse is collected by a sanitation collection service to place their garbage containers directly behind the curbline of the street abutting their property or in the absence of a curb directly behind the ditch line abutting their property. In no event shall containers be placed in the street or on the sidewalk or in any manner placed where the containers will interfere with vehicular or pedestrian traffic. It shall be the responsibility of the subscriber to place the containers no earlier than 6:00 p.m. of the afternoon preceding the collection day.

50.04 MEDDLING WITH TRASH RECEPTACLES PROHIBITED.

A. It shall be unlawful to meddle with garbage cans, trash or rubbish receptacles or in any way pilfer, search or scatter contents of garbage cans or rubbish receptacles in or upon any street or alley within the City limits.

B. This section shall not apply to persons authorized by the City or persons authorized by state or federal law to search or otherwise meddle with trash receptacles.

50.05 CONTAINERS TO BE KEPT SANITARY AND SECURE.

All containers shall be kept clean and free from accumulation of any substance remaining attached to the inside of the container which would attract or breed flies, mosquitoes or other insects. The area surrounding garbage containers shall be maintained in a clean and sanitary condition. The contents of all receptacles shall be protected so that the wind cannot scatter the contents over the streets, alleys or other property within the City. All containers shall be securely closed in a manner as to prevent the scattering of contents and to make them inaccessible to insects, rodents and other animals.

50.06 UNAUTHORIZED PRIVATE COLLECTION PROHIBITED.

A. It shall be unlawful for any person to transport garbage or refuse for hire which has been collected from any premises within the City over any public street within the City.

B. This section shall not apply to any person who at the time of the activity is operating under a valid contract or franchise granted by the City which authorizes that person to use the public streets to conduct that activity.

50.07 SANITATION SERVICE: CITY OPTIONS.

The City Council may provide for sanitation collection services within the City by use of licenses under the terms and conditions of Section 50.12, or it may contract with one or more contractors for the provision of these services under the terms and conditions negotiated with the contractors, except that the provisions for insurance under 50.12 shall always apply.

50.08 REMOVAL OF BUILDING MATERIALS.

Waste from building operations, rock waste, building materials or other refuse resulting from building or remodeling operations or resulting from a general cleanup of vacant or improved property shall be removed by the building contractor, owner or occupant of the building at his or her own expense. It shall be unlawful for any person to place those material in any dumpster or other trash receptacle for disposal by the City or any agent or contractor of the City.

50.09 PROHIBITED ACTS.

A. It shall be unlawful for any person to sweep, throw or deposit any garbage, trash, debris, stagnant water or dead animals, bird or fish, into, upon or along any public property or private property of another, except as specifically provided by this chapter.

B. It shall be unlawful for any person owning or otherwise in control of any premises within the City to permit any of the conditions described in division (A) to exist upon property owned or controlled by him or her after having actual or constructive notice thereof.

C. It shall be unlawful for any person to place in any container any material other than as specifically provided in this chapter.

D. It shall be unlawful for any person to deposit or maintain garbage or trash except as provided for by this chapter.

E. It shall be unlawful for any person to deposit any burning match, charcoal, ember or other material in any container used for the disposal of garbage.

50.10 NONRESIDENTAL CUSTOMERS; CONTAINER TYPES; COLLECTION SCHEDULES.

A. It shall be the duty of the owner or person otherwise in charge of business premises within the City to cause all garbage and trash accumulated on the premises to be placed in disposable containers, or commercial type containers. Commercial type containers may be used and may be placed at a location on the premises so arranged between the customer and the collector, but subject to review by the City at any time.

B. Disposal containers shall be placed at a location on the premises which his readily accessible to the collector.

C. The amount and character of garbage shall be considered in establishing size of commercial containers and frequency of pickup. The City shall have final authority to establish the size and frequency based on the history of amount and type of garbage generated by the customer. The collection and removal of garbage and trash from premises used for commercial, institution, or industrial purposes shall be made as often as necessary in order to maintain the premises free of accumulations. Garbage, except dry trash in contractor supplied containers, shall be collected not less than one time each week, except for roll-off containers which shall not be subject to this provision so long as they are used solely for brush and dry trash.

50.11 MANNER OF COLLECTION AND TRANSPORTATION.

A. The collection, removal and disposal of all garbage, trash and brush shall be carried on in a systematic, efficient manner to keep the City in a clean and sanitary condition.

B. All vehicles used for the collection and transportation of garbage and trash shall be equipped with suitable covers which shall be used to prevent blowing and scattering of refuse which garbage and trash are being transported for disposal.

50.12 LICENSING FOR COLLECTION.

A. Purpose. In order to provide for a continuous system of refuse collection and disposal in a manner which meets the needs and convenience of resident of the

City and in order to protect the area from the problems of uncoordinated, unsanitary and improper solid waste disposal, the City Council may determine that it is in the best interests of the residents of the City to require licenses of persons collecting or hauling garbage and rubbish for hire, reserving to the City the right and authority to contract with one more operators to provide these services.

B. Licensing. No person may collect or haul garbage or rubbish with the City without first obtaining a written license from the City Council. An application for a license shall be submitted in writing to the City Clerk, and shall contain the following information:

1. Name and address of the applicant.
2. Description of the equipment which will be used within the City by the Applicant.
3. A schedule of the rate that will be charged by the applicant for the various categories of customers within the City.
4. Evidence of compliance with the other applicable sections of this chapter.

C. Franchise. The City Council may exercise its reserved right to contract with one or more operators for the collection of garbage and rubbish within the City.

D. Suspension of License or Contract. A contract or license issued under the provisions of this section may be revoked or suspended for a violation of this chapter or other applicable regulations of law upon a showing that the contractor or licensee has failed to comply with that regulation.

E. Financial Responsibility. The licensee or contractor shall show financial responsibility or a certificate of insurance coverage prior to obtaining the license or franchise whereby each vehicle to be used by the licensee or contractor shall be covered against loss or injury in the following amounts:

> $300,000 when the claim is one for death or wrongful act or omission and $300,000 to any claimant in any other case; $1,000,000 for any number of claims arising or of a single occurrence.

The licensee or contractor shall hold the City harmless and agrees to defend and indemnify the City, and the City's employees and agents, for any claims, damages, losses, and expenses related to the work under the license or contract.

The City shall be named as an additional insured under the insurance for the services provided under the licenses or contract. The licensee's or contractor's insurance shall be the primary insurance for the City and the licensee or contractor shall provide a certificate of insurance on the City's approved form which verifies the existence of the insurance required, including provisions to hold the City harmless and defend and indemnify the City. The licensee or contractor shall also provide evidence of workers compensation insurance for employees. These insurance policies shall be for the full term of the license or franchise and shall provide for the giving of ten days prior notice to the City of any termination or cancellation of these policies. In case any policies are terminated or cancelled, the license or contract shall be automatically revoked upon receipt by the City Clerk of the termination or cancellation.

F. Design of Equipment. All trucks or motor vehicles under the licensee or contractor shall be watertight so as not to allow leakage of liquids or refuse while hauling the same and shall be covered with a covering to prevent the scattering of its contents upon the public streets or private properties in the City.

G. Inspections. All vehicles used for garbage or rubbish shall be made available for inspection within the City at the times and places as the City Council may designate.

H. Bond. The contractor or licensee may be required to furnish a surety bond in an amount as the City Council deems necessary running to and approved by the City Council, guaranteeing the franchisee's or licensee's faithful and continuous performance of the terms of the franchise, license or contract of this chapter.

50.13 COLLECTION OF LEAVES, TREES AND TREE LIMBS.

Nothing in this chapter shall be construed to prevent the collection for hire by other persons of leaves, trees or tree limbs.

CHAPTER 51: REGULATIONS FOR INDIVIDUAL SEPTIC SYSTEMS; WELL ABANDONMENT

Section:

51.01 Definitions

51.02 Public Sewer Not Available

51.03 Permits

51.04 Type, Capacities, Location and Layout

51.05 Operation and Maintenance by Owner

51.06 Surface Runoff or Groundwater Connections Prohibited

51.07 Well Abandonment

51.08 Subsurface Sewage Treatment System Regulations

51.09 Additional Provisions

51.10 Alternative Systems

51.11 Maintenance and Inspections

51.12 Graveless Pipe Trench Systems

51.13 Licensing

51.14 Penalty

GENERAL PROVISIONS

51.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. The area within the corporate boundaries of the city as presently established or as amended by ordinance or other legal actions at a future time. The term CITY when used herein may also be used to refer to the City Council and its authorized representative.

MPCA. The Minnesota Pollution Control Agency.

PERSON. Any individual, firm, company, association, society, corporation or group.

SEWAGE. See Wastewater.

SEWER. A pipe or conduit that carries wastewater or drainage water.

WASTEWATER. The spent water referred to as sewage. It may be a combination of the liquid and water-carried wastes from residences and commercial buildings together with any ground water, surface water and storm water that may be present.

PRIVATE WASTEWATER DISPOSAL

51.02 PUBLIC SEWER NOT AVAILABLE.

The sewer shall be connected to a private wastewater disposal system complying with the provisions of this Ordinance and Minn. Rules Ch. 7080 through 7083 Individual Sewage Treatment Systems, as they may be amended from time to time.

51.03 PERMITS.

A. Required. Prior to commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the city. The application for the permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary to the city.

B. Inspections. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the city or its authorized representative. The city or its representative shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the city when work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 72 hours of the receipt of notice.

C. Fees. Permit fees shall be paid to the City in the amounts established by Resolution of the City Council from time to time.

51.04 TYPE, CAPACITIES, LOCATION AND LAYOUT.

The type, capacities, location, and layout of a private wastewater disposal system shall comply with all requirements of this Ordinance as they may be amended from time to time. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

51.05 OPERATION AND MAINTENANCE BY OWNER.

The owner shall operate and maintain the private septic system and/or wastewater disposal facilities in a sanitary manner at all times at no expense to the city.

51.06 SURFACE RUNOFF OR GROUNDWATER CONNECTIONS PROHIBITED.

No person shall make connection of roof downspouts, sump pumps, foundation drains, areaway drains or other sources of surface runoff or groundwater to a septic system or indirectly to the wastewater disposal system.

51.07 WELL ABANDONMENT.

All well abandonment shall be done in accordance with M.S. 1031.345 and Minnesota Rules Chapter 4725, Wells and Borings, as it may be amended from time to time.

51.08 MINNESOTA RULES CHAPTER 7080 THROUGH 7083

ADOPTION BY REFERENCE:

51A.08 Washington County Development Code Chapter Four.

The terms and provisions of Chapter Four of the Washington County Development Code with effective date of **April 28, 2015**, as amended from time to time, together with the provisions of this Chapter 51, Sections 51.01 through 51.14 hereof, shall constitute the Subsurface Sewerage Treatment Systems Regulations of the City of Dellwood.

All of the terms and provisions of said Chapter Four are hereby adopted by reference thereto, as Official Regulations of Dellwood.

In cases of conflict or inconsistency between Chapter 51 of the Dellwood City Code and Chapter Four of the Washington County Development Code, as amended, the provisions which are more restrictive shall govern.

51.09 ADDITIONAL PROVISIONS.

In addition to the provisions of Minnesota Rules Chapter 7080, the provisions of this Ordinance shall apply. In case of a conflict or inconsistency, the provisions set forth in this Ordinance shall take priority over the provisions of Chapter 7080.

A. Capacity of Septic Tanks for non-residential uses:
The minimum capacity of the septic tanks and the minimum area of the drainfield shall be determined by the City Septic System Inspector after review of the plans and specifications, soil reports and inspections. Capacity shall not be less than required by Washington County Development Code, Chapter Four, as amended.

B. For new subdivision testing, enough soil observations must be conducted to assure that at least 10,000 square feet of suitable soil exists for each lot for long-term sewage treatment. On previously subdivided lots, enough area of suitable soil must be identified for two soil treatment and dispersal areas. Percolation tests are not required for subdivision or lot approval testing unless permeability cannot be estimated or there is reason to believe the soil is not original or has been disturbed.

C. An alternative location for a drain field having a minimum area of 5000 square feet shall be required in all cases where a new septic system is installed. This provision is to ensure a suitable location for a second system in case of failure of the original or existing system.

D. All maintainers, installers, inspectors, designers and service providers must have a current Individual Sewage Treatment System Business License issued by the Minnesota Pollution Control Agency. A design for the septic system must be submitted and approved by the City prior to commence of any work.

E. All subdivisions or developments must demonstrate to the City that each lot contains not less than 10,000 square feet of designated suitable area for an individual sewage treatment system and alternative site. This area may consist of two non-contiguous areas of 5.000 square feet each. Each area designated for septic system purposes shall contain at least four satisfactory soil borings and at least two satisfactory percolation tests.

F. Each individual sewage treatment system in the City of Dellwood must have not less than three feet of vertical separation between the bottom of the treatment system and the saturated soil or bedrock.

Systems in place on or before April 1, 1996 having at least two feet but less than three feet of vertical separation, and which in the opinion of the City Sewer

Inspector do not present an imminent threat to public health or safety, may be allowed by variance.

51.10 ALTERNATIVE SYSTEMS.

A. Replacement of existing systems. On previously developed sites where system replacement is required by virtue of existing system failure and where site and soil conditions do not permit installation of a standard system, an alternative system as provided by this section may be considered subject to the following conditions:

1. The engineering design and substantiation of performance of proposed system shall be submitted for approval.

2. There shall be no discharge allowed to the ground surface or surface water.

3. Method of treatment and disposal of wastes shall provide protection to the public health and general welfare equal to that provided by a standard system.

4. Proposed alternative systems shall be required to comply with State rules and standards.

B. Type III System. On any site where soil conditions may reasonably be altered by placing fill to provide suitable conditions as required for a standard system, a modified standard system may be considered subject to the following conditions:

1. Soil and site conditions shall be evaluated and system sized and located as prescribed by this Ordinance for a Type III System.

2. Modified soil areas shall be adequate in size to accommodate a minimum of two (2) complete systems. On specific sites, area requirements may be increased when appropriate under the long range sewer plan for the location.

3. Proposed fill projects shall require engineered design to be submitted for review and approval by the permitting authority prior to the start of work, and the issuance of a grading permit as required by the Zoning Ordinance.

4. Fill material shall be selected and placed under competent supervision.

5. Existing soils shall be protected from compaction and properly prepared by scarifying or plowing, prior to placement of fill.

6. Where trench bottoms terminate entirely in natural soils, fill to achieve required cover may be placed at the time of system installation.

7. Where trench bottoms are required to terminate in fill shall be placed without compaction and allowed to settle through a frost cycle. After settlement, the soil shall be tested and data submitted for approval by the City Sewer Inspector. The total settlement period shall be determined by the City Sewer Inspector.

8. Where fill is placed to achieve adequate separation from the water table, a minimum of three observation wells shall be placed within the fill area as follows:

    a. Install one (1) inch to four (4) inch diameter, solid pipe, to a minimum depth of six (6) feet below final grade and three (3) feet below design depth of system, canned above ground surface.

    b. Bore hole for pipe a minimum of four (4) inches larger than the diameter of the pipe.

    c. Set pipe in two (2) inches pea gravel, with six (6) inches of gravel extending up around outside of pipe bottom.

    d. Fill around remainder of pipe and compact at ground surface.

    e. In appropriate cases, observation wells may not be required. The City Sewer Inspector may waive this requirement based on the soil tester's findings and recommendations.

    f. Observations shall be made by a certified soil tester as follows:

        i. First observation to be made within two weeks after frost is absent and every seven days thereafter until June 1st, or until the site is determined to be unacceptable, whichever comes first.

        ii. If water is observed after the first frost is absent, or at any other time, an observation shall be made one week later. If water is present at both observations, monitoring can cease since the site is unacceptable.

iii. If water is not present at the second observation, monitoring shall continue until June 1st. If any two successive observations show the presence of water above the critical depth, the site is unacceptable.

iv. The occurrence of rainfall(s) on one-half (1/2) inch intensity or more during the monitoring period may necessitate observations at more frequent intervals.

v. A site which is saturated at or above the critical depth for seven consecutive days or more in a normal spring season (preceded by six months of precipitation which is at a minimum normal for the area) is an unacceptable site.

All “mound” system and fill sites must be pressurized systems approved by the City Septic Sewer Inspector.

51.11 MAINTENANCE AND INSPECTIONS.

A. Each year the City will cause an individual sewage treatment system to be inspected by a duly licensed inspector. The inspector shall report to the City his findings and recommendations. The City will issue to the property owner within 30 days after completion of the inspection, a Notice of Non-Compliance for all systems which do not comply with this Ordinance. Each system must have a manhole or other suitable structure for measuring and sampling of waste material.

B. A system shall be deemed to be a “failing system” if such system discharges sewage into a seepage pit, cesspool, drywell or leaching pit, or if such system has less than three feet of soil or sand between the bottom of the distribution medium and the saturated soil level or bedrock. An existing system that is not otherwise considered an imminent threat to public health which was constructed under a permit need not be upgraded, repaired, replaced, or its use disconnected notwithstanding the fact that at no time of a compliance inspection, there appears to be less than the required three foot separation between the system bottom and saturated soil or bedrock. In all such cases, the determination whether or not to require upgrade, repair, replacement or discontinuance of use shall be within the discretion of the City Sewer Inspector.

C. Any system which constitutes an “imminent threat to the public health or safety” as that term is defined in Minnesota Rules Chapter 7080 through 7083 shall be deemed to be a failed system.

D. The owner shall have a period of 10 months following the date of the Notice of Non-Compliance in which to bring the system into compliance with the Ordinance. In cases where the system constitutes an imminent threat with the potential to immediately and adversely impact the public health or safety, the owner shall within 30 days after receipt of such Notice, cause such system to be pumped, cleaned and repaired as necessary to remove the threat to public health and safety. The owner shall certify to the City that such cleaning and repairs have been completed. The City may conduct further inspections to determine whether the system is no longer an imminent threat to public health or safety.

E. Individual servicing of septic tanks and absorption units shall require a permit from the City and shall conform to the Minnesota Department of Health and Minnesota Pollution Control Agency specifications. Disposal of sludge and scum removed from the system shall be:

    1. Into a municipal sewer disposal system where practical.

    2. In the absence of a public sewer, at a land application site that is approved by the City Sewer Inspector, or Washington County.

F. Owners of sanitary disposal systems shall be required to cooperate with and assist the City in taking water samples, as required to test the adequacy of such systems.

51.12 GRAVELESS PIPE TRENCH SYSTEMS.

The Hancor Graveless Pipe Trench System, or other graveless systems for treating sewage have been determined by the City Sewer Inspector and the County of Washington be inadequate systems. No such systems will be allowed in the City of Dellwood.

51.13 LICENSING.

A. No person, firm or corporation shall engage in the business of inspecting, altering, repairing, installing, constructing, pumping or cleaning of sewer disposal systems within the City without having the proper current license to do so, and without first obtaining the proper Permit from the City.

B. Prior to the commencement of work, the Contractor shall supply to the City Clerk evidence of the Contractor's current license issued under the requirements of the applicable Code of the State of Minnesota. Applicant shall file with the City Clerk policies of public liability and property damage insurance which shall remain in force and effect during the entire term of said license and which shall contain a provision that they shall not be canceled without ten days written notice to the City. No work shall be done under license until said insurance policies have been filed with and approved by the City.

51.14 PENALTY.

A. Any person found to be violating any provisions of this Ordinance shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all violations.

B. Any person who shall continue any violation beyond the time limit provided for in division (A) of this section shall be guilty of a misdemeanor punishable by law. Each day in which any violation occurs shall be deemed as a separate offense.

C. If the violation is such as to constitute a nuisance, the City may take steps to prosecute the offense under a nuisance ordinance or statute and to abate the nuisance as provided by law.

D. Any person violating any of the provisions of this Ordinance shall become liable to the city for any expense, loss or damage occasioned by the city by reason of that violation.

E. Each and every sewer service charge levied by the City pursuant to this Ordinance is made a lien upon the lot or premises served, and all charges which are as of October 31 of each year past due and delinquent shall be certified to the County Auditor by November 29, for collection.

CHAPTER 52: WATER/WELLS REGULATIONS

Section:

52.01	Supply From One Service
52.02	Well Abandonment
52.03	Adoption by Reference of MN Statutes, Chapter 103I

52.01 SUPPLY FROM ONE SERVICE.

No more than one single family dwelling shall be supplied from one private well except by Conditional Use Permit.

52.02 WELL ABANDONMENT.

All wells not in use must be sealed in accordance with Minnesota Statute section 103I.345, as amended and Minnesota Rules Chapter 4725, Wells and Borings, as amended, unless a maintenance permit has been issued by the State of Minnesota.

52.03 ADOPTION BY REFERENCE.

All of the applicable provisions of Minnesota Statutes 2008, Chapter 103I entitled “Wells and Borings, and Underground Uses” are adopted and incorporated into this Ordinance by reference thereto, as if the same were herein set forth in their entirety.

CHAPTER 53: STORMWATER DRAINAGE

Section:

53.01 Ordinance Adoption

53.02 Findings

53.03 Purpose

53.04 Definitions

53.05 Scope and Effect

53.06 Exemptions

53.07 Stormwater Management Plan

53.08 Illicit Discharge and Connection

53.09 Plan Review Procedures

53.10 Approval Standards

53.11 Site Erosion Control

53.12 Stormwater Management Criteria for Permanent Facilities

53.13 Design Standards

53.14 Wetlands

53.15 Street Slopes

53.16 Catch Basins

53.17 Drain Leaders

53.18 Inspection and Maintenance

53.19 Models/Methodologies/Computations

53.20 Watershed Management Plan

53.21 Easements

53.22 Lawn Fertilizer Regulations

53.23 Phosphorous Turf Fertilizer Use Restrictions

53.24 Consumer Information

53.25 Research Evaluation; Report

53.26 Enforcement

53.27 Penalty

53.28 Other Controls

53.29 Severability

53.01 ORDINANCE ADOPTION.

This Ordinance is adopted pursuant to Minnesota Statutes Section 462.351.

53.02 FINDINGS.

The City of Dellwood hereby finds that uncontrolled and inadequately planned use of wetlands, woodlands, natural habitat areas, areas subject to soil erosion and areas containing restrictive soils adversely affects the public health, safety and general welfare by impacting water quality and contributing to other environmental problems, creating nuisances, impairing other beneficial uses of environmental resources and hindering the ability of the City of Dellwood to provide adequate water, sewage, flood control, and other community services. In addition, extraordinary public expenditures may be required for the protection of persons and property in such areas and in areas which may be affected by unplanned land usage.

53.03 PURPOSE.

The purpose of this Ordinance is to provide, preserve and promote the natural resources within the City of Dellwood and protect them from adverse effects occasioned by poorly sited development or incompatible activities by regulating land disturbing or development activities that would have an adverse and potentially irreversible impact on water quality and unique and fragile environmentally sensitive land; by minimizing conflicts and encouraging compatibility between land disturbing and development activities and water qualify and environmentally sensitive lands; and by requiring detailed review standards and procedures for land disturbing or development activities proposed for such areas, thereby achieving a balance between urban growth and development and protection of water quality and natural areas.

53.04 DEFINITIONS.

For the purpose of this Ordinance, the following terms, phrases, words and third derivatives shall have the meaning stated below. When not inconsistent with the content, words used in the present tends include the future tens, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directive.

APPLICANT. Anyone who wishes to obtain a building permit, zoning or subdivision approval.

CONTROL MEASURE. A practice or combination of practices to control erosion and attendant pollution.

DETENTION FACILITY. A permanent natural or man-made structure, including wetlands, for the temporary storage of runoff which contains a permanent pool of water.

FLOOD FRINGE. The portion of the floodplain outside of the floodway.

FLOODPLAIN. The area adjoining a watercourse or water basin that have been or may be covered by a regional flood.

FLOODWAY. The channel of the watercourse, the bed of water basins, and those portions of the adjoining floodplains that are reasonably required to carry and discharge floodwater and provide water storage during a regional flood.

HYDRIC SOILS. Soils that are saturated, flooded, or podded long enough during the growing season to develop anaerobic conditions in the upper part.

HYDROPHILIC VEGETATION. Macrophysics plant life growing in water, soil or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

LAND DISTURBING OR DEVELOPMENT ACTIVITIES. Any change of the land surface including removing vegetative cover, excavating, filling, grading, and the construction of any structure.

PERSON. Any individual, firm, corporation, partnership, franchisee, association or subdivision 15.

PUBLIC WATERS. Waters of the state as defined in Minnesota Statutes section 103G.005, Subd. 15.

REGIONAL FLOOD. A flood that is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of a 100 year recurrence interval.

RETENTION FACILITY. A permanent natural or man made structure that provides for the storage of storm water runoff by means of a permanent pool of water.

SEDIMENT. Solid matter carried by water, sewage, or other liquids.

STRUCTURE. Anything manufactured, built, constructed or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas, pools, patios, courts, recreational facilities, docks and decks.

WETLANDS. Lands transitionally between terrestrial and aquatic systems where the water table is equally at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands include all types of 3,4 and 5 wetlands as defined in U.S. Fish and Wildlife service circular number 39 (1971 edition). Not included within the definition of public waters and having an area of 2.5 acres or more.

53.05 SCOPE AND EFFECT.

Applicability. Every applicant for a building permit, subdivision approval, or a permit to allow land disturbing activities must submit a stormwater management plan. No building permit, subdivision approval, or permit to allow land disturbing activities shall be issued until approval for the storm water management plan or a waiver of the approval requirements has been obtained in strict conformance with the provisions of this Ordinance. The provisions of this Ordinance apply to all land, public or private, located within the City of Dellwood.

53.06 EXEMPTIONS.

The provisions of this Ordinance do not apply to:

A. Any part of a subdivision in a plat for the subdivision has been approved by the City on or before the effective date of this Ordinance.

B. Any land disturbing activities for which plans have been approved by the Rice Creek Watershed District within six months prior to the effective date of this Ordinance and not withdrawn or revoked.

C. A lot for which a building permit has been approved on or before the effective date of this Ordinance.

D. Installation of fence, sign, telephone, and electric poles and other kinds of posts, poles, or communications equipment.

E. Emergency work to protect life, limb or property.

53.07 STORMWATER MANAGEMENT PLAN.

A. Application. A written application for storm water management approval, along with the proposed stormwater management plan, shall be filed with the City and shall include a statement indicating the grounds upon which the approval is requested, that the proposed use is permitted by right or as an exception in the underlying zoning district, and adequate evidence showing that the proposed use will conform to the standards set forth in this Ordinance. Prior to applying for approval of a stormwater management plan, an applicant may have the stormwater management plans reviewed by the appropriate departments of the City.

Two sets of clearly legible, blue or black lined copies or drawings and required information shall be submitted together with payment of all required fees for processing and approval as set forth in this Ordinance and a bond when required, in the amount to be calculated in accordance with that section. Drawings shall be prepared to a scale appropriate to the site of the project and suitable for the review to be performed. As a minimum it shall be 1 inch equals 100 feet.

B. At a minimum, the stormwater management plan shall contain the following information:
    1. Existing site map. A map of existing site conditions showing the site and immediately adjacent areas, including:
        a. The name and address of the applicant, the section, township and range, north point, date and scale of the drawing and number of sheets.
        b. Location of the tract by an insert map at a scale sufficient to clearly identify the location of the property and giving such information as the names and numbers of adjoining roads, railroads, utilities, subdivisions, towns and districts or other landmarks.
        c. Existing topography with a contour interval appropriate to the topography of the land but in not case having a contour interval greater than 2 feet.
        d. A delineation of all streams, rivers, public waters and wetlands located on and immediately adjacent to the site, including depth of water, a description of all vegetation which may be found in the water, a statement of general water quality and any classification given to the water body or wetland by the Minnesota DNR, the

MPCA and/or the United State Army Corps of Engineers.

e. Location and dimensions of existing storm water drainage systems and natural drainage patters on and immediately adjacent to the site delineating in which direction and at what rate storm water is conveyed from the site, identifying the receiving stream, river, public water or wetland and setting forth those areas of the unaltered site where stormwater collects.
f. A description of the soils of the site, including a map indicating soil types of areas to be disturbed as well as a soil report containing information on the suitability of the soils for the type of development proposed and the type of sewage disposal proposed and describing any remedial steps to be taken by the developer to render the soils suitable.
g. Vegetative cover and clearly delineating any vegetation proposed for removal; and
h. 100-year flood plains, flood fringes and floodways.

2. Site Construction Plan. A site construction plan including:
    a. Locations and dimensions of all proposed land disturbing activities and any phasing of those activities.
    b. Locations and dimensions of all temporary soil or dirt stockpiles.
    c. Locations and dimensions of all construction site erosion control measures necessary to meet the requirements of this Ordinance.
    d. Schedule of anticipated starting and completion dates of each land disturbing activity including the installation of construction site erosion control measures needed to meet the requirements of this Ordinance; and
    e. Provisions for maintenance of the construction site erosion control measures during construction.
3. Plan of final site conditions. A plan of final site conditions on the same scale as the existing site map showing the site changes including:
    a. Finished grading shown at contours at the same intervals as provided above or as required to clearly indicate the relationship of proposed changes to existing topography and remaining features.
    b. A landscape plan, drawn to an appropriate scale, including dimensions and distances and the location, type, size and description of all proposed landscape materials which will be added to the site as part of the development.
    c. A drainage plan of the developed site delineating in which direction and at what rate storm water will be conveyed from the site and setting forth the areas of the site where storm water will be allowed to collect.
    d. The proposed size, alignment and intended use of any structures to erected on the site.
    e. A clear delineation and tabulation of all areas which shall be

paved or surfaced, including a description of the surfacing material to be used, and

f. Any other information pertinent to the particular project which in the opinion of the applicant is necessary for the review of the project.

53.08 ILLICIT DISCHARGE AND CONNECTION.

A. PURPOSE/INTENT. The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Dellwood through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

1. To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.

2. To prohibit illicit connections and discharges to the MS4.

3. To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

B. DEFINITIONS. For the purposes of this ordinance, the following shall mean:

AUTHORIZED ENFORCEMENT AGENCY. The City of Dellwood, Minnesota.

BEST MANAGEMENT PRACTICES (BMPS). Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems.

BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY. Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing,

grading, excavating, and demolition.

HAZARDOUS MATERIALS. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLEGAL DISCHARGE. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 8 of this ordinance.

ILLICIT CONNECTIONS. An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

Any drain or conveyance connected from a commercial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by the City of Dellwood.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT.

Means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC §1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

NON-STORM WATER DISCHARGE. Any discharge to the storm drain system that is not composed entirely of storm water.

PERSON. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes;

refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

PREMISES. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

STORM DRAINAGE SYSTEM. Publicly-owned or privately owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

STORM WATER. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORM WATER MANAGEMENT PLAN. A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

WASTEWATER. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

C. APPLICABILITY. This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Dellwood.

D. RESPONSIBILITY FOR ADMINISTRATION. The City of Dellwood shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the City of Dellwood may be delegated in writing by the Mayor of the City of Dellwood to persons or entities acting in the beneficial interest of or in the employ of the City.

E. COMPATIBILITY WITH OTHER REGULATIONS. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human

health or the environment shall control.

F. SEVERABILITY. The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

G. ULTIMATE RESPONSIBILITY. The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

H. DISCHARGE PROHIBITIONS.

1. Prohibition of Illegal Discharges. No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than storm water.
The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

    a. The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.

    b. Discharges or flow from firefighting, and other discharges specified in writing by the City of Dellwood as being necessary to protect public health and safety.

    c. Discharges associated with dye testing, however this activity requires a verbal notification to the City of Dellwood prior to the time of the test.

    d. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency

(EPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

The City of Dellwood may evaluate and remove any of the above exemptions if it is determined that they are causing an adverse impact.

2. Prohibition of Illicit Connections.
    a. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
    b. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
    c. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
    d. Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the City of Dellwood.
    e. Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the City of Dellwood requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City of Dellwood.

I. WATERCOURSE PROTECTION. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

J. CONSTRUCTION ACTIVITY DISCHARGES.

1. Submission of NOI.

    a. Any person subject to a construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Dellwood prior to the allowing of discharges to the MS4.

    b. The operator of a facility, including construction sites, required to have an NPDES permit to discharge storm water associated with construction activity shall submit a copy of the Notice of Intent (NOI) to the City of Dellwood at the same time the operator submits the original Notice of Intent to the EPA as applicable.

    c. The copy of the Notice of Intent may be delivered to the City of Dellwood either in person or by mailing it to:

        Notice of Intent to Discharge Storm Water
        City of Dellwood
        111 Wildwood Road
        Willernie, MN 55090

    d. A person commits an offense if the person operates a facility that is discharging storm water associated with construction activity in a manner which is not in compliance with such permit.

K. COMPLIANCE MONITORING.

1. Right of Entry: Inspection and Sampling. The City of Dellwood shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

    Unreasonable delays in allowing the City of Dellwood access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with an NPDES permit to discharge storm water associated with construction activity commits an offense if the person denies the City of Dellwood reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

2. Search Warrants. If the City of Dellwood has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City of Dellwood may seek issuance of a search warrant from any court of competent jurisdiction.

L. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES. The City of Dellwood will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with construction activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water management plan (SWMP) as necessary for compliance with requirements of the NPDES permit.

M. NOTIFICATION OF SPILLS. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City of Dellwood in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Dellwood within three (3) business days of the phone notice. If the discharge of prohibited materials emanates from a

commercial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five (5) years.

Failure to provide notification of a release as provided above is a violation of this ordinance.

N. VIOLATIONS, ENFORCEMENT, AND PENALTIES.

1. Violations. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

   In the event the violation constitutes an immediate danger to public health or public safety, the City of Dellwood is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City of Dellwood is authorized to seek costs of the abatement as outlined in Q.

2. Warning Notice. When the City of Dellwood finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the City of Dellwood may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the City of Dellwood to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

3. Notice of Violation. Whenever the City of Dellwood finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the City of Dellwood may order compliance by written notice of violation to the responsible person.

   The Notice of Violation shall contain:

   a. The name and address of the alleged violator;

b. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;

c. A statement specifying the nature of the violation;

d. A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;

e. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

f. A statement that the determination of violation may be appealed to the City of Dellwood by filing a written notice of appeal within ten (10) days of service of notice of violation; and

g. A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Such notice may require without limitation:

a. The performance of monitoring, analyses, and reporting;

b. The elimination of illicit connections or discharges;

c. That violating discharges, practices, or operations shall cease and desist;

d. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property

e. Payment of a fine to cover administrative and remediation costs; and

f. The implementation of source control or treatment BMPs.

4. Compensatory Action. In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the City of Dellwood may impose

upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

a. Suspension Of MS4 Access.

b. Emergency Cease and Desist Orders

When the City of Dellwood finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the City of Dellwood may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

a. Immediately comply with all ordinance requirements; and

b. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the City of Dellwood may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The City of Dellwood may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the City of Dellwood that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the City of Dellwood within five (5) days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

5. Suspension due to Illicit Discharges in Emergency Situations. The City of Dellwood may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City of Dellwood may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

6. Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Dellwood will notify a violator of the proposed termination of its MS4 access. The violator may petition the City of Dellwood for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City of Dellwood.

7. Civil Penalties. In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the City of Dellwood shall deem appropriate, after the City of Dellwood has taken one or more of the actions described above, the City of Dellwood may impose a penalty not to exceed $500.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation. The amount of the maximum penalty may be increased from time to time by resolution of the City Council.

8. Criminal Prosecution. Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law and shall be subject to a criminal penalty of $1,000.00 per violation per day and/or imprisonment for a period of time not to exceed 90 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

O. APPEAL OF NOTICE OF VIOLATION. Any person receiving a Notice of Violation may appeal the determination of the City of Dellwood. The notice of appeal must be received within 5 business days from the date of the Notice of Violation.

P. ENFORCEMENT MEASURES AFTER APPEAL. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, the

City of Dellwood shall enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Q. COST OF ABATEMENT OF THE VIOLATION. Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten (10) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

R. VIOLATIONS DEEMED A PUBLIC NUISANCE. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

S. REMEDIES NOT EXCLUSIVE. The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Dellwood to seek cumulative remedies.

The City of Dellwood may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

T. ADOPTION OF ORDINANCE. This ordinance shall be in full force and effect upon its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

53.09 PLAN REVIEW PROCEDURES.

A. PROCESS. Stormwater management plans meeting the requirements of Section 53.07 shall be submitted to the Planning Commission for review in accordance with the standards of Section 53.10. The Commission shall recommend approval, recommend approval with conditions, or recommend denial of the

stormwater management plan. Following Planning Commission action, the stormwater management plan shall be submitted to the City Council at its next regular meeting. City Council action for the stormwater management plan must be accomplished within 120 days following the date application for approval is filed with the City.

B. DURATION. Approval of plans submitted under the provisions of this Ordinance shall expire one year after the date of approval unless construction has commenced in accordance with the plan. However, if prior to the expiration of the approval, the applicant makes a written request to the City for an extension of time to commence constructing setting forth the reasons for the requested extension, the City may grant one extension of not greater than one single year. The City shall make a decision on the extension within 30 days of receipt. Any plan may be revised in the same manner as originally approved.

C. CONDITIONS. A stormwater management plan may be approved subject to compliance with conditions reasonable and necessary to insure that the requirements contained in this Ordinance are met. Such conditions may, among other matters, limit the size, kind, or character of the proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, stage the work over time, require alternation of the site design to insure buffering, and require the conveyance to the City of Dellwood or other public entity of certain lands and interests therein.

D. PERFORMANCE BOND. Prior to approval of any stormwater management plan, the applicant shall submit an agreement to construct such required physical improvements, to dedicate property or easement, or to comply with such conditions as may have been agreed to. Such agreement shall be accompanied by a bond to cover the amount of the established cost of complying with the requirement. The agreement and the bond shall guarantee completion and compliance with conditions within a specific time, which time may be extended in accordance with section 53.09 (B).

   The adequacy, condition and acceptability of any agreement and bond shall be determined by the City Council or any official for the City as may be designated by resolution of the City Council.

E. FEES. All applications for stormwater plan approval shall be accompanied by a processing and approval fee as determined by City Council Resolution.

53.10 APPROVAL STANDARDS.

No storm water management plan which fails to meet the standards contained in this section shall be approved by the City Council.

A. SITE DEWATERING. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, swirl concentrators or other appropriate controls as appropriate. Water may not be discharged in a manner that causes erosion or flooding of the site or receiving channels or a wetland.

B. WASTE AND MATERIAL DISPOSAL. All water and unused building materials (including garbage, debris, clearing wastes, wastewater, toxic materials or hazardous materials) shall be properly disposed of off-site and not allowed to be carried by runoff into a receiving channel or storm sewer system.

C. TRACKING. Each site shall have gravel roads, access drives and parking areas of sufficient width and length to prevent sediment from being tracked onto public or private roadways. Any sediment reaching a public or private road shall be removed by street cleaning (not flushing) before the end of each workday.

D. DRAIN INLET PROTECTION. All storm drain inlets shall be protected during construction until control measures are in place with a straw bale, silt fence or equivalent barrier meeting accepted design criteria, standards and specifications contained in the MPCA publication “Protecting Water Quality in Urban Areas”.

53.11 SITE EROSION CONTROL.

The following criteria (a through d) apply only to construction activities that result in runoff leaving the site.

A. Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described below. Sheet flood runoff from adjacent areas greater than 10,000 square feet in area shall be diverted around disturbed areas, unless shown to have resultant runoff rates of less than 0.5 ft./sec. across the disturbed area for the one year storm. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels.

B. All activities on the site shall be conducted in a logical sequence to minimize the area of bare soils exposed at any one time.

C. Runoff from the entire disturbed area on the site shall be controlled by meeting either subsection 1 and 2 or 1 and 3:

1. All disturbed ground left inactive for fourteen or more days shall be stabilized by seeding or sodding or by mulching or covering or other equivalent control measure.

2. For sites with more than 10 acres disturbed at one time, or if a channel originates in the disturbed area, one or more temporary or permanent sedimentation basins shall be constructed. Each sediment basin shall have a surface area of at least one percent of the draining to the basin and at least three feet of depth and constructed in accordance with accepted design specifications. Sediment shall be removed to maintain a depth of three feet. The basin discharge rate shall also be sufficiently low as to not cause erosion along the discharge channel of the receiving water.

3. For site with less than ten acres disturbed at one time, silt fences, straw bales, or equal control measures shall be placed along all side slope and down slope sides of the site. If a channel or areas of concentrated runoff passes through the site, silt fence shall be placed along the channel edges to reduce sediment reaching the channel. The use of silt fences, straw bales or equivalent control measures must include a maintenance and inspection schedule.

D. Any soil or dirt storage piles containing more than ten cubic yards of material should not be located with a down slope drainage length of less than 25 feet from the toe of the pile to a roadway or drainage channel. If remaining for more than 7 days, they shall be stabilized by mulching, vegetative cover, tarps or other means. Erosion from piles which will be in existence for less than 7 days shall be controlled by placing straw bales or silt fence barriers around the pile. In street utility repair or construction soil or dirt storage piles located closer than 25 feet to a roadway or drainage channel must be covered with tarps or suitable alternative control, if exposed for more than 7 days, and the storm drain inlets must be protected with straw bales or other appropriate filtering barriers.

53.12 STORM WATER MANAGEMENT CRITERIA FOR PERMANENT FACILITIES.

A. An applicant shall install or construct on or for the proposed land disturbing or development activities, all storm water management facilities necessary to manage increased runoff so that the two year, ten year, and 100 year storm peak discharge rates existing before the proposed development shall not be increased

and accelerated channel erosion shall not occur as a result of the proposed land disturbing or development activity. An applicant may also make an in-kind or monetary contribution to the development and maintenance community storm water management facilities designed to serve multiple land disturbing and development activities undertaken by one or more persons including the applicant.

B. The applicant shall give consideration to reducing the need for storm water management facilities by incorporating the use of natural, topography and land cover such as wetlands, ponds, natural swales and depressions as they exist before development to the degree that they can accommodate the additional flow of water without compromising the integrity of quality of the wetland or pond.

C. The following storm water management practices shall be investigated in developing a storm water management plan in the following descending order of preference:

1. Natural filtration of precipitation on-site;

2. Flow attenuation by use of open vegetated swales and natural depressions.

3. Storm water retention facilities, and

4. Storm water detention facilities.

D. A combination of successive practices may be used to achieve the applicable minimum control requirements specified in subsection a) above. Justification shall be provided by the applicant for the method selected.

53.13 DESIGN STANDARDS.

Storm water detention facilities construction in the City of Dellwood shall be designed according to the most current technology as reflects in the MPCA publication “Protecting Water Quality in Urban Areas” and shall contain, at a minimum, the following design factors:

A. A permanent pond surface area equal to two percent of the impervious area draining to the pond or one percent of the entire area draining to the pond, whichever amount is greater.

B. An average permanent pool depth of four to ten feet.

C. A permanent pool length to width ratio of 1:1 or greater.

D. A minimum protective shelf extending ten feet into the permanent pool with a slope of 10:1, beyond which slopes should not exceed 3:1.

E. A protective buffer strip of vegetation surround the permanent pool at a minimum width of one road (16.5 feet) (this width is consistent with the draft rules developed by the board of Water and Soil Resources under the Wetland Conservation Act of 1991).

F. All storm water detention facilities shall have a devise to keep oil, grease, and other floatable material from moving downstream as a result of normal operations.

G. Storm water detention facilities for new development must be sufficient to limit peak flows in each subwatershed to those that existed before the development for the 10 year storm event. All calculations and hydrologic models/information used in determining peak flow shall be submitted along with the storm water management plan.

H. All storm water detention facilities must have as a forebay to remove course-grained particles prior to discharge into as a watercourse or storage basin.

53.14 WETLANDS.

A. Runoff shall not be discharged directly into wetlands without presettlement of the runoff.

B. A protective buffer strip of natural vegetation at least one rod in width shall surround all wetlands.

C. Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value. Replacement must be guided by the following principals in descending order of priority:

1. Avoid the direct or indirect impact of the activity that may destroy or diminish the wetland.

2. Minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation.

3. Rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment.

4. Reducing or eliminating the impact over time by preservation and

maintenance operations during the life of the activity, and

5. Compensating for the impact by replacing or providing suitable wetland resources or environments.

53.15 STREET SLOPES.

No land disturbing or development activities shall be allowed on slopes or 10 percent or more without a Conditional Use Permit.

53.16 CATCH BASINS.

All newly installed and rehabilitated catch basins shall be provided with a sump area for the collection of course grained material. Such basins shall be cleared when they are half filled with material.

53.17 DRAIN LEADERS.

All newly constructed and reconstructed building will route drain leaders to pervious areas wherein the runoff can be allowed to infiltrate. The flow rate of water exiting the leaders shall be controlled so erosion occurs in the pervious areas.

53.18 INSPECTION AND MAINTENANCE.

All storm water management facilities shall be designed to minimize the need of maintenance, to provide access for maintenance purposes not structurally sound. All storm water management facilities shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in storm water runoff. The director of public works, or designated representative, shall inspect all storm water management facilities during construction, during the first year of operation, and at least once every five years thereafter. The inspection records will be kept on file at the public works department for a period of 6 years. It shall be the responsibility of the applicant to obtain any necessary easement or other property interests to allow access to the stormwater management facilities for inspection and maintenance purposes.

53.19 MODELS/METHODOLOGIES/COMPUTATIONS.

Hydrologic models and design methodologies used for the determination of runoff and analysis of stormwater management structures shall be approved by the director of public works. Plans, specifications and computations for storm water management facilities submitted for review shall be sealed and signed by a registered professional engineer. All computations shall appear on the plan submitted for review, unless other

wise approved by the director of public health.

53.20 WATERSHED MANAGEMENT PLAN.

Groundwater management plans. Stormwater management plans shall be consistent with adopted watershed management plans and groundwater management plans prepared in accordance with M.S. section 103B.231, and 103B.255, respectively, and as approved by the Minnesota Board of Water and Soil Resources in accordance with state law.

53.21 EASEMENTS.

If a storm water management plan involves direction of some or all runoff of the site, it shall be the responsibility of the applicant to obtain from the adjacent property owners any necessary easements or other property interests concerning flowage of water.

53.22 LAWN FERTILIZER REGULATIONS.

A. USE OF IMPERVIOUS SURFACES. Adoption by reference of Minnesota Statute entitled “Fertilizer, Soil Amendment and Plant Amendment Law”.

All of the applicable provisions of Minnesota Statutes, 2008, Chapter 18C.001, through 18C.71, as amended, entitled “Fertilizer, Soil Amendment and Plant Amendment Law” are hereby adopted and incorporated into this Ordinance by reference thereto, as if the same were herein set forth in their entirety. A complete and current copy of M.S. 18C.01 through 18C.71 is on file and available for inspection and copying in the office of the Dellwood City Clerk.

53.23 PHOSPHOROUS TURF FERTILIZER USE RESTRICTIONS.

A. DEFINITIONS. For the purpose of this section, “turf” means noncrop land planted in closely moved, managed grasses, including but not limited to, residential and commercial residential property, private golf courses, and property owned by federal, state or local units of government, including parks, recreation areas, and public golf courses. Turf does not mean pasture, hayland, hay, turf grown on turf farms, or any other form of agricultural production.

B. PHOSPHORUS USE RESTRICTIONS.

1. A person may not apply a fertilizer containing the plan nutrient phosphorus to turf statewide, except under conditions listed in paragraph 2.

2. Paragraph (1.) does not apply when:

a. a tissue, soil, or other test by a laboratory or method approved by the commissioner is performed within the last 3 years indicates that the level of available phosphorus in the soil is insufficient to support healthy turf growth.

b. the property owner or an agent of the property owner is first establishing turf via seed or sod procedures, and only during the first growing season; or

c. the fertilizer containing the plan food phosphorus is used on a golf course under the direction of a person licensed, certified, or approved by an organization with an on going training program approved by the commissioner.

3. Application of phosphorous fertilizer authorized under paragraph (2.) must not exceed rates recommended by the University of Minnesota and approved by the commissioner.

53.24 CONSUMER INFORMATION.

The commissioner, in consultation with the University of Minnesota Extension Service, fertilizer industry representative, lakes groups and other interested or affected parties, must produce consumer information on use restrictions and recommended best practices for lawn fertilizer containing phosphorus, and on best management practices for other residential sources of phosphorus in the urban landscape. The information must be in a format and of a content suitable for posting and distribution at retail points of sale of fertilizer that contains phosphorus and is for use on turf.

53.25 RESEARCH EVALUATION; REPORT.

The commissioner, in cooperation with the University of Minnesota and the University of Minnesota Extension Service, and, after consultation with representatives of the fertilizer industry, lakes groups, and other interested or affected parties, shall evaluate research needs and encourage targeted research opportunities to investigate the effects of phosphorus fertilization of turn on urban stormwater quality. The commissioner must evaluate the effectiveness of the restrictions on phosphorus fertilizers under this section and report the legislature by 01/15/2007.

53.26 ENFORCEMENT.

Sections 53.23 and 53.26 are enclosed by local units of government under their existing authority. Violation of a provision in either of these sections is a petty misdemeanor.

53.27 PENALTY.

Any person, firm or corporation violating any provision of this section is guilty of a misdemeanor offense, upon conviction thereof may be punished by a fine or imprisonment or both, according to law. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

53.28 OTHER CONTROLS.

In the event of any conflict between the provisions of this ordinance and the provisions of the zoning subdivision erosion control or shoreland protection ordinance adopted by the City the more restrictive standard prevails.

53.29 SEVERABILITY.

The provisions of this section are severable. If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of the application of this section which can be given effect with the invalid provision or application.

CHAPTER 54: ADOPTION OF RICE CREEK WATERSHED RULES FOR SHORELAND AND WETLAND AREAS

Section:

54.01	Purpose
54.02	Appointment Of Regulatory/Permitting Authority
54.03	Adoption Of Rules
54.04	Penalties

54.01 PURPOSE.

The Rice Creek Watershed District (District) is a political subdivision of the State of Minnesota established under the Minnesota Watershed Law. The District is also a watershed management organization as defined under the Minnesota Metropolitan Surface Water Management Act, and is subject to the directives and authorizations of that act. Under the Watershed Law and the Metropolitan Surface Water Management Act, the District exercises a series of powers to accomplish is statutory purposes. The District's general statutory purpose is to conserve natural resources through development planning, flood control, and other conservation projects, based upon sound scientific principles.

As required under the Metropolitan Surface Water Management Act, the District has adopted a Watershed Management Plan, which contains the framework and guiding principles for the District in carrying out its statutory purposes. It is the intent of the City of Dellwood (City) to implement the Plan's principles and objectives in these rules.

By adopting these rules the City seeks to protect the public health and welfare and the natural resources of the City by providing reasonable regulation of the modification or alteration of the City's lands and waters to reduce the severity and frequency of flooding and high water, to preserve floodplain and wetland storage capacity to improve the chemical, physical and biological qualify of surface water, to reduce sedimentation, to preserve waterbodies' hydraulic and navigational capacity, to preserve natural wetland and shoreland features, and to minimize public expenditures to avoid or correct these problems in the future.

The District rules include certain rules adopted to implement area-specific resource management plans (RMP's) developed by the District. RMP's are designed to achieve identified water resource management needs within specific drainage areas of the watershed. Each set of such rules (labeled sequentially as Rule RMP-1, Rule RMP-2, and so on) applies to a delineated geographic area. Activity within an area governed by an RMP rules will be subject to that rule in place of the general District rules. Accordingly, a property owner intending an activity subject to District permitting requirements first should determine whether the activity will be governed by an RMP rule or by the general District rules.

54.02 APPOINTMENT OF REGULATORY / PERMITTING AUTHORITY.

The City of Dellwood designates the Rice Creek Watershed District as the regulatory/permitting authority for the City with regard to all land use project within the City which involve shoreland and wetland areas (as defined in Dellwood's Shoreland Management Ordinance).

54.03 ADOPTION OF RULES.

The rules, policies and regulations of the Rice Creek Watershed District, adopted by the District on February 13, 2008, three copies of which are on file in the Office of the Dellwood City Clerk, are hereby adopted as the rules, policies and regulations of the City of Dellwood applicable to all land use requests and projects which involve shoreland or wetland areas (as defined in Dellwood's Shoreland Management Ordinance).

Every provision contained in the Rules of the Rice Creek Watershed District adopted on February 13, 2008 are hereby adopted and made a part of this Ordinance as if fully set forth herein.

54.04 PENALTIES.

Any person who violates any provision of this Ordinance is guilty of a misdemeanor offense and upon conviction thereof, may be punished by a fine and imprisonment, or both, according to law.

CHAPTER 55: ESCROW FUND TO BE ESTABLISHED IN CONNECTION WITH CONSTRUCTION WORK IN THE CITY OF DELLWOOD

Section:

55.01 Purpose

55.02 Severability

55.01 PURPOSE.

A. Where a permit is issued by the City for construction work, landscaping, excavation and/or filling operations on private property, any damage caused within the street right-of-way by reason of said work shall be promptly repaired by the person obtaining the building permit, and all debris deposited on the street right-of-way by reason of said work shall be promptly removed. Such repairs and removal shall be done to the satisfaction of the City as determined by the Road Commissioner.

B. To insure compliance with the above, every person applying for a permit shall pay a fee of $1,000.00, prior to receiving a permit. This fee shall be deemed to have been paid by the property owner, and may be refunded only to the property owner.

C. If the person obtaining the permit complies with the requirements in paragraph A above, the amounts set forth in paragraph B above shall be refunded by the City upon completion and inspection of all work for which any permits has been issued for said property. Any costs incurred by the City in restoring streets to their original condition before construction shall be subtracted from the above fee.

D. If the above fees do not cover all of the costs incurred by the City in restoring the streets, the City will bill the additional amount to the property owner who received the permit and the additional amount shall be payable by that person within 30 days from such billing date.

55.02 SEVERABILITY.

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

CITY OF DELLWOOD
ROAD ESCROW AGREEMENT

DATE:_____

PROPERTY ADDRESS: _____

_____

PERMIT ISSUED FOR: _____
(type of work)

_____

PROPERTY OWNERS NAME / ADDRESS: _____

_____

CONTRACTOR'S NAME / ADDRESS: _____

_____

AMOUNT OF ROAD ESCROW DEPOSITED WITH CITY: $_____

Pursuant to Ordinance Number: _____
The road escrow funds deposited with the City may be refunded to the property owner only, after final completion of all work to be done at the property address, and final inspection by the City Building Inspector and City Road Commissioner.

The provisions of Ordinance Number:____, attached hereto, are made a part of this agreement.

Property Owners: X_____

X_____

City Clerk: _____

Final Inspection Date: _____
Payment Refund Date: _____
Amount Refunded: _____

CHAPTER 56: RIGHT-OF-WAY ORDINANCE

Section:

56.01 Findings, Purpose, and Intent

56.02 Election To Manage The Public Rights-Of-Way

56.03 Definitions

56.04 Administration

56.05 Utility Coordination Committee

56.06 Registration and Right-of-Way Occupancy

56.07 Registration Information

56.08 Reporting Obligations

56.09 Permit Requirement

56.10 Permit Applications

56.11 Issuance of Permit; Conditions

56.12 Action on Small Wireless Facility Permit Applications

56.13 Permit Fees

56.14 Right of Way Restoration

56.15 Joint Applications

56.16 Supplementary Applications

56.17 Other Obligations

56.18 Denial or Revocation of Permit

56.19 Installation Requirements

56.20 Inspection

56.21 Work Done Without a Permit

56.22 Supplementary Notification

56.23 Revocation of Permits

56.24 Mapping Data

56.25 Location and Relocation of Facilities

56.26 Pre-Excavation Facilities Location

56.27 Damage to Other Facilities

56.28 Right-of-Way Vacation
56.29 Indemnification and Liability
56.30 Abandoned and Unusable Facilities
56.31 Appeal
56.32 Reservation of Regulatory and Police Powers
56.33 Severability
56.34 Non-Exclusive Remedy

56.01 FINDINGS, PURPOSE, AND INTENT.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the city hereby enacts this new chapter of this code relating to right-of-way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163,237.79, 237.81, and 238.086 (the "Act") and 2017 Session Laws, Chapter 94 amending the Act and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 -7819.9950 and Minnesota Rules Chapter 7560 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

56.02 ELECTION TO MANAGE THE PUBLIC RIGHTS-OF-WAY.

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects, pursuant Minn. Stat. 237.163 subd. 2(b), to manage rights-of-way within its jurisdiction.

56.03 DEFINITIONS.

The following definitions apply in this chapter of this code. References hereafter to . "sections" are, unless otherwise specified, references to sections in tills chapter. Defined terms remain defined terms, whether or not capitalized.

ABANDONDED FACILITY. A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

APPLICANT. Any person requesting permission to excavate or obstruct a right-of-way.

CITY. The City of Dellwood, Minnesota. For purposes of section 56.28, city also means the City's elected officials, officers, employees and agents.

COLLOCATE OR COLLOCATION. To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit.

COMMISSION. The State Public Utilities Commission.

CONGESTED RIGHT-OF-WAY. A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes, section 216D.04 subdivision 3, over a continuous length in excess of 500 feet.

CONSTRUCTION PERFORMANCE BOND. Any of the following forms of security provided at permittee's option:

- Individual project bond;
- Cash deposit;
- Security of a form listed or approved under Minn. Stat. Sec. 15.73, subd. 3;
- Letter of Credit, in a form acceptable to the City;
- Self-insurance, in a form acceptable to the City;
- A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.

DEGRADATION. A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

DEGRADATION COST. Subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

DEGRADATION FEE. The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

DIRECTOR. The director of the department of public works of the City, or her or his designee. If the City has not designated a director of the department of public works, this role shall be held by the City Clerk or a designee of the City Clerk.

DELAY PENALTY. The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

EMERGENCY. A condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

EQUIPMENT. Any tangible asset used to install, repair, or maintain facilities in any right-of-way. Excavate. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

EXCAVATION PERMIT. The permit which, pursuant to this chapter, must be obtained before a person may excavate in a right-of-way. An Excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

EXCAVATION PERMIT FEE. Money paid to the city by an applicant to cover the costs as provided in Section 56.13.

FACILITY OR FACILITIES. Any tangible asset in the right-of-way required to provide Utility Service.

FIVE-YEAR PROJECT PLAN. Shows projects adopted by the city for construction within the next five years.

HIGH DENSITY CORRIDOR. A designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

HOLE. An excavation in the pavement, with the excavation having a length less than the width of the pavement.

LOCAL REPRESENTATIVE. A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

MANAGEMENT COSTS. The actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of- way or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 56.30 of this chapter.

OBSTRUCT. To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

OBSTRUCTION PERMIT. The permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

OBSTRUCTION PERMIT FEE. Money paid to the city by a permittee to cover the costs as provided in Section 56.13.

PATCH or PATCHING. A method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

PAVEMENT. Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel

PERMIT. Has the meaning given "right-of-way permit" in Minnesota Statutes, section 237.1

PERMITTEE. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.

PERSON. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

PROBATION. The status of a person that has not complied with the conditions of this chapter.

PROBATIONARY PERIOD. One year from the date that a person has been notified in writing that they have been put on probation.

REGISTRANT. Any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

RESTORE OR RESTORATION. The process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

RESTORATION COST. The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

PUBLIC RIGHT-OF-WAY or RIGHT-OF-WAY. The area on, below, or above a public roadway, highway, street, cartway, bicycle lane or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

RIGHT-OF-WAY PERMIT. Any permit identified in Section 56.09 (A), depending on the context, required by this chapter.

RIGHT-OF-WAY USER. (1) A telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subd. 4; or (2) a person owning or controlling a facility in the right- of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

SERVICE OR UTILITY SERVICE. Includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. Chapter. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stat., Chapter 308A; and (6) water, and sewer, including service

laterals, steam, cooling or heating services.

SERVICE LATERAL. An underground facility that is used to transmit, distribute or furnish 'gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

SMALL WIRELESS FACILITY. A wireless facility that meets both of the following qualifications:

A. each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and

B. all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

SUPPLEMENTARY APPLICATION. An application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

TEMPORARY SURFACE. The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

TRENCH. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

TELECOMMUNICATIONS RIGHT-OF-WAY USER. A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this chapter except to the extent such entity is offering wireless service.

TWO YEAR PROJECT PLAN. Shows projects adopted by the city for construction within the next two years.

UTILITY POLE. A pole that is used in whole or in part to facilitate telecommunications or electric service.

WIRELESS FACILITY. Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

WIRELESS SERVICE. Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

WIRELESS SUPPORT STRUCTURE. A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

56.04 ADMINISTRATION.

The director is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The director may delegate any or all of the duties hereunder.

56.05 UTILITY COORDINATION COMMITTEE.

The city may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the city in obtaining information and, by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The city may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the city.

56.06 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

A. **Registration.** Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information.

B. **Registration Prior to Work.** No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the city.

C. **Exceptions.** Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, nothing herein relieves a person from complying with the provisions of the Minn. Stat. Chap. 216D, Gopher One Call Law.

56.07 REGISTRATION INFORMATION.

A. **Information Required.** The information provided to the city at the time of registration shall include, but not be limited to:

1. Each registrant's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.

2. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

3. A certificate of insurance or self-insurance:
    a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the City;

    b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising

out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placementand use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

c. Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;

d. Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; and

e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

f. The city may require a copy of the actual insurance policies.

g. If the person is a corporation, a copy of the certificate is required to be filed under Minn. Stat. Sec. 300.06 as recorded and certified to by the Secretary of State.

h. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval from said commission or other state or federal agency.

B. **Notice of Changes.** The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

56.08 REPORTING OBLIGATIONS.

A. **Operations.** Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and

shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.
The plan shall include, but not be limited to, the following information:

1. The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and
2. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

The term "project" in this section shall include both next-year projects and five-year projects.

By January 1 of each year, the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by February 1, each registrant may change any project in its list of next year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

B. **Additional Next-Year Projects.** Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

56.09 PERMIT REQUIREMENT.

A. **Permit Required.** Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the city to do so.

1. Excavation Permit. An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
2. Obstruction Permit. An obstruction permit is required by a registrant to hinder

free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

3. Small Wireless Facility Permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

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

C. **Delay Penalty.** In accordance with Minnesota Rule 7819.1000 subd. 3 and notwithstanding Subdivision. B of this Section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by the city council.

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

56.10 PERMIT APPLICATIONS.

Application for a permit is made to the city. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

1. Registration with the city pursuant to this chapter;
2. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
3. Payment of money due the city for:
    a. permit fees, estimated restoration costs and other management costs;
    b. prior obstructions or excavations;
    c. any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City;
    d. franchise fees or other charges, if applicable.
4. Payment of disputed amounts due the city by posting security or depositing in an

escrow account an amount equal to at least 110% of the amount owing.

5. Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

56.11 ISSUANCE OF PERMIT; CONDITIONS.

A. **Permit Issuance.** A permit may be issued upon satisfaction of the following criteria:

1. Compliance with applicable and reasonable health, safety, and welfare regulations consistent with the City's public right-of-way management.
2. Compliance with the standards set forth in Chapter 56.
3. All facilities shall make reasonable accommodations for decorative wireless support structures.
4. Submittal shall address the restocking, replacement, or relocation requirements when a new wireless support structure is placed in a public right-of-way.

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

C. **Small Wireless Facility Conditions.** In addition to Subdivision B, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

1. A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
2. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
3. No wireless facility may extend more than 10 feet above its wireless support structure.

4. Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
5. No new support structures shall be placed less than 5 feet from the street curb, edge of street pavement, or edge of pedestrian ways.
6. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.
7. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
8. Any initial engineering survey and preparatory construction work association with collocation shall be paid by the applicant.
9. All facilities and support structures shall use design, materials, colors, textures, screening, and landscaping to blend in within the surrounding natural setting and built environment. All facilities shall be designed to minimize the visual impact and, in the sole discretion of the City, appear to be compatible with the surroundings.
10. Facilities shall use colors to minimize the visual impact.
11. Facilities that are integrated into a pole structure shall be in scale or proportionate to the pole structure.
12. Above ground cabinets shall be screened with landscaping materials.
13. All facilities shall be designed to prevent unauthorized climbing or entry.
14. All facilities shall be maintained in good condition, appearance, order, and repair.
15. Small cell facilities shall not be illuminated by artificial means and shall not display lights, other than the lights intended for the illumination of the street.
16. New wireless support structures and antennae in single family residentially zoned areas shall require a conditional use permit as required by Section 155.16.

D. **Small Wireless Facility Agreement**. A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement shall require payment of the following:

1. $150 per year for rent to collocate on the city structure.
2. $25 per year for maintenance associated with the collocation;
3. A monthly fee for electrical service as follows:
    a. $73 per radio node less than or equal to 100 maximum watts;
    b. $182 per radio node over 100 maximum watts; or

c. The actual costs of electricity, if the actual cost exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant.

56.12 ACTION ON SMALL WIRELESS FACILITY PERMIT APPLICATIONS.

A. **Deadline for Action.** The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

B. **Consolidated Applications.** An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:

1. are located within a two-mile radius;
2. consist of substantially similar equipment; and
3. are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

C. **Tolling of Deadline.** The 90-day deadline for action on a small wireless facility permit application may be tolled if:

1. The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.
2. The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.

3. The city and a small wireless facility applicant agree in writing to toll the review period.

56.13 PERMIT FEES.

A. **Excavation Permit Fee.** The city shall impose an excavation permit fee in an amount sufficient to recover:

1. management costs;
2. degradation costs, if applicable.

B. **Obstruction Permit Fee.** The city shall impose an obstruction permit fee in an amount sufficient to recover management costs.

C. **Small Wireless Facility Permit Fee.** The city shall impose a small wireless facility permit fee in an amount sufficient to recover:

1. management costs, and;
2. city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

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

E. **Non-Refundable.** Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 56.23 are not refundable.

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

56.14 RIGHT-OF-WAY PATCHING AND RESTORATION.

A. **Timing.** The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 56.16.

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

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

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

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

C. **Standards.** The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100.

D. **Duty to Correct Defects.** The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the city, shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 56.16.

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

56.15 JOINT APPLICATIONS.

A. **Joint application.** Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

B. **Shared fees.** Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

C. **With City projects.** Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

56.16 SUPPLEMENTARY APPLICATIONS.

A. **Limitation on Area.** A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area:

1. make application for a permit extension and pay any additional fees required thereby, and
2. be granted a new permit or permit extension.

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

56.17 OTHER OBLIGATIONS.

A. **Compliance with Other Laws.** Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, Section 216D.Ol-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules

and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

B. **Prohibited Work.** Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

C. **Interference with Right-of-Way.** A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

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

56.18 DENIAL OR REVOCATION OF PERMIT.

A. **Reasons for Denial.** A permit may be denied based on the following findings:

1. Denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.
2. The facility does not comply with the standards set forth in Chapter 56.

B. **Procedural Requirements.** The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

56.19 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, Sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in Section 56.23 of this ordinance.

56.20 INSPECTION.

A. **Notice of Completion.** When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rule 7819.1300.

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

C. **Authority of Director.**
   1. At the time of inspection, the director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
   2. The director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to Sec. 56.23.

56.21 WORK DONE WITHOUT A PERMIT.

A. **Emergency Situations.** Each registrant shall immediately notify the director of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement Within two (2) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees

associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

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

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

56.22 SUPPLEMENTARY NOTIFICATION.

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

56.23 REVOCATION OF PERMITS.

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

1. The violation of any material provision of the right-of-way permit;
2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
3. Any material misrepresentation of fact in the application for a right-of-way permit;
4. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 56.19.

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

C. **Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the City, that will cure the breach. Permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

D. **Cause for Probation.** From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

E. **Automatic Revocation.** If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

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

56.24 MAPPING DATA.

A. **Information Required.** Each registrant and permittee shall provide mapping information required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the director accurate maps and drawings certifying the "as-built" location of all equipment installed, owed and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the City's electronic mapping system, when practical or as a condition imposed by the

director. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration.

B. **Service Laterals.** All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the director reasonably requires it. Permittees or their subcontractors shall submit to the director evidence satisfactory to the director of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005 shall be a condition of any City approval necessary for:

1. Payments to contractors working on a public improvement project including those under Minnesota Statutes Chapter 429 and
2. City approval under development agreements or other subdivision or site plan approval under Minnesota Statutes Chapter 462. The director shall reasonably determine the appropriate method of providing such information to the City. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors.

56.25 LOCATION AND RELOCATION OF FACILITIES.

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

B. **Undergrounding.** Unless otherwise permitted by an existing franchise or MS. 216B.34, or unless existing above ground equipment is repaired or replaced, or unless infeasible such as in the provision of electric service at certain voltages, new construction, the installation of new equipment, and the replacement of old equipment shall be done underground or contained within buildings or other structures in conformity with applicable codes unless otherwise agreed to by the City in writing, and such agreement is reflected in applicable permits.

C. **Corridors.** The city may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

D. **Nuisance.** One year after the passage of this chapter, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

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

56.26 PRE-EXCAVATION FACILITIES LOCATION.

In addition to complying with the requirements of Minn. Stat. 216D.Ol-.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

56.27 DAMAGE TO OTHER FACILITIES.

When the City does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the city shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way

which it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the City's response to an emergency occasioned by that registrant's facilities.

56.28 RIGHT-OF-WAY VACATION.

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

56.29 INDEMNIFICATION AND LIABILITY

By registering with the City, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

56.30 ABANDONED AND UNUSABLE FACILITIES.

A. **Discontinued Operations.** A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the City that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.

B. **Removal.** Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

56.31 APPEAL.

A right-of-way user that:

1. Has been denied registration;
2. Has been denied a permit;
3. Has had a permit revoked;
4. Believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, Subd. 6; or
5. Disputes a determination of the director regarding Section 56.23 of this ordinance

May have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its

appeal with sufficient time to include the appeal as a regular agenda item. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

56.32 RESERVATION OF REGULATORY AND POLICE POWERS.

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

56.33 SEVERABILITY.

If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

56.34 NON-EXCLUSIVE REMEDY.

The remedies provided in this Ordinance and other Ordinances are not exclusive or in lieu of other rights and remedies that the City may have at law or in equity. The City is hereby authorized to seek legal and equitable relief for actual or threatened injury to the public rights of way, including damages to the right of way, whether or not caused by violation of any of the provisions of this chapter or other provisions of law.

CHAPTER 70: TRAFFIC REGULATIONS

Section:

70.01	State Highway Traffic Regulations Adopted by Reference
70.02	Driver's License Act Incorporated by Reference
70.03	Chauffer's License Provisions Incorporated by Reference
70.04	Trucks Prohibited on Certain Streets
70.05	Stop Intersections
70.06	Through Streets and One-Way Streets
70.07	Turning Restrictions
70.08	U-Turns Restricted
70.09	Excessive Noise
70.10	Exhibition Driving Prohibited
70.11	Motor Vehicle Noise
70.12	Removal of Keys

70.01 STATE HIGHWAY TRAFFIC REGULATIONS ADOPTED BY REFERENCE.

A. The Highway Traffic Regulations Act is hereby adopted by reference. The regulatory provisions of M.S. Chapter 169, as it may be amended from time to time, are hereby adopted as a traffic ordinance regulating the use of highways, streets and alleys within the city and are hereby incorporated in and made a part of this section as completely as if set out in full herein.
B. The penalty for violation of the provisions of state statutes adopted by reference in this section shall be identical with the penalty provided for in the Minnesota statutes for the same or similar offense.

70.02 DRIVER'S LICENSE ACT INCORPORATED BY REFERENCE.

The regulatory provisions and definitions of Minnesota Statutes 1969, Chapter 171, as amended, are hereby adopted as a driver's license ordinance regulating the driving of motor vehicles within the City of Dellwood and are hereby incorporated and made a part of this ordinance as completely as if set forth in full herein, pursuant to Minnesota Statutes Annotated, Section 471.62.

70.03 CHAUFFER'S LICENSE PROVISIONS INCORPORATED BY REFERENCE.

The regulatory provisions and definitions of Minnesota Statutes 1969, Sections 168.39, 168.40, 168.141, 168.413, 168.42 and 168.423, are hereby adopted, as amended, as a chauffeur's license ordinance regulating the driving of motor vehicles by chauffeurs in the City of Dellwood, and are hereby incorporated in and made a part of this ordinance as completely as if set out here in full, pursuant to Minnesota Statutes Annotated, Section 471.62.

70.04 TRUCKS PROHIBITED ON CERTAIN STREETS.

A. The City Council by resolution may designate streets on which travel by commercial vehicles in excess of 10,000 pounds axle weight is prohibited. The City shall cause appropriate signs to be erected on those streets. No person shall operate a commercial vehicle on posted streets in violation of the restrictions posted.
B. The weight restrictions established in division (A) shall not apply to city or emergency vehicles, public school buses or to garbage and refuse trucks making regular collections and are under contract with the city.

70.05 STOP INTERSECTIONS.

The city may designate intersections as a stop intersection and require all vehicles to stop at one or more entrances to those intersections. The city shall post signs at those designated intersections, giving notice of the designation as a stop intersection. It shall be unlawful for any person to fail to obey the markings or signs posted under this section.

70.06 THROUGH STREETS AND ONE-WAY STREETS.

The City Council by resolution may designate any street or portion of a street as a through street or one-way street where necessary to preserve the free flow of traffic or to prevent accidents. No trunk highway shall be so designated unless the consent of the Commissioner of Transportation to the designation is first secured. The city shall cause appropriate signs to be posted at the entrance to designated streets. It shall be unlawful for any person to fail to obey the markings or signs posted under this section.

70.07 TURNING RESTRICTIONS.

A. The City Council by resolution may, whenever necessary to preserve a free flow of traffic or to prevent accidents, designate any intersection as one where turning of vehicles to the left or to the right, or both, is to be restricted at all times or during specified hours. No intersection on a trunk highway shall be so designated until the consent of the Commissioner of Transportation to the designation is first obtained.
    1. The city shall mark by appropriate signs any intersection so designated.

2. No person shall turn a vehicle at any intersection contrary to the direction on those signs.

B. Except at intersections, and then only if not posted otherwise, it shall be unlawful for any person operating a motor vehicle on any street to cross the center of the street for the purpose of parking on the side of the street opposite the original direction of travel.

C. It shall be unlawful for any person operating a motor vehicle on any street to back up or drive from a parked position and commence travel in the opposite direction from which the motor vehicle faced when parked.

70.08 U-TURNS RESTRICTED.

No person shall turn a vehicle so as to reverse its direction at any intersection where traffic is regulated by a traffic control signal.

70.09 EXCESSIVE NOISE.

A. As used in this section, **LIGHT-MOTOR VEHICLES** means any automobile, van, motorcycle, motor-driven cycle, motor scooter, go-cart, mini-bike, trail bike, or truck with a gross vehicular weight of less than 10,000 pounds.

B. It shall be unlawful for any person to operate, or cause to operate, or use a light-motor vehicle in a manner as to cause, or allow to be caused, excessive noise levels as a result of unreasonable rapid accelerations, deceleration, revving of engine, squealing of tires, honking of horns, or as a result of the operation of audio devices including but not limited to radios, phonograph, tape players, compact disc players or any other sound-amplifying device on or from the light-motor vehicle.

C. No person shall operate, or cause to operate, or use a light-motor vehicle in violation of the noise standards contained in Minn. Rules parts 7030.1050 and 7030.1060, as it may be amended from time to time.

D. No person shall operate, or cause to operate, or use a light-motor vehicle that discharges its exhaust other than through a muffler or other device that effectively prevents loud or explosive noises. No person shall operate, or cause to operate, or use a light-motor vehicle whose exhaust system has been modified, altered, or repaired in any way, including the use of a muffler cut-out or by-pass, that amplifies or otherwise increases noise above that emitted by the light-motor vehicle as originally equipped.

E. The following are exempted from the provisions of this section:
   1. Sound emitted from sirens of authorized emergency vehicles;
   2. Burglar alarms on light-motor vehicles of the electronic signaling type which also transmit an audible signal to a receiver which can be carried by the owner or operator of the vehicle.

70.10 EXHIBITION DRIVING PROHIBITED.

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

70.11 MOTOR VEHICLE NOISE.

A. Definitions. For the purposes of this section, the following phrases are defined as follows:

ABNORMAL OR EXCESSIVE NOISE.

a. Distinct and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort and repose of any person or precludes their enjoyment of property or affects their property's value;
b. Noise in excess of that permitted by M.S. 169.69, as it may be amended from time to time, which requires every motor vehicle to be equipped with a muffler in good working order; or
c. Noise in excess of that permitted by M.S. 169.693 and Minn. Rules parts 7030.1000 through 7030. 1050, as this statute and these rules may be amended from time to time, which establish motor vehicle noise standards.
d. *Engine Retarding Brake.* A dynamic brake, jake brake, Jacobs brake, C-brake, Paccar brake, transmission brake or other similar engine-retarding brake system which alters the normal compression of the engine and subsequently releases that compression.
e. It shall be unlawful for any person to discharge the exhaust or permit the discharge of the exhaust from any motor vehicle except through a muffler that effectively prevents abnormal or excessive noise and complies with all applicable state laws and regulations.
f. It shall be unlawful for the operator of any truck to intentionally use an engine-retarding brake on any public highway, street, parking lot or alley within the city which causes abnormal or excessive noise from the engine because of an illegally modified or defective exhaust system, except in an emergency.
g. Minnesota Statutes 169.69 and 169.693 (motor vehicle noise limits) and Minn. Rules parts 7030. 1000 through 7030. 1050, as these statutes and rules may be amended from time to time, are hereby adopted by reference.
h. Signs stating "VEHICLE NOISE LAWS ENFORCED" may be installed at locations deemed appropriate by the City Council to advise motorists of the prohibitions contained in this section, except that no sign stating "VEHICLE NOISE LAWS ENFORCED" shall be installed on a state highway without a permit from the Minnesota Department of Transportation. The provisions of this section are in full force and effect even if no signs are installed.

70.12 REMOVING KEYS.

No person shall leave a motor vehicle unattended on any street without first stopping the engine, locking the ignition and removing all ignition keys from the vehicle.

CHAPTER 71: PARKING REGULATIONS

Section:

71.01	No Parking Where Posted
71.02	Limited Parking
71.03	Other Parking Restrictions
71.04	Parking Certain Semi-Trailers Or Tractors On Public Streets Prohibited
71.05	Overnight Parking
71.06	Repairing Of Vehicles
71.07	Prohibiting Parking Areas In Front Yards In Residential Zones
71.08	Impoundment
71.09	Prima Facie Violations
71.10	Weight Restrictions
71.11	Removing Keys
71.12	Reference To City Code

71.01 NO PARKING WHERE POSTED.

No person shall stop, stand or park a vehicle upon the public streets of the city at any place where official signs or where appropriate devices, marks, or painting, either upon the surface of the street or the curb immediately adjacent thereto, prohibit these acts.

71.02 LIMITED PARKING.

No person shall stop, stand or park a vehicle upon the public streets of the city where official signs are erected limiting the parking time thereon, for a period of time in excess of the time as designated by the official signs.

71.03 OTHER PARKING RESTRICTIONS.

A. The City Council may by resolution order the placing of signs, devices or marks, or the painting of streets or curbs prohibiting or restricting the stopping, standing or parking of vehicles on any street where, in its opinion, as evidenced by a finding in

its official minutes, the stopping, standing or parking is dangerous to those using the highway, or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic. The signs, devices, marks or painting shall be official signs, devices, marks or painting, and no person shall stop, stand or park any vehicle in violation of the restrictions thereon or as indicated thereby.

B. "No parking" signs may be placed by city employees on any street of the city to permit construction, repair, snow removal, street cleaning or similar temporary activities. While the signs are in place, it shall be unlawful to park any vehicle on the streets or portion thereof so posted.
C. It shall be unlawful for a person to park in an area designated by Council resolution and posted as a fire lane.
D. It shall be unlawful for a person to park a motor vehicle in an area designated by posted signs pursuant to Council resolution for certain types of vehicles, unless the motor vehicle is one of the types of vehicles specifically permitted.
E. Every vehicle parked upon any street shall be parked to the right of the main traveled portion of the street and parallel to it and in such a manner as not to interfere with the free flow of traffic.

71.04 PARKING CERTAIN SEMI-TRAILERS OR TRACTORS ON PUBLIC STREETS PROHIBITED.

No person shall park a semi-tractor or trailer, or any truck rated with a gross vehicle weight in excess of 10,000 pounds, in any area of the city except when the vehicle is parked in a completely enclosed garage.

71.05 OVERNIGHT PARKING.

The following vehicles shall not be allowed to park on city streets overnight: repair, delivery, rented vehicles with commercial plates and refuse and recycling haulers or any other vehicle not registered as a passenger vehicle.

71.06 REPAIRING OF VEHICLES.

Minor repairs and tune-ups, such as replacement of spark plugs, spark plug wires, thermostat, radiator or heater hoses, oil changes and brake jobs shall be permitted on city streets; provided, that they can be accomplished within the same day and completed by one-half hour after dusk. All other repairs shall be considered major repairs and shall not be permitted on any city street, unless the repairs are made within an enclosed structure allowed within the zoning district. Damage to city streets because of repairs or lack of repairs shall be charged to the person responsible for the damage to the city streets.

71.07 PROHIBITING PARKING AREAS IN FRONT YARDS IN RESIDENTIAL ZONES.

A. Driveways in any area zoned for residential use shall not exceed 25% of the width at the front or side lot line. Where more than one driveway is desired or required, they shall be at least 70 feet apart.
B. The front part of any lot shall not be used for the parking of a commercial truck, trailer, tractor, recreational vehicle, camper, travel trailer, camper top, tent, wagon, boat, boat trailer, storage area or motor home.

71.08 IMPOUNDMENT.

Any police officer may order the removal of a vehicle from a street to a garage or other place of safety when the vehicle is left unattended and constitutes an obstruction to traffic or hinders snow removal, street improvements or maintenance operations. The vehicle shall not be released until the fees for towing and storage are paid in addition to any fine imposed for violation of this code.

71.09 PRIMA FACIE VIOLATIONS.

The presence of any motor vehicle on any street when standing or parked in violation of this chapter is prima facie evidence that the registered owner of the vehicle committed or authorized the commission of the violation.

71.10 WEIGHT RESTRICTIONS.

The City may, by resolution, prohibit the operation of vehicles upon any street under its jurisdiction or impose weight restrictions on vehicles to be operated on such street whenever the street, by reason of deterioration, rain, show or other climatic or road condition, may be damaged or destroyed unless the use of vehicles on the street is restricted or prohibited. The City shall erect and maintain signs clearly indicating the prohibition or restriction at each end of that portion of the street affected. No person shall operate a vehicle on a posted street in violation of the prohibition or restriction.

71.11 REMOVING KEYS.

No person shall leave a motor vehicle unattended on any street without first stopping the engine, locking the ignition and removing all ignition keys from the vehicle.

71.12 REFERENCE TO CITY CODE.

Parking is also subject to Chapter 152.10 of the City Code.

CHAPTER 72: SNOWMOBILES

Section:

72.01	Intent
72.02	Definitions
72.03	Application of Traffic Ordinances
72.04	Prohibited Uses
72.05	Unattended Vehicles
72.06	Stopping And Yielding
72.07	Persons Under 18
72.08	Penalty

72.01 INTENT.

It is the intent of this chapter to supplement M.S. 84.81 to 84.91, and M S. Ch.169, as these statutes may be amended from time to time and Minn. Rules parts 6100.5000 through 6100.6000, as these rules may be amended from time to time, with respect to the operation of snowmobiles. These statutes and rules are incorporated herein by reference. This section is not intended to allow what the state statutes and rules prohibit, nor to prohibit what the state statutes and rules allow.

72.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DEADMAN THROTTLE or ***SAFETY THROTTLE.*** A device which, when pressure is removed from the engine accelerator or throttle, causes the motor to be disengaged from the driving mechanism.

OPERATE. To ride in or on and control the operation of a snowmobile.

OPERATOR. Every person who operates or is in actual physical control of a snowmobile.

OWNER. A person, other than a lien holder having the property in or title to a snowmobile, or entitled to the use or possession thereof.

PERSON. Includes an individual, partnership, corporation, the state and its agencies and subdivision, and any body of persons, whether incorporated or not.

RECREATIONAL VEHICLE. Means any self-propelled vehicle used for recreational purposes, including, but not limited to trail bike, all-terrain vehicle, or motor vehicle licensed for highway operation which is being used for off road recreational purposes.

RIGHT-OF-WAY. The entire strip of land traversed by a highway or street in which the public owns the fee or an easement for roadway purposes.

ROADWAY. That portion of a highway or street improved, designed or ordinarily used for vehicular travel.

SNOWMOBILE. A self-propelled vehicle designed for travel on snow or ice, steered by skis or runners.

STREET. A public thoroughfare, roadway, alley or trail used for motor vehicular traffic which is not an interstate, trunk, county-state aid, or county highway.

72.03 APPLICATION OF TRAFFIC ORDINANCES.

The provisions of Ch. 70 of this code shall apply to the operation of snowmobiles upon streets and highways, except for those relating to required equipment, and except those which by their nature have no application.

72.04 PROHIBITED USES.

A. It is unlawful for any person to operate a snowmobile or recreational vehicle within the City of Dellwood:
    1. Except in full compliance with Minnesota Statutes.
    2. On any public sidewalk.
    3. On lands not his own, including private lakes, golf courses, City owned parks and open space, and the closed portion of Echo street, without specific written and dated permission of the owner, occupant or lessee of such land.
    4. On streets as permitted by this chapter at a speed exceeding 10 miles per hour.
    5. During the hours of 10:00 p.m. to 7:00 a.m.
B. It is unlawful for any person to operate a snowmobile within the limits of the city:
    1. So as to tow any person or thing in a public street or highway except through use of a rigid tow bar attached to the rear of the snowmobile; provided, that a disabled snowmobile may be towed to a private residence or a place of business where snowmobiles are repaired without the use of a rigid tow bar.
    2. Within 100 feet of any fisherman, pedestrian, skating rink or any area where the operation would conflict with use or endanger other persons or operation.
    3. To intentionally drive, chase, run over or kill any animal.
C. Emitting a noise level of greater than 78 decibels on the A scale at 50 feet.
D. Upon any roadway except for the purpose of direct travel to and from the person's home to and from the closest snowmobile area by the shortest possible route and

then only if traveling upon the adjacent right-of-way is obstructed. Crossings shall be made at an angle of approximately 90 decrees to the direction of travel upon such roadway, and only at a place which allows quick and safe crossing.

74.05 UNATTENDED VEHICLES.

No snowmobile or recreational vehicle shall be left unattended with the motor running or with the key in the ignition switch.

72.06 STOPPING AND YIELDING.

No snowmobile shall enter any uncontrolled intersection without making a complete stop. The operator shall then yield the right-of-way to any vehicles or pedestrians at the intersection, or so close to the intersection, as not to constitute an immediate hazard.

72.07 PERSONS UNDER 18.

A. No person under 14 years of age shall operate on streets or make a direct crossing of a city street as the operator of a snowmobile. A person 14 years of age or older, but less than 18 years of age, may operate a snowmobile on streets as permitted under this chapter and make a direct crossing of those streets only if he or she has in his or her immediate possession a valid snowmobile safety certificate issued pursuant to M.S. 84.872, as it may be amended from time to time.
B. It is unlawful for the owner of a snowmobile to permit the snowmobile to be operated contrary to the provision of this section.

72.08 PENALTY.

Any person who violates this ordinance, upon conviction thereof shall be guilty of a misdemeanor and be punished by fine of not more than $1,000. or imprisonment for not more than 90 days or both.

CHAPTER 73: RECREATIONAL VEHICLES

Section:

73.01	Purpose and Intent
73.02	Definitions
73.03	Operation Requirements
73.04	Street Crossings
73.05	Hours of Operation
73.06	Minimum Equipment Requirements
73.07	Motorized Golf Carts

73.01 PURPOSE AND INTENT.

A. The purpose of this chapter is to provide reasonable regulations for the use of recreational motor vehicles on public and private property in the city.
B. This chapter is not intended to allow what the Minnesota Statutes prohibit nor to prohibit what the Minnesota Statutes expressly allow.
C. It is intended to ensure the public safety and prevent a public nuisance.

73.02 DEFINITIONS.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

RECREATIONAL MOTOR VEHICLE. Any self-propelled vehicle and any vehicle propelled or drawn by a self-propelled vehicle used for recreational purposes including, but not limited to trail bike, off-highway motorcycle, as defined by M.S. 84.787, Subd. 7, as it may be amended from time to time, or other all-terrain vehicle as defined by M.S. 84.92, Subd. 8, as it may be amended from time to time, motorized go-carts, hovercraft or motor vehicle licensed for highway operation which is being used for off-road recreational purposes.

73.03 OPERATION REQUIREMENTS.

It is unlawful for any person to operate a recreational motor vehicle:

A. On private property of another without specific written permission of the owner of the property.
B. On publicly owned land, including park property, recreation areas and golf courses.

C. In a manner so as to create a loud, unnecessary or unusual noise which disturbs, annoys or interferes with the peace and quiet of other persons;
D. On a public sidewalk or walkway provided or used for pedestrian travel
E. While under the influence of intoxicating liquor or narcotics or habit-forming drugs;
F. At a rate of speed greater than reasonable or proper under all the surrounding circumstances;
G. At any place in a careless, reckless or negligent manner so as to endanger or be likely to endanger any person or property or to cause injury or damage thereto;
H. On any public street, highway or right-of-way unless the operator and the vehicle are licensed pursuant to Minnesota law;
I. To intentionally drive, chase, run over or kill any animal, wild or domestic;
J. By halting any recreational motor vehicle carelessly or heedlessly in disregard of the rights or the safety of others or in a manner so as to endanger or be likely to endanger any person or property or in excess of 25 miles per hour on publicly owned lands.

73.04 STREET CROSSINGS.

No person under 14 years of age operating the vehicles regulated herein shall make a direct crossing of any street, highway or public right-of-way.

73.05 HOURS OF OPERATION.

Hours for use are 7:00 a.m. to 10:00 p.m.

73.06 MINIMUM EQUIPMENT REQUIREMENTS.

A. Standard mufflers shall be properly attached and in constant operation to reduce the noise of operation of the motor to the minimum necessary for operation. No person shall use a muffler cutout, by-pass, straight pipe or similar device on a recreational motor vehicle motor. The exhaust system shall not emit or produce a sharp popping or crackling sound.
B. Brakes shall be adequate to control the movement of and to stop and hold under any conditions of operation.
C. At least one clear lamp shall be attached to the front with sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead during the hours of darkness under normal atmospheric conditions. The head lamp shall be so that glaring rays are not projected into the eyes of an oncoming vehicle operator. It shall also be equipped with at least one red tail lamp having a minimum candlepower of sufficient intensity to exhibit a red light plainly visible from a distance of 500 feet to the rear during the hours of darkness under normal atmospheric conditions. This

equipment shall be required and shall be in operating condition when the vehicle is operated between the hours of one-half hour after sunset and one-half hour before sunrise, or at times of reduced visibility.

73.07 MOTORIZED GOLF CARTS.

No person shall operate a motorized or electric golf cart on streets, or other public property.

CHAPTER 74: BICYCLES, ROLLER BLADES, ROLLER SKATES, ROLLER SKIS AND SKATEBOARDS

Section:

Bicycles

74.01 Definitions

74.02 Traffic Laws Apply
74.03 Manner and Number Riding
74.04 Hitching Rides
74.05 Where to Ride
74.06 Right-of-Way; Sidewalks
74.07 Carrying Articles
74.08 Lighting and Brake Equipment
74.09 Sale With Reflectors

Roller Blades, Roller Skates, Roller Skis And Skateboards

74.10 Definitions
74.11 Unlawful Acts
74.12 Right-of-Way
74.13 Hours of Use
74.14 Violations

BICYCLES

74.01 DEFINITIONS.

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

BICYCLE/UNICYCLE. Every device propelled solely by human power upon which any person may ride, having two tandem wheels, except scooters and similar devices, and including any device generally recognized as a ***BICYCLE*** though equipped with two front or rear wheels.

74.02 TRAFFIC LAWS APPLY.

Every person riding a bicycle on a street or upon any path set aside for the exclusive use of bicycles shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this title, except as to special regulations in this chapter and except as to those provisions of this chapter which by their nature can have no application.

74.03 MANNER AND NUMBER RIDING.

A. It is unlawful for any person propelling a bicycle to ride other than upon or astride a permanent and regular seat attached thereto.
B. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped, except on an infant seat attached to the bicycle, provided that the seat is equipped with a harness to hold the child securely in the seat and that protection is provided against the child's feet hitting the spokes of the wheel, or in a seat attached to the bicycle operator.

74.04 HITCHING RIDES.

It is unlawful for any person riding upon any bicycle, coaster, roller skates, roller blades, skateboard, sled, or toy vehicle to attach the same or themselves to any vehicle upon a street.

74.05 WHERE TO RIDE.

A. Every person operating a bicycle upon a street shall ride as near to the right side of the street as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.
B. Persons riding bicycles upon a street shall not ride more than two abreast except on paths or parts of streets set aside for the exclusive use of bicycles.

74.06 RIGHT-OF-WAY; SIDEWALKS.

Whenever a person is riding a bicycle upon any street or public trail, the person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing the pedestrian.

74.07 CARRYING ARTICLES.

It is unlawful for any person operating a bicycle to carry any package, bundle, or article which prevents the driver from keeping at least one hand upon the handlebars.

74.08 LIGHTING AND BRAKE EQUIPMENT.

A. Every bicycle, when in use at night time, shall be equipped with, or its operator shall carry a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front, and with a red reflector on the rear of a type approved by the Department of Public Safety which is visible from all distances from 100 feet to 600 feet to the rear when directly in front of lawful lower beams of headlamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector. No person may, at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead, operate a bicycle unless the bicycle or its operator is equipped with reflective surfaces that shall be visible during the hours of darkness from 600 feet when viewed in front of lawful lower beams of headlamps on a motor vehicle. The reflective surfaces shall include reflective materials on each side of each pedal to indicate their presence from the front or the rear and with a minimum of 20 square inches on each side of the bicycle or its operator of white reflective material. All reflective materials used in compliance with this section shall meet the requirements as prescribed by the Commissioner of Public Safety.
B. Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

74.09 SALE WITH REFLECTORS.

It is unlawful for any person to sell or offer for sale any new bicycle unless it is equipped with such reflectors as are prescribed in 74.08.

ROLLER BLADES, ROLLER SKATES, ROLLER SKIS AND SKATEBOARDS

74.10 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

OPERATE. To ride on or upon or control the operation of roller blades, roller skates, or a skateboard.

OPERATOR. Every person who operates or is in actual physical control of roller blades, roller skates, or a skateboard.

ROLLER BLADES/ROLLER SKATES. A shoe with wheels attached or a device with wheels which is designed to be attached to a shoe.

ROLLER SKIS. A pair of skis platformed with wheels attached which is intended to simulate skiing.

SKATEBOARD. A device for riding-upon, usually while standing, consisting of an oblong piece of wood, or of other composition, mounted on skate wheels.

74.11 UNLAWFUL ACTS.

A. It is unlawful for any person to operate roller blades, roller skates, roller skis or a skateboard under the circumstances set forth hereafter:
    1. On private property of another without the express permission to do so by the owner or occupant of the property.
    2. In any careless, reckless, or negligent manner so as to endanger or be likely to endanger the safety of any person or property of any other person.
B. It is unlawful for any person operating roller blades, roller skates, roller skis or a skateboard to attach the same, or the person of the operator, to any vehicle upon a street.
C. Every person operating roller blades, roller skates, roller skis or a skateboard upon a street shall ride as close as possible to the right-hand curb or edge of the street.
D. Every person operating roller blades, roller skates, roller skis or a skateboard upon a street shall observe the same rules of the road as required of bicycles, pursuant to M.S. 169.222.

74.12 RIGHT-OF-WAY.

The operator of roller blades, roller skates, roller skis or a skateboard emerging from any driveway shall yield the right-of-way to all pedestrians approaching the area and upon entering the street shall yield the right-of-way to all vehicles and bicycles approaching on the street.

74.13 HOURS OF USE.

It is unlawful for any person to use roller blades, roller skates, roller skis or a skateboard upon a public street, or other roadway from 10:00 p.m. to 6:00 a.m., except on private property with express permission of owner, and except if the roller blades, roller skates, roller skis, skateboard or operator are equipped with reflective surfaces that shall be visible during the hours of darkness from 600 feet when viewed in front of lawful lower

beams of head lamps on a motor vehicle. The reflective material shall be a minimum of 40 square inches. All reflective materials used in compliance with this section shall meet the requirements as prescribed by the Commissioner of Public Safety.

74.14 VIOLATIONS.

A person apprehended by a peace officer in violation of the provisions of this chapter does, by his or her use of the public sidewalks, streets, and public parking lots, consent to the impoundment by a police officer of the roller blades, roller skates, roller skis or skateboard for a period of three days upon a first offense, a week upon the second offense and 30 days upon a third or additional offense. Any operator aggrieved by the impoundment of his or her roller blades, roller skates roller skis or skateboard may petition the Council for a hearing thereon at the next regular Council meeting following the impoundment.

CHAPTER 90: BUILDING CODE

Section:

90.01	Codes Adopted by Reference
90.02	Policy and Purpose
90.03	Administration Required
90.04	Organization and Enforcement
90.05	Permits, Inspections and Fees
90.06	Certificates of Occupancy
90.07	Violations
90.08	Demolition Permit Site Plan
90.09	Permit Fees
90.10	Plan Review Fees
90.11	Fixed Fees
90.12	Payment of Fees
90.13	Work Commencing Before Permit Issuance
90.14	Fee Refunds
90.15	Re-inspections
90.16	Expiration
90.17	Expiration of Plan Review
Table 1-A	Building Permit Fees

90.01 CODES ADOPTED BY REFERENCE.

The Minnesota State Building Code, as adopted by the Commissioner of Labor and Industry pursuant to Minnesota Statutes Chapter 326B, including all amendments, rules and regulations established, adopted and published from time to time by the Commissioner of Labor and Industry, through the Building Codes and Standards Division is hereby adopted by reference with the exception of the optional chapters, unless specifically adopted by this Ordinance. The Minnesota State Building Code is hereby incorporated in this Ordinance as if fully set out herein.

90.02 POLICY AND PURPOSE.

The State Building Code governs the construction, reconstruction, alteration, and repair of buildings and other structures to which the code is applicable. The commissioner

shall administer and amend a state code of building construction which will provide basic and uniform performance standards, establish reasonable safeguards for health, safety, welfare, comfort, and security of the residents of the state and provide for the use of modern methods, devices, materials, and techniques which will in part tend to lower construction costs. The construction of buildings should be permitted at the least possible cost consistent with recognized standards of health and safety.

90.03 ADMINISTRATION REQUIRED.

The State Building Code adopts by reference the following codes, which shall be administered and enforced by the City of Dellwood and may be referred to as the Building Code:

A. Required Enforcement

1. Chapter 1300 Administration of the MN State Building Code
2. Chapter 1301 Building Official Certification
3. Chapter 1302 State Construction Approvals
4. Chapter 1305 Adoption of 2006 International Building Code
5. Chapter 1307 Elevators and Related Devices
6. Chapter 1309 Adoption 2006 International Residential Code
7. Chapter 1311 Adoption of the Guidelines for the Rehabilitation of Existing Buildings
8. Chapter 1315 Adoption of the 2005 National Electric Code
9. Chapter 1325 Solar Energy Systems
10. Chapter 1335 Flood Proofing Regulations
11. Chapter 1341 Minnesota Accessibility Code
12. Chapter 1346 Adoption of the 2000 International Mechanic and Fuel Gas Codes
13. Chapter 1350 Manufactured Homes
14. Chapter 1360 Prefabricated Buildings
15. Chapter 1361 Industrialized/Modular Buildings
16. Chapter 1370 Storm Shelters (Manufactured Home Parks)
17. Chapter 4715 Minnesota Plumbing Code

Minnesota Energy Code: consists of Minnesota Statutes 16B.6`7 (7670) and Minnesota Rules Chapter 7672, 7674, 7676 and 7678.

90.04 ORGANIZATION AND ENFORCEMENT.

The enforcement of the Code shall be conducted within the guidelines established by the Uniform Building Code. The Code shall be enforced within the corporate limits of the City.

The Building Code shall be enforced and administered by a State Certified “Building Official” designated by the City Council.

90.05 PERMITS, INSPECTIONS AND FEES.

A. The issuance of permits, conduction of inspections, and collection of fees shall be as provided for by resolution of the City Council from time to time. See attached schedule for current fees.
B. The Council of the City of Dellwood has adopted by resolution fees to compensate the City for the expenses of administrating and enforcing the Building Code. Fee schedules as may be amended from time to time by resolution of the Council, are on file in the office of the Clerk and are hereby made a part of this Ordinance by reference.
C. Surcharge. In addition to the permit fees required by the City, the Applicant shall pay a surcharge in the amount fixed by law. The amount required by law shall be remitted quarterly by the City to the Minnesota Department of Labor and Industry.

90.06 CERTIFICATES OF OCCUPANCY.

No building or structure may be used or occupied, and no change in the existing occupancy classification of a building or structure or portion of a building or structure may be made until the building official has issued a certificate of occupancy for it as provided in the State Building Code Chapter 1305.1000. Issuance of a certificate of occupancy shall not be construed as approval of a violation of the provisions of this Ordinance or any Ordinance of the City. Any certificate that presumes to give authority to violate or cancel provisions of this Ordinance or any other Ordinance of the City is not valid, unless granted under a waiver, variance, or conditional use permit approved by the City Council.

90.07 VIOLATIONS.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this Ordinance. Any violation of this Ordinance shall be punishable as a misdemeanor. Each day a violation is permitted to occur shall be treated as a separate violation.

90.08 DEMOLITION PERMIT SITE PLAN.

All demolition permits shall be accompanied by a site plan depicting the intended construction on the site of the property after demolition, if any. Such site plan shall be reviewed by the City and the applicant shall be informed of, and acknowledge receipt of, relevant general zoning information regarding the proposed post demolition construction. Such information is not guaranteed to include every potential outcome and does not abrogate potential responsibilities for any permits or land use requirements.

SCHEDULE OF FEES TO BE COLLECTED BY THE CITY OF DELLWOOD

90.09 PERMIT FEES.

The applicant for a permit shall provide an estimated construction value at the time of application, except for fixed fees. Permit valuations shall include total value of all construction work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. The Building Official shall make the final determination of value.

Valuation is based on the most current building valuation data provided by the State of Minnesota Building Codes and Standards Division or contract bid price. The Building Official shall make the final determination.

90.10 PLAN REVIEW FEES.

When submittal documents are required by the Building Official, a plan review fee shall be paid. Said plan review fee shall be 65 percent of the building permit fee. The plan review fees are separate fees from the permit fees and are in additional to the permit fees. When submittal documents are incomplete or changed so as to require additional plan review, fees shall be charged at the rate shown on Table 1-A. Plan review fees for similar plans falling under 1300.0160, Subpart 6, shall be 25 percent of the building permit fee.

90.11 FIXED FEES.

As found in Section 30.11 of the City Code.

90.12 PAYMENT OF FEES.

A permit shall not be issued until the fees prescribed by the City have been paid.

90.13 WORK COMMENCING BEFORE PERMIT ISSUANCE.

If work for which a permit is required by the code has been commenced without first obtaining a permit, a special investigation shall be made before a permit may be issued for the work. An investigation fee shall be collected and is in addition to the required permit fee, and equal to the permit fee.

90.14 FEE REFUNDS.

A. The Building Official may authorize refunding of any fees paid hereunder which was erroneously paid or collected.

B. The Building Official may authorize refunding of not more than 80% of the permit fee or plan review fee paid when no work has been done under a permit issued.
C. The Building Official shall not authorize refunding of any fee paid except on written application filed by the original permitee not later than 180 days after the date of fee payment.

90.15 RE-INSPECTIONS.

A. A re-inspection fee may be assessed for each inspection or re-inspection when such portion of which for which inspection is called for is not complete or when corrections called for are not made.
B. To obtain a re-inspection, the permit applicant shall be the re-inspection fee in accordance with Table 1-A in the fee schedule adopted by the City of Dellwood.
C. In instances where re-inspection fees have been assessed, no additional inspection of work will be performed until the required fees have been paid.

90.16 EXPIRATION.

A. Every permit issued by the Building Official shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefore shall be one-half the amount required for a new permit for such work, excluding plan review fee, provided no changes have been made or will be made in the original plans and specifications for such work.
B. The Building Official may grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

90.17 EXPIRATION OF PLAN REVIEW.

Application for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the Building Official. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee. In the event of a hardship and at the discretion of the Building Official a new plan review fee may be waived.

TABLE 1-A BUILDING PERMIT FEES
(Extracted from 1997 Uniform Building Code)

TOTAL VALUATION	FEE
$1.00 to $500.	$23.00
$501. to $2,000.	$23.50 for the first $500. plus $3.05 for each additional $100. or fraction thereof, to and including $2,000.
$2,001. to $25,000.	$69.25 for the first $2,000. plus $14. for each additional $1,000. or fraction thereof, to and including $25,000.
$25,001. to $50,000.	$391.25 for the first $25,000. plus $10.10 for each additional $1,000. or fraction thereof, to and including $50,000.
$50,001. to $100,000.	$643.75 for the first $50,000. plus $7. for each additional $1,000. or fraction thereof, to and including $100,000.
$100,001. to $500,000.	$993.75 for the first $100,000. plus $5.60 for each additional $1,000. or fraction thereof, to and including $500,000.
$500.001. to $1,000,000.	$3,233.75 for the first $500,000. plus $4.75 for each additional $1,000. or fraction thereof, to and including $1,000,000.
$1,000,001. and up	$5,608.75 for the first $1,000,000. plus $3.15 for each additional $1,000. or fraction thereof.

Other Inspections and Fees:

1. Inspections outside of normal business hours. — $47.00 per hour*
2. Re-Inspection fees. — $47.00 per hour*
3. Inspections for which no fee is specifically indicated. (minimum charge one-half hour) — $47.00 per hour*
4. Additional plan review required by changes, additions or revisions to plans. — $47.00 per hour*
5. For use of outside consultants for plan checking and inspections or both. — Actual costs **

* Or the total hourly cost to the jurisdiction, whichever is the greatest. The cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

** Actual costs including administrative and overhead costs.

CHAPTER 91: DOMESTIC ANIMALS

Section:

91.01	Definitions
91.02	Non-Domestic & Farm Animals
91.03	License Required
91.04	Restraint of Domestic Animals
91.05	Operation of Kennels
91.06	Appointment of Animal Control Authority
91.07	Seizure of Domestic: Animals-Impounding
91.08	Impounding and Boarding Fees
91.09	Domestic Animals Nuisances
91.10	Cleaning up Litter
91.11	Inoculation
91.12	Females in Heat
91.13	Rabies Control
91.14	Non-Domestic Animals
91.15	Cruelty
91.16	Dangerous and Potentially Dangerous Animals
91.17	Definitions
91.18	Dangerous Dog Prohibition
91.19	Potentially Dangerous Or Dangerous Declarations
91.20	Dangerous Dogs; Registration
91.21	Dangerous Dogs; Requirements
91.22	Microchip Identification
91.23	Penalty
91.24	Confiscation
91.25	Destruction of Dog in Certain Circumstances
91.26	Restrictions
91.27	Diseased Animals
91.28	Penalty
91.29	Exemptions

91.30 Constitutionality
91.31 Exceptions To Farm Animal Regulations

91.01 DEFINITIONS.

The following words, terms and phrases when used in this article, shall have the meaning ascribed to them in this section:

ANIMAL shall mean any mammal, reptile, amphibian, fish, bird (including all fowl and poultry) or other member commonly accepted as part of the animal kingdom. 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" shall mean 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, tigers, cougars, bobcats, leopards and jaguars, but excluding commonly accepted domestic 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, unless the crossbreed is commonly accepted as a domesticated house pet.
    d. Any member or relative of the rodent family, including any skunk (whether or not de-scented), raccoon, squirrel, or ferret, but excluding those members 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 the terms of this subpart, including but not limited to bears, deer, monkeys and game fish.
3. *Farm.* "Farm Animals" 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 equestrian family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens and turkeys), fowl (ducks, geese), swine (including Vietnamese pot-bellied pigs) goats, bees, and other animals associated with a farm, ranch or stable.

CAT shall be intended to mean both male and female of the Felidae species commonly accepted as domesticated house pets.

DOG shall be intended to mean both the male and female of the canine species, commonly accepted as domesticated household pets, and other domesticated animals of a dog kind.

ANIMAL CONTROL OFFICER (Animal Warden) A person or persons, or organization designated by the City to enforce the provisions of this Ordinance.

AT LARGE means any animal shall be deemed at large when the animal is off the property of the owner and not under leash, restraint or confinement as defined herein.

EXPOSED TO RABIES. An animal has been exposed to rabies if it has been bitten by, or has been exposed to, any animal known to have been infected with rabies.

KENNEL means any place where four (4) or more dogs or cats or other domestic animals over age three (3) months of age are kept, raised, sold, boarded, bred, shown, treated or groomed.

OWNER means any person who owns, harbors or keeps or has custody of any domestic animal, or the parents or guardians of a person under eighteen (18) years of age who owns, harbors, keeps or has custody of a domestic animal.

RESTRAINT. A dog is under restraint if the dog is on a leash, cord, chain or other restraint or confinement of a type sufficient to control the animal and held by the owner or other responsible person.

91.02 NON-DOMESTIC & FARM ANIMALS.

A. It shall be illegal for any person to own, possess, harbor, or offer for sale, any non-domestic animal within the City limits. Any owner of such an animal at the time of the adoption of this Code shall have thirty days in which to remove the animal from the City after which time the City may impound the animal as provided for in this Section. An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to handicapped or disabled persons.
B. Farm animals are only permitted on agricultural properties greater than 10 acres in size. Animals may not be kept at a density greater than 1 animal unit per acre of grazable land. Exceptions to this are only permitted as established by Section 91.31 of this Ordinance.

91.03 LICENSE REQUIRED.

No person shall own or keep or harbor any domestic animal more than three (3) months of age without securing a license therefore from the City Clerk, who shall keep a record of all licenses issued and shall issue a durable identification tag for each license. Upon receipt of an application reciting the name and address of the owner, the address of where the domestic animal will be kept, and the sex, breed, age, color and markings of the domestic animal for which a license is sought, and upon payment of a license fee to

be established by Council Resolution from time to time, the Clerk shall issue a license in the form of an identification tag for such animal. The term of such license shall be for two (2) years. No license shall be issued without the Certificate of Vaccination being presented at the time of application for said license. Each license tag shall bear the identification number of the application.

91.04 RESTRAINT OF DOMESTIC ANIMALS.
The owner shall keep his animal under restraint at all times and shall not permit such animal to be at large. Every female dog or cat in heat shall be kept confined in a building or in a veterinary hospital or boarding kennel, in such manner that such female dog or cat cannot come into contact with another animal, except for breeding purposes within such building.

91.05 OPERATION OF KENNELS.
It shall be unlawful to operate a kennel in any area of the City unless a permit to operate the same has been secured from the City Council. The term “kennel” shall mean any place where four (4) or more dogs over three (3) months of age are boarded, bred, or offered for sale. Any person who keeps or operates a kennel shall, in lieu of the license of each dog, apply for a kennel license for which he shall pay a fee to be established by Council Resolution from time to time.

91.06 APPOINTMENT OF ANIMAL CONTROL AUTHORITY.

The City may contract with a designated Animal Control Officer and establish compensation for such services. Said officer shall be an independent contractor.

91.07 SEIZURE OF DOMESTIC ANIMALS: IMPOUNDING.
The Animal Control Officer, any Peace Officer, or any other person may seize, impound or restrain any unlicensed domestic animal or any domestic animal found at large. The fact that a domestic animal is without a license attached to its collar shall be presumptive evidence that it is unlicensed. Any person or officer, other than the Animal Control Officer, impounding or restraining such domestic animal shall immediately deliver the same to the Animal Control Officer. The Animal Control Officer shall thereupon give notice to the owner of the same, or, of the owner is unknown, shall post notice of the impounding at the City office. If such domestic animal is not claimed within ten (10) days of such posted notice and all fees and charges paid, the Animal Control Officer shall humanely dispose of such domestic animal in such manner as he sees fit. The Animal Control Officer shall house and feed in a humane manner any domestic animal restrained or impounded.

91.08 IMPOUNDING AND BOARDING FEES.

The Animal Control Officer may charge such reasonable impounding fees for the care and board of any domestic animal restrained or impounded and any and all such fees so imposed shall be paid to the Animal Control Officer at the time of reclaiming the domestic animal. The City Council shall, from time to time, review all fees to be imposed

by the Animal Control Officer to determine their reasonableness, and may by resolution impose such additional fees reasonably related to the necessary and reasonable expenses incurred by the City for the capture, transportation, and/or care of the domestic animal. All such fees must be paid to the City Clerk to release the animals by the Animal Control Officer and the City Clerk shall issue a certificate to the Animal Control Officer evidencing such payment.

91.09 DOMESTIC ANIMAL NUISANCES.

The owner or custodian of any domestic animal shall prevent the domestic animal from committing in the City any act which constitutes a nuisance. It is a nuisance for any domestic animal to frequently or habitually bark or cry at any time of the day or night, to damage any lawn, garden, or other property or habitually worry, chase or molest people or other animals, or habitually chase automobiles. Failure of the owner or custodian of a domestic animal to prevent the animal from committing such nuisance is a violation of this Ordinance.

91.10 CLEANING UP LITTER.

The owner of any animal or person having the custody or control of any animal shall be responsible for cleaning up any feces of the animal and disposing of such feces in a sanitary manner whether on their own property, on the property of others or on public property.

91.11 INOCULATION.

All domestic animals in the City over the age of six months shall be inoculated for rabies, and shall be re-inoculated once every two years thereafter.

All dogs and cats kept harbored, maintained, or transported within the City shall be vaccinated at least once every two years by a licensed veterinarian for:

1. Rabies – with a live modified vaccine; and
2. Distemper

A certificate of vaccination must be kept on which is stated the date of vaccination, owner's name and address, the animal's name (if applicable) sex, description and weight, the type of vaccine, and the veterinarian's signature. Upon demand by the Clerk or Sheriff, the owner shall present for examination the required certificate(s) of vaccination for the animal(s). In cases where certificates are not presented, the owner or keeper of the animal(s) shall have seven days in which to present the certificate(s) to the Clerk or Sheriff's Office. Failure to do so shall be deemed a violation of this section. A certificate of the veterinarian inoculating said domestic animal shall be exhibited to the Clerk each time the license is issued to said domestic animal.

91.12 FEMALES IN HEAT.

Every female domestic animal in heat shall be confined in a building or other secure enclosure in such manner that such females cannot come into contact with another animal, except for the express purpose of planning breeding.

91.13 RABIES CONTROL.

A. Every animal which bites a person shall be promptly reported to the Animal Warden and shall thereupon be securely quarantined at the direction of the Warden for a period of ten (10) days and shall not be released from such quarantine except by written permission of the Animal Warden. Such quarantine may be on the premises of the owner, at the animal shelter or at the owner's option an expense in a veterinary hospital of his choice.
B. Upon demand made by the Animal Warden, the owner shall forthwith surrender any animal which has bitten a human, or which is suspected as having been exposed to rabies, for supervised quarantine, which expense shall be borne by the owner, and may be reclaimed by the owner if adjudged free of rabies, upon payment of fees set forth in this Ordinance, and upon compliance with licensing procedures set forth this Ordinance.
C. When a laboratory report gives a positive diagnosis of rabies, the City Health Officer may declare a City-wide quarantine for a period which he deems advisable, and during such period the local health officer shall be empowered to provide for a program of mass immunization of all animals within the City. Any animal bitten by an animal adjudged to have been rabid shall be forthwith destroyed, or at the owner's expense and option, treated for rabies infection by a licensed veterinarian.

91.14 NON-DOMESTIC ANIMALS.

It shall be illegal for any person to own, possess, harbor, or offer for sale, any non-domestic animal within the City limits. Any owner of such an animal at the time of the adoption of this Code shall have thirty days in which to remove the animal from the City after which time the City may impound the animal as provides for in this Section. An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to handicapped or disabled persons.

91.15 CRUELTY.

No owner shall fail to provide any domestic animal with sufficient, good and wholesome food and water, property shelter and protection from the weather, veterinary care when needed to prevent suffering, and with humane care and treatment. No person shall beat, cruelly ill-treat, torment or otherwise abuse any domestic animal, or cause or permit any domestic animal to fight or other combat between domestic animals or between humans. No person shall abandon any domestic animal in the said person's possession.

91.16 DANGEROUS AND POTENTIALLY DANGEROUS ANIMALS.

No person may own, keep or harbor a dangerous or potentially dangerous animal in the City of Dellwood unless the dog has been licensed, registered, and a certificate issued in compliance with Minnesota Statute, Section 347.51 and 347.53. The provisions of Minnesota Statutes, Section 347.50 through 347.55, inclusive, as amended, are hereby adopted and incorporated into this Ordinance by reference and made a part hereof as if fully set forth herein.

DANGEROUS AND POTENTIALLY DANGEROUS DOGS

91.17 DEFINITIONS.

Subdivision 1. TERMS. For the purposes of sections 91.17 through 91.25 the following terms shall have the meanings stated herein:

Proper Enclosure. "Proper Enclosure" means securely confined indoors or in a securely enclosed and locked pen or structure suitable to prevent the dog from escaping and providing protection from the elements for the dog. A proper enclosure does not include a porch, patio or any part of a house, garage, or other structure that would allow the dog to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only obstacles that prevent the dog from exiting.

Owner. "Owner' means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having care, custody or control of a dog.

Killed. For purposes of this Ordinance, the word "killed" means that death was the direct and inescapable consequence of the injuries inflicted upon the dog or other domestic animal, and, if euthanized, that such action was recommended by a licensed doctor of veterinary medicine.
(in re: Molly, 712 NW2nd 567 (Minn. App. 2006)

Substantial Bodily Harm. "Great Bodily Harm" has the meaning given it under Section 609.02, Subdivision 7a of Minnesota Statutes.

Great Bodily Harm. "Great Bodily Harm" has the meaning given it under section 609.02, Subdivision 8 of Minnesota Statutes.

Animal Control Authority. "Animal Control Authority" means an agency of the City, which is responsible for animal control operations. Unless otherwise stated reference to the Animal Control Authority shall be the Washington County Sherrif's Office.

91.18 DANGEROUS DOG PROHIBITION.

No person may own, keep or harbor a dangerous dog in the City of Dellwood unless the dog has been licensed, registered, and a certificate issued in compliance with this Ordinance.

91.19 POTENTIALLY DANGEROUS OR DANGEROUS DECLARATIONS.

All cases involving bites or other cases involving behavior considered to be potentially dangerous or dangerous will be reviewed by the Washington County Sheriff's Department, which is an agency of the City responsible for animal control operations in the City of Dellwood.

A. **Determination of Potentially Dangerous.** After review of incidents involving bites or other behaviors, the Washington County Sheriff's Office shall determine whether a dog is Potentially Dangerous, if the dog is found to have done any of the following:

1. Without provocation has inflicted bites on a human being or domestic animal on public or private property, or
2. Without provocation chased or approached a person, including a person on a bicycle, upon the streets, sidewalks, or any private property other than the animal owner's property, in an apparent attitude of attack; or
3. Has been known to have a propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

B. **Notice of Potentially Dangerous Animal.** Upon determination that a dog is potentially dangerous, the Washington County Sheriff's Office shall provide a Notice of Potentially Dangerous Animal to the owner of such animal by personally serving the owner or person of suitable age at the residence of such owner. The Notice shall describe the animal deemed to be potentially dangerous and shall give the owner notice of reasons for such determination, and any potential restrictions to be imposed. The Notice shall notify the owner of the right to a hearing. If no timely request for a hearing is filed with the City, the declaration shall stand.

C. **Determination of Dangerous Animal.** After investigation the Washington County Sherriff's Office shall determine whether an dog is dangerous, based on the fact that the dog has done any of the following:

1. Without provocation has inflicted substantial bodily harm on a human being on public or private property; or
2. Without provocation has killed another dog or domestic animal while off the owner's property; or

3. The dog has been determined to be a potentially dangerous dog and after the owner has notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals.

D. **Notice of Dangerous Dog**. Upon determination that a dog is dangerous, the Washington County Sheriff's Office shall provide a Notice of Dangerous Dog to the owner of such a dog by personally serving the dog's owner or a person of suitable age at the residence of such owner. The Notice shall describe the dog deemed to be dangerous and the reasons for such determination. The Notice shall describe the dog deemed to be dangerous and the reasons for such determination. The Notice shall also inform the owner of the right to appeal the determination by requesting a hearing in writing pursuant to section 91.19, Section F below. If no timely appeal is received by the City, the owner of the dangerous dog shall comply with the requirements set forth in Sections 91.18 through 91.26 of this Ordinance.

E. **Provocation.** A Dog may not be declared potentially or dangerous if the threat, injury or damages were inflicted as a result of the dog having been provoked into attacking by a person or another animal. Provocation may include evidence that a person:
   1. was committing, at the time, a willful trespass or other tort upon the premises occupied by the owner of the dog; or
   2. was provoking, tormenting, abusing or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, abused or assaulted the dog, or
   3. was committing or attempting to commit a crime at the time.

A person who attempts to intervene in an attack by a dog against a person or persons, or fight between the dog and another dog or animal with the intent to stop the fight or to separate them for the purpose of preventing further attacking, biting, injury or harm shall not be deemed to have committed an act of provocation.

F. **Right to a Hearing.** Within 14 days of the receipt of Notice, the owner of any dog declared to be Potentially Dangerous or Dangerous may request a hearing to be held before an impartial hearing officer appointed by the City. The Hearing Officer may accept records of the Washington County Sheriff's Office regarding its investigation of the incident, medical records of the injury and/or harm inflicted upon a person, or upon another dog or domestic animal. The Hearing Officer may take such testimony as he or she deems helpful in deciding the case. The Hearing Officer shall determine whether the declaration is supported by substantial evidence and issue his/her decision within 10 days of the date upon such hearing is closed.

   "Substantial Evidence" means (1) "such relevant evidence as a reasonable mind might accept as adequate to support a "conclusion." (2) "more than a scintilla of evidence", (3) more than "some evidence"; (4) "more than any evidence" and (5) "evidence considered in its entirety. (Reserve Mining Co. v. Herbst, 256 NW 2nd 808, 825)

Such decision must be in writing and a copy thereof delivered to the owner of the dog by personal delivery or by registered mail as soon as practical.
In the event the Declaration is upheld by the Hearing Officer, the actual expenses incurred by the City, including the Hearing Officer's fees are the obligation of the owner of the dog. The decision shall include a notice to all interested parties that the decision may be appealed to the Minnesota Court of Appeals by way of a Writ of Certiorari.

In the event the declaration is upheld, the owner of the Potentially Dangerous dog or Dangerous Dog shall forthwith comply with the requirements set forth in sections 91.18 through 91.26 of this Ordinance. Such requirements must be complied with by the dog owner whether or not the owner has filed an appeal of the Hearing Officer's decision. The City may waive such requirements upon the dog's owner providing a plan whereby the dog will be kept in a secure manner so as to prevent the dog from being off the owner's property without a muzzle and unrestrained.

91.20 DANGEROUS DOGS; REGISTRATION.

A. Requirement. No person may own a dangerous dog in the city unless the dog is registered as provided in this Ordinance.
B. Registration. The City or the animal control authority shall issue a certificate of registration to the owner of the dangerous dog if the owner presents sufficient evidence that:

    1. A proper enclosure exists for the dangerous dog and a posting on the premises with a clearly visible warning sign that there is a dangerous dog on the property, including a warning symbol to inform children.
    2. A surety bond issued by a surety company authorized to conduct business in the State in a form acceptable to the City in the sum of at least $300,000.00, payable to any-person injured by the dangerous dog, or a policy of liability insurance issued by an insurance company authorized to do business in the State in the amount of at least $300,000.00, insuring the owner for any personal injuries inflicted by the dangerous dog.
    3. If required, the owner has paid to the City an annual fee of not more than $500.00 in additional to any regular dog licensing fees, to obtain a certificate of registration for a dangerous dog under this Ordinance; and
    4. The owner has had microchip identification implanted in the dangerous dog as required under this Ordinance.

C. Certificate of Registration and Warning Symbol. If a certificate of registration has been issued to the owner of a dangerous dog pursuant to the above, the City must provide, for posting on the owner's property, a copy of a warning symbol to inform children that there is a dangerous dog on the property. The warning symbol must be the uniform symbol provided by the Minnesota Commissioner of Public Safety. The Commissioner shall provide the number of copies of the warning symbol requested by the animal control authority and shall charge the City the actual cost of the

warning symbols received. The City may charge the registrant a reasonable fee to cover the administration costs and the cost of the warning symbols.

D. Fee. The City may charge the owner a fee, in addition to any regular dog licensing fees, to obtain a certificate of registration for a dangerous dog under this Ordinance.
E. Dangerous Dog Designation Review. Beginning six months after a dog is declared a dangerous dog, an owner may request annually that the animal control authority review the designation. The owner must provide evidence that the dog's behavior has changed due to the dog's age, neutering, environment, completion of obedience training that includes modification of aggressive behavior, or other factors. If the animal control authority finds sufficient evidence that the dog's behavior has changed, the authority may rescind the dangerous dog designation.
F. Law Enforcement Exemption. The provisions of this section do not apply to dogs used by law enforcement officials in the course of police work operations.
G. Tag. A dangerous dog registered under this section must have a standardized, easily identifiable tag identifying the dog as dangerous and containing the uniform dangerous dog symbol, affixed to the dog's collar at all times while the dog is off the owner's property.

91.21 DANGEROUS DOGS; REQUIREMENTS.

A. An owner of a dangerous dog shall keep the dog, while on the owners property, in a proper enclosure. If the dog is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash and under the physical restraint of a responsible person. If the dog is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash and under the physical restraint of a responsible person. The muzzle must be made in a manner that will prevent the dog from biting any person or animal but that will not cause injury to the dog or interfere with its vision or respiration.

B. An owner of a dog must renew the registration of the dog annually until the dog is deceased unless such designation has been rescinded by the Animal Control Agency. If the dog is removed from the jurisdiction, it must be registered as a dangerous dog in the new jurisdiction.

C. An owner of a dangerous dog must notify the animal control authority in writing the death of the dog or its transfer to a new location where the dog will reside within 30 days of the death or transfer, and must, if requested by the animal control authority, execute and affidavit under oath setting forth either the circumstances of the dog's death and disposition or the complete name, address and telephone number of the person to whom the dog has been transferred or the address where the dog has been relocated.

D. An animal control authority shall require a dangerous dog to be sterilized at the owner's expense. If the owner does not have the animal sterilized within 30 days, the animal control authority shall seize the dog and have it sterilized at the owner's expense.

E. A person who owns a dangerous dog and who rents property from another where the dog will reside must disclose to the property owner prior to entering the lease agreement and that the time of any lease renewal that the person owns a dangerous dog that will reside at the property.

F. A person who transfers ownership of a dangerous dog must notify the new owner that the animal control authority has identified the dog as dangerous. The current owner must also notify the animal control authority in writing of the transfer of the ownership and provide the animal control authority with the new owner's name, address and telephone number.

91.22 MICROCHIP IDENTIFICATION.

The owner of a dangerous or potentially dangerous dog must have a microchip implanted in the dog for identification, and the name of the microchip manufacturer and identification number of the microchip must be provided to the animal control authority. If the microchip is not implanted by the owner, it may be implanted by the animal control authority. In either case, all costs related to purchase and implantation of the microchip must be borne by the dog's owner.

91.23 PENALTY.

A. A person who violates any provision of this Ordinance including Section 91.21 is guilty of a misdemeanor.
B. It is a misdemeanor to remove a microchip from a dangerous or potentially dangerous dog, to fail to renew registration of a dangerous dog, to fail to account for a dangerous dog's death or change of location where the dog will reside, or fail to disclose ownership of a dangerous dog to a property owner from whom the person rents property.
C. A person who is convicted of a second or subsequent violation of paragraph (a) or (b) is guilty of a gross misdemeanor.
D. An owner who violates section 347.542, Subd. 1, of Minnesota Statutes is guilty of a gross misdemeanor.
E. Any household member who knowingly violates section 347.542, Subd. 2 of Minnesota Statutes, as amended, is guilty of a gross misdemeanor.

91.24 CONFISCATION. Unless an appeal has been duly filled in accordance with this Ordinance,

A. Seizure.
   1. The Animal Control Authority having jurisdiction will immediately seize any dangerous dog if (a) after 14 days after the owner has notice that the dog is dangerous, the dog is not validly registered under this Ordinance. (b) After 14 days after the owner has notice that the dog is dangerous, the owner does not secure the proper liability insurance or surety coverage as required under this Ordinance. (c) The dog is not maintained in the proper enclosure. (d) The dog is outside the proper enclosure and not under physical restraint of a responsible person as required by this Ordinance. (e) The dog is not sterilized within 30 days

pursuant to this Ordinance. (f) If the owner is convicted of a crime for which the dog was originally seized, the Court may order that the dog be confiscated and destroyed in a property and humane manner, and that the owner pay the costs incurred in confiscating, confining, and destroying the dog.

B. Reclaimed.
A dangerous dog seized under this Ordinance may be reclaimed by the owner of the dog upon payment of impounding and boarding fees, and presenting proof to the appropriate animal control authority that the requirements of this Ordinance will be met. A dog not reclaimed under this Subdivision within seven (7) days may be disposed of in a manner permitted by law, and the owner is liable to the animal control authority for costs incurred in confining and disposing of the dog.

C. Subsequent Offenses; seizure.
If a person has been convicted of a misdemeanor for violating a provision of this Ordinance, and the person is charged with a subsequent violation relating to the same dog, the dog must be seized by the animal control authority having jurisdiction. If the owner is convicted of a crime for which the dog was seized, the Court shall order the dog be destroyed in a proper and humane manner and the owner pay the cost of confining and destroying the animal. If the owner is not convicted and the dog is not reclaimed by the owner within seven (7) days after the owner has been notified that the dog may be reclaimed, the dog may be disposed of in a manner permitted by law.

91.25 DESTRUCTION OF DOG IN CERTAIN CIRCUMSTANCES.

A. Circumstances. Notwithstanding anything to the contrary contained herein, a dog may be destroyed in a proper and humane manner by the animal control authority if the dog:
1. Inflicted great bodily harm on a human on public or private property without provocation.
2. Inflicted multiple bites on a human on public or private property without provocation.
3. Bit multiple human victims on public or private property in the same attack without provocation; or
4. Has bitten a human on public or private property without provocation in an attack where more than one dog participated in the attack.
(Authority: Minnesota Statutes Section 347.56)

B. Hearing.
The animal control authority may not destroy the dog until the dog owner has had the opportunity for a hearing before an impartial Hearing Officer, by filing a written request with the City Clerk and paying an administrative fee of $30. The Hearing Officer shall determine whether the decision to destroy the dog is supported by substantial evidence.

91.26 RESTRICTIONS.

A. Dog Ownership Prohibited. Except as provided in this Ordinance, no person may own a dog if the person has:

1. Been convicted of a third or subsequent violation of this Ordinance.
2. Been convicted of a violation under section 609.205, clause (4) of Minnesota Statutes.
3. Been convicted of a gross misdemeanor under section 609.226, Subd. 1 of Minnesota Statutes.
4. Been convicted of a violation under section 609.226, Subd. 2 of Minnesota Statutes.
5. Had a dog ordered destroyed under this Ordinance and been convicted of one or more violations of sections 347.51, 347.515, 347.52 or 609.226, subd. 2, of Minnesota Statutes.

B. Household Members. If any member of a household is prohibited from owning a dog in subdivision A, unless specifically approved with or without restrictions by an animal control authority, no person in the household is permitted to own a dog.

C. Dog Ownership Prohibition Review. Beginning three years after a conviction under Subd. A, that prohibits a person from owning a dog, and annually thereafter, the person may request that the animal control authority review the prohibition. The animal control authority may consider such facts as the seriousness of the violation or violations that led to the prohibition, any criminal convictions, or other facts that the animal control authority deems appropriate. The animal control authority may rescind the prohibition entirely or rescind it with limitations. The animal control authority also may establish conditions a person must meet before the prohibition is rescinded, including but not limited to, successfully completing dog training or dog handling courses. If the animal control authority rescinds a person's prohibition and the person subsequently fails to comply with any limitations, imposed by the animal control authority or the person is convicted of any animal violation involving unprovoked bites or dog attacks, the animal control authority may permanently prohibit the person from owning a dog in this State.

91.27 DISEASED ANIMALS.

A. **RUNNING AT LARGE.** No person shall keep or allow to be kept on his or her premises, or on premises occupied by the, nor permit to run at large in the City, any animal which is diseased so as to be a danger to the health and safety of the City, even though the animal be properly licenses under this Section.
B. **CONFINMENT.** Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public, may be apprehended and confined in the pound by any person or police officer. The police officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in such a manner so as to be a danger to the health and safety of the City, the officer shall cause such animal to be painlessly killed and shall properly dispose of the remains. The owner or keeper of the animal killed under this section shall be liable for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examinations.

C. **RELEASE.** If the animal, upon examination, is not found to be diseased within the meaning of this Section, the animal shall be released to the owner or keeper free of charge.

91.28 PENALTY.

Any person, firm or corporation violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000.00 or by imprisonment in the County Jail for not more than ninety (91) days, or both.

91.29 EXEMPTIONS.

The licensing and vaccination requirements of this Ordinance shall not apply to any dog or cat belonging to a non-resident of the City and kept within the City for a period not to exceed thirty (30) days, provided such dog or cat shall at all times be kept within a building, enclosure or vehicle, or be under the restraint of the owner.

91.30 CONSTITUTIONALITY.

If any portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining provisions thereof.

91.31 EXCEPTIONS TO FARM ANIMAL REGULATIONS.

A. **Limited Keeping of Bees.**

1. Intent and purpose. It is the intent and purpose of this section to set standards for the limited keeping of honeybees in urban settings as a non-commercial hobby independent of the requirements found in Section 91.02.

2. Definitions.
    a. Beekeeping equipment means anything used in the operation of keeping honeybees, such as hive bodies, supers, frames, top and bottom boards and extractors.
    b. Colony means an aggregate of honeybees consisting principally of workers, but having, when perfect, one (1) queen and at times drones, brood, combs, and honey.
    c. Hive means the receptacle inhabited by a colony that is manufactured for that purpose.
    d. Honeybee means all life stages of the common domestic honeybee, Apis mellifera species of European origin.
    e. Nucleus colony means a small quantity of honeybees with a queen housed in a smaller than usual hive box designed for a particular purpose.

3. Conditions. The limited keeping of honeybees may be permitted as an accessory use to a single-family residence subject to the following:
    a. The property shall be occupied with a single-family home. The owner of the honeybees shall live in the dwelling on the property. The property owner shall be in receipt of a license as required by this Ordinance.
    b. Honeybees shall be kept in hives with removable frames, which shall be kept in sound and usable condition.
    c. A convenient source of water shall be available to the colony prior to and so long as colonies remain active outside the hive.
    d. No wax comb or other material that might encourage robbing by other bees shall be left upon the property. Such materials once removed from the site shall be handled and stored in sealed containers, or placed within a building or other insect-proof container.
    e. For each colony, there may also be maintained upon the same lot, one (1) nucleus colony in a hive structure not to exceed one (1) standard nine and five-eighths (9 5/8) inch depth ten-frame hive body with no supers.
    f. Beekeeping equipment shall be maintained in good condition including keeping the hives painted and securing unused equipment from weather, potential theft or vandalism and occupancy by swarms. It shall be a violation of this section for any unused equipment to attract a swarm, even if the property owner is not intentionally keeping honeybees.
    g. All hives shall be enclosed with a latching fence.
    h. Hives shall be located not less than 10 feet from the property line and located only in the rear yard. In each instance where a colony is kept less than 25 feet from a property line of the lot upon which the apiary is located, as measured from the nearest point on the hive to the property line, and any entrances to the hive faces the property line, there shall be established and maintained a flyway barrier at least six feet in height. The flyway barrier may consist of a wall, fence, dense vegetation or combination thereof, such that honeybees will fly over rather than through the material to reach the colony. If a flyway barrier of dense vegetation is used, the initial planting may be four feet in height, so long as the vegetation normally reaches six feet in height or higher. The flyway barrier must continue parallel to the apiary lot line for ten feet in either direction from the hive. All other sides of the area encompassing the colonies shall consist of fencing, a wall, dense vegetation or combination thereof at least four feet tall. The area encompassing the colonies need not entail the entire property.
    i. No more than two colonies shall be permitted per property.

4. License Required. A license is required for any person seeking to keep honeybees as allowed by this Ordinance. Any applicant shall complete an application form provided by the City. Any amendment to an existing license shall constitute a new application and fee. The application shall include, but not limited

to the following information:

a. Site plan showing the location and size of the premises and the location, size and type of all structures, colonies, hives, flyway barriers, fences, storage containers, and any other item related to the beekeeping operation.
b. An agreement by the applicant that the premises may be inspected by the City at all reasonable times to ensure compliance with all applicable conditions.
c. Applicant must document 16 hours of beekeeping training in the form of a certificate from the University of Minnesota. Other similar training may be substituted if found to be acceptable by the City Administrator.

5. Duration of license and fee.
   a. Each license issued hereunder shall expire on December 31 in the year of issuance unless sooner revoked. A license shall be renewed annually to continue the limited keeping of honeybees.
   b. The annual fee for a license shall be in such amount as set forth in the City's fee schedule, which shall be paid at the time of the making of the application.

6. Public notification. Upon issuance of the first license, the applicant shall supply mailing labels for all properties within 350 feet of the property on which the honeybees are proposed to be kept. An informational notice shall be sent to the property owners within 350 feet at the applicant's expense. If an objection is received by the City in writing within 10 days of notice, the City Council shall review the permit at the next available meeting to ensure the applicant is meeting the terms of this Ordinance.

7. Right of entry for inspections. The animal control officer or City Clerk's designee may enter and inspect any property licensed for the keeping of honeybees at any reasonable time for the purpose of investigating an actual or suspected violation to ascertain compliance or non-compliance with this section.

8. Violation and penalties. When a violation is found to have occurred, the officer or agent of the City shall give written notice thereof to the owner. If said violation is not remedied within ten (10) days, the City may issue a citation to appear in district court to answer the charges stated thereon. Any owner found violating any of the provisions of this section shall upon conviction be guilty of a misdemeanor punishable by a fine. Any conviction shall result in the revocation of the permit by the City Council.

B. **Temporary Keeping Of Goats For Vegetation Management.** It is the purpose of this section to permit the temporary keeping of goats brought in for the purpose of vegetation management where vegetation, which may include non-native, invasive or noxious species cannot otherwise be reasonably removed using conventional methods.

1. Definitions
    a. Buck means a male goat.
    b. Doe means a female goat.
    c. Goat means an animal in the subspecies of Capra aegagrus hircus.
    d. Grazing means goats eating vegetation.
    e. Wethers means a castrated buck.
2. Permit Required: Except as provided herein, no person shall stable, keep, or permit any goats to remain on any lot or premises within the City without a Permit.
    a. Upon receipt of a completed Application, the City shall send a notice to property owners that are located within 350 of the grazing area that there is a Permit Application. If, within 10 days of such Notice, there are objections provided in writing to the City, then the Permit must be submitted to the City Council for review and approval.
    b. Following the expiration of the 10-day notice period, absent the receipt of the objections by property owners in the notice area, the City Clerk may issue a Permit for Goats. Failure to meet the requirements shall result in denial of the Permit.

3. Application: any person desiring a Permit required under the provisions of this Ordinance shall make written Application to the City Clerk upon a form provided by the City. The Application shall contain the following:
    a. A description of the real property upon which it is desired to keep goats.
    b. The breed and number of goats to be maintained on the property.
    c. The dates the goats will be kept on the property.
    d. A detailed site plan of the property showing the location and size of the grazing area, including dimensions, a list of the vegetation on the property that is sought to be controlled by the grazing and the location of the fencing, as well as any goat pen or enclosure.
    e. List of persons managing and monitoring the goats, including 24-hour contact information, accompanied by evidence of liability insurance in the amount of at least $1,000,000 per occurrence, specifically covering the keeping of goats.
    f. Signature from the Applicant that the Applicant will at all times keep the goats in accordance with all of the conditions prescribed by the City Clerk, or modification thereof, and that failure to obey such condition will constitute a violation of the provisions of this Ordinance and grounds for revocation of the Permit.
    g. Signature of the property owner, if different than the Applicant.
    h. Application fee as established by the City's Fee Schedule.

4. Limitations for the Keeping of Goats.
    a. Permitted and prohibited goats: does and wethers are permitted. Bucks are prohibited.

b. Permits shall not be granted from December through March.
c. Fences: Each owner, keeper, custodian, or harborer of goats shall erect and/or maintain a temporary or permanent fence to contain and confine all goats kept on the premises. The fence shall be sufficient height to contain the goats. A permanent fence shall comply with all fence requirements of the Ordinance. Any temporary electric fence shall have appropriate warning signs. The goats may be moved to a separate holding pen at night, which shall be located at least 150 feet from all residential buildings. All fencing and any temporary holding pens must be removed within 7 days after the goats are removed from the property.
d. The number of goats allowed is limited at all times to four goats.
e. Nuisance: Goats shall not be kept is such a manner as to constitute a nuisance to the occupants of adjacent property.
f. The property shall be available for inspection by the City at all reasonable times to determine compliance with this Ordinance, other City codes or State law.

5. Violations.
   a. A violation of any provision of this Ordinance or a condition of the Permit shall be grounds for revocation of the Permit by the City Clerk.
   b. Any person violating any conditions of this Permit shall reimburse the City for all costs borne by the City to enforce the conditions of the Permit including but not limited to the impounding and safekeeping of the goats.

6. Term of Permit. No property owner or person shall store goats on property for more than 30 consecutive days or 60 days in any 12-month period starting with the date the animals are moved onto the property.

7. Exception. No Permit shall be required by a government agency as part of a vegetation management program on City, County or State-owned property.

8. Zoning District. This temporary Permit is allowed in all zoning districts.

C. **Limited Keeping of Chickens.** The limited keeping of chickens may be permitted as an accessory use to a legally established single-family residence subject to the following:
1. The property shall be occupied with a single-family home. The owner of the chickens shall live in the dwelling on the property and the property owner is in receipt of a license as required by this Ordinance.

2. No person shall keep more than four (4) total hen chickens.

3. No person shall keep roosters or adult male chickens.

4. Chickens shall be kept within a separate enclosed accessory building and/or

fenced outdoor containment area subject to the following:

a. The accessory building shall be less than 120 square feet in size and not exceed six (6) feet in height.
b. The accessory building shall comply with all setbacks and other standards for accessory buildings, unless otherwise stated herein.
c. Any outdoor containment areas shall be screened from view from all neighboring properties and rights-of-way. Outdoor containment areas shall not exceed 20 feet per bird and shall not have a fenced enclosure greater than six (6) feet in height. Such enclosures are required to meet structural setbacks.
d. Any accessory building or containment area shall be located in the rear yard only and shall be at least 50 feet from adjacent habitable structures on neighboring properties.
e. Fencing used to contain chickens shall comply with applicable conditions of the City Code.
f. Chickens shall not be kept within the dwelling unit or garage.
g. The accessory building and/or containment area shall be maintained in good repair, in a clean and sanitary manner, free of vermin, and free of objectionable odors.
h. Chickens shall remain in the accessory building and/or containment area at all times and shall not run at large.
i. Chickens shall remain in the accessory building from sunset to sunrise each day to prevent nuisance noise and the attraction of vermin and predators.
j. Accessory buildings for the purpose of this ordinance shall not count towards the one accessory building as stated in the Zoning Ordinance but shall not exceed 120 square feet in area or be used for any purpose other than for the limited keeping of chickens.

5. The slaughter of chickens on site is prohibited.

6. The raising of chickens for breeding purposes is prohibited.

7. The sale of eggs or other commercial activity on the premises is prohibited.

8. Feces and discarded feed shall be regularly collected and only stored temporarily on site in a leak-proof container with a tight-fitting cover to prevent nuisance odors and the attraction of vermin. Such waste shall not be composted on site.

9. Chicken feed shall be stored in leak-proof containers with a tight-fitting cover to prevent attracting vermin.

10. A license is required for the keeping of chickens subject to this ordinance. The applicant shall pay the fee associated with the license and each subsequent renewal.
    a. Upon receipt of a completed Application, the City shall send a notice to property owners that are located within 350 of the property that there is a License Application. If, within 10 days of such Notice, there are objections provided in writing to the City, then the license must be submitted to the City Council for review and approval.
    b. Following the expiration of the 10-day notice period, absent the receipt of the objections by property owners in the notice area, the City Clerk may issue a license. Failure to demonstrate compliance with the requirements of this Ordinance shall result in denial of the License.

11. Duration of license and fee.
    a. Each license issued hereunder shall expire on December 31 in the year of issuance unless sooner revoked. A license shall be renewed annually to continue the limited keeping of chickens.
    b. The annual fee for a license shall be in such amount as set forth in the City's fee schedule, which shall be paid at the time of the making of the application.

CHAPTER 92: HEALTH AND SAFETY; NUISANCES; DISEASED TREES, NOXIOUS WEEDS USE OF FERTILIZERS

Section:

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92.01 ASSESSABLE CURRENT SERVICES.

A. **Definition.** For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

CURRENT SERVICE. Shall mean one or more of the following: weed elimination from private property; removal or elimination of public health or safety hazards from private property, excluding any hazardous building included in M.S 463. 15 through 463.26 as they may be amended from time to time; dust treatment of streets, trimming and care of trees and removal of unsound and insect-infected trees from the public streets or private property; and the operation of a street lighting system.

B. **Public health and safety hazards.** When the City removes or eliminates public health or safety hazards from private property under the following provisions of this chapter the administrative officer responsible for doing the work shall keep record of the cost of the removal or elimination against each parcel of property affected and annually deliver that information to the City clerk.

C. **Damage to public property.** Any person driving any vehicle, equipment, object or contrivance upon any street, road, highway or structure shall be liable for all damages which the surface or structure thereof may sustain as a result of any illegal operation, or driving or moving of the vehicle, equipment or object or contrivance; or as a result of operating, driving or moving any vehicle, equipment, object or contrivance weighing in excess of the maximum weight permitted by statute or this code. When the driver is not the owner of the vehicle, equipment, object or contrivance, but is operating, driving or moving it with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any such damage. Any person who willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under M.S. 514.67, as it may be amended from time to time.

D. **Assessment.** On or before October 31 of each year, the City Clerk shall list the total unpaid charges for each type of current service and charges under this section against each separate lot or parcel to which they are attributable under this section. The City Council may then spread the charges against property benefited as a special assessment under the authority of M.S. 429.101 as it may be amended from time to time and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.

NUISANCES

92.02 PUBLIC NUISANCE.

Whoever by his or her act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor:

A. Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public;

B. Interferes with, obstructs or renders dangerous for passage any public highway or right-of-way, or waters used by the public; or

C. Is guilty of any other act or omission declared by law or any other part of this code to be a public nuisance and for which no penalty is specifically provided.

92.03 PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

A. Exposed accumulation of decayed or unwholesome food or vegetable matter;
B. All diseased animals running at large;
C. All ponds or pools of stagnant water;
D. Carcasses of animals not buried or destroyed within 24 hours after death;
E. Accumulations of manure, refuse or other debris;
F. Vaults and garbage cans which are not rodent-free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;
G. The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, household waste or other substances.
H. All noxious weeds or other rank growths of vegetation upon public or private property.
I. Dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities.

92.04 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

The following are declared to be nuisances affecting public peace and safety:

A. All trees, hedges, signs, billboards or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;
B. All wires and limbs of trees which are so close to the street as to constitute a danger to pedestrians or vehicles;

C. All obnoxious noises in violation of Minn. Rules Ch. 7030, as they may be amended from time to time which are hereby incorporated by reference into this code;

D. The discharging of the exhaust or permitting the discharging of the exhaust of any stationary internal combustion engine, motor boat, motor vehicle, motorcycle, all-

terrain vehicle, snowmobile or any recreational device except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations;

E. The using or operation or permitting the using or operation of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for producing or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet and comfort of any person nearby. Operation of any device referred to above between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building shall be prima facie evidence of violation of this section;

F. No person shall participate in any party or other gathering of people giving rise to noise, unreasonably disturbing the peace, quiet, or repose of another person. When a police officer determines that a gathering is creating such a noise disturbance, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave after being ordered by a police officer to do so. Every owner or tenant of such premises who has knowledge of the disturbance shall make every reasonable effort to see that the disturbance is stopped;

G. Obstructions and excavations affecting the ordinary public use of streets, or public grounds except under conditions as are permitted by this code or other applicable law;

H. Radio aerials or television antennae erected or maintained in a dangerous manner;

I. Any use of property abutting on a public street or any use of a public street which causes large crowds of people to gather, obstructing traffic and the free use of the street

J. All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;

K. Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other material in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from accumulation;

L. Any well, hole or similar excavation which is left uncovered or in another condition as to constitute a hazard to any child or other person coming on the premises where it is located;

M. Obstruction to the free flow of water in a natural waterway or a public street drain, gutter or ditch with trash of other materials;

N. The placing or throwing on any street, or other public property of any glass, tacks, nails, bottles or other substance which may injure any person or animal or damage any pneumatic tire when passing over the substance;

O. The depositing of garbage or refuse on a public right-of-way or on adjacent private property;

P. All other conditions or things which are likely to cause injury to the person or property of anyone.

92.05 DRONE AERIAL VEHICLES.

A. **Purpose.**
   1. It is the purpose of this Ordinance to provide the residents of the City protection from invasions of privacy due to the rapid implementation of drone technology being put into use by individuals, entities and law enforcement agencies.
   2. Use of unmanned aerial vehicles also pose an unreasonable public safety concern to other aircraft or objects in the air and to City residents and their property on the ground in the event of drone malfunction, loss of control or other liability to sustain flight as intended.

B. **Definitions.**
   1. ***CITY*** means all land situated within the boundaries of the City of Dellwood, Washington County, Minnesota, and the airspace above it.
   2. ***DRONE*** means a powered, aerial vehicle that:
      a. Does not carry a human;
      b. Uses aerodynamic forces to provide vehicle lift
      c. Can fly autonomously or be piloted remotely; and
      d. Can be expendable or recoverable.

C. **Prohibition.**
No person, entity, governmental unit or law enforcement agency may operate a drone within the City, except as provided below.

D. **Exceptions.**
This Ordinance does not prohibit the use or operation of a drone in the city if:
   1. A law enforcement agency first obtains a warrant authorizing its use; or
   A law enforcement agency determines, under the particular circumstances, that there is immediate danger of death or serious injury to any person and prompt use of a drone is warranted.

2. It is operated only within the boundaries of the operator's real property, and shall not surveil any adjoining property.
3. The Dellwood City Council has approved events including use of a drone upon such terms as the City deems necessary or reasonable, including liability insurance coverage for the City's benefit.
4. The drone operator has been hired to do aerial photography of a property by the property owner and is operated only within the boundaries of that owner's property and the airspace above it.

E. **Penalty.**
Use or operation of a drone is a violation of this Chapter and is a Misdemeanor, punishable in accordance with applicable law.

92.06 NOISES PROHIBITED.

A. **General prohibition.** No person shall make or cause to be made any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person or precludes their enjoyment of property or affects their property's value. This general prohibition is not limited by the specific restrictions of this section.

B. **Defective vehicles or loads.** No person shall use any vehicle so out of repair or so loaded as to create loud and unnecessary grating, grinding, rattling, or other noise.

C. **Loading, unloading, unpacking.** No person shall create loud or excessive noise in loading, unloading, or unpacking any vehicle.

D. **Radios, phonographs, paging systems, and the like.** No person shall use or operate or permit the use or operation of any radio receiving set, musical instrument, phonograph, paging system, speaker, amplifier, machine or other device for the production or reproduction of sound in a distinct and loudly audible manner as to unreasonably disturb the peace, quiet, and comfort of any person nearby. Operation of any such set, instrument, phonograph, machine or other device between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at the property line of the structure or building in which it is located, in the hallway or apartment adjacent, or at a distance of 50 feet if the source is located outside a structure or building, shall be prima facie evidence of a violation of this section.

E. **Hourly restriction of certain operations.**
1. Domestic power equipment. No person shall operate a power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, drill or other similar domestic power maintenance equipment except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday. Snow removal equipment is exempt from this provision.

2. Refuse hauling. No person shall collect or remove garbage or refuse in any residential district except between the hours of 6:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

3. Construction activities. No person shall engage in or permit construction activities involving the use of any kind of electric, diesel, or gas-powered machine or other power equipment except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.

F. **Noise impact statements.** The Council may require any person applying for a permit or license for any structure, operation, process, installation, alteration or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the Council. It shall evaluate each such statement and take its evaluation into account in approving or disapproving the license or permit applied for or the zoning change requested.

92.07 LIGHTING.

Reflected glare or light from private exterior lighting exceeding 0.5 footcandles as measured on the property line of the property where the lighting is located when abutting any residential parcel.

92.08 NUISANCE PARKING AND STORAGE.

A. **Declaration of nuisance.** The outside parking and storage on residentially-zoned property of large numbers of vehicles and vehicles, materials, supplies or equipment not customarily used for residential purposes in violation of the requirements set forth below is declared to be a public nuisance because it:
   1. Obstructs views on streets and private property,
   2. Creates cluttered and otherwise unsightly areas,
   3. Prevents the full use of residential streets for residential parking,
   4. Introduces commercial advertising signs into areas where commercial advertising signs are otherwise prohibited,
   5. Decreases adjoining landowners' and occupants' enjoyment of their property and neighborhood, and
   6. Otherwise adversely affects property values and neighborhood patterns.

B. **Unlawful parking and storage.**
   1. A person must not place, store, or allow the placement or storage of ice fish houses, skateboard ramps, playhouses or other similar non-permanent structures outside in the front-yard area of residential property.

2. A person must not place, store, or allow the placement or storage of pipe, lumber, forms, steel, machinery, or similar materials, including all materials used in connection with a business, outside on residential property.

3. A person must not cause, undertake, permit or allow the outside parking and storage of vehicles on residential property unless it complies with the following requirements:

    a. No more than four vehicles per lawful dwelling unit may be parked or stored anywhere outside on residential property except as permitted by Conditional Use Permit.

    b. Vehicles that are parked or stored outside in the front-yard area must be on a paved or graveled parking or driveway area.

    c. Vehicles, watercraft and other articles stored outside on residential property must be owned by a person who resides on that property. Students who are away at school for periods of time but still claim the property as their legal residence will be considered residents on the property.

92.09 INOPERABLE MOTOR VEHICLES.

A. It shall be unlawful to keep, park, store or abandon any motor vehicle which is not in operating or which is not properly licensed for operation with the state, pursuant to M.S. 168B.01 1, Subd. 3, as it may be amended from time to time.

B. This section does not apply to a motor vehicle entirely enclosed in a building.

C. Any motor vehicles described in this section constitute a hazard to the health and welfare of the residents of the community in that such vehicles can harbor noxious diseases, furnish a shelter and breeding place for vermin and present physical danger to the safety and well-being of children and citizens; and vehicles containing fluids which, if released into the environment, can and do cause significant health risks to the community.

92.10 BUILDING MAINTENANCE AND APPEARANCE.

A. **Declaration of nuisance.** Buildings, fences and other structures that have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood are declared to be public nuisances because they
    1. Are unsightly,
    2. Decrease adjoining landowners and occupants' enjoyment of their property and neighborhood, and
    3. Adversely affect property values and neighborhood patterns.

B. **Standards.** A building, fence or other structure is a public nuisance if it does not comply with the following requirements:

1. No part of any exterior surface may have deterioration, holes, breaks, gaps, loose or rotting boards or timbers.

2. Every exterior surface that has had a surface finish such as paint applied must be maintained to avoid noticeable deterioration of the finish. No wall or other exterior surface may have peeling, cracked, chipped or otherwise deteriorated surface finish on more than 20% of:
    a. Any one wall or other flat surface; or
    b. All door and window moldings, eaves, gutters, and similar projections on any one side or surface.

3. No glass, including windows and exterior light fixtures, may be broken or cracked, and no screens may be torn or separated from moldings.

4. Exterior doors and shutters must be hung properly and have an operable mechanism to keep them securely shut or in place.

5. Cornices, moldings, lintels, sills, bay or dormer windows and similar projections must be kept in good repair and free from cracks and defects that make them hazardous or unsightly.

6. Roof surfaces must be tight and have no defects that admit water. All roof drainage systems must be secured and hung properly.

7. Chimneys, antennae, air vents, and other similar projections must be structurally sound and in good repair. These projections must be secured properly, where applicable, to an exterior wall or exterior roof.

8. Foundations must be structurally sound and in good repair.

92.11 DUTIES OF CITY OFFICERS.

The Sheriff or person designated by the City Council may enforce the provisions relating to nuisances. Any peace officer or designated person shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances. Except in emergency situations of imminent danger to human life and safety, no police officer or designated person shall enter private property for the purpose of inspecting or preventing public nuisances without the permission of the owner, resident or other person in control of the property, unless the officer or person designated has obtained a warrant or order from a court of competent jurisdiction authorizing the entry.

92.12 ABATEMENT.

A. **Notice.** Written notice of violation; notice of the time, date, place and subject of any hearing before the City Council; notice of City Council order; and notice of motion for summary enforcement hearing shall be given as set forth in this section.

1. Notice of violation. Written notice of violation shall be served by a peace officer or designated person on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of violation, notice of violation shall be served by posting it on the premises.

2. Notice of City Council hearing. Written notice of any City Council hearing to determine or abate a nuisance shall be served on the owner of record and occupant of the premises either in person or by certified or registered mail. If the premises is not occupied, the owner of record is unknown, or the owner of record or occupant refuses to accept notice of the City Council hearing, notice of City Council hearing shall be served by posting it on the premises.

3. Notice of City Council order. Except for those cases determined by the city to require summary enforcement, written notice of any City Council order shall be made as provided in M.S.463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time, or other applicable law.

4. Notice of motion for summary enforcement. Written notice of any motion for summary enforcement shall be made as provided for in M.S.463.17 (Hazardous and Substandard Building Act), as it may be amended from time to time, or other applicable law.

B. **Procedure**. Whenever a peace officer or designated person determines that a public nuisance is being maintained or exists on the premises in the city, the officer or person designated shall notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the officer or designated person shall report that fact forthwith to the City Council. Thereafter, the City Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the city may seek injunctive relief by serving a copy of the City Council order and notice of motion for summary enforcement or obtain an administrative search and seizure warrant and abate the nuisance.

C. **Emergency procedure; summary enforcement.** In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in divisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health safety or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the officer or designated person shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare. The officer or designated person shall notify in writing the occupant or owner of the premises of the nature of the nuisance and of the city's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement. The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in division (A) of this section, and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

D. **Immediate abatement.** Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

92.13 RECOVERY OF COST.

A. **Personal liability.** The owner of premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk.

B. **Assessment.** After notice and hearing as provided in M.S. § 429.061 , as it may be amended from time to time, if the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the City Clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other charges as well as other charges for current services to be assessed under M.S. § 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.

92.14 NUISANCE TREE ORDINANCE.

A. **Purpose.** It is the purpose of this Ordinance to promote and protect the public health, safety and general welfare by providing for regulations of the planting, maintenance, and removal of trees, shrubs, and other plants within the City, to the extend found by the City Council to be practical within available financial and staff resources.

B. ***Definitions.***

CITY. The City of Dellwood.

PUBLIC PROPERTY. Any area or building owned by the City including, but not limited to: boulevards, streets, sidewalks, alleys and open space.

PUBLIC RIGHT-OF-WAY. Portion of property reserved for public use and accepted for such use by the City to provide circulation and travel to abutting properties, including: streets, boulevard, sidewalks, provisions for public utilities and cut and fill slopes.

TREE. Tree means any tree, shrub, hedge or woody vegetation.

PUBLIC TREES. All trees growing on public property or public right-of-way owned by the City or other governmental entity.

PRIVATE TREES. All trees growing on private property within the City limits.

NUISANCE TREES. Any public or private tree or part thereof which:

1. Has an infectious or destructive disease, insect problem, or other pestilence which endangers the growth, health, life or well-being of trees in the City, or which threatens to or is capable of causing a spread of disease, pestilence, or insect infestation;
2. Is dead, dying, broken, or decayed;
3. Obstructs streetlights, traffic signs, or the view of any street intersection or street sign and so that there shall be a clear space of at least 12 feet above the street;
4. Obstructs the free passage of pedestrians or vehicles;
5. Is cause the surface of a public street, curb or sidewalk to be up heaved or otherwise disturbed
6. Injuries or poses an imminent threat of injury to the storm sewer system, electric power lines, gas lines, cable lines or other public utility; or
7. Constitutes and imminent danger to the health, safety or well-being of the general public.

BOULEVARD. The publicly owned area between the improved surface of the road and the private property line.

PUBLIC UTILITY. Any public or private facility or system for producing, transmitting or distributing communications, electricity, gas, oil products, water, waste or storm

water, which directly or indirectly serves the public or any part thereof within the corporate limits of the City.

C. **Authority and Power.** There is hereby created and established a City Tree Inspector whom shall be appointed for the City.

D. **Applicability.** This Ordinance provides full power and authority over all trees, plants and shrubs located within the street rights-of-way, parks, along trails, and in other public places of the City; and to trees, plants and shrubs located on private property that constitute a nuisance of threat as described herein.

E. **Tree Care and Protection.** The City Tree Inspector has the authority to enter onto private property upon which there is located a tree, shrub, plant, or plant part that is suspected to be a public nuisance or a nuisance tree. Before making any inspection on private property within the City, it shall be the duty of the municipality to give notice of said inspection to all property owners either through an individual oral or written notice or by posting said notice in three (3) public places within the City.

Upon the discovery of any nuisance tree, the City Tree Inspector shall at once cause written notice to be served upon the owner of the property upon which such diseased or infested tree is situated, and the notice shall require such property owner to eradicate, remove or otherwise control such condition not less than fourteen (14) days from the date of the notice. It shall be unlawful for an owner of property receiving such an order to fail to comply with the order in the time specified.

If the required action is not taken by the property owner within the specified time, the City Council may cause the trees, shrubs or plants concerned to be removed, trimmed or treated with the costs being borne by the property owner. If not voluntarily paid to the City by such owner, the costs of such trimming or treatment may be recovered by the City by special assessment upon the property owner.

F. **Abuse or Mutilation of Trees.** No person shall intentionally damage, cut, carve, transplant or remove any public tree; attach any rope, wire, nails, advertising poster, or other contrivances to any public tree; allow any gaseous liquid, or solid substance which is harmful to such trees to come into contact with them; or set any fire or permit any fire to burn when such fire or heat thereof will injure any portion of the tree; or to direct or authorize such activity or circumstance.

G. **Landscaping.** In new subdivisions or when the redevelopment of property occurs, the City Council and the Tree Inspector will review landscaping plans and may require trees to be planted in any of the streets and other public places abutting lands henceforth developed and/or subdivided.

H. **Shade Tree Pest Control.**

1. **Declaration of Policy.** The health of the trees in the City is threatened by shade tree pests, and the loss or ill health of trees growing upon public and private property substantially depreciates the value of property within the City and impairs the safety, good order, general welfare and convenience of the public. In addition to and in accordance with M.S. §§ 89.001, 89.01 and 89.51 through 89.64, the provisions of this section are adopted to attempt to control and prevent the spread of these shade tree pests.

2. **Jurisdiction.** The City shall have control of all street trees, shrubs, and other plantings now or hereafter in any street, park, public right-of-way or easement, or other public place within the City limits, and shall have the power to plant, care for, maintain, remove, and replace such trees, shrubs and other plantings. [Note: This may already be provided in another city ordinance.]

3. **Declaration of a Shade Tree Pest.** The Council may by ordinance declare any vertebrate or invertebrate animal, plant pathogen, or plant threatening to cause significant damage to a shade tree or community forest in the community, to be a shade tree pest and prescribe control measures to effectively eradicate, control or manage the shade tree pest including necessary timelines for action.

4. **Public Nuisances Declared.** A shade tree pest declared by Council occurring within the City is a public nuisance.

5. **Shade Tree Pest Nuisances Are Unlawful.** It is unlawful for any person to permit any public nuisance as defined in this section to remain on any premises the person owns or controls within the City. The nuisance may be abated as provided in this section.

6. **Tree Inspector.** The Council may appoint a Tree Inspector to coordinate the activities of the City relating to the control and prevention of damage by shade tree pests. The Tree Inspector will recommend to the Council the details of any program for the declaration, control and prevention of shade tree pests. The Tree Inspector is authorized to enforce or cause to be enforced the duties incident to such a program adopted by the Council. The term “Tree Inspector” includes any person designated by Council or the Tree Inspector to carry out activities authorized in this section.

7. **Abatement of Shade Tree Pest Nuisances.**
    a. In abating a nuisance declared by ordinance under Subdivisions 3 and 4 above, the organism, condition or plant and any tree, wood or material identified as injurious to the health of shade trees shall be removed or effectively treated so as to destroy and prevent as fully as possible the spread of the shade tree pest. Such abatement

procedures shall be carried out in accordance with the control measures and areas prescribed by ordinance according to Subdivisions 3 and 10 and 14.

b. In addition, should the appropriate abatement procedure be removal and the tree(s) and/or hedge(s) be within the limits of a highway under the City's jurisdiction, M.S. § 160.22 shall be complied with as necessary.

8. **Reporting Discovery of Shade Tree Pest.** Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of public nuisance caused by a shade tree pest as defined under Subdivision 3 shall report the same to the City.

9. **Registration of Tree Care Firms.** Any person, firm or corporation that provides tree care, tree trimming or removal of trees, limbs, branches, brush, or shrubs for hire must be registered with the Minnesota Commissioner of Agriculture under M.S. § 18G.07.

10. **Inspection and Application of Control Measures.**
    a. The Tree Inspector is authorized to cause premises and places within the City to be inspected to determine whether shade tree pests exist thereon and to investigate all reported incidents of shade tree pests. The Tree Inspector shall have the power to take all reasonable precautions to prevent the maintenance of public nuisances and may enforce the provisions relating to abatement in this section. Diagnosis of shade tree pests may be by the presence of commonly recognized symptoms or by tests as may be recommended by the Commissioner of the Minnesota Department of Agriculture or the Commissioner of the Minnesota Department of Natural Resources.

    b. Except in situations of imminent danger to human life and safety, the Tree Inspector shall not enter private property for the purpose of inspecting or preventing maintenance of public nuisances without the permission of the owner, resident or other person in control of the property, unless the Tree Inspector has obtained a warrant or order from a court of competent jurisdiction authorizing the entry.

    c. No person, firm, or corporation shall interfere with the Tree Inspector acting under his authority while engaged in activities authorized by this section.

11. **Standard Abatement Procedure.** Whenever a Tree Inspector determines with reasonable certainty that a public nuisance as described by this ordinance is being maintained or exists on premises in the City, the Tree

Inspector is authorized to abate a public nuisance according to the following procedure.

a. The Tree Inspector will notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice must be given in person or by mail. Failure of any party to receive the mail does not invalidate the service of the notice. A copy of the notice shall be filed with the City Clerk.

b. The notice of abatement shall state that unless the public nuisance is abated by the owner or occupant, it will be abated by the City at the expense of the owner or occupant. The notice shall specify the control measures to be taken to abate the nuisance, and provide a reasonable amount of time to abate the nuisance. The notice will also state that the owner or occupant has the right to appeal the determination that a public nuisance exists by submitting a request in writing to the City Clerk within seven (7) days after service of the notice, or before the date by which abatement must be completed, whichever comes first.

c. If no timely appeal is submitted, and the notice of abatement and its prescribed control measures are not complied with within the time provided by the notice or any additional time granted, the Tree Inspector or designated person shall have the authority to obtain permission or an administrative search warrant, enter the property and carry out abatement in accordance with the notice of abatement.

12. **Appeal Procedure.** If the City Clerk receives a written request for a hearing on the question of whether a public nuisance in fact exists, the City Council shall hold a hearing within seven (7) calendar days following receipt by the Clerk of the written request. At least (3) days' notice shall be given to the individual who made the written request for the hearing. The Council may modify the abatement notice or extend the time by which abatement must be completed. Each owner, agent of the owner, occupant and lienholder of the subject property or properties in attendance, if any, shall be given the opportunity to present evidence at the hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance.

13. **Abatement Procedure in Event of Imminent Danger; Summary Enforcement.**

a. If the Tree Inspector determines that the danger of infestation to other shade trees is imminent and delay in control measures may put public health, safety or welfare in immediate danger, the Tree Inspector may provide for immediate abatement without following Subdivision 11. The Tree Inspector must reasonably attempt to notify the owner or occupant of the affected property of the intended action and the right to appeal the abatement and any cost recovery at the next regularly scheduled city council meeting.

b. Immediate Abatement. Nothing in this section shall prevent the City, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

14. **Recovery of Cost of Abatement; Liability and Assessment.**

a. The owner of premises on which a nuisance has been abated by the City shall be personally liable for the cost to the City of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk.

b. After notice and hearing as provided in M.S. § 429.061, as it may be amended from time to time, the City Clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other charges as well as other charges for current services to be assessed under M.S. § 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then certify the charges against the property under that statute and other pertinent statutes to the County Auditor for collection along with current taxes the following year or in annual installments as the City Council may determine in each case.

15. **Penalty.**

a. Any person, firm, or corporation who violates any provision of this section shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor under this section, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days or a fine of not more than $1,000, or both.

b. Upon conviction of a misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

c. The failure of any officer or employee of the City to perform any official duty imposed by this section shall not subject the officer or employee to the penalty imposed for a violation.

d. In addition to any penalties provided for in this section, if any person, firm or corporation fails to comply with any provision of this section, the City Council or any official designated by it, may institute appropriate

proceedings at law or at equity to restrain, correct or abate the violation.

16. **Severability.** Should any part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part held to be invalid.

I. ***Declared Shade Tree Pests, Control Measures and Control Areas.***

1. **Oak Wilt Disease** is declared a shade tree pest and is defined as any living or dead tree, log, firewood, limb, branch, stump or other portion of a tree from any species of the genus Quercus existing within the control area defined that has bark attached and that exceeds three inches in diameter or ten inches in circumference and contains to any degree any spore or reproductive structures of the fungus Ceratocystis fagacearum.

2. **Dutch Elm Disease** is declared a shade tree pest and is defined as any living or dead tree, log, firewood, limb, branch, stump or other portion of a tree from any species of the genus Ulmus existing within the control area defined that contains to any degree the fungus Ceratocystis ulmi, or which harbors any of the elm bark beetles, Scolytus multistriatus or Hyplurgopins refipes.

3. **Control measures** prescribed for abating Oak Wilt Disease and Dutch Elm Disease are:

    a. Installation of a root graft barrier

    A root graft barrier can be ordered installed to prevent the underground spread of the Disease. The City will mark the location of the root graft barrier. The barrier disrupts transmission of the fungus within the shared vascular systems of root grafted trees. The barrier is created by excavating or vibratory plowing a line at least forty-two inches deep between any tree infected with Disease and each nearby and apparently healthy tree within fifty feet of the infected tree.

    If, however, after the City prescribes the location for a root graft barrier, the City determines that installation of the barrier is impossible because of the presence of pavement or obstructions such as a septic system or utility line, the City may mark for removal all oak trees whether living or dead, infected or not and located between an infected tree and the marked barrier location. These marked trees must be felled and disposed of no later than May 1 of the year following infection. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

b. Removal and disposal of trees.

Those trees that are dead, barren, or have extensive disease (30 percent or more of the tree is diseased) may be removed within 20 days of notification of the property owner. Those trees in earlier stages of infestation in June or subsequently during the growing season with those symptoms not progressing beyond the 30 percent disease point shall be removed by the owner within 20 days of notification and may be removed by the City no later than April 1 of the year following the appearance of the symptoms.

All wood more than three inches in diameter or ten inches in circumference from such felled trees must be disposed of by burying or debarking or chipping or sawing into wane-free lumber or by splitting into firewood, stacking the firewood and immediately covering the woodpile with unbroken 4-mill or thicker plastic sheeting that is sealed into the ground until October 1 of the calendar year following the calendar year in which the tree was felled or by burning before May 1 of the year following infection.

92.15 WEED CONTROL.

This subchapter shall be cited as the “Weed Ordinance.”

92.16 JURISDICTION.

This subchapter shall be in addition to any state statute or county ordinance presently in effect, subsequently added, amended or repealed.

92.17 DEFINITIONS; EXCLUSIONS.

A. For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DESTRUCTION ORDER. The notice served by the City Council or designated city official, in cases of appeal, on the property owner of the ordinance violation.

PROPERTY OWNER. The person occupying the property, the holder of legal title or a person having control over the property of another, such as a right-of-way, easement, license or lease.

WEEDS, GRASSES and ***RANK VEGETATION.*** Includes but is not limited to the following:

1. Noxious weeds and rank vegetation shall include but not be limited to: alum (allium), Buckthorn, Bur Cucumber, Canada Thistle, Corncockle, Cressleaf Groundsel, Curly Dock, Dodder, Field Bindweed, French Weed, Hairy Whitetop, Hedge Bindweed, Hoary Cress, Horsenettle, Johnsongrass, Leafy Spurge, Mile-A-Minute Weed, Musk Thistle, Oxeye Daisy, Perennial Sowthistle, Poison Hemlock, Purple Loosestrife, Quackgrass, Russian Knapweed, Russian Thistle, Serrated Tussock, Shatter Cane, Sorghum, Wild Carrot, Wild Garlic, Wild Mustard, Wild Onion, Wild Parsnip;
2. Grapevines when growing in groups of 100 or more and not pruned, sprayed, cultivated, or otherwise maintained for two consecutive years;
3. Bushes of the species of tall, common, or European barberry, further known as berberis vulgaris or its horticultural varieties;
4. Any weeds, grass, or plants, other than trees, bushes, flowers, or other ornamental plants, growing to a height exceeding 12 inches;
5. Rank vegetation includes the uncontrolled, uncultivated growth of annuals and perennial plants;
6. The term ***WEEDS*** does not include shrubs, trees, cultivated plants or crops, except those which have been defined by state statute or administrative rule as being noxious or detrimental plants.

92.18 OWNERS RESPONSIBLE FOR TRIMMING, REMOVAL AND THE LIKE.

All property owners shall be responsible for the removal, cutting, or disposal and elimination of weeds, grasses and rank vegetation or other uncontrolled plant growth on their property.

92.19 FILING COMPLAINT.

Any person, including the city, who believes there is property located within the corporate limits of the city which has growing plant matter in violation of this subchapter shall make a written complaint signed, dated and filed with the City Clerk. If the city makes the complaint, an employee, officer or Council Member of the city shall file the complaint in all respects as set out above.

92.20 NOTICE OF VIOLATIONS.

A. Upon receiving notice of the probable existence of weeds in violation of this subchapter, a person designated by the City Council shall make an inspection and prepare a written report to the City Council regarding the condition. The City Council, upon concluding that there is a probable belief that this subchapter has been violated, shall forward written notification in the form of a “Destruction Order” to the property owner or the person occupying the property as that information is contained within the records of the City Clerk or any other city agency . The notice shall be served in writing by certified mail. The notice shall provide that within seven regular

business days after the receipt of the notice that the designated violation shall be removed by the property owner or person occupying the property.

1. All notices are to be in writing and all filings are to be with the City Clerk.
2. Certified mailing to the City Clerk or others is deemed filed on the date of posting to the United States Postal Service.

92.21 APPEALS.

A. The property owner may appeal by filing written notice of objections with the City Council within 48 hours of the notice, excluding weekends and holidays, if the property owner contests the finding of the City Council. It is the property owner's responsibility to demonstrate that the matter in question is shrubs, trees, cultivated plants or crops or is not otherwise in violation of this subchapter, and should not be subject to destruction under the subchapter.
B. An appeal by the property owner shall be brought before the City Council and shall be decided by a majority vote of the Council Members in attendance and being at a regularly scheduled or special meeting of the City Council.

92.22 ABATEMENT BY CITY.

In the event that the property owner shall fail to comply with the "Destruction Order" within seven regular business days and has not filed a notice within 48 hours to the City Clerk of an intent to appeal, the City Council may employ the services of city employees or outside contractors and remove the weeds to conform to this subchapter by all lawful means. No person shall enter the property to abate the nuisance, except with the permission of the owner, resident or other person in control of the property.

92.23 LIABILITY.

A. The property owner is liable for all costs of removal, cutting or destruction of weeds as defined by this subchapter.
B. The property owner is responsible for all collection costs associated with weed destruction, including but not limited to court costs, attorney's fees and interest on any unpaid amounts incurred by the city. If the city uses municipal employees, it shall set and assign an appropriate per hour rate for employees, equipment, supplies and chemicals which may be used.
C. All sums payable by the property owner are to be paid to the City Clerk and to be deposited in a general fund as compensation for expenses and costs incurred by the city.
D. All sums payable by the property owner may be collected as a special assessment as provided by M.S. 429.101, as it may be amended from time to time.

92.24 Adoption of Minnesota Statute Chapter 18C – Governing Use of Phosphorous Fertilizers.

A. The terms and provisions of Minnesota Statutes Chapter 18C, as the same may be amended from time to time, which regulates the use of fertilizers, soil amendment and plan amendment, are hereby adopted as to the Ordinance of the City of Dellwood as if set forth herein in their entirety.
B. A copy of Minnesota Statutes Chapter 18C is maintained on file in the office of the Clerk of City of Dellwood.
C. This Ordinance supersedes any and all provisions contained in any other Ordinance or Rule of the City of Dellwood which may be in conflict with the provisions of this Ordinance.

CHAPTER 93: FENCE REGULATIONS

Section:

93.01	Location and Construction
93.02	Fences as Structures
93.03	Agricultural Fences
93.04	Perimeter Fences
93.05	Corner Fencing and Screening
93.06	Fees

93.01 LOCATION AND CONSTRUCTION.

A. Fences shall be constructed in such a manner as to allow at least thirty percent (30%) open space through the structure to allow passage of light, air and wind. An exception may be granted for fences which have support posts anchored in cement, under a Permit issued by the City.
B. The side of the fence which is considered to be the face (finished side as opposed to structural supports) shall face the abutting property.
C. No fences are permitted upon public right-of-way except those placed by public authority. No fence shall be placed in a public drainage, ponding, or utility easement, nor within a private access easement without the written consent of the fee owner of the property or permitted by the terms of the Easement Agreement.
D. Where the property line is not clearly defined, a Certificate of Survey is required to establish the property line.
E. The placement of a fence requires an Administrative Permit from the City. Except as may be specifically permitted by this Ordinance, no residential fence shall exceed 6 feet in height and fences on non-residential property shall not exceed 8 feet in height.
F. Chain link fences used for enclosure of courts or pools or other recreational purposes shall not exceed ten (10) feet in height and may be located in a rear yard only and are allowed only under a Permit from the City. All required setbacks shall apply.
G. No barbed-wire fences, cable fences, or electrical fences shall be allowed in any residential area.
H. Every fence shall be constructed in a substantial, workmanlike manner and of substantial material reasonably suited for the purpose for which the fence is proposed to be used. Every fence shall be maintained in a condition of reasonable repair and shall not be reason of age, decay, accident or otherwise be allowed to become and remain in a state of disrepair so as to tend to be a nuisance to the injury of the public or any abutting property. Any fence which is dangerous by reason of its

construction or state of disrepair or is otherwise injurious to the public safety, health or welfare is a nuisance, and shall be repaired or removed as necessary to abate the nuisance.

I. Fences used for the purposes of keeping, deer, rabbits, and other animals from a garden are allowed with a Permit issued by the City, may be located in a rear yard only and are subject to setback requirements of the Zoning Ordinance.
J. No fences shall be permitted within a wetland, shore impact zone, or bluff impact zone.

93.02 FENCES AS STRUCTURES.

Except as may be specifically exempted herein, fences are deemed to be "structures" under the Zoning Regulations and subject to property setback requirements. Fencing encroaching into required setback lines may be allowed under a conditional use permit provided that:

A. Placement, height, or design shall not create a safety hazard with regard to access to and from or on a public street.
B. Placement, height or design shall not negatively affect adjoining properties or use.
C. All requirements for granting a conditional use permit are met.

93.03 AGRICULTURAL FENCES.

"Box" type wire or chain link perimeter fences up to eight (8) feet in height required for security purposes or to prevent deer and other animals from entering the property or to control the movement of livestock may be constructed along all exterior property lines on agricultural property with an interim use permit.

93.04 PERIMETER FENCES.

Perimeter fences constructed in residential areas may be allowed only with a permit issued by the City. In residential areas no fence shall be placed within the front yard or in the yard facing a lake except by permit issued by the City,

A. Property line boundary fences are permitted up to six feet in height in all districts provided the fence is located within twelve inches of the property line. All other fences are subject to the setback requirements as stated by this ordinance. No such fence shall be permitted adjacent to a public right-of-way.
B. Fencing connecting the property line boundary fences or connecting boundary fences to permitted structures may be permitted within the setback provided such fencing meets all other requirements of this ordinance.
C. When within a front or lake yard, property line boundary fencing or fencing connecting property line boundary fencing consisting of split rail, wrought iron, picket

or other such fencing with a minimum of 75% open space may be permitted provided such fencing does not exceed 4 feet in height. No such fencing shall be permitted within the shore impact zone. Chain link fencing is not permitted within the front or lake yards.

93.05 CORNER FENCING AND SCREENING.

No fencing other than a split rail or similar fence which does not obstruct view and maintains a 75% opening or screening (plant material) not to exceed 12 inches in height shall be permitted within 25 feet of any comer formed by the intersection of street right-of-way lines. The twenty-five (25) feet referred to above shall be in the form of a triangle with two (2) sides formed by the property lines and the third side formed by a straight line connecting the two (2) twenty-five (25) foot points on both sides of the corner.

93.06 FEES.

The City may charge a fee in connection with the issuance of a Permit in an amount determined by the City's fee schedule.

CHAPTER 94: SIGNS

Section:

94.01	Purpose
94.02	Definitions
94.03	General Provisions Applicable to All Signs
94.04	Exclusions
94.05	Real Estate Signs
94.06	Off Site Portable Signs
94.07	Campaign Signs
94.08	Nonconforming Signs
94.09	Election Year Exception
94.10	Violations

94.01 PURPOSE.

The intent of this Chapter is to permit the use of signs that are compatible with their surroundings and are legible while at the same time assuring that the public is not endangered or distracted by unsafe or indiscriminate use of signs; that all signs are removed when required and the identity of the person placing a sign is known to the City.

The City Council has determined that the regulations in this Chapter are necessary for the following reasons, among others:

1. To preserve the residential character of residential neighborhoods.
2. To preserve order and cleanliness;
3. To avoid the appearance of clutter;
4. To protect property values;
5. To avoid litter and the growth of weeks around signs;
6. To reduce the traffic hazard caused by distractions to motorists and impairment of sight lines;
7. To ensure that the City remains an attractive place to live and work;
8. To reduce administrative burdens; and
9. To protect the health, safety, welfare, morals, convenience, and comfort of the public.

94.02 DEFINITIONS.

ABOVE-ROOF SIGN. A sign, any portion of which is displayed above the peak of a roof-line or beyond the outline of the building or roof as viewed from the front of the sign.

ANIMATION SIGN. A sign that displays a collection of static images joined together and shown consecutively so that they appear to move.

DYNAMIC SIGN. A sign that exhibits any characteristics of movement or that appear to change, caused by any method other than physically removing and replacing the sign or its components, whether the apparent movement or change is in the display, the sign structure itself, or any other component of the sign.

ELECTRIC SIGN. Any sign containing electrical wiring; and/or is defined as dynamic, but not including signs illuminated by an exterior light source.

FLASHING SIGNS. Illuminated signs or lighting that have flashing or intermittent lighting.

MOVING SIGN. Any sign that is animated or revolving, up and down or sideways, mechanically or otherwise.

NON-CONFORMING SIGN. Any sign or combination of signs that were lawfully established and that do not comply with all applicable provisions of this Chapter.

PORTABLE SIGNS. A mobile advertising device that is capable of being transported from one location to another and that is not permanently attached to the ground, a sign structure, or a building.

PROJECTING SIGN. A sign attached to a building and projecting more than six (6) inches.

REVOLVING SIGN. A sign that moves in an orbit, rolls, or turns on or around an axis or center.

SIGN. Any letter, number, symbol, configuration or combination thereof designed and displayed to attract the attention of the public.

SPINNING SIGNS. A sign that revolves quickly and repeatedly around one's own axis or displays a swift whirling motion.

WALL. All the exterior surface of a building from ground level to the highest point of the roof.

DIRECTIONAL SIGNS. so-called "Arrow Signs" and Off Premises Signs. These signs are installed to guide persons to a particular place or event, such as an Open House, Garage Sale, etc.

94.03 GENERAL PROVISIONS APPLICABLE TO ALL SIGNS.

A. The following types of signs are not permitted:
   1. Projecting signs.
   2. Above-roof signs.
   3. Moving signs.
   4. Spinning, scrolling, or revolving signs.
   5. Signs with animation or video capabilities.
   6. Portable Signs except as permitted under Section 94.06 below.
   7. Revolving Sign. A sign that moves in an orbit, rolls, or turns on or around an axis or center.
   8. Above-Roof Sign. A sign, any portion of which is displayed above the peak of a roof-line or beyond the outline of the building or roof as viewed from the front of the sign.
   9. Animation Sign. A sign that displays a collection of static images joined together and shown consecutively so that they appear to move.
   10. Dynamic Sign. A sign that exhibits any characteristics of movement or that appear to change, caused by any method other than physically removing and replacing the sign or its components, whether the apparent movement or change is in the display; the sign structure itself, or any other component of the sign.
   11. Electric Sign. Any sign containing electrical wiring, and/or is defined as dynamic, but not including signs illuminated by an exterior light source.
   12. Flashing Signs. Illuminated signs or lighting that have flashing or intermittent lighting.

B. General Regulations.
   1. Except as provided in sections 94.04 through 94.06 below, signs are not permitted on public streets or rights of way nor on any public property.
   2. Signs may not exceed nine (9) square feet in area nor exceed five (5) feet in height as measured from adjacent ground level, except as otherwise provided herein.
   3. Temporary signs advertising Parade of Homes promotions or school and church events may be displayed no earlier than one week prior to the event and must be removed- within 2 days following the day of the event.
   4. Seasonal Holiday decorations may be placed no earlier than six (6) weeks prior to the Holiday and may not contain any advertising or commercial message. Christmas Holiday decorations shall be removed by the following January 31". Other Holiday decorations shall be removed within two (2) weeks following the Holiday.
   5. Signs used for the protection of property such as "No Trespassing", "No Solicitation", "Invisible Fence", etc. are allowed on the property and may be no larger than 1.5 square feet.

6. All signage shall adhere to the following safety standards:
    a. Signs shall not exceed nine (9) square feet in area.
    b. No part of such sign shall be closer than six (6) feet to the traveled portion of the roadway, including the shoulder, nor closer than two (2) feet to the edge of any sidewalk located in the public right of way. Except as permitted by Section 94.05 below.
    c. Design Standards. Signs that become unsafe or deteriorated shall be ordered repaired or removed by the City.
    d. Clearance from High Voltage Power Lines. Signs shall be located no less than six (6) feet horizontally or twelve feet vertically from overhead electrical lines. The term "overhead lines" as used in this Section means any electrical conductor, either bare or insulated, above the ground.
    e. Traffic Flow. No sign shall be used at any location or in any manner where it may be confused or construed as a traffic control device or create a traffic hazard.
    f. Sign Maintenance. The owner of any sign shall properly maintain and keep the sign in a safe, orderly condition and keep such sign, including all parts and supports, properly painted.
    g. Each off-site sign shall contain the name and contact information of the person or firm placing the sign.
7. Minnesota Statutes Chapter 173 regulates signs alongside State Highways and is enforced in the City of Dellwood.

94.04 EXCLUSIONS.

The following signs are excluded from the requirements of this Section:

1. Architectural details of buildings including comer-stones, crosses, or other identifying details that are part of the buildings.
2. Official Traffic Signs and Signals and other official governmental signs.
3. Names plate signs not exceeding more than one square foot in area, including the same and/or address of the occupant. House and building numbers shall not exceed six (6) inches in height
4. Governmentally authorized historical markers.
5. Official governmental information signs.
6. Signs denoting the location of a utility line for purposes of safety warnings or maintenance are allowed with no commercial message attached.

94.05 REAL ESTATE SIGNS.

Signs for the purpose of selling or leasing individual residential lots or buildings within the City of Dellwood shall be permitted, under the following conditions:

A. A single Real Estate Sign and/or Open House Sign may be displayed only on the property being offered for sale or lease, except as provided in Sub-Section 94.05(A2) below.
    1. Every sign must contain the name and contact information of the person or firm placing the sign.
    2. Only one sign is permitted and it must be placed on the property being offered for sale or lease. If the property for sale or lease abuts two or more public streets, one sign may be placed at each street frontage. If the property abuts a lake or golf course, one sign may be placed within the property lines fronting the lake or golf course.
    3. Such signs shall be removed within ten (10) days following the closing of a lease or purchase agreement.

B. **On-Site Signs:** A single sign advertising a property for sale or lease may be placed on the subject property for a period of 300 days following the initial placement of the sign. If the property abuts more than one public roadway, a sign may be placed at each roadway frontage. The 300-day period may be extended for good cause upon written application to the City Clerk Such signs shall in any event be removed within 10 days following the closing of a sale or lease agreement.

C. **Off-Site Signs:** Portable temporary directional signs for "Open House", showing purposes are permitted under the following conditions:
    1. No sign shall exceed three (3) square feet in area.
    2. No sign shall be placed more than six (6) hours prior to a scheduled public showing and must be removed within one (1) hour after the close of the open house showing.
    3. No more than three (3) temporary directional signs may be placed. No more than one such sign may be placed at any street intersection. All such signs must state the times between which the property is open for showing to the public. Multiple signs for one Open House showing may not be placed at the same location. "Location" for purposes of this Ordinance means that no such sign may be located within 100 feet of another sign relating to the same Open House showing.
    4. Signs may not be left in place overnight.
    5. No part of such sign shall be closer than six (6) feet to the traveled portion of the roadway, including the shoulder, nor closer than two (2) feet to the edge of any sidewalk located in the public right of way.
    6. Minnesota Statutes Chapter 173 regulates signs along State Highways and is enforced in the City of Dellwood.

94.06 OFF SITE PORTABLE SIGNS.

Off-site portable signs advertising private garage sales and estate sales, to be held on the residential property owned by the Seller of the goods are allowed under the following conditions:

1. No sign may exceed three (3) square feet in area.
2. No sign may be placed more than six (6) hours prior to the starting time of the sale and must be removed within two (2) hours after the closing time of the sale.
3. No more than three (3) such signs maybe in place at any one time. Only one (1) such sign may be placed at any street intersection. Signs pertaining to the same sale event must be located not less than I 00 feet apart from one another.
4. Signs may not be left in place overnight.
5. No part of the sign may be placed closer than six (6) feet to the traveled portion or shoulder area of any public roadway nor closer than two (2) feet to the edge of any sidewalk located in the public right of way.

94.07 CAMPAIGN SIGNS.

Campaign Signs of any size may be posted in any number in even numbered years from the 46 days before the State primary election until ten days following the State general election and in odd numbered years from the last day of candidate filing until ten days following the City election. All such signs shall be subject to the following requirements:

1. Signs are permitted on private property only and may be placed only upon approval of the property owner;
2. No such sign may be located in the road right-of-way nor closer than six (6) feet to the paved portion of the road.
3. The property owner on which campaign signs are located shall be responsible for the removal of such signs within ten days following the election.

94.08 NONCONFORMING SIGNS.

Nonconforming permanent signs lawfully existing and in place as of the effective date of this Ordinance shall be allowed to continue in use, but shall not be rebuilt if the sign is destroyed by any means to the extent of fifty percent or more of its value, altered other than to change the message, or relocated without being brought in to compliance with the requirements of this Chapter. After a nonconforming sign has been removed, it shall not be replaced by another conforming sign.

Whenever use of a nonconforming sign has been discontinued for a period of three months, such use shall not thereafter be resumed unless in conformance with the provisions of this Chapter or by Special Use Permit issued by the City of Dellwood.

94.09 ELECTION YEAR EXEMPTION.

To the extent that any section of the City Code conflicts with the provisions of M.S. Section 211B.045, as amended, the State law shall prevail.

94.10 VIOLATIONS.

Any sign which is deemed by the City to be in violation of this Ordinance may be summarily removed and kept at the City Offices for 20 days, after which time the sign may be destroyed or otherwise disposed of, unless a request for review is filed with the City Clerk within ten (10) days following written notice to the sign owner as provided in Chapter 30 of the Dellwood City Code.

Violations of this Ordinance are misdemeanor offenses which may be prosecuted in the Washington County District Court. Violations may also be addressed by way of an Administrative Citation process as set forth in Chapter 30.16 of the Dellwood City Code.

CHAPTER 95: EXTERIOR STORAGE OF PERSONAL PROPERTY, VEHICLES AND EQUIPMENT

Section:

95.01	Definitions
95.02	Storage and Screening Requirements
95.03	Exceptions
95.04	Recreational Vehicles
95.05	Power Generators
95.06	Parking
95.07	Wood Storage Regulations
95.08	Removal by City/Administrative Action
95.09	Required Screening and Landscaping
95.10	Violations
95.11	Severability

95.01 DEFINITIONS.

PERSONAL PROPERTY AND EQUIPMENT. The term “Personal Property and Equipment” shall include all items of tangible personal property which are not part of the land or buildings attached to the land.

RECREATIONAL VEHICLES AND EQUIPMENT shall include all types of personal property, designed or used primarily for recreational purposes.

HOME PLAY SETS means any equipment designed primarily for playtime use by children including swing sets, slides and play houses.

TRUCK means any motor vehicle designed, used or maintained primarily for the transportation of property and not for the carrying of passengers, excluding pickup trucks.

TRUCK-TRACTOR means any motor vehicle designed and use primarily for drawing other vehicles and trailers.

SEMI-TRAILER means a vehicle so designed and used in conjunction with a truck-tractor and shall include a trailer drawn by a truck-tractor semi-trailer combination.

SPECIAL MOBILE EQUIPMENT means every vehicle not designed or used primarily for transportation of persons or property, including, but not limited to: ditch digging

apparatus, moving dollies, asphalt spreaders, bituminous mixers, bucket loaders, tractors, graders, rollers, scrapers, each moving equipment, power shovels, draglines, cranes, and other such machinery or equipment.

95.02 STORAGE AND SCREENING REQUIREMENTS.

All personal property shall be stored within a building or be fully concealed by screening so as not to be visible from any public road or street, or from any nearby dwelling. (Screening shall consist of a green belt planting strip consisting of evergreen shrubs or trees and/or deciduous trees and plants, which shall be of sufficient width, height and density to provide an effective visual screen. Earth mounding berms may be used to achieve not more than three (3) feet of the required height of the screen.) Other types of screening may be allowed under a Conditional Use Permit approved by the City.

95.03 EXCEPTIONS.

The following exceptions and provisions shall apply:

a. Exceptions: Landscaping materials; patio furniture, hammocks, lawn chairs and outdoor cooking equipment; currently being used on the property.
b. Children's playsets are allowed provided they meet the setback requirements of the Zoning Ordinance and the Shoreland Management Ordinance.
c. Small boats and trailers not exceeding twenty-two (22) feet in length, docks and dock sections, boat lifts and similar water orientated equipment may be stored alongside the shoreline of that part of the property owner's property upon which the owner's principal dwelling is situated.

95.04 RECREATIONAL VEHICLES.

A. No person shall park or store any recreational vehicles or equipment in the required front yard in any residential district. In the case of a corner lot, both yards abutting a street shall be considered a front yard.
B. Subject to paragraph 95.03(a) above, no more than two (2) recreational vehicles, only one of which may be a motor home, may be parked or stored outside in the side or rear yard of a residential lot. A recreational vehicle and the trailer upon which it is normally transported are to be considered as being one recreational vehicle.
C. Recreational vehicles and equipment must be maintained in a clean, well-kept, operable condition at all times.
D. Recreational vehicles and equipment shall be mobile and shall not be permanently affixed to the ground in a manner that would prevent immediate removal.

E. Unmounted slide-in pickup campers, trucks, tractor trailers, semi-trailers and special mobile equipment may not be stored outside except in the Farm-Estate Zoning District with a Conditional Use Permit.
F. Recreational vehicles, if so designed for such purposes, may be occupied or used for living, sleeping or housekeeping purposes, for no more than seven (7) consecutive days during any one calendar month between May 1st and October 31st.

95.05 POWER GENERATORS.

Except for routine maintenance or during emergency conditions when power supply is interrupted, the operation of a power generator plant shall not be permitted in residential districts. Routine maintenance periods shall not exceed sixty (60) minutes per month and shall not take place between the hours of 10:00 p.m. and 8:00 a.m.

95.06 PARKING.

A. It shall be illegal to park, store, or permit to be parked or stored, any motor vehicle, recreational vehicle or equipment upon any undeveloped residential property, unless approved in writing by the City.
B. No temporary garages or storage buildings will be permitted.

95.07 WOOD STORAGE REGULATIONS.

A. On residential zoned property no person shall keep or store wood or allow wood to be kept or stored outside on property owned or controlled by that person, unless said wood is kept or stored in compliance with the provisions of this Ordinance.
B. The wood storage regulations of this Section shall not apply to:
    1. Persons having property on which new construction is taking place and the wood on said property is being used for said construction, unless the wood has remained on the property for more than thirty (30) days and is not a permanent part of the new construction at the end of that time; and
    2. Persons storing or keeping wood on property when said wood is stored within an enclosed structure which otherwise conforms to the zoning requirements of the district.
C. Wood stored or kept in the City shall be stored or kept as follows:
    1. In neat and secure stacks (maximum of 4 stacks), each of which shall be no higher than five feet (5') high by ten feet wide.
    2. Stacks shall not be closer than twenty (20) feet from the property line.
    3. The wood stacks shall not at any time be infested or inhabited with rats, rodents, vermin, or insects noxious or dangerous to persons or property.

4. The wood shall not be stored or kept in the front yard or yard that is commonly considered the front yard of any lot.
5. Temporary storage of logs for up to twenty (20) days outside of required areas of setback from property lines and street is allowed for the purpose of cutting and splitting logs to a size usable in the residence's wood burning device.

95.08 REMOVAL BY CITY; ADMINISTRATIVE ACTION.

A. **Written Notice of Nuisance Movable Property:**
Upon issuance of a citation for the removal of any nuisance movable property or any nuisance junk car from any public place or private property by any authorized City official, the City Clerk shall give written notice to the owner of said nuisance movable property thereof as shown by the records of the Washington County Tax Assessor or in records of the state Registrar of Motor Vehicles or other pertinent registered agency. Such notice shall be sent by registered or certified mail or delivered by any City Police Officer or Deputy Sheriff of Washington County to the address as indicated on said records. Such notice shall include a description of said movable property.

B. **Removal Contractor:**
The City Council may contract with one or more persons, firms, or corporations to provide to the City removal services required to enforce this and other City and County Ordinances and State law.

C. **Impounding, Removal and Release:**
The City removal contractor shall take immediate possession of any nuisance motor vehicle or any nuisance movable property duly ordered impounded and ticketed for any traffic or parking violation and shall tow such movable property to the designated storage pound. The City removal contractor shall take possession of any nuisance movable property from any public place or private properties after a citation has been issued by any City Police Officer and has ordered the removal and impoundment of such nuisance removable property and seventy-two (72) hours after written notification has been sent to the address of the owner of said nuisance movable property, and shall tow such movable property to the designated storage pound. No such movable property shall thereafter be released without authorization of the City Clerk or Washington County Sheriff. The removal contractor shall immediately after impounding said movable property notify the City Clerk and the authorized City Official who orders the impoundment of all such impounded movable properties including description, license number, and any other pertinent information.

D. **Notification to the Owner:**
The City Clerk shall give notice of the impounding of any such movable property to the owner thereof as shown upon or in records of the State

Registrar of Motor Vehicles or other pertinent registering agency. Such notice shall be by registered or certified mail and shall be sent or delivered by the City Clerk or authorized City Official to the address as indicated on said records. Such notice shall include a description of the movable property impounded and a statement of the intent of the City to dispose of such movable property after thirty (30) days unless such movable property is released.

E. **Removal and Impounding Charges and Removal and Storage Charges:**
The removal and storage charges in connection with impounding any movable property shall not exceed the amount agreed upon in the contract between the City and the duly appointed removal contractor.

F. **Storage of Impounded Movable Properties:**
The removal contractor during the time the movable property is impounded shall not permit the movable property to be removed or released to the owner until the impounding and storage fees hereinafter provided have been paid. At the time of the return of the movable property the removal contractor shall release the same by a release in writing which shall state the date of such release together with the charges enumerated thereon and the purpose for which such charges were made.

G. **Report of the Authorized City Official:**
Any authorized City Official directing the impounding of any nuisance movable property shall prepare a written report of such movable property which report shall among other things include the following: make and type of movable property, license number, motor number, number of tires or other form of propulsion, tools, and other separate articles of personal property, general description of the movable property with regard to condition, damaged parts, and other such information as may be necessary to describe adequately the movable property and such property delivered to the removal contractor. The removal contractor shall receipt for and verify such report and his signature thereon shall be considered a receipt for the movable property and the property described therein.

H. **Sale of Movable Properties:**
Any movable property which is impounded pursuant to this or any other Ordinance or Statute and which is not released within thirty (30) days of mailed notice to the owner, may be sold by the City to the highest bidder at public auction or sale following reasonable published notice thereof. The proceeds of such sale shall first be applied towards the cost of handling, storing, and sale of such movable property. The net proceeds shall be placed in the general fund. If within six (6) months of such sale the former owner applies to the City Clerk for payment of such net proceeds and if satisfactory proof of ownership is presented, the net proceeds shall be paid to the former owner.

I. **Sale of Movable Property Where Owner of Movable Property Cannot be Identified:**
If any such movable property is found and removed under circumstances which do not give the authorized City Official directing the impoundment or the removal contractor knowledge or means of inquiry as to the true owner thereof, the

authorized City Official shall immediately report such facts to the City Clerk. Any such movable property or property unclaimed or abandoned by any owner for a period of thirty (30) days from the after such impounding shall be sold by the City Clerk or the City of Dellwood at a public sale.

95.09 REQUIRED SCREENING AND LANDSCAPING.

A. Refuse containers for non-residential use shall be covered and shall be screened by either a screening fence or green belt planting strip.
B. All areas where grading has occurred shall be landscaped within a period of one year after such grading. Landscaping shall consist at a minimum of a finished grade and a soil retention cover generally used in landscaping.
C. In all districts, all waste, refuse, or garbage shall be kept in an enclosed building or properly contained in a closed container designed for such purposes. The owner of vacant land shall be responsible for keeping such land free of refuse and weeds.

95.10 VIOLATIONS.

The provisions of this Ordinance may be enforced by citations for violations hereof issued by the Washington County Sheriff's Office or by Community Service Officers so authorized by the City, provided that no Community Service Officer may require a person to sign a promise to appear in Court with respect to any such citation.

95.11 SEVERABILITY.

It is hereby declared to be the intention of the City of Dellwood that the provisions of this Ordinance are severable. If any provision or the application thereof to any person or circumstances is held to be illegal or invalid by any Court of competent jurisdiction, such invalidity or illegality shall not affect other provisions of this Ordinance or the application of said provisions to any other property.

CHAPTER 96: GEO-THERMAL HEATING SYSTEMS, WATERFED HEAT EXTRACTORS AND WATERFED AIR CONDITIONING

Section:

96.01	Geo-thermal Heating Systems, Water fed Heat Extractors and Water fed Air Conditioning Units
96.02	Permit Required
96.03	Penalty
96.04	Disclaimer

96.01 GEO-THERMAL HEATING SYSTEMS, WATER FED HEAT EXTRACTORS AND WATER FED AIR CONDITIONING UNITS.

A. Geo-thermal heating systems, also known as watered heating systems and air conditioning units are prohibited, except those systems which are constructed and installed with a closed, recirculating ground loop water system, and charged with a non-toxic solution approved by the Building Coordinator.
B. No system shall be permitted which allows discharge of water onto the surface, or into a seepage pit/drainfield system, or into any natural or artificial drainage-ways.

96.02 PERMIT REQUIRED.

A. No person shall erect, construct, or alter any geo-thermal or water fed heating system, in the City of Dellwood without first securing a building permit therefore and paying the permit fee as established by the Council from time to time.
B. The information to be submitted with the application for a permit shall include a description of the system clearly showing that the system employs a closed loop recirculating water system with property equipment to prevent discharge of any water in the ordinary use of the system.

96.03 PENALTY.

Any person violating any provision of this Ordinance shall upon conviction thereof, be guilty of a misdemeanor and be punished according to law.

96.04 DISCLAIMER.

The provisions of this Ordinance are severable. If any provision or application thereof is held to be illegal or invalid by any Court of competent jurisdiction, such illegality or invalidity shall not affect any other provision or application of this Ordinance.

CHAPTER 97: COAL TAR BASED SEALANTS - PROHIBITED

Section:

97.01	Purpose
97.02	Definitions
97.03	Prohibitions
97.04	Exemption
97.05	Asphalt-Based Sealcoat Products
97.06	Penalty

97.01 PURPOSE.

A. The Council of the City of Dellwood has determined that lakes, rivers, streams and other bodies of water are natural assets which enhance the environmental, recreational, cultural and economic resources and contribute to the general health and welfare of the community.
B. The use of sealers on asphalt driveways is a common practice. However, reliable scientific studies on the use of driveway sealers have demonstrated a relationship between stormwater runoff and certain health and environmental concerns.
C. The purpose of this Ordinance is to regulate the use of sealer products within the City of Dellwood, in order to protect, restore and preserve the quality of its lakes, wetlands and subsurface waters.

97.02 DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ASPHALT-BASED SEALER. A petroleum-based sealer material that is commonly used on driveways, parking lots, and other surfaces and which does not contain coal tar.

COAL TAR. A byproduct of the processed used to refine coal.

UNDILUTED COAL TAR-BASED SEALER. A sealant material containing coal tar that has not been mixed with asphalt and which is for use on driveways, parking lots and other surfaces.

CITY. The City of Dellwood.

MPCA. The Minnesota Pollution Control Agency.

PAHs. Polycyclic Aromatic Hydrocarbons. A Group of organic chemicals formed during the incomplete burning of coal, oil, gas, or other organic substances, present in coal tar and found to be harmful to humans, fish, and other aquatic life.

97.03 PROHIBITIONS.

A. No person shall apply any undiluted coal tar-based sealer to any driveway, parking lot or other surface within the City of Dellwood.
B. No person shall contract with any commercial sealer product applicator, residential or commercial developer, or any other person for the application of any undiluted coal tar-based sealer to any driveway, parking lot or other surface within the City.
C. No commercial sealer product applicator, residential or commercial developer, or other similar individual or organization shall direct any employee, independent contractor, volunteer, or other person to apply any undiluted coal tar-based sealer to any driveway, parking lot or other surface within the City.

97.04 EXEMPTION.

Upon the express written approval from both the City and MPCA, person conducting bona fide research on the effects of undiluted coal tar-based sealer products or PAHs on the environment shall be exempt from the prohibitions provided in Section 97.03.

97.05 ASPHALT-BASED SEALCOAT PRODUCTS.

The provisions of this Ordinance shall only apply to use of undiluted coal tar-based sealer in the City and shall not affect the use of asphalt-based sealer products within the City.

97.06 PENALTY.

Any person convicted of violating any provision of this Ordinance is guilty of a misdemeanor and shall be punished by a fine not to exceed $1,000.00 or imprisonment for not more than 90 days, or both, plus the costs of prosecution in either case. Said fine shall apply for each and every day that the undiluted coal tar-based sealant shall be allowed to remain in place, and each day shall constitute a separate violation of this Ordinance. Furthermore, the City shall have the authority to remove all such material placed in violation of this Ordinance, and to enter onto the private property for such purposes, and to assess the costs of such removal against the property.

CHAPTER 98: RENTAL HOUSING REGULATIONS

Section:

98.01 Purpose

98.02 Prohibition

98.01 PURPOSE.

The City finds that short-term rentals located in residential zoning districts constitute commercial use of residential property; conflict with the residential character of residential zoning districts, disrupt the residential character of neighborhoods, and have a negative impact on the livability of residential neighborhoods. To preserve the residential character of the City's residential districts, preserve property values, and reduce land use conflicts, the City determines, in furtherance of the public health, safety and general welfare, it is necessary to limit short-term rentals to hotels, motels, lodging establishments and similar accommodations.

98.02 PROHIBITION.

It is prohibited to rent, lease, or offer for rent or lease any dwelling unit, part of a dwelling unit, guest house, guest room, lodging room, accessory dwelling unit, or other accommodation for a period of less than thirty (30) consecutive days. Rental of less than this period of time shall only be permitted in state licensed hotels and other lodging establishments where permitted by the City's Zoning Ordinance.

CHAPTER 110: GENERAL LICENSING PROVISIONS

Section:

110.01	Licenses Required To Engage In Certain Businesses
110.02	Application for License
110.03	Issuance of License
110.04	Date and Duration of License
110.05	License Not Transferable
110.06	License Certificate to be Displayed
110.07	Revocation or Suspension
110.08	Appeal and Review

110.01 LICENSES REQUIRED TO ENGAGE IN CERTAIN BUSINESSES.

No person shall engage in any of the trades, businesses, or professions for which licenses are required by Title XI of this code or by any other ordinance of the city or provision of this code without first applying for and obtaining a license from the City Clerk or other duly authorized issuing authority.

110.02 APPLICATION FOR LICENSE.

A. All original applications for licenses, unless otherwise specifically provided, shall be made to the City Clerk or other authorized official in writing upon forms to be furnished by him or her and shall contain:
    1. The applicant's full name, address, and telephone number, and the full name of each officer, partner or business associate, if applicable;
    2. His or her present occupation and principal place of business;
    3. His or her place of residence for the preceding five years;
    4. The nature and location of the intended business or enterprise;
    5. The period of time for which the license is desired;
    6. A description of the merchandise, goods or services to be sold;
    7. If motor vehicles are to be used, a full description of each motor vehicle, including the make, model, year, color, license number, and vehicle registration (VIN) number of the vehicle.
    8. Other information concerning the applicant and his or her business as may be reasonable and proper, having regard to the nature of the license desired.

B. Any change in the information required by division (A) of this section must be reported to the City Clerk or other authorized official within 14 days of that change.
C. Renewal of an annual license may be granted to a licensee in good standing on the basis of the original application, unless otherwise provided. However, if a request for renewal is not submitted to the City Clerk or other authorized official within 21 days after the date of expiration for the preceding license, the applicant must fill out an original application.
D. With each original or renewal application, the applicant shall deposit the fee required for the license requested.
E. It shall be unlawful to knowingly make any false statement or representation in the license application.

110.03 ISSUANCE OF LICENSE.

Upon receipt of an application for a license, accompanied by the proper fee if approval by another officer or department is not required, the City Clerk, shall deposit the fee in the general fund of the city and issue to the applicant a proper license certificate signed by the City Clerk.

110.04 DATE AND DURATION OF LICENSE.

A license shall not be valid beyond the expiration date therein specified and, unless otherwise provided, shall not extend beyond December 31 of the year issued. However, at any time after December 1, licenses may be issued for the next calendar year. Unless otherwise specified, the full annual fee will be required of licensees irrespective of the date of issuance of the license.

110.05 LICENSE NOT TRANSFERABLE.

Every license shall be issued to a real party in interest in the enterprise or business, and unless otherwise provided, no license shall be assigned or transferred.

110.06 LICENSE CERTIFICATE TO BE DISPLAYED.

Every licensee carrying on business at a fixed location shall keep posted in a prominent place upon the premises the license certificate. Other licensees shall carry their licenses at all times, and whenever requested by any officer or citizen, shall exhibit the license.

110.07 REVOCATION OR SUSPENSION.

A. Any license may be suspended or revoked by the City Clerk or City Council at any time for any of the following reasons:
    1. For conditions or considerations which, had they existed at the time of issuance, would have been valid grounds for its denial;
    2. For any misrepresentation of a material fact in the application discovered after issuance of the license;

3. For any misrepresentation or materially false statement made in the course of carrying on the trade, business or profession;
4. For violation of any provision of this chapter or other federal, state or municipal law or ordinance relating to the operation of the business or enterprise for which the license has been issued;
5. Upon conviction of a licensee for any federal, state or municipal law or ordinance involving the creation of a nuisance, a breach of the peace, interference with the rights of property owners, or any other offense constituting a threat to the public health, safety, morals or general welfare of the public.

B. The suspension or revocation shall become effective upon notice served upon the licensee. The notice shall contain a written summary of the reasons for the suspension or revocation and a statement concerning the right to appeal the decision. The notice shall be delivered by certified mail, return receipt requested, to the address given on the licensee's application.

110.08 APPEAL AND REVIEW.

In case any applicant has been denied a license by the City Clerk, or if his or her license has been suspended or revoked by the City Clerk, the applicant or licensee shall within ten business days have the right to appeal to the City Council from the denial, suspension or revocation. Notice of appeal shall be filed in writing with the City Clerk or other authorized official. Notice of appeal shall be filed in writing with the City Clerk. Three members of the City Council shall constitute a quorum to hear the appeal. The appellant may appear and be heard in person or by counsel. If, after hearing, a majority of the members of the City Council present at the meeting declare in favor of the applicant, the license shall be issued or fully reinstated as the case may be; otherwise the suspension or revocation shall become final.

CHAPTER 111: FRANCHISE AGREEMENTS

Section:

111.01 Cable Communications Franchise Agreement

111.02 Natural Gas Distribution Franchise Agreement

111.03 Electric Franchise Agreement

111.01 CABLE COMMUNICATIONS FRANCHISE AGREEMENT

A. **Definitions.**

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

CHANNEL shall mean a six Megahertz (MHz) frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other non-video signals, or some combination of such signals.

CLASS IV CABLE COMMUNICATIONS CHANNEL means a signaling path provided by System to transmit signals of any type from a subscriber terminal to another point in the System.

COMMUNITY ACCESS CORPORATION shall mean the non-profit, public corporation whose duties may include the financing, management and programming of the community access and Public access channels.

COMMUNITY PROGRAMMING shall mean the programming that will be the responsibility of the Commission or its designee, pursuant to the Franchise Agreement.

COMMUNITY PROGRAMMING CHANNELS shall mean all of the Channels on the System designated for Community Programming in the Franchise Agreement.

COMPANY shall mean Group W Cable of Ramsey/Washington, Inc., its agents, employees, lawful predecessors, successors, transferees or assignees.

CONVERTER shall mean an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all appropriate subscriber signals included in that level of service delivered at designated converter dial locations.

FCC shall mean the Federal Communications Commission or a designated representative.

FRANCHISE means the rights and obligations extended by Grantor to Company to own, operate and maintain a System within the Municipality and the Ramsey/Washington Service Territory and manifested by the following:

1. This Ordinance adopted by the Grantor; and
2. A Franchise Agreement entered into between Grantor and Company based on the authority and grant of a cable communications franchise extended by this Ordinance and any and all acceptance agreements related thereto.

FRANCHISE AGREEMENT means the agreement entitled “Cable Communications Franchise Agreement” between Grantor and Company which is incorporated herein by reference and which is enforceable by Grantor and Company and which sets forth the rights and obligations between Grantor and Company arising out of the Franchise.

GRANTOR or ***MUNICIPALITY*** shall mean the Municipality of Dellwood, Minnesota, its governing body, and its lawful assigns or designees, including specifically the Commission.

INSTITUTIONAL NETWORK or ***1/NET*** shall mean the 440 MHz capacity, single cable network, more particularly described in Section 4.02 of the Franchise Agreement.

MEMBER MUNICIPALITY shall mean any municipality which enters into the Joint and Cooperative Agreement and is, at the time involved, a member in good standing.

NON-VOICE RETURN COMMUNICATIONS shall mean the result of appropriate System design techniques which incorporate installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.

OFFERING OF COMPANY or ***OFFERING*** shall mean that certain document entitled “Offering of Company” and signed by Company and the Commission, and any amendments thereto, which document is on file with Grantor. Further, to the extent that the Franchise Agreement may conflict with the Offering, the provisions of the Franchise Agreement shall supersede those of the Offering, only where such terms are in direct and irreconcilable conflict.

ORDINANCE means this Ordinance No. 111 of the Municipality.

RAMSEY/WASHINGTON COUNTIES SUBURBAN CABLE COMMUNICATIONS COMMISSION or ***COMMISSION*** shall mean the joint powers commission established by the cities of:

> Birchwood Village, Dellwood, Lake Elmo, Mahtomedi, Maplewood, North St. Paul, Oakdale, Vadnais Heights, White Bear Lake, and Willernie, and the townships of Grant and White Bear, Minnesota, as reorganized under Minnesota Statutes § 471.

PERSON shall mean any corporation, partnership, proprietorship, individual or organization authorized to do business in the State of Minnesota, or any natural person.

PUBLIC PROPERTY shall mean any real property owned by Grantor or any other governmental unit, other than a Street.

STREET shall mean the surface of and the space above and below any public street, road, cartway, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by Grantor which shall, within its proper use and meaning in the sole opinion of Grantor, entitle Company to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, man holes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to System.

SYSTEM shall mean a broadband telecommunications system of antennas, cables, wires, lines, towers, wave guides or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals, located in Grantor.

SUBSCRIBER shall mean any Person or entity who lawfully subscribes to a service provided by Company by means of or in connection with the System and pays a fee unless such fee is lawfully waived.

TWO-WAY SYSTEM means a distribution system that has amplifiers that can pass video, voice and/or data signals in both directions simultaneously.

B. **Grant of Franchise.**

The Ramsey/Washington Counties Suburban Cable Communications Commission (“Commission”) and the Municipality of Dellwood (“Grantor”) does ordain it is in the public interest to permit the use of public rights-of-way and easements for the construction, maintenance and operation of Cable Communications System (“System”) under the terms of a Franchise; said public purpose being specifically the enhancement of communications within the municipal limits of Grantor, the expansion of communications opportunities outside Grantor, and the provision of programming of a truly local interest. The City has entered into an agreement with Group W Cable of Ramsey /Washington, Inc. for the operation and maintenance of a cable communications system. A copy of the entire Franchise Agreement is available for inspection and copying in the office of the City Clerk.

C. **Statement Of Intent And Purpose.**

Grantor intends by the adoption of this Ordinance, to bring about the development and operation of a system. Such a development can contribute significantly to the communication needs and desires of citizens of Grantor, the surrounding area and the member municipalities of Commission. Further, the development and operation of a system may help achieve better utilization and improvement of public services. Studies participated in by Grantor and Commission have led the way for organizing this means of procuring and securing a system deemed best suited to Grantor and the member municipalities of Commission. This has resulted in the preparation and adoption of this Ordinance and Franchise as defined herein, in compliance with all requirements of the State of Minnesota.

D. **Authority.**

The original Ramsey/Washington Counties Suburban Cable Communications Commission, under federal and state authority, granted a Franchise for a System operating within the Commission’s territorial boundaries and prohibited operation of a System without a Franchise, and Commission carried out the ongoing administration and enforcement of the Franchise. The original Commission is to be dissolved, a successor Commission is to be created pursuant to Minnesota Statutes §471, and the individual member municipalities comprising Commission, including Grantor, must therefore enter into a franchise relationship with Group W Cable of Ramsey/Washington, Inc. d/b/a Meredith Cable ("Company”) pursuant to the same substantive terms and conditions of the original Commission’s Franchise.

E. **Franchise Processing Fee.**

Company shall be required to reimburse Grantor for all costs incurred including attorneys’ fees in soliciting and evaluating applications, and processing the franchise award, and any other ongoing expenses connected with the franchise award, to the extent that such costs are not recovered from application fees.

F. **Franchise Agreement.**

Grantor and Company are hereby authorized to, at the time of acceptance, enter into a Franchise Agreement, consistent with this Ordinance, governing the relationship between Grantor and Company; providing for regulation and use of the System; and prescribing liquidated damages for the violation of its provisions. The terms and conditions of the Agreement are incorporated herein by reference. The Agreement is on file in the office of the City Clerk.

G. **Short Title.**

This ordinance shall be known and cited as the “Cable Communications Franchise Ordinance”, hereinafter in this document referred to as “Ordinance”.

H. **Grant Of Authority And General Provisions.**

1. Grant of Franchise. The Franchise is granted pursuant to the terms and conditions contained herein and the accompanying agreements constituting the Franchise. Such terms and conditions shall be subordinate to all applicable provisions of state and federal laws, rules and regulations. Grantor hereby intends to adopt a replacement Franchise and enter into a franchise relationship on substantially the same terms and conditions as previously existed between the original Commission and Company. In the event any term or condition herein differs in any substantive respect from a term or condition in the prior Franchise, such prior Franchise term or condition shall continue in full force and effect, and shall supersede such term or condition.
2. Criteria of Selection. Company’s technical ability, financial condition and Legal qualifications were considered and approved by the original Commission, including Grantor, in a full public proceeding which afforded reasonable notice and a reasonable opportunity to be heard. By adoption of this Franchise, Grantor accepts the review of the original Commission and approves Company’s qualifications for the purposes contemplated herein.

I. **Authority For Use Of Streets.**

1. For the purposes of operating and maintaining System in Grantor, Company may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within Grantor such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with. Prior to construction or alteration, Company shall in each case file plans with Grantor, all appropriate agencies and utility companies and receive written approval of such plans. Company shall provide a monthly progress report to Grantor through the completion of construction.

2. Company shall construct and maintain System so as not to interfere with other uses of Streets. Company shall make use of existing poles and other facilities available to Company. Company shall make reasonable efforts to individually notify all residents affected by proposed construction prior to the commencement of that work.

3. Notwithstanding the above grant to use Streets, no Street shall be used by Company if Grantor in its sole opinion determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used.

J. **Franchise Term.**
This Franchise shall commence upon the date this Ordinance becomes effective.

K. **Franchise Non-Exclusive.**
The Franchise granted herein is non-exclusive.

L. **Cable Communications Franchise Required.**
No System shall be allowed to occupy or use the Streets or other Public Property of Grantor or be allowed to operate without a Franchise.

M. **Design Provisions.**
1. Initial Channel Capacity.
    a. System shall be a single trunk 450 MHz cable activated immediately with sixty-four (64) downstream Channels and four (4) return (upstream) Channels. FM music service shall be available through System. Notwithstanding anything to the contrary, Company shall install dual 450 MHz cable in all underground locations, provided, however, that Company is not required to install dual 450 MHz cable or dual conduit in any new build locations meeting the line extension criteria contained herein.
    b. System shall have initially a separate Institutional Network with a capacity of 56 video Channels, 31 activated downstream Channels, and 25 activated upstream Channels.
    c. Both Subscriber and Institutional Networks shall be capable of passing signals upstream and downstream simultaneously and have the technical capacity for non-voice return communications.
2. Interconnection.
System shall be designed to be interconnected with other cable communications system(s). The standard VHF Channel 6 is hereby designated for uniform regional channel usage; provided, however, that until the uniform regional channel becomes operational, the standard VHF Channel 6 may be utilized by Company as it deems appropriate. Subject to approval by Grantor, the designated uniform regional channel may be shared with the government access channel as may be required until such time as

Grantor requests a separate channel or until combined usage of the channel expands to such point as it is in use during eighty percent (80%) of the time between 8:00 a.m. and 10:00 p.m. during any consecutive six-week period.

3. Technical Performance Standards.
   At a minimum, System technical and performance standards promulgated by the FCC relating to cable communications systems contained in sub-part K ofpart 76 of the FCC's rules in effect at the time of application submission are incorporated herein by reference. Company shall further abide by standards agreed upon by Grantor and Company and set forth in the Franchise Agreement. The results of any tests required by the FCC shall be filed within ten (10) days of the conduct of such tests with Grantor.
4. Special Testing.
   The following procedures shall apply to any special testing required by Grantor:
   a. If special testing required by Grantor establishes that System is not in compliance with prescribed technical standards, Company shall bear all costs of the special testing.
   b. If special testing required by Grantor establishes that System is in compliance with prescribed technical standards, Grantor shall bear all costs of the special testing.

Grantor shall bear all costs of any other special testing required by Grantor.

N. **Construction Provisions.**

1. Construction Timetable.
   Company's construction timetable (submitted in with a map for the initial service area and made a part of the Franchise) reflects and schedule of construction of System. The plan of Company will reflect at the following:
   a. Within 90 days of the granting of the Franchise, Company shall apply for all necessary govern mental permits, licenses, certificates and authorizations.
   b. All engineering and design shall be completed within one year after the granting of the Franchise.
   c. A significant amount of construction shall be completed within one year after Company's receipt of all necessary governmental permits, licenses, certificates and authorizations.
   d. Energized trunk cable shall be extended substantially throughout the authorized area within five years after commencement of construction. Persons along the route of the energized cable will have individual "drops" within the same period of time, if the same is desired.
   e. Construction of the initial service area shall be completed within three (3) years of certification by Board.
   f. The requirements of this section may be waived by Grantor only upon occurrence of unforeseen events or acts of God.
2. Permits.
   Company shall obtain a permit from Grantor before commencing construction of System, including the opening or disturbance of any Street, sidewalk,

driveway or public place. Any and all Streets which are disturbed or damaged during the construction, operation, maintenance or reconstruction of System shall be promptly repaired by Company, at its expense and to the satisfaction of Grantor. There shall be imposed a daily fine of Fifty Dollars ($50.00) per incident should Company not meet the conditions of any applicable city permit not to disturb the streets.

3. Construction Codes.
   All wires, conduits, cable and other property and facilities of Company shall be located, constructed, installed and maintained in compliance with applicable codes. Company shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the Streets and public places of the Franchise area or endanger the lives or property of any Person. In the event of such interference, Grantor may require the removal of Company's lines, cables and appurtenances from the Street or property in question. Grantor shall have the right to inspect all construction or installation work performed subject to the provisions of the Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and pertinent provisions of law and ordinances that are applicable.
4. Reservation of Street Rights.
   Nothing in the Franchise shall be construed to prevent Grantor from constructing sewers, grading, paving, repairing and/or altering any Street, or laying down, repairing or removing water mains, or constructing or establishing any other public work. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Company. If any such property of Company herein shall interfere with the construction or repair of any Street or improvement, thirty (30) days' notice shall be given to Company by Grantor and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Company in such manner as shall be directed by the Grantor so that the same shall not interfere with the said public work of City, and such removal or replacement shall be at the expense of Company herein.

O. **Operation and Maintenance.**

1. Annual Reports.
   Grantor shall have the authority to collect a use fee and to audit Company's accounting and financial records upon reasonable notice as set forth in the Franchise Agreement. Company shall file with Grantor annually reports of gross revenues and other information as set forth in the Franchise Agreement.
2. Maintenance and Complaints.
   A toll-free or collect telephone number for the reception of complaints shall be provided to Subscribers and Company shall maintain a repair service

capable of responding to Subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. Company shall investigate and resolve all complaints regarding quality of service, equipment malfunction, billing disputes and other matters pursuant to the procedure set forth in the Franchise Agreement. Company will bear the costs included in making such repairs, adjustments or installations unless Company deems such repairs necessary due to neglect or abuse of Subscriber. All costs for repairs necessary due to neglect or abuse of Subscriber shall be borne by the Subscriber.

3. Rates and Other Charges.
    a. All regulatable rates and charges shall be subject to regulations by Grantor, in a manner to be provided by it. In the absence of any Grantor action taken to exercise rate regulation, Company shall be subject to the rate regulation provisions provided herein, and of the state or its agencies that may from time to time be applicable.
    b. Rates and charges charged by Company for monthly service and installation and all other charges hereunder shall be uniform, fair and reasonable and designed to meet all necessary costs of service, including a fair rate of return on the original cost, less depreciation, of the properties devoted to such service.
    c. Standard installation rates shall apply to installations that are two hundred (200) feet or less from the distribution plant. For aerial and underground installation of service drops longer than two hundred (200) feet, Subscribers will be charged an additional amount for the installation equal to the incremental increase of the cost of time and materials for the portion of the drop over two hundred (200) feet.
    d. Service requests for maintenance or repair of System shall be performed at no charge to a Subscriber, If such maintenance or repair is required as a result of damage caused by Subscriber, Company may charge according to its actual cost for time and material.
    e. Company may offer both its initial and additional installation services to Subscribers at uniformly applied reduced rates.
4. Rate Changes.
   A change in any regulatable rate shall require approval of Grantor and shall be effectuated pursuant to terms of the Franchise Agreement.
5. Service Contract.
   The length and terms of the service contract shall be as set forth in the Franchise Agreement.

P. **General Financial and Insurance Provisions.**

1. Performance Bond.
   At the time the Franchise becomes effective and at all times thereafter until Company has liquidated all of its obligations with Grantor, Company shall furnish a performance bond approved by Grantor in such amount as Grantor deems to be adequate compensation for damages resulting from

Company's nonperformance. Grantor may, from year to year, in its sole discretion, reduce the amount of the performance bond. The amount of the performance bond shall be as set forth in the Franchise Agreement.

2. Liability Insurance and Indemnification.
   Company shall indemnify and hold harmless Grantor at all times during the term of the Franchise, and maintain throughout the term of the Franchise, liability insurance in such amount as Grantor may require insuring both Grantor and Company with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the Franchise. Company shall initially maintain insurance in such amounts as set forth in the Franchise Agreement.

3. Duty to Company.
   Nothing contained in the Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Company's facilities while performing any work connected with grading or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water system.

Q. **Revocation, Abandonment, Purchase and Removal Of System.**

1. Grantor's Right to Revoke.
   Grantor reserves the right, in its sole discretion, to terminate and cancel the Franchise and all rights and privileges of the Franchise in the event:
   a. Company substantially violates any provision of the Franchise,
   b. Company attempts to evade any of the provisions of the Franchise,
   c. Company practices any fraud or deceit upon Grantor,
   d. Company becomes insolvent, unable or unwilling to pay its debts,
   e. Company is adjudged bankrupt,
   f. Company materially misrepresents a fact in the application for or negotiation of the Franchise, or
   g. Upon the conviction of any director, officer, employee or agent of Company of the offense of bribery or fraud connected with or resulting from the awarding of the Franchise.

   Nothing in the Franchise granted by this Ordinance shall preclude termination of it at any time by mutual agreement of both Grantor and Company.

2. Procedures.
   Grantor shall provide Company with a written notice of the cause for termination and its intention to terminate the Franchise and shall allow the Company a minimum of thirty (30) days after service of the notice in which to correct the violation. Company shall be provided with an opportunity to be heard at a public hearing before Grantor prior to the termination of the Franchise. In the event Grantor determines to terminate the Franchise, Company shall have a period of thirty (30) days, from the date of the

conclusion of the public hearing at which the termination of the Franchise was considered, within which to file an appeal. During the thirty (30) day period and until the appeal is decided, the Franchise shall remain in full force and effect, unless the term of the Franchise ends sooner.

3. Removal of System.
   Upon termination, forfeiture or expiration of the Franchise, if not renewed, Company shall remove its cables, wires and appliances from the Streets and other public and private property within Grantor, if Grantor so requests, and Grantor shall follow procedures set forth in the Franchise Agreement in the event Company fails to remove its cable, wires and appliances from the Streets and other public and private property within Member Municipalities.

4. Purchase.

   When System or the Franchise is offered for sale or at the termination of the Franchise, Grantor shall have the right to purchase System in the manner set forth in the Franchise Agreement.

5. Abandonment.
   Company may not abandon any cable communications service or any portion thereof without having given three (3) months prior written notice to Grantor and Board. Further, Company may not abandon any cable communications service or any portion thereof without compensating Grantor for damages resulting from the abandonment. The amount of damages resulting from abandonment shall be determined by Grantor.

6. Damage Due to Abandonment or Other Non-Performance.
   In the event Company abandons System for any reason or if Company files or has filed against it a petition in bankruptcy, a petition for the appointment of a receiver for all or part of its assets, or a levy of execution against all or part of its assets or makes an assignment for the benefit of its creditors, then any credit on future franchise fees Company may then be entitled, due to the advance payment of franchise fees, shall be retained by Grantor for application towards the damages incurred by Grantor, provided no additional revenues are received which are subject to the franchise fee. The rights reserved to Grantor above shall be in addition to all of the rights of Grantor, whether reserved by the Franchise or authorized by law, and no action authorized by this Section 111.01.Q.6 shall affect any other right Grantor may have.

R. **Rights of Individuals Protected.**

1. Monitoring Subscriber Viewing.
   No signals of a Class IV Cable Communications Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Request for such permission shall be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full

knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which shall be renewed at the option of the Subscriber. No penalty shall be invoked for the Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

2. Sale of Subscriber Lists Prohibited.
   No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, or by any other means, including, but not limited to, lists of the names and addresses of such Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Company and its employees for internal business use, and also to the Subscriber who is a subject of that information, unless Company has received specific written authorization from Subscriber to make such data available. The sale of any subscriber list, however generated, is also prohibited.
3. Protection of System Integrity.
   Written permission from the Subscriber shall not be required for the conducting of System-wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billings. Confidentiality of such information shall be subject to the provision set forth above in paragraph 111.01.R.2.
4. Subscriber Access to Information.
   Upon written request by a Subscriber, Company shall within ten (10) days of receiving such request provide the Subscriber with copies of all individually identifiable information relating to the Subscriber, Subscriber household, or user of a Subscriber terminal currently maintained by Company. Company shall make the disclosures required under this paragraph to the Subscriber in person, by mail, or in any combination of these ways at the option of the Subscriber.
5. Procedure for Disputing Accuracy.
   The following shall apply where a Subscriber disputes the accuracy or completeness of any item of information disclosed to a Subscriber by Company under Section 111.01.R.4.
   a. The Subscriber must convey the dispute within sixty (60) days of receipt of the disputed information directly to Company. The dispute may be conveyed in writing or in person by the Subscriber.
   b. Company shall within thirty (30) days reinvestigate and record the current status of the disputed information. Such reinvestigation shall be completed within thirty (30) days of its commencement. If after such reinvestigation the information is found to be inaccurate, incomplete, or can no longer be verified, Company shall within ten (10) days delete or correct the information. Company may not require the appearance of a Subscriber at its office as a precondition to the right of a

Subscriber to a reinvestigation under this Section.

c. After completion of any reinvestigation pursuant to subdivision B of This Section, Company shall within ten (10) days notify the Subscriber of the result of the reinvestigation or of its decision regarding deletion or inclusion of information and shall clearly and conspicuously disclose to the Subscriber his or her rights under this Section.
d. If the reinvestigation does not resolve the dispute, the Subscriber may file a statement with Company setting forth the nature of the dispute. Company may limit such statements to not more than five hundred (500) words if it provides the Subscriber with assistance in writing a clear summary of the dispute.
e. Whenever a statement of a dispute is filed, Company shall, in any subsequent disclosure containing the information in question, clearly note that it is disputed by the Subscriber and provide the recipient with a copy of the statement filed by the Subscriber. A mere reference to the fact that a disputed statement is in the record and may be obtained on request does not comply with this Section.

S. **Community Programming, Community Programming Channels And Institutional Network Requirements.**

1. Minimum Required Community Programming Channels.
Company shall provide to each of its Subscribers who receives some or all of the total services offered on System reception, without charge, Community Programming on the Community Programming Channels, pursuant to the joint responsibilities between Grantor and Company described in the Franchise Agreement. The Grantor shall provide through the Community Programming Channels at least one specially designated noncommercial public access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel available for local government use; and at least one specially designated access channel available for lease on a first-come, first-served, nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels required in this paragraph unless specifically waived by Grantor or its designee. No charges may be made by Grantor for channel time or playback of prerecorded programming on at least one of the specially designated noncommercial public access channels required by this subdivision, provided, however, that personnel, equipment, and production costs may be assessed for live studio presentations exceeding five minutes in length. Charges for such production costs and any fees for use of other public access channels must be consistent with the goal of affording the public a low-cost means of television access.

2. Additional Community Programming Channels.
   Whenever the specially designated noncommercial public access channel, the specially designated education access channel, the specially designated local government access channel, or the specially designated leased access channel required in this section is in use during 80% of the weekdays (Monday-Friday), for 80% of the time during any consecutive 3 hour period for six weeks running, and there is demand for use of an additional channel for the same purpose, Company shall then have six months in which to provide a new specially designated access channel for the same purpose, provided that provision of such additional channel or channels shall not require Company to install converters. However, nothing in this section shall be construed so as to preclude the installation of converters by Company on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

3. Operating Rules.
   Grantor, and/or its designee, may establish rules pertaining to the administration of the Community Programming Channels.

4. Alarm Service/Data Transmission Services.
   To the extent Company provides only alarm services or only data transmission services for computer operated functions, Company need not Community Programming reception to alarm and data service Subscribers.

5. Community Programming Equipment.
   Grantor or its designee will make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel(s).

6. Institutional Network Requirements.
   Grantor will assume responsibility for the I/Net, which is part of the System, in accordance with the provisions of the Franchise Agreement.

7. Access to Community Programming Channels And The I/Net.
   The Grantor and its designee shall have complete and unrestricted access to the Community Programming Channels and the I/Net, however, the Company shall have full responsibility for the maintenance, repair, and technical performance of the cable and related active and passive electronics which carry said Community Programming Channels and the services provided by Company on this I/Net (excluding all equipment owned and operated by the Grantor or its designee).

T. **Miscellaneous Provisions.**

1. Compliance with Laws.
   Company shall conform with all the state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated. Company shall conform with all federal laws and regulations regarding cable communications as they become effective. Company shall also conform with all City ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise.

2. Sale or Transfer of Franchise.
   The sale or transfer of the Franchise or sale or transfer of stock so as to create a new controlling interest pursuant to Chapter 12 of Board's rules and regulations is prohibited, except at the approval of Grantor, which approval shall not be unreasonably withheld, and that such sale or transfer is completed pursuant to Chapter 12 of Board's rules and regulations and as agreed upon in the Franchise Agreement.

3. Amendment of Franchise Ordinance and Variance Procedure.
   a. After published notice, public hearings and deliberations of Grantor, this Ordinance may be amended upon a weighted majority vote of the Commission and the written consent of Company.
   b. When the Commission Franchise administrator determines that a proposed change, alteration or substitution in Company's offering will be non-controversial in nature, the following procedure may be utilized rather than the provisions of paragraph a above.
   c. The Franchise administrator shall give notice of the intention to change, alter, or substitute a provision of the Offering without public hearing. The notice shall be given by publication in the official newspapers of each City. The notice shall include a summary of the proposed change, alteration or substitution. The notice shall include a statement advising the public:
      i. That they have ten (10) days in which to submit comment on the proposed change, alteration or substitution;
      ii. That no public hearing will be held unless seven (7) or more persons make a written request for a hearing within the ten (10) day comment period; and
      iii. Of the manner in which persons shall request a hearing on changes proposed pursuant to this subdivision.
   d. Applications for variance shall be filed with the Commission Franchise administrator and subject to the following procedures:
      i. An application fee of Fifty Dollars ($50.00) plus actual costs incurred by Grantor, including costs of outside consultants, shall be paid to Grantor by applicant at the time of approval of a request for

variance. An application for variance may include more than one (1) variance request if the Franchise administrator or Grantor determines that there is sufficient similarity or relationships between issues to warrant the use of only one (1) application.

ii. The Commission Franchise administrator shall give notice of the application to Grantor and Company of the date, time and place for review of the application.

iii. The Franchise administrator shall review the application within fourteen (14) calendar days of publication of the notice unless a public hearing is required.

iv. In the event a public hearing is required, the hearing shall be held within ten (10) calendar days after demand for such a hearing has been met. The Commission Franchise administrator shall review the application within seven (7) calendar days of the conclusion of the public hearing.

v. Grantor shall receive a report of the findings of the Franchise administrator at its next meeting following the date of review by the Franchise administrator.

vi. The variance will be deemed approved by majority vote of Grantor.

e. Before a variance is granted, the following findings shall be made by the Commission Franchise administrator and shall be included in the report to Grantor:

i. The requested variance is a minor deviation from the offering and is consistent with the Franchise in the sole judgment of Grantor.

ii. Application of the provisions of the Franchise may result in a hardship to the applicant and to grant a variance would not be detrimental to other affected parties.

iii. Due to expense or delay, it would be unreasonable to perfect such changes by Ordinance amendment.

iv. Undue delay, expense of other adverse results will not occur by approval of the required variance.

v. If a variance is because of technical or cost reasons, the variance will result in equal or better technical standards of cost efficiency.

4. Franchise Renewal.

a. Company may apply for renewal or renegotiation of the Franchise by making application to do so not later than eighteen (18) months prior to the expiration of the Franchise on forms provided by Grantor, unless Grantor determines not to reissue the Franchise to Company or desires to consider additional applicants for a Franchise.

b. Company may be approved, and the Franchise or modification to it may be renewed or extended by Grantor in accordance with the then existing

rules of the FCC, the Board, the Cities and all other applicable laws, ordinances, rules or regulations.

c. Nothing in the Franchise shall be construed to require renewal or extension of this Franchise.
d. Renewal of the Franchise may not be for more than 15 years, unless otherwise permitted by federal or state law.

5. Administration of Franchise.
   a. Grantor, and/or its designee, shall be responsible for the continued administration of the Franchise.
   b. Grantor shall have continuing regulatory jurisdiction and supervision over System and Company's operation under the Franchise. Grantor may issue such reasonable rules and regulations concerning the construction, operation and maintenance of System as are consistent with the provisions of the Franchise.
   c. Company shall construct, operate and maintain the System subject to the supervision of Grantor and other affected Member Municipalities who have jurisdiction in such matters and in strict compliance with all laws, ordinances, departmental rules and regulations affecting System.
   d. System and all parts thereof shall be subject to the right of periodic inspection by Grantor.

6. Penalties.
   Exclusive of contractual damages or other rights in law or equity, a violation of any provision of this Ordinance is a misdemeanor and is enforceable by Grantor.
   a. From and after the effective date of the Franchise, it shall be unlawful for any Person to establish, operate or to carry on the business of distributing to any Persons in Grantor any television signals or radio signals by means of a cable communications system unless a franchise therefore has first been obtained pursuant to the provisions of the Ordinance, and unless such franchise is in full force and effect.
   b. From and after the effective date of the Franchise, it shall be unlawful for any Person to construct, install or maintain within any public Street in Grantor, or within any other Public Property of Grantor, or within any privately owned area within Grantor which has not yet become a public Street but is designated or delineated as a proposed public Street on any tentative subdivision map approved by Grantor, any equipment or facilities for distributing any television signals or radio signals through a cable communications system, unless a franchise authorizing such use of such Street or property or area has first been obtained and unless such franchise is in full force and effect.

c. It shall be unlawful for any Person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised System within Grantor for the purpose of taking or receiving television signals, radio signals, pictures, programs, sound, or data transmission.
d. It shall be unlawful for any Person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised System within Grantor for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program, sound, or data transmission, without payment to the owner of said System.
e. It shall be unlawful for any Person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs, sound, or data transmissions.

U. **Effective Date: Publication: Dissolution.**

1. Publication; Effective Date.
   This Ordinance shall be properly executed by the Grantor in accordance with local rules. This Ordinance shall take effect upon publication within fifteen (15) days after adoption. This Ordinance may incorporate by reference, without publication in full, a statute of Minnesota or a rule of the Board or the FCC and the Offering of Company.
2. Dissolution of Commission.
   a. Method. Commission shall continue for an indefinite term up to and including fifteen (1 5) years. The Commission may be terminated only upon the expiration the Joint Powers Agreement or by the operation of state or federal law.
   b. Distribution of Assets. Upon dissolution of Commission, all remaining assets of Commission, after payment of obligations, shall be distributed among the Member Municipalities, including Grantor, in proportion to their contributions and in accordance with procedures established by Commission. Commission shall continue to exist after dissolution for such period, no longer than six (6) months, as is necessary to wind up its affairs, but for no other purpose.
   c. Effectiveness of Ordinance after Dissolution. Upon the dissolution of Commission by operation of state or federal law, the Franchise shall remain effective and enforceable by Grantor within its territorial limits.
3. Acceptance Procedure.
   a. Company shall accept the Franchise, in form and substance acceptable to Grantor. Upon acceptance of the Franchise, Company shall be bound by all its terms and conditions.

b. The Offering shall be permanently kept and filed in the Office of the Commission and the originals or reproductions thereof shall be available for inspection by the public during normal business hours.
c. Company shall have continuing responsibility for the Franchise, and if Company be a subsidiary or wholly owned corporate entity of a parent corporation, performance of the Franchise shall be secured by guarantees of the parent corporation in form and substance acceptable to Grantor, which shall be delivered at time of, and as part of, acceptance of the Franchise.
d. With its acceptance, Company shall deliver to Commission true and correct copies of documents creating Company and evidencing its power and authority to accept the Franchise. Further, such documents shall describe officers authorized to accept on behalf of Company.
e. With its acceptance, Company shall also pay all costs and expenses incurred by Grantor in connection with the franchising process. Grantor shall provide an itemized statement to Company. Costs or expenses of Grantor not identified at that time shall be paid promptly by Company upon receipt of an itemized statement from Grantor. It is the intent of Grantor and Company that Grantor be reimbursed for all costs and expenses in connection with the granting of the Franchise including any subsequent expenses due to delays or litigation pertaining to the grant of the Franchise. In order to accomplish these activities, Company shall arrange a time and place satisfactory to both Company and Grantor.
f. All security deposits, insurance contracts, bonds and guarantees required by Company by the Franchise shall be delivered with the acceptance.
g. Upon the delivery of the above described documents, Grantor and Company shall execute the Franchise Agreement. The execution of the Franchise Agreement shall be deemed the completion of the franchising process.
h. The commitment of Company is contained in the Offering. Company shall perform all services or offerings set forth in its Offering including all promises, offers, representations and inducements contained therein. Company's offering and specific understandings and agreements with Grantor shall be embodied in and incorporated into a Franchise Agreement to be entered into between Grantor and Company based upon the authority granted pursuant to this Ordinance. The Franchise Agreement is a separate document, incorporated herein by reference. The failure to refer to the Offering in any specific provision in the Franchise shall not be a limitation on the obligation of Company to fully comply with the Offering. In the event of conflict or discrepancies between any parts of the Offering or the Agreement entered into between Grantor and Company or this Ordinance, those provisions which provide the greatest benefit for Grantor, in the opinion of Grantor, shall prevail. In the event the

Agreement is not entered into and executed by both the City and Company or for any other failure to complete the acceptance as provided for in this section, the Franchise granted by this Ordinance shall be void, and Grantor shall have no further obligations to Company and Company shall have no claim in law or equity against Grantor.

The Exhibit and Offering are a part of this Ordinance and each is specifically incorporated herein by reference. To the extent any provision of the Offering or Exhibit I are not specifically set out in this Ordinance or not validly incorporated herein by reference, Grantor, from time to time, may amend this Ordinance to include such provision effective as of the date of commencement of this Ordinance or any such rule effective as of the date of the commencement of this Ordinance or adoption of the rule, whichever is later. Company, by acceptance of this Ordinance and the Franchise authorized by it, consents to and agrees to be bound by any such amendment.

111.02 NATURAL GAS FRANCHISE AGREEMENT

A. **Definitions.**

CITY means the City of Dellwood, County of Washington, State of Minnesota.

CITY UTILITY SYSTEM means the facilities used for providing non-energy related public utility service owned or operated by City or agency thereof including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

COMMISSION means the Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government which preempts all of part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.

COMPANY means Northern States Power Company, a I\4innesota corporation, d/b/a Xcel Energy, its successors and assigns.

GAS as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.

NOTICE means a written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, Suite 3000, 800 Nicollet Mall, Minneapolis,

MN 55402. Notice to the City shall he mailed to the City Clerk, 111 Wildwood Road, Willernie, MN 55090. Either parry may change its respective address for the purpose of this Ordinance by written notice to the other party.

PUBLIC GROUND means land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

PUBLIC WAY means any street, alley, walkway or other public right-of-way within the City.

B. **Grant of Franchise.**
City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the non-exclusive right and privilege of erecting a gas distribution system and using the Public Ways and Public Grounds of City for the purpose of constructing, operating, repairing, and maintaining in, on, over, under and across the same, all gas pipes, mains and appurtenances usually, conveniently, or necessarily used in connection therewith, for the purpose of the transmission of gas, or the distribution of gas, for public and private use within and through the limits of City as its boundaries exist or as they may be extended in the future. Company may also do all reasonable things necessary or customary to accomplish these purposes, subject, however, to the further provisions of this franchise agreement.

C. **Restrictions.**
1. All gas pipes, mains, regulators, and other property and facilities shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over said Public Ways and so as to not disrupt normal operation of City Utility System previously installed therein. Company's construction, operation, repair, maintenance and location of such facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground gas facilities in place provided, at City's request, Company will remove abandoned metal pipe interfering with a City improvement project but only to the extent such metal pipe is uncovered by excavation as part of the City improvement project.
2. Company shall not construct any new or modified installations within or upon any Public Grounds without receiving the prior written consent of an authorized representative of City for each such new installation.
3. In constructing, removing, replacing, repairing, or maintaining said gas pipes, mains and appurtenances, Company shall, in all cases, place the Public Ways in, on, under or across which the same are located in as good condition as they were prior to said operation and maintain any restored paved surface

in such condition for two years thereafter. City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

D. **Tree Trimming.**
Company is also granted the permission and authority to trim all trees, including roots and shrubs in the Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of gas facilities, provided that Company shall save City harmless from any liability in the premises.

E. **Service and Rates.**
The service to be provided and the rates to be charged by Company for gas service in City are subject to the jurisdiction of the Public Utilities Commission of this State or its successor agency

F. **Relocating.**
1. Whenever City at its cost shall grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions, when necessary, and after approval of its final plans have been obtained, order Company to relocate permanently its mains, services, and other property located in said Public Way materially interfering with the City's planned construction, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any Public Way or to construct or reconstruct any City Utility System therein. However, after Company has so relocated, if a subsequent relocation or relocations shall be ordered within five (5) years from and after first relocation, City shall reimburse Company for such non-betterment relocation expense which Company may incur on a time and material basis; provided, if subsequent relocations are requested because company facilities materially and necessarily interfere with the extension of a City Utility System to previously unserved areas, Company may be required to relocate at its own expense.
2. Nothing contained in this franchise shall require Company to relocate, remove, replace or reconstruct at its own expense its facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

3. Any relocation, removal, or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46 as supplemented or amended; and further, it is expressly understood that the right herein granted to Company is a valuable property right and City shall not order Company to remove or relocate its facilities without compensation when a Public Way is vacated. improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such a relocation and the loss and expense resulting therefrom are first paid to Company.
4. The provisions of this franchise shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way or Public Ground was established, or Company's rights under state or county permit.

G. **Indemnification.**

1. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the gas facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to) the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.
2. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

H. **Vacation of Public Ways.**
The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required solely for a City improvement project, the vacation of any Public Way, after the installation of gas facilities, shall not operate to deprive Company of its rights to operate and maintain such gas facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall the City be liable to pay damages to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

I. **Written Acceptance.**
Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Clerk within ninety (90) days after the final passage and any required publication of this Ordinance.

J. **General Provisions.**
1. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.
2. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the patties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.
3. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

4. Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.
5. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Company's facilities while performing any activity.

111.03 ELECTRIC FRANCHISE AGREEMENT

A. **Definitions.**

CITY. The City of Dellwood, County of Washington, State of Minnesota.

CITY UTILITY SYSTEM. Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

COMMISSION. The Minnesota Public Utilities Commission, or any successor agency or agencies, including and agency of the federal government, which preempts all, or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.

COMPANY. Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns.

ELECTRIC FACILITIES. Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.

NOTICE. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, Dellwood, Minnesota 55110. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

PUBLIC GROUND. Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

PUBLIC WAY. Any street, alley, walkway or other public right-of-way within the City.

B. **Adoption of Franchise.**

1. Grant of Franchise.
   City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

2. Effective Date; Written Acceptance.
   This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City, by Council resolution, may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

3. Services and Rates.
   The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

4. Publication Expense.
   The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

5. Dispute Resolution.
   If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith

to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used, or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

C. **Location, Other Regulations.**

1. Location of Facilities.
   Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

2. Field Locations.
   Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statues, Chapter 216D.

3. Street Openings.
   Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electrical Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

4. Restoration.
   After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment, and material and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section C(4), but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace, or maintain facilities in a Public Way.

5. Avoid Damage to Electric Facilities.
   Nothing in this ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

6. Notice of Improvements.
   The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

7. Shared Use of Poles.
   Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions acceptable to Company whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any

cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

D. **Relocations.**

1. Relocation of Electric Facilities in Public Ways.
   If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Electric Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section D(3), Company shall relocate its Electric Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

2. Relocation of Electric Facilities in Public Ground.
   City may require Company, at Company's expense, to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

3. Projects with Federal Funding.
   Relocation, removal, or rearrangement of any Company Electric Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment

costs of such relocation and the loss and expense resulting therefrom are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.

4. No Waiver.
   The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

E. **Tree Trimming.**
   Company may trim all trees and shrubs in the Public Grounds and Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

F. **Indemnification.**
   1. Indemnity of City.
      Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner, of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

   2. Defense of City.
      In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without

the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

G. **Vacation of Public Ways.**
The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

H. **Change in Form of Government.**
Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

I. **Provisions of Ordinance.**
1. Severability.
Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

2. Limitation on Applicability.
This Ordinance constitutes a franchise agreement between the City and Company as the only parties, and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

J. **Amendment Procedure.**
Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern, and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a

subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

K. **Previous Franchises Superseded.**
This franchise supersedes any previous electric franchise granted to Company or its predecessor.

CHAPTER 112: LIQUOR REGULATIONS

Section:

General Provisions

112.01 Adoption of State Law by Reference

112.02 City May be More Restrictive Than State Law

112.03 Definitions

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Licensing

112.05 Term And Expiration Of Licenses

112.06 Kinds Of Liquor Licenses

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112.08 Council Discretion To Grant Or Deny A License

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112.10 Description Of Premises

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112.14 Hearing And Issuance

112.15 Restrictions On Issuance

112.16 Conditions Of License

112.17 Hours And Days Of Sale

112.18 Minors On Premises

112.19 Restrictions On Purchase And Consumption

112.20 Suspension And Revocation

112.01 ADOPTION OF STATE LAW BY REFERENCE.

The provisions of M.S. Ch. 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this Chapter as if set out in full. It is the intention of the City Council that all future amendments to M.S. 340A are hereby adopted by reference or referenced as if they had been in existence at the time this Chapter is adopted.

112.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The Council is authorized by the provisions of M.S. 340A.509, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M.S. Ch. 340A, as it may be amended from time to time.

112.03 DEFINITIONS.

In addition to the definitions contained in M.S. 340A.101, as it may be amended from time to time, the following terms are defined for purposes of this chapter:

LIQUOR. As used in this chapter, without modification by the words "intoxicating" or 3.2 percent malt, includes both intoxicating liquor and 3.2 percent malt liquor.

RESTAURANT. An eating facility, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a "restaurant" as defined by this section, an establishment shall have a license from the state as required by M.S. 157.16, as it may be amended from time to time, and meet the definition of either a "small establishment, "medium establishment" or "large establishment" as defined in M.S.157.16, Subd. 3d, as it may be amended from time to time.

112.04 CONSUMPTION IN PUBLIC PLACES.

No person shall consume intoxicating liquor or 3.2 percent malt liquor on any public street, or in any public place other than on the premises of an establishment licensed under this chapter.

112.05 TERM AND EXPIRATION OF LICENSES.

Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on December 31 of each year unless another date is provided by ordinance. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety, and the accompanying city consent to the permit, shall expire on March 31 of each year.

112.06 KINDS OF LIQUOR LICENSES.

A. 3.2 percent malt liquor on-sale licenses, which may be issued only to golf courses, clubs, and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.
B. Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious, or nonprofit organization.
C. On-sale intoxicating liquor licenses, which may be issued to private clubs as defined by M S. 340A ,101, as it may be amended from time to time. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under 112.23 shall not exceed the amended amount from time to time.
D. Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval as a general or special election as provided by M.S. 340A.504, Subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a private club which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license, which shall be established by the Council shall not exceed $200, or the maximum amount provided by M.S. 340A.504, Subd. 3c, as it may be amended from time to time.
E. Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year.
F. One day consumption and display permits with the approval of the Commissioner of Public Safety to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization.

112.07 LICENSE FEES; PRO RATA.

A. No license or other fee established by the city shall exceed any limit established by M.S. Ch. 340A, as it may be amended from time to time, for a liquor license.
B. The Council may establish from time to time in the Ordinance Establishing Fees and Charges the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this chapter. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.
C. The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis.
D. All license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the license fee shall be returned to the applicant.
E. A refund of a pro rata share of an annual license fee may occur only if authorized by M.S. 340A.408, Subd. 5, as it may be amended from time to time.

112.08 COUNCIL DISCRETION TO GRANT OR DENY A LICENSE.

The Council in its sole discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this chapter.

112.09 APPLICATION FOR LICENSE.

A. Form. Every application for a license issued under this chapter shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. The form shall be verified and filed with the city. No person shall make a false statement in an application.

B. Financial responsibility. Prior to the issuance of any license under this chapter, the applicant shall demonstrate proof of financial responsibility as defined in M.S. 340A.409, as it may be amended from time to time, with regard to liability under M.S. 340A.801 , as it may be amended from time to time. This proof will be filed with the city and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to M.S.

340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this chapter without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

112.10 DESCRIPTION OF PREMISES.

The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed. The description may not include any parking lot.

112.11 APPLICATIONS FOR RENEWAL.

At least 90 days before a license issued under this chapter is to be renewed, an application for renewal shall be filed with the city. The decision whether or not to renew a license rests within the sole discretion of the Council. No licensee has a right to have the license renewed.

112.12 TRANSFER OF LICENSE.

No license issued under this chapter may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this code applying to applications for a license shall apply.

112.13 INVESTIGATION.

A. Preliminary background and financial investigation. On an initial application for a license, on an application for transfer of a license and, in the sole discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of $500 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than $500, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

B. Comprehensive background and financial investigation. If the results of a preliminary investigation warrant, in the sole discretion of the Council, a comprehensive background and financial investigation, the Council may either

conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be $500, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and $10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

112.14 HEARING AND ISSUANCE.

The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sole discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

112.15 RESTRICTIONS ON ISSUANCE.

A. Each license shall be issued only to the applicant for the premises described in the application.
B. Not more than one license shall be directly or indirectly issued within the city to any one person.
C. No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the city are delinquent and unpaid.
D. No license shall be issued for any place or any business ineligible for a license under state law.
E. No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this division (E) shall not apply to any license existing on the effective date of this chapter or to the renewal of an existing license.

112.16 CONDITIONS OF LICENSE.

The failure of a licensee to meet any one of the conditions of the license specified below shall result in a suspension of the license until the condition is met.

A. Within 90 days after employment, every person selling or serving liquor in an establishment which has an “on-sale” license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.
B. Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.
C. Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect, and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.
D. No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.
E. Compliance with financial responsibility requirements of state law and of this chapter is a continuing condition of any license.
F. Racial Discrimination – Clubs. No license to sell alcoholic beverages may be issued or renewed to a club which discriminates against members or applicants for membership or guests of members on the basis of race.
G. Notice Posting. A premises license for the retail sale of alcoholic beverages must post and maintain in a conspicuous place within the licensed premise, one or more signs which read:
    1. This establishment is prohibited by law from serving alcoholic beverage to a person who is under the age of 21 years or obviously intoxicated. Minnesota Statutes Chapter 340A.
    2. A conspicuous place is a location clearly visible to the customers.
    3. The signs must be at least 12 inches wide by 8 inches high, with letters at least one inch high in clear contrast with the background.

112.17 HOURS AND DAYS OF SALE.

A. No sale of intoxicating liquor for consumption on the licensed premises may be made:
    1. Between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday;
    2. After 1:00 a.m. on Sundays, except as provided by a separate Sunday license;
    3. Between 8:00 p.m. on December 24th and 8:00 a.m. on December 25th, except that when December 25 occurs on a Sunday on-sales on that day are governed as follows:

B. Intoxicating Liquor – Sunday Sales – On Sale. A licensee which holds an on-sale intoxicating liquor license may sell intoxicating liquor for consumption on the premises in conjunction with the sale of food between the hours of 10:00 a.m. on Sundays and 1:00 a.m. on Mondays, provides the licensee is in compliance with the Minnesota Clean Air Act.
C. No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.
D. No on-sale licensee shall permit any glass, bottle, or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool, or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.
E. No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.
F. Any violation of any condition of this section may be grounds for revocation or suspension of the license.

112.18 MINORS ON PREMISES.

No person under the age of 18 years shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person or dishwashing services or serving food.

112.19 RESTRICTIONS ON PURCHASE AND CONSUMPTION.

No person shall mix or prepare liquor for consumption in any place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. 340A.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place.

112.20 SUSPENSION AND REVOCATION.

A. The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this chapter relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

B. The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this chapter or M.S. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time:
    1. For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, the license shall be revoked.
    2. The license shall be suspended by the Council after a finding under division (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows:
        a. For the first violation within any three-year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed.
        b. For a second violation within any three-year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
        c. For the third violation within any three-year period, at least seven consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
        d. For a fourth violation within any three-year period, the license shall be revoked.
    3. The Council shall select the day or days during which the license will be suspended.

C. Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this chapter or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Clerk, a hearing before the Council shall be granted within ten days. Any suspension under this division (B) shall continue until the Council determines that the financial responsibility requirements of state law and this chapter have again been met.

D. The provisions pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this chapter.

CHAPTER 113: PEDDLERS AND SOLICITORS

Section:

113.01	Definitions
113.02	Exceptions to Definitions
113.03	Licensing; Exemptions
113.04	License Ineligibility
113.05	License Suspension and Revocation
113.06	License Transferability
113.07	Prohibited Activities
113.08	Exclusion by Placard

113.01 DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PEDDLER. A person who goes from house-to-house, door-to-door, street-to-street, or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise or other personnel property that the person is carrying or otherwise transporting. The term ***PEDDLER*** shall mean the same as the term “hawker.”

PERSON. Any natural individual, group, organization, corporation, partnership or association. As applied to groups, organizations, corporations, partnerships and associations, the term shall include each member, officer, partner, associate, agent or employee.

REGULAR BUSINESS DAY. Any day during which the city hall is normally open for the purpose of conducting public business. Holidays defined by state law shall not be counted as regular business days.

SOLICITOR. A person who goes from house-to-house, door-to-door, street-to-street, or any other type of place-to-place, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property or services of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which

delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. The term shall mean the same as the term "canvasser."

TRANSIENT MERCHANT. A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering, goods, wares, products, merchandise or other personal property and who does not remain or intend to remain in any one location for more than 14 consecutive days.

113.02 EXCEPTIONS TO DEFINITIONS.

A. For the purpose of the requirements of this chapter, the terms ***PEDDLER***, ***SOLICITOR***, and ***TRANSIENT MERCHANT*** shall not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route.
B. In addition, persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, shall be exempt from the definitions of ***PEDDLERS***, ***SOLICITORS***, and ***TRANSIENT MERCHANTS***, as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court-ordered sale. Exemption from the definitions for the scope of this chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

113.03 LICENSING; EXEMPTIONS.

A. City license required. No person shall conduct business as either a peddler, solicitor, a transient merchant without first having obtained a license from the city.

B. Application. Application for a city license to conduct business as a peddler, solicitor or transient merchant shall be made at least 14 regular business days before the applicant desires to begin conducting business. Application for a license shall be made on a form approved by the City Council and available from the office of the City Clerk. All applications shall be signed by the applicant. All applications shall include the following information:
    1. Applicant's full legal name.
    2. All other names under which the applicant conducts business or to which applicant officially answers.
    3. A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features, and the like).

4. Full address of applicant's permanent residence.
5. Telephone number of applicant's permanent residence.
6. Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent.
7. Full address of applicant's regular place of business (if any).
8. Any and all business related telephone numbers of the applicant.
9. The type of business for which the applicant is applying for a license.
10. Whether the applicant is applying for an annual or daily license.
11. The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days).
12. Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business.
13. A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses.
14. A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant.
15. Proof of any requested county license.
16. Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant.
17. A general description of the items to be sold or services to be provided.
18. All additional information deemed necessary by the City Council.
19. The applicant's driver's license number or other acceptable form of identification.
20. The license plate number, registration information and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.

C. Fee. All applications for a license under this chapter shall be accompanied by the fee established by the City as amended from time to time.

D. Procedure. Upon receipt of the completed application and payment of the license fee, the City Clerk, within two regular business days, must determine if the application is complete. An application is determined to be complete only if all required information is provided. If the City Clerk determines that the application is incomplete, the City Clerk must inform the applicant of the required necessary information that is missing. If the application is complete, the City Clerk must order any investigation, including background checks, necessary to verify the information provided with the application. Within ten regular business days of receiving a complete application the City Clerk must issue the license unless

there exist grounds for denying the license. If the City Clerk denies the license, the applicant must be notified in writing of the decision, the reason for denial, and of the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal within 20 days of the date of the request. The decision of the City Council following the public hearing can be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari.

E. Duration. An annual license granted under this chapter shall be valid for one calendar year from the date of issue. All other licenses granted under this chapter shall be valid only during the time period indicated on the license.

F. License exemptions.

    1. Professional fund raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this chapter.

113.04 LICENSE INELIGIBILITY.

The following shall be grounds for denying a license under this chapter:

A. The failure of the applicant to obtain and show proof of having obtained any required county license.
B. The failure of the applicant to truthfully provide any of the information requested by the city as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application.
C. The conviction of the applicant within the past five years from the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner. Those violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.
D. The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor or transient merchant.
E. The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's Office, or other similar business or consumer rights office or agency, within the preceding 12 months, or three complaints filed against the applicant within the preceding five years.

113.05 LICENSE SUSPENSION AND REVOCATION.

A. Generally. Any license issued under this section may be suspended or revoked at the discretion of the City Council for violation of any of the following:
    1. Fraud, misrepresentation or incorrect statements on the application form.
    2. Fraud, misrepresentation or false statements made during the course of the licensed activity.
    3. Conviction of any offense for which granting of a license could have been denied under law.
    4. Violation of any provision of this chapter.

B. Multiple persons under one license. The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of the licensee shall serve as a suspension or revocation of each authorized person' s authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.

C. Notice. Prior to revoking or suspending any license issued under this chapter, the city shall provide the license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

D. Public hearing. Upon receiving the notice provided in division (C) of this section, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the City Clerk within ten regular business days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within 20 days from the date of the request. Within three regular business days of the hearing, the City Council shall notify the licensee of its decision.

E. Emergency. If, in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the actions of a peddler or transient merchant licensed under this chapter, the City Council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in division (C) of this section.

F. Appeals. Any person whose license is suspended or revoked under this section shall have the right to appeal that decision to the Court.

113.06 LICENSE TRANSFERABILITY.

No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.

113.07 PROHIBITED ACTIVITIES.

No peddler, solicitor or transient merchant shall conduct business in any of the following manners:

A. Calling attention to his or her business or items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure.
B. Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right-of-way.
C. Conducting business in a way as to create a threat to the health, safety and welfare of any individual or the general public.
D. Conducting business before 7:00 a.m. or after 9:00 p.m.
E. Failing to provide proof of license or registration, and identification, when requested; or using the license or registration of another person, and any person exempt from the licensing requirements of this chapter with the city.
F. Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor or transient merchant shall claim to have the endorsement of the city solely based on the city having issued a license or certificate of registration to that person.
G. Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.

113.08 EXCLUSION BY PLACARD.

No peddler, solicitor or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor or transient merchant when the property is marked with a sign or placard at least four inches long and four inches wide with print of at least 48 point in size stating “No Peddlers, Solicitors or Transient Merchants, “ or “Peddlers, Solicitors, and Transient Merchants Prohibited, or other comparable statement. No person other than the property owner or tenant shall remove, deface or otherwise tamper with any sign or placard under this section.

CHAPTER 114: TOBACCO REGULATIONS

Section:

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114.01 DEFINITIONS AND INTERPRETATIONS.

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

TOBACCO or TOBACCO PRODUCTS shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff; flowers, cavendish; shorts, plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.

SELF-SERVICE MERCHANDISING shall mean open displays of tobacco, tobacco products, or tobacco related devices in any way where any person shall have access to the product with the assistance or intervention of an employee of the premises maintaining the self-service merchandising. Self-service merchandising shall not include vending machines.

VENDING MACHINES shall mean any mechanical, electric or electronic or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco products or tobacco related devices.

INDIVIDUALLY PACKAGED shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco, and tobacco products shall including, but not limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

LOOSIES shall mean the common term used to refer to a single or individually packaged cigarette.

MINOR shall mean any natural person who has not yet reached the age of eighteen (18) years.

RETAIL ESTABLISHMENT shall mean any place of business where tobacco, tobacco products, or other tobacco related devices are available for sale to the general pubic. Retail establishments including, but not limited to, grocery stores, convenience stores, restaurants and bars.

SALE shall mean any transfer of goods for money, trade, barter or other consideration.

COMPLIANCE CHECKS shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products and tobacco related devices are following and complying with the requirements of this ordinance. Compliance checks may involve the use of minors as authorized by this ordinance.

114.02 LICENSE.

No person shall sell or offer to sell any tobacco, tobacco products or tobacco related devices without first having obtained a license to do so from the City.

A. **Application.**
An application for a license to sell tobacco, tobacco products or tobacco related devices shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the

license is sought, and any additional information the City deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the action complete.

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

C. **Term.**
All licenses issued under this Ordinance shall be valid for one calendar year from the date of issue.

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

E. **Transfers.**
All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the Council.

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

G. **Renewals.**
The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before expiration of the current license. The issuance of a licensed issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

114.03 FEES.

No license shall be issued under this ordinance until the appropriate license fees shall be paid in full. Fees shall be set from time to time by the City Council by Resolution.

114.04 BASIS FOR DENIAL OF LICENSE.

The following shall be grounds for denying the issuance or renewal of a license under this Ordinance, and if a license is mistakenly issued or renewed to a person, it shall be

revoked upon the discovery that the person was ineligible for the license under this Section.

A. The applicant is under the age of eighteen (18) years.
B. The applicant has been convicted within the past five (5) years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices.
C. The applicant has had a license to sell tobacco, tobacco products, or tobacco related devices revoked, in the City or any other place, within the preceding twelve (12) months of the date of application.
D. The applicant fails to provide any information required on the application, or provides false or misleading information.
E. The applicant is prohibited by Federal, State or other local law, ordinance, or other regulation, from holding such a license.
F. The applicant has no established fixed place of business.

114.05 PROHIBITED SALES.

It shall be a violation of this Ordinance for any person to sell or offer to sell any tobacco, tobacco product or tobacco related device:

A. To any person under the age of eighteen (18) years.
B. By means of any type of vending machine.
C. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of a licensed premises in order to receive the tobacco, tobacco product or tobacco related device. All tobacco, tobacco products and tobacco related devices shall be stored behind the counter or other area not accessible to customers.
D. By means of “loosies” as defined in this Ordinance.
E. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other type of deleterious, hallucinogenic, or toxic or controlled substance except nicotine and not naturally found in tobacco or tobacco products.
F. By any other means or to any other person, prohibited by Federal, State or other local law, ordinance provision or other regulation.

114.06 RESPONSIBILITY.

All licenses under this Ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco related devices on the licensed premises, and the sale of such an item by an employee shall also be considered a sale by the license holder, and each can be held responsible for any criminal and/or civil penalties imposed herein.

114.07 COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the City Police or other authorized City official during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks by engaging minors to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products or tobacco related devices when such items are obtained as a part of the compliance check.

114.08 OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a violation of this Ordinance.

A. **Illegal Possession.**
It shall be a violation of this Ordinance for any minor to have in his or her possession any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the City.

B. **Illegal Procurement.**
It shall be a violation of this Ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product or tobacco related device, and it shall be a violation of this Ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall also be a violation of this Ordinance for any person to sell or otherwise provide any tobacco, tobacco product or tobacco related device to any minor, and it shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the City.

C. **Use of False Identification.**
It shall be a violation of this Ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person. This subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the City.

114.09 VIOLATIONS AND PENALTIES.

A. **Criminal Penalty.**
Any person, firm or corporation violating any of the provisions of this Ordinance shall be guilty of a misdemeanor. Each violation and every day in which a violation occurs or continues shall constitute a separate offense.

B. **Civil Enforcement.**
In addition to any criminal penalty, the license holder shall be responsible for the conduct of its agents or employees while on the licensed premises. In addition to any criminal penalty any violation of this Chapter shall be considered an act of the license holder for purposes of imposing a civil penalty, license suspension, or revocation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

1. Notice Of Violation. Upon the occurrence of a suspected violation, the City shall send to the license holder a written notice of the civil violation. The notice shall advise the license holder of the penalty of the license holder's right to request a hearing regarding the violation of this Ordinance.
2. Civil Penalties. Each license issued hereunder shall be subject to suspension or revocation of any provisions of this Chapter or the laws of the State of Minnesota as follows:
    a. *FIRST VIOLATION*. The first violation of this Chapter shall be punishable by a civil penalty of at least $150.00 but no more than $500.00.
    b. *SECOND VIOLATION.* A second violation of this Chapter within a 36 month period shall be punishable by a civil penalty of $700.00 and a suspension of the license of at least seven days but not more than twenty days.
    c. *SUBSEQUENT VIOLATION.* A third or subsequent violation of this Chapter within any 36 month period shall be punishable by the revocation of the license. Any licensee whose license is revoked under this Section shall not be eligible for renewal for a period of two license years after the revocation.
3. Any civil penalty, suspension or revocation or combination thereof under this Section does not preclude criminal prosecution under this ordinance or Minnesota statute section 609.685.

114.10 HEARING ON DENIAL OR VIOLATION.

A. **Hearing.** Following receipt of a notice of denial of license or a notice of violation and penalty, an applicant or license holder may request a hearing before the City Council. A request for a hearing shall be made by the applicant or license holder in writing and filed with the City within 10 days of the mailing of the notice of

denial or alleged violation. Following receipt of a written request for hearing, the applicant or license holder shall be afforded an opportunity for a hearing before the Council. If a committee of the Council conducts the hearing it shall report its findings and make a recommendation to the full Council.

B. **Findings.** If after the hearing the applicant or license holder is found ineligible for license, or in violation of this ordinance, the Council may affirm the denial, impose a fine, issue a suspension or revocation, or impose any combination thereof.
C. **Default.** If the applicant or license holder has been provided written notice of the denial or violation and if no request for a hearing is filed within the 10 day period, then the denial, penalty, suspension or revocation shall take immediate effect by default. The City shall mail notice of the denial, fine, suspension or revocation to the applicant or license holder. The City shall investigate compliances with the suspension or revocation.

114.11 EXCEPTIONS AND DEFENSES.

Nothing in this Ordinance shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

114.12 SEVERABILITY AND SAVING CLAUSE.

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

114.13 RESTRICTIONS ON AGE OF CLERKS.

It shall be illegal for a retail establishment to cause or permit a minor to sell tobacco, tobacco products or tobacco related devices. It shall also be illegal for any minor to sell tobacco, tobacco products or tobacco related devices.

114.14 SIGNAGE.

Anyone holding a tobacco license under the provisions of this ordinance shall post and display in plain view of the general public on the licensed premises a sign indicating that it is illegal to sell tobacco, tobacco products or tobacco related devices to anyone under the age of eighteen (18) years and that the possession and use of such items by minors

is also illegal under both State law and local ordinances. Said signs shall be of a type approved by City staff and issued to a retail establishment at the time that a license is obtained. The cost of said sign shall be included within the licensing fee.

114.15 POSTING, FILING AND PUBLICATION.

The City Clerk shall keep a copy of this Ordinance on file in the Clerk's Office and in the Washington County Library Wildwood Branch which the Council hereby designates as locations at which a copy is available for inspection by any person during regular office hours.

CHAPTER 116: REGULATING LAWFUL GAMBLING

Section:

116.01 Adoption of State Law by Reference
116.02 City May be More Restrictive than State Law
116.03 Purpose
116.04 Definitions
116.05 Applicability
116.06 Lawful Gambling Prohibited
116.07 Lawful Gambling Permitted
116.08 Council Approval
116.09 Local Permits
116.10 License and Permit Display
116.11 Notification of Material Changes to Application
116.12 Hours of Operation
116.13 Severability
116.14 Penalty

116.01 ADOPTION OF STATE LAW BY REFERENCE.

The provisions of M.S. Ch.349, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, provisions relating to sales, and all other matters pertaining to lawful gambling, are hereby adopted by reference and are made a part of this chapter as if set out in full. It is the intention of the Council that all future amendments of M.S. Ch. 349 are hereby adopted by reference or referenced as if they had been in existence at the time this chapter was adopted.

116.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The Council is authorized by the provisions of M.S. 349.213, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on gambling within its limits beyond those contained in MS. Ch. 349, as it may be amended from time to time.

116.03 PURPOSE.

The purpose of this chapter is to regulate lawful gambling within the city, to prevent its commercialization, to ensure the integrity of operations, and to provide for the use of net profits only for lawful purposes.

116.04 DEFINITIONS.

In addition to the definitions contained in M.S. 349.12, as it may be amended from time to time, the following terms are defined for purposes of this chapter:

BOARD. The State of Minnesota Gambling Control Board.

ORGANIZATION. An organization licensed by the Board.

LOCAL PERMIT. A permit issued by the city.

116.05 APPLICABILITY.

This chapter shall be construed to regulate all forms of lawful gambling within the city except those forms of gambling activity which are defined as exclusions under M.S. 349.166, Subd. (1) & (2), subject to Section 116.09 below.

Raffles, if the value of all prizes awarded by the organization in a calendar year does not exceed $1500.00.

116.06 LAWFUL GAMBLING PROHIBITED.

No person or organization shall conduct lawful gambling within the City of Dellwood except as permitted by Section 7 below.

116.07 LAWFUL GAMBLING PERMITTED.

Lawful gambling is permitted within the City provided it is conducted in accordance with M.S. 609.75-.763, inclusive, as they may be amended from time to time; M.S. 349.11-.23, inclusive, as they may be amended from time to time; and this Ordinance.

116.08 COUNCIL APPROVAL.

Lawful gambling authorized by M.S. 349.11-.23, inclusive, as they may be amended from time to time, shall not be conducted unless approved by the Council, subject to the provisions of this ordinance and state law.

116.09 LOCAL PERMITS.

A. No organization shall conduct gambling excluded or exempted from state licensure requirements by M.S. 349.166, as it may be amended from time to time, without a valid permit from the City. This section shall not apply to temporary raffles described in section 116.05 above.
B. Applications for issuance or renewal of a local permit shall be on a form prescribed by the Board.
C. The fee for a local permit shall be established by Resolution of the City Council. The fee shall be submitted with the application for a local permit.
D. The Council may disapprove an application for issuance of a gambling permit for any of the following reasons:
    1. Violation by the gambling organization of any state statute, state rule or city ordinance relating to gambling within the last three years.
    2. Violation by the on-sale establishment or organization allowing use of its premises for gambling of any state statute, state rule or city ordinance relating to the operation of the establishment, including, but not limited to, laws relating to the operation of the establishment, laws relating to alcoholic beverages, gambling, controlled substances and protection of public safety within the last three years.
    3. The organization has not been in existence in the city for at least three consecutive years prior to the date of application.
    4. The organization does not have at least 30 active members.
    5. Failure of the applicant to pay permit fee provided by division (C) of this section within the prescribed time limit.
    6. Operation of gambling at the site would be detrimental to health, safety, and welfare of the community.
E. Local permits shall be valid only for the date or dates specified in the permit.

116.10 LICENSE AND PERMIT DISPLAY.

All permits issued under state law or this chapter shall be prominently displayed on the premises where gambling is being conducted.

116.11 NOTIFICATION OF MATERIAL CHANGES TO APPLICATION.

An organization holding a state issued premises permit or local permit shall notify the City within 10 days in writing whenever any material change is made in the information submitted on the application.

116.12 HOURS OF OPERATION.

Lawful gambling shall not be conducted between 1:00 a.m. and 8:00 a.m. on any day of the week.

116.13 SEVERABILITY.

If any provision of this Ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

116.14 PENALTY.

A violation of the provisions of this Ordinance constitute a misdemeanor offense punishable by a fine up to $1000, incarceration for up to 90 days, or both, plus the costs of prosecution. In addition, violations shall be reported to the Board and recommendation shall be made for suspension, revocation, or cancellation of an organization’s license.

CHAPTER 117: GARAGE OR RUMMAGE SALES

Section:

117.01	Definition
117.02	Restrictions and Prohibitions
117.03	Exceptions
117.04	Penalty

117.01 DEFINITION.

The following term, as used in this chapter, shall have the meaning stated:

GARAGE OR RUMMAGE SALE. Any display and sale of personal property, conducted on premises located in the City by the occupant and which garage or rummage sale does not require a business license or make taxable sales, leases or services.

117.02 RESTRICTIONS AND PROHIBITIONS.

A. None of the items offered for sale shall have been obtained for resale or received on consignment for sale.
B. Any garage or rummage sale (community or neighborhood sale) shall be conducted solely within the boundaries of the property owned or occupied by the occupant who is conducting the sale.
C. No garage or rummage sale shall be conducted during any part of more than three consecutive days.
D. No garage or rummage sale may be conducted before 7:00 a.m. or after 8:00 p.m.
E. Any related signage shall be limited to the premises upon which the sale is to take place and shall be removed at the termination of the sale. Signs shall be limited to four square feet.
F. There shall be no more than one sale conducted at the same premises in any calendar year.

117.03 EXCEPTIONS.

This chapter shall not apply to any sale under court order, nor to any bona fide auction sale, nor to a sale of farm or garden products by the person producing same, on the property of the person producing the products.

117.04 PENALTY.

It is unlawful for any person to conduct a garage or rummage sale in violation of any of the provisions of this chapter. A violation of this chapter is a misdemeanor, to be punished as provided by law.

CHAPTER 118: REGULATION OF PUBLIC DANCES

Section:

118.01	Regulations of Public Dances
118.02	Definitions
118.03	Permit Required
118.04	Application for Permit
118.05	Insurance
118.06	Location
118.07	Permit to be Posted
118.08	Liquor License Required
118.09	Licensed Police Officer Presence
118.10	Hours
118.11	Minors Prohibited
118.12	Certain Behavior Prohibited
118.13	Lighting
118.14	Noise

118.01 REGULATION OF PUBLIC DANCES.

All public dances held in this city shall be conducted in accordance with the provisions of this chapter.

118.02 DEFINITIONS.

The terms stated below shall have the following meanings:

PUBLIC DANCE. Any dance where the general public may participate, whether or not a charge for admission for dancing is made.

PUBLIC DANCING PLACE. Any room or space or other area, whether indoors or outside, which is open to the general public for the purpose of participating in public dancing.

118.03 PERMIT REQUIRED.

No person shall conduct a public dance in this city unless a permit has been obtained from the City Clerk prior to the holding of the dance. The fees for a permit shall be as established by the City Council from time to time. The City Council shall establish criteria for determining the number of licensed peace officers required to be present at any dance. No permit shall be issued until the Applicant demonstrates that Section 118.09 herein has been addressed.

118.04 APPLICATION FOR PERMIT.

Any person desiring a permit to hold a public dance in this city shall submit an application for a permit on the form provided by the City Clerk, submitted to the City Clerk at least ten days before the date of the proposed dance. The application shall set forth the name and address of the applicant, who shall be the person responsible for conducting the public dance, and any business, committee or organization sponsoring the dance, the place where the dance is to be held, the date of the dance and the time of its beginning and end. Proof of all insurance required by this chapter shall be submitted with the application and no permit shall be issued until proof of insurance has been received. A request for any use of a city building or other city property shall be included with the permit application, and no permit shall be issued until the fees for the use of the city building or other city property have also been paid.

118.05 INSURANCE.

All insurance policies required for the event, including any insurance required by law for the sale of alcoholic beverages, shall list the city as a named insured and provide a provision to defend, indemnify and hold harmess the city and any of its employees from any claims arising from the event.

118.06 LOCATION.

The applicant shall make sure that adequate parking is available for the persons wishing to attend the dance and make sure that the location is safe and accessible. This information shall also be provided to the City Clerk before a permit shall be issued.

118.07 PERMIT TO BE POSTED.

When a permit is issued, the holder of the permit shall post the permit in a prominent location on the premises on which the dance is to be held during the time the dance is occurring. The applicant shall be present at all times while the dance is occurring.

118.08 LIQUOR LICENSE REQUIRED.

No person shall give, hold, conduct or permit any public dance where liquor will be served, as defined in M.S. Chapter 340A, without obtaining a license from the city.

118.09 LICENSED PEACE OFFICER PRESENCE.

No public dance shall occur without at least one licensed peace officer or more, if more are required by the City Council, who shall be present at the public dancing place during the duration of the dance and after the dance, until all of the participants have left the public dancing place.

118.10 HOURS.

No public dance shall occur between the hours of 1:00 a.m. and 12:00 noon.

118.11 MINORS PROHIBITED.

No person under the age of 21 shall be allowed to be present by the permit holder or any peace officer at a public dance where alcohol is sold or consumed, unless accompanied by a parent or guardian.

118.12 CERTAIN BEHAVIOR PROHIBITED.

No person present at any public dance shall engage in any disorderly conduct, as defined by M.S. 609.72, as it may be amended from time to time, and any disorderly person shall be immediately removed from the dance by the peace officer present at the public dancing place. Should a substantial number of persons at the public dance engage in disorderly conduct, the peace officer present shall terminate the dance and remove all persons from the public dancing place.

118.13 LIGHTING.

In order to protect the safety of persons attending a public dance, public dancing places shall be adequately illuminated and dancing therein while lights are extinguished, dimmed or turned low so as to give inadequate or imperfect illumination is hereby prohibited. All exit areas shall be illuminated at all times during the public dance with light having intensity of not less than one footcandle at floor level. Illumination of less than 0.5 foot-candles in any area where dancing is occurring, permitted or encouraged is prohibited.

118.14 NOISE.

All public dances shall be subject to the provisions of this code regulating noise pollution.

CHAPTER 130: GENERAL OFFENSES

Section:

130.01 Damage to Property; Graffiti
130.02 Discharging Dangerous Weapons
130.03 Fireworks
130.04 Penalty
130.05 Open Burning
130.06 Prohibited Materials
130.07 Permit Required for Open Burning
130.08 Purposes Allowed for Open Burning
130.09 Permit Application for Open Burning; Permit Fees
130.10 Permit Process for Open Burning
130.11 Permit Holder Responsibility
130.12 Revocation of Open Burning Permit
130.13 Denial of Opening Burning Permit
130.14 Burning Ban or Air Quality Alert
130.15 Rules and Laws Adopted by Reference
130.16 Penalty

130.01 DAMAGE TO PROPERTY; GRAFFITI.

A. **Definitions.** For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GRAFFITI. In addition to its usual and customary meaning of defacing walls or structures with messages or slogans, GRAFFITI shall also mean any letter, numeral, figure, emblem, insignia, picture, outline, character, spectacle, delineation, announcement, word, phrase, diagram, symbol, sketch, inscription or representation, wherein the contents thereof are visible to any member of the general public and which contains references to sexual activity , diagrams relating to sexual activity or sexual organs, references to criminal activities or groups which promote or are involved in criminal activity, swearing or fighting words, defamatory materials about

any person, references to relationships, or any marking of any kind whatsoever which results in damage to, defacing of, marring of, or discoloring of any sidewalk, street, or other public surface, any vehicle, any equipment, lamp, lamp post or other city property, or of the exterior surface of a wall, fence, door, building or other structure, whether publicly or privately owned.

OWNER. Means and includes the owner of record of the subject property, whether public or private, at the time of the placement or discovery of the graffiti or at a subsequent time, the beneficial owner under a land trust, the contract purchaser, or that person or persons or trust in whose name the general taxes for the last preceding year were paid, except that ***OWNER*** shall not include the city.

B. **Conduct Prohibited.**

1. It is unlawful for any person to inscribe, draw, or otherwise place or cause to be placed any graffiti upon the surface of any building, structure, wall or surface of other property that is publicly or privately owned.
2. It shall be unlawful for any parent or legal guardian to knowingly permit any minor child in his or her custody or control to violate division B(1) of this section.
3. The parent or legal guardian of a minor defendant who resides with the parent or legal guardian at the time of the offense may be held liable for any fine or condition of restitution or reparation imposed by a court upon a minor for violation of this section; provided, that minor has not paid the fine or made restitution or reparation within the time ordered by the court; and further provided that the parent or legal guardian has been served with summons or notice to appear whether in the original cause or in any subsequent proceedings arising therefrom, including sentencing or collection actions, as provided by law.

C. **Removal by Owner.**

1. Owner‘s responsibility. It shall be the duty of the owner of the structure or wall or other private property upon which any graffiti is placed or made to remove, eradicate, or eliminate the inscription or representation within 30 days of the occurrence unless granted additional time by the City Council.
2. Notice to remove graffiti. In the event the owner has failed to eliminate the graffiti, the owner shall be notified by certified mail or personal notice that he or she has 30 days from the date of the notice in which to remove the graffiti. In the event that charges have been filed against the person believed responsible for placement of the graffiti and the owner can show to the city that there is a reasonable likelihood that the person will be required to make restitution or restore the premises to its previous

condition, the owner may be given additional time to meet the removal requirements. In no event shall the owner be granted more than a total of six months' time to remove graffiti, but any extensions shall be based solely upon a reasonable likelihood of apprehension and conviction of the person responsible. In the absence of the reasonable likelihood, the owner is responsible for removal within the time allowed in divisions C(1) and (2) of this section.

D. **Removal by the City.**

1. The city shall have the right but not the duty to remove graffiti from the exterior of private property if the owner informs the city of the presence of the graffiti and of the owner's inability to remove it. Prior to the city entering any private property to remove graffiti, the owner must sign a statement authorizing removal by the city and agreeing to pay the reasonable costs of the removal and to allow the recording of a lien against the real estate upon which the work was performed if the cost is not paid to the city within 30 days of the date of the invoice sent to the owner. The owner must also sign a release holding the city harmless from any claims or suits brought for damages pursuant to any adverse or injurious effects of such chemicals or from the actions taken by the city or its employees to remove the graffiti prior to the city commencing work on the property. If the property owner does not remove the graffiti within the time specified or extended time requested and granted by the city or if the city is unable to perform the work at the request of the owner, the owner shall be subject to the penalties listed in division E of this section.
2. If the city performs the graffiti removal pursuant to division D(1) of this section, it shall be entitled to a lien and to file a notice of lien against the property upon which the work was performed for the cost of the removal.

E. **Penalty.**

1. Upon a finding of guilty for violation of division B of this section, an offender shall be punished as provided in § 130.16. Additionally, the court may, as a condition of probation, supervision, or conditional discharge, require that the party guilty of violating the provisions of division B of this section make full and complete restitution to the owner of the property for expenses incurred in the removal of the graffiti or, with the consent of the owner, restore the structure, wall, building or surface to its previous condition. In addition, the court may order as a further penalty community service in the form of time to be spent in cleaning property that has been defaced by graffiti in any location in the city.
2. Upon a finding of guilty for violation of division C(1) of this section, an offender shall be punished as provided in 130.16. Each and every day that

graffiti is permitted to remain beyond the time specified in division C(2) of this section shall constitute a separate violation.

F. **Compliance by the City.**
   1. It is the intention of the city that graffiti discovered upon city property or public property under the jurisdiction and control of the city will be removed within the time periods for graffiti removal imposed upon other governmental bodies and owners of private property under this section. The City Council shall have the authority to order and direct the removal of graffiti.
   2. A designated city officer, or his or her designee, shall provide, no less than semi-annually, a written report to the City Council of graffiti incidents involving city property and removal efforts by the city. The report shall include at a minimum the location of the graffiti, charges filed against or convictions of offenders where relevant, the date and methods of graffiti removal undertaken by the city and the cost of the removal.

130.02 DISCHARGING DANGEROUS WEAPONS PROHIBITED.

A. No person shall discharge a firearm as defined in Minnesota Statutes Chapter 624, or an arrow from a bow, or other dangerous weapon in the City of Dellwood.
B. This section shall not prohibit the firing of a military salute or the firing of weapons by persons of the nation's armed forces acting under military authority, and shall not apply to law enforcement officials in the proper enforcement of the law, or to any person in the proper exercise of the right of self defense, or to any person otherwise lawfully permitted by proper federal, state or local authorities to discharge a firearm in a manner contrary to the provisions of this section.
C. If any of the above provisions are found to be in conflict with M.S. 624.717, as it may be amended from time to time, the provisions of that statute shall prevail.

130.03 FIREWORKS.

A. The use, display, possession, discharge or sale of any fireworks not expressly permitted by M.S. 624.20, Subd. 1(c), as it may be amended from time to time, is strictly prohibited.
B. The regulatory provisions and definitions contained in Minnesota Statutes Section 624.20 through 624.25, as amended, a copy of which is on file in the Office of the City Clerk are hereby adopted as the Fireworks Ordinance of the City of Dellwood. Every provision contained in these sections is hereby adopted and incorporated into this Ordinance as if fully set forth herein, except as follows:

   Notwithstanding anything to the contrary contained in M.S. 624.20 through M.S. 624.25, as amended, the following provisions shall apply in the City of Dellwood:

1. No wholesale or retail sales of fireworks shall be allowed.
2. No indoor display of fireworks shall be allowed.
3. No fireworks displays shall be conducted before 10:00 a.m. or after 11:00 p.m.
4. Any fireworks display shall be conducted continuously for a period not to exceed thirty (30) minutes.

130.04 PENALTY.

The penalties prescribed by Minnesota Statutes, Section 624.20 through 624.25 for violations thereof are hereby adopted as the penalties imposed for violations of this Ordinance.

130.05 OPEN BURNING.

A. **Definitions.** For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FIRE CHIEF, FIRE MARSHAL, and ASSISTANT FIRE MARSHALS. The Fire Chief, Fire Marshal, and Assistant Fire Marshals of the Fire Department which provides fire protection services to the city.

OPEN BURNING. The burning of any matter if the resultant combustion products are emitted directly to the atmosphere, except a “recreational fire” as defined herein. Mobile cooking devices such as manufactured hibachis, charcoal grills, wood smokers, and propane or natural gas devices are not defined as “open burning.”

RECREATIONAL FIRE. A fire no more than three feet in height, contained within the border of a “recreational fire site” using dry, clean wood; producing little detectable smoke, odor or soot beyond the property line; conducted with an adult tending the fire at all times; for recreational, ceremonial, food preparation for social purposes; extinguished completely before quitting the occasion; and respecting weather conditions, neighbors, burning bans, and air quality so that nuisance, health or safety hazards will not be created. No more than one recreational fire is allowed on any property at one time.

RECREATIONAL FIRE SITE. An area of no more than a three foot diameter circle (measured from the inside of the fire ring or border); completely surrounded by non-combustible and non-smoke or odor producing material, either of natural rock, cement, brick, tile or blocks or

ferrous metal only an which area is depressed below ground, on the ground, or on a raised bed. Included are permanent outdoor wood burning fireplaces. Burning barrels are not a “recreation fire site” as defined herein. Recreational fire sites shall not be located closer than 25 feet to any structure.

WOOD. Dry, clean fuel only such as twigs , branches , limbs , “presto logs,“ charcoal, cord wood or untreated dimensional lumber. The term does not include wood that is green with leaves or needles, rotten, wet, oil soaked, or treated with paint, glue or preservatives. Clean pallets may be used for recreational fires when cut into three foot lengths.

130.06 PROHIBITED MATERIALS.

A. No person shall conduct, cause or permit open burning oils, petrol fuels, rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted or glued wood composite shingles, tar paper, insulation, composition board, sheet rock, wiring, paint or paint fillers.
B. No person shall conduct, cause or permit open burning of hazardous waste or salvage operations, open burning of solid waste generated from an industrial or manufacturing process or from a service or commercial establishment or building material generated from demolition of commercial or institutional structures.
C. No person shall conduct, cause or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.
D. No person shall conduct, cause or permit open burning of any leaves or grass clippings.

130.07 PERMIT REQUIRED FOR OPEN BURNING.

No person shall start or allow any open burning on any property in the city without first having obtained an open burn permit, except that a permit is not required for any fire which is a recreational fire as defined herein.

130.08 PURPOSES ALLOWED FOR OPEN BURNING.

A. Open burn permits may be issued only for the following purposes:
    1. Elimination of fire of health hazard that cannot be abated by other practical means.
    2. Ground thawing for utility repair and construction.

3. Disposal of vegetative matter for managing forest, prairie or wildlife habitat, and in the development and maintenance of land and rights-of-way where chipping, composting, landspreading or other alternative methods are not practical.
4. Disposal of diseased trees generated on-site, diseased or infected nursery stock, diseased bee hives.

B. Fire training permits can only be issued by the Minnesota Department of Natural Resources.

130.09 PERMIT APPLICATION FOR OPEN BURNING; PERMIT FEES.

A. Open burning permits shall be obtained by making application on a form prescribed the Department of Natural Resources (DNR) and approved by the Fire Department. The permit application shall be presented to the Fire Chief, Fire Marshal, and Assistant Fire Marshals for reviewing and processing those applications, prior to issuance of any permit by the City.
B. An open burning permit shall require the payment of a fee. Permit fees shall be in the amount established by resolution or ordinance of the City.

130.10 PERMIT PROCESS FOR OPEN BURNING.

Upon receipt of the completed open burning permit application and permit fee, the Fire Chief, Fire Marshal, or Assistant Fire Marshals shall schedule a preliminary site inspection to locate the proposed burn site, note special conditions, and set dates and time of permitted burn and review fire safety considerations and report to the City.

130.11 PERMIT HOLDER RESPONSIBILITY.

A. Prior to starting an open burn, the permit holder shall be responsible for confirming that no burning ban or air quality alert is in effect. Every open burn event shall be constantly attended by the permit holder or his or her competent representative. The open burning site shall have available, appropriate communication and fire suppression equipment as set out in the fire safety plan.
B. The open burn fire shall be completely extinguished before the permit holder or his or her representative leaves the site. No fire may be allowed to smolder with no person present. It is the responsibility of the permit holder to have a valid permit, as required by this subchapter, available for inspection on the site by the Police Department, Fire Department, MPCA representative or DNR forest officer.
C. The permit holder is responsible for compliance and implementation of all general conditions, special conditions, and the burn event safety plan as established in the permit issued. The permit holder shall be responsible for all costs incurred as a result of the burn, including but not limited to fire suppression and administrative fees.

130.12 REVOCATION OF OPEN BURNING PERMIT.

The open burning permit is subject to revocation at the discretion of DNR forest officer, the Fire Chief, Fire Marshal, or Assistant Fire Marshals of the Department providing fire protection services to the City, or by the City Clerk. Reasons for revocation include but are not limited to a fire hazard existing or developing during the course of the burn, any of the conditions of the permit being violated during the course of the burn, pollution or nuisance conditions developing during the course of the burn.

130.13 DENIAL OF OPEN BURNING PERMIT.

If established criteria for the issuance of an open burning permit are not met during review of the application, it is determined that a practical alternative method for disposal of the material exists, or a pollution or nuisance condition would result, or if a burn event safety plan cannot be drafted to the satisfaction of the Fire Chief, Fire Marshal, or Assistant Fire Marshals, these officers may deny the application for the open burn permit.

130.14 BURNING BAN OR AIR QUALITY ALERT.

No recreational fire or open burn will be permitted when the city or DNR has officially declared a burning ban due to potential hazardous fire conditions or when the MPCA has declared an Air Quality Alert.

130.15 RULES AND LAWS ADOPTED BY REFERENCE.

The provisions of M.S. 88.15 to 88.22 relating to campfires and open burning as these statutes may be amended from time to time, are hereby adopted by reference and made a part of this subchapter as if fully set forth at this point.

130.16 PENALTY.

Violation of any provision of this chapter, including maintaining a nuisance after being notified in writing by first class mail of a violation of any provision of this chapter, shall be a Misdemeanor and punished as provided by law.

CHAPTER 132: TRESPASS

Section:

132.01	Definitions
132.02	Misdemeanor Violation
132.03	Trespass on Private Golf Course Property
132.04	Targeted Residential Picketing

132.01 DEFINITIONS.

PROPERTY means the land and any structures located thereon, and specifically includes golf courses, recreational facilities, wetlands and public waters as defined in Minnesota Statutes, Section 105.391, and railroad rights-of-way.

PREMISES means the real property and any building or structure situated on the real property and includes a construction site and dwelling.

DWELLING means the building or part of a building used by an individual as a place of residence on either a full-time or part-time basis.

OWNER OR LAWFUL POSSESSOR as used in paragraph (b) clause (8) includes the person on whose behalf a building or dwelling is being constructed, altered, painted, or repaired the general contractor or subcontractor engaged in that work.

POSTED as used herein means the placement of a sign or signs at least 11 inches square in a conspicuous place on the premises. The signs must carry an appropriate notice and the name of the person giving the notice, followed by the word “owner” if the person giving the notice is the holder of legal title to the premises or by the work “occupant” if the person giving the notice is not the holder of legal title but is a lawful occupant of the land; and

1. State “no trespassing” or similar terms;
2. Display letters at least two inches high;
3. State that Minnesota law prohibits trespassing on the property; and
4. Be posted in a conspicuous place and at intervals of 500 feet or less.

132.02 MISDEMEANOR VIOLATION.

A Person is guilty of a misdemeanor if the person intentionally:

1. Permits domestic animals or fowls under the actor’s control to go on the land of another within the City;

2. Interferes unlawfully with a monument, sign, or pointer erected or marked to designate appoint of a boundary, line or political subdivision, or of a tract of land;
3. Trespasses on the premises of another without claim of right and refuses to depart from the premises on demand of the owner or lawful possessor;
4. Occupies or enters the dwelling or locked or posted premises of another, without claim or right or consent of the owner or the consent of one who has the right to give consent, except in an emergency situation;
5. Enters the premises of another with intent to take or injure any fruit, fruit trees, or vegetables growing on the premises, without the permission of the owner or occupant;
6. Returns to the property of another with the intent to abuse, disturb, or cause distress in or threaten another, after being told to leave the property and not to return, if the actor is without claim of right to the property or consent of one without authority to consent;
7. Returns to the property of another within one year after being told to leave the property and not to return, if the actor is without claim of right to the property or consent of one with authority to consent.

132.03 TRESPASS ON PRIVATE GOLF COURSE PROPERTY.

It is a misdemeanor for any person, who is not a member, to enter upon the property of a private golf club without claim of right, unless accompanied by a member or with the express consent of the general manager of the club.

132.04 TARGETED RESIDENTIAL PICKETING.

A. Purpose. The City of Dellwood has an interest in safeguarding the right of Dellwood residents to enjoy, in the home and dwelling, a feeling of well-being, tranquility and privacy. The Dellwood City Council finds that targeted residential picketing in front of or about a residential dwelling causes emotional distress to the dwelling occupant(s); obstructs and interferes with the free use of public rights of way; and has as its object, the harassment of the dwelling occupant(s). The City Council further finds that, without resorting to targeted residential picketing, amply opportunities exist for those otherwise engaged in targeted residential picketing to exercise constitutionally protected freedom of speech and expression.
B. Definition. For purposes of this regulation, “targeted residential picketing” means standing, marching, or patrolling by one or more persons focused in front of or bout a particular residential dwelling without the consent of the dwelling’s occupant(s).
C. Prohibited. No person shall engage in targeted residential picketing with the City of Dellwood.

D. Any person violating any provision of this Ordinance shall upon conviction be guilty of a misdemeanor and be subject to the penalties imposed by Minnesota Statutes, Section 609.03, as amended.
E. Each act of violation and every day on which a violation occurs or continues constitutes a separate offense.

CHAPTER 133: TRAPPING ANIMALS

Section:

133.01 Trapping Animals Prohibited

133.02 Exceptions

133.03 Penalty

133.01 TRAPPING ANIMALS PROHIBITED.

No person may set or place a trap or snare for the purpose of trapping birds, fish or animals in the City of Dellwood.

133.02 EXCEPTIONS.

Any person may apply to the City Council for Permit to set or place a trap for the purpose of trapping an animal or animals which have caused and are likely to cause damage to the land or property of the applicant. The City may issue a Permit upon such terms and conditions as the City may determine to be appropriate for the purpose intended.

133.03 PENALTY.

Any person violating any provision of this Ordinance shall upon conviction, be guilty of a misdemeanor offense punishable by a fine not to exceed $1,000.00 or imprisonment for 90 days, or both, and the costs of prosecution.

CHAPTER 134: REGULATING NOISE POLLUTION

Section:

134.01	Findings and Purpose
134.02	Definitions
134.03	Adoption by Reference
134.04	Maximum Noise Levels
134.05	Prohibition of Commercial Construction Activity During Certain Times
134.06	Special Permits
134.07	Abatement Order
134.08	Exception to Variance Requirement
134.09	Exception for Golf Courses

134.01 FINDINGS AND PURPOSE.

The Council finds that noise pollution is injurious to human health and welfare and should be prohibited within the City, and also finds that construction activities need to be regulated such that noise which emanates from construction sites does not unreasonably disturb the health, comfort, peace and repose of neighboring property owners and occupants. The regulations established herein are intended to reasonably control noise pollution within the City, to reasonably control the hours within which construction activities may take place, and to penalize persons who violate these regulations.

134.02 DEFINITIONS.

The following definitions shall be applied in the interpretation and enforcement of this Chapter 134, and unless otherwise defined, all terminology used herein shall be in conformance with the definitions and standards contained in Minnesota Statutes Chapter 116 now existing and has hereafter amended, in Minnesota Rules Chapter 7030 now existing and as hereafter amended, and in the applicable publications of The American National Standards Institute or its successor body.

CONSTRUCTION means any site preparation, assembly, erection, repair, alteration, demolition or similar activity, including, without limitation, the activities of excavation, filling, cement work, masonry, framing, drilling, sanding, shingling, siding, landscaping

and clearing, the moving or removal of structures, utilities, surfaces, natural growth and other property, and the use and operation of tools, appliances, equipment, machinery, motors generators, engines, air compressors, saws, jackhammers, and other devices which emit audible noise that are used in any such activities.

COMMERCIAL CONTRACTOR means a person who pursuant to a written or oral contract providing for compensation performs construction or causes construction to occur.

EMERGENCY means an occurrence or set of circumstances involving actual or imminent physical injury or property damage which demands prompt attention.

MOTOR VEHICLE means any vehicle which is propelled or drawn on land by a motor or engine, such as passenger cars, trucks, truck trailers, semi-trailers, buses, campers, go-carts, snowmobiles, all-terrain vehicles, recreational vehicles, motor scooters, mini-bikes, and motorcycles.

NOISE means any sound not occurring in the natural environment.

NOISE POLLUTION means the presence in the outdoor atmosphere of any noise or combination of noises in such quantity, or at such levels, or of such nature or duration, or under such conditions as is injurious to human health, safety or welfare, unreasonably interferes with the enjoyment of life or property, and which exceeds the MPCA standards as defined in Section 134.03 below.

PERSON means any individual human being, agency, corporation, partnership, firm, association, or other company or other organization or legal entity, and an officer, partner, employee, agent, contractor or other legal representative of any of the foregoing.

PROPERTY BOUNDARY means a line along the ground surface and its vertical extension which separates the real property owned by one person from that owned by another person.

SOUND INSTRUMENT means radio, television, phonograph, stereo system, drum, musical instrument, loud speaker, public address system, sound amplifier, paging system or other device which produces, reproduces or amplifies sound.

VIBRATION means an oscillatory motion of solid bodies or deterministic or random nature described by displacement, velocity or acceleration with respect to a given point of reference.

WEEKDAY means any day Monday through Friday which is not a legal holiday under federal or state law.

134.03 ADOPTION BY REFERENCE.

Pursuant to M.S. 471.62 there is hereby adopted by reference and incorporated herein the Minnesota Pollution Control Agency standards adopted pursuant to M.S. Chapter 1 16, describing the maximum levels of noise in terms of sound pressure level which may occur in the outdoor atmosphere, as such standards now exist and are hereafter amended or adopted, including the standards established in Minnesota Rules Parts 7030.0040, 7030.0050, 7030. 1040, 7030.1050 and 7030. 1060 (hereinafter referred to as the “MPCA Standards”).

134.04 MAXIMUM NOISE LEVELS.

A. **General Prohibition.** No person shall make, or cause to be made, or permit another person over whom they have responsibility or control which on property they own or legally possess to make, any noise audible across a property boundary which constitutes noise pollution. This general prohibition is not limited by the specific prohibitions contained in the following paragraphs.
B. **Exceeding State Standards.** No person shall make or operate, or cause or permit to be operated, any source of noise in such a manner as to create noise on any receiving lands use within the City, when measured at or within the property boundary of the receiving land use, which exceeds the noise limits established for land use in the MPCA Standards. Notwithstanding the foregoing, a household unit located on property which is zoned for non-residential use shall be deemed to be within Noise Area Classification 2 under the MPCA Standards.
C. **Motor Vehicles.** No person shall operate a motor vehicle in the City in violation of the motor vehicle noise limits established in the MPCA Standards.
D. **Motor Vehicle Horns. Audible Signaling Devices.** No person shall sound a motor vehicle horn, siren, or whistle, or any other audible signaling device, except as a warning of danger.
E. **Exhaust.** No person shall discharge, or permit the discharge of, exhaust from any internal combustion engine, steam engine, motor vehicle, motorboat or other vehicle, except through a muffler or other device which effectively prevents loud or explosive noises therefrom, which is in good repair, and which is in compliance with the applicable governmental laws and regulations.
F. **General Prohibitions.** Between the hours of 10:00 p.m. and 7:00 a.m. the following day in any area of the City zoned for residential use, or within 200 feet of any area of the City used for residential, school, church, library, hospital or nursing home purposes, the following activities, if they produce noise pollution as defined in this ordinance, shall be regulated as follows:
    1. Sound Instruments. No person shall operate or play or permit to be operated or played, a sound instrument.

2. Loading and Unloading. No person shall load, unload, open, close, or otherwise handle boxes, crates, containers, building materials, garbage cans, refuse, dumpsters, or similar objects.
3. Service and Repair. No person shall construct, service or repair motor vehicles, motorboats or other motorized equipment, and
4. Power Tools and Equipment. No person shall operate or permit the operation in the outdoor atmosphere of a mechanically powered saw, sander, drill, grinder, other power tool, or a power lawn mower, or other garden or landscape tool, or a chainsaw, snow blower, tractor, or similar power equipment or device.

G. **Non-Emergency Signal Devices.** No person shall operate, sound or permit the sounding of any signal from a stationary bell, chime, siren, whistle, or similar device intended for use primarily for non-emergency purposes (i) between the hours of 10:00 p.m. and 7:00 a.m. the following day, or (ii) at any other time for more than 30 seconds in any period of 60 minutes.

H. **Emergency Signal Devices.** Except for emergency purposes or for testing, no person shall intentionally operate, sound, or permit the sounding of outdoor atmosphere of any fire, burglar, motor vehicle, or civil defense alarm, siren, whistle, horn or other emergency signaling device. This subparagraph shall not apply to normal use of back up alarms on vehicles.

I. **Vibration.** No person shall operate or permit the operation of any machine, engine or device which creates a substantial vibration which is above the vibration perception threshold of an individual person of normal sensitivities across the property boundary of the source; this subparagraph shall not apply to motor vehicle using, or construction occurring on, public streets and highways.

J. **Explosives, Firearms, Fireworks.** Except by permit issued by the City, the use, discharge of firing of explosives, firearms (except by public safety officers) or fireworks in prohibited at all times and places.

K. **Exceptions.** The provisions of this paragraph 4 shall not apply to the emission of sound (i) for the purpose of alerting persons to the existence of an emergency or imminent danger, or (ii) in the performance of work intended to prevent or eliminate an emergency or dangerous condition or (iii) in connection with organized school, church or public programs, activities, or events, or in connection with other community programs, activities, events or parades for which a permit has been issued by the City. This subparagraph shall not apply to non-commercial spoken language, for which a permit has been obtained.

134.05 PROHIBITION OF COMMERCIAL CONSTRUCTION ACTIVITY DURING CERTAIN TIMES.

A. No person shall engage in or permit construction activity by a commercial contractor which produces noise which is audible across, or sustained vibration which is perceptible across, a property boundary within the City (“Construction

Activity") except between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and between the hours of8:00 a.m. and 6:00 p.m. on Saturdays; no Construction Activity may occur on Sundays or on federal or state holidays.

B. Exceptions to the foregoing prohibition of Construction Activity may be allowed only by permit issued by the City upon the application of a person who demonstrates either (i) that an emergency exists requiring Construction Activity within the prohibited hours or days (ii) that a substantial economic loss will result, on account of events or circumstances beyond the control of the applicant, unless extended hours of Construction Activity is allowed. The application shall be processed by the City in the same manner as an application for a building permit and the application fees shall be $25.00. If the City Building Official determines that an emergency exists, the permit may be issued for the conduct of Construction Activity on the specific locations involving during any hour of any day while the emergency continues, but not to exceed 48 hours; such permit may be renewed for successive periods of up to 48 hours if the City Building Official determines that the emergency continues. If the City Building Official determines that, on account of events or circumstances beyond the control of the applicant, substantial economic loss will result from compliance with subsection 5A above, the permit may be issued but it may only extend the permitted hours of Construction Activity on the property involved for specific hours within the period between 7:00 p.m. and 9:30 p.m. on weekdays, and/or within the period between 6:00 p.m. and 8:30 p.m. on Saturdays, and or within the period between 1:00 p.m. on Sundays and holidays; and such permit shall contain the condition that during any such extended hours of Construction Activity, all powered equipment, tools, appliances, machinery, generators, compressors, saws, jackhammers and other powered devices shall be operated not less than 600 feet in any direction from any residential building.

134.06 SPECIAL PERMITS.

A. The City Building Official or designated representative shall have the authority, consistent with this Section, to grant special permits. Any person seeking a special permit shall file an application with the City, containing information which demonstrates that bringing the source of sound or activity into compliance with this ordinance would constitute an unreasonable hardship on the applicant, on the community or on other persons. Enforcement of this ordinance shall be stayed as to any person filing an application for special permit until such time as the Building Official has issued a decision, unless such a stay would cause imminent peril to life, health or property. Notice of application shall be given to the public in the same manner as for a variance under the City Zoning Ordinance. Any person who claims to be adversely affected by the allowance of the special permit may file a statement with the City to support such claim. In determining whether to grant or deny the application, the City shall balance the hardship to the applicant, the community and other persons claimed by the

applicant against the adverse impact on the health and welfare of persons affected, the adverse impact on property or animals affected, and any other adverse impact of granting the special permit. Applicants and person contesting such application shall be required to submit to the City any information which the Building Official may reasonably require. In granting or denying an application, the Building Official shall file the decision and the reasons in support thereof. Any person aggrieved of such decision may appeal the same to the City Council, acting as a Board of Appeal in writing specifying the grounds for appeal and accompanied by a filing fee of $100.00 in cash or certified funds. The appeal shall be heard within 30 days after such appeal is filed and the fee paid, and at least five days advance notice of the time and place of such hearing shall be sent to the person appealing. The City Council may affirm, modify or reverse in whole or in part, the application. If the special permit is granted, it shall be subject to all necessary conditions as determined by the City, including without limitation, day and time limitations on the permitted activity, steps to be taken to buffer or muffle the noise, and a date on which the permit shall expire. The special permit shall not become effective unless and until the applicant shall agree to all such conditions, and non-compliance with any such condition shall terminate the special permit and subject the person holding it to the provisions of this ordinance regulating the source of sound or activity for which the permit is granted.

B. **Exception to Permit Requirement.**
In cases where the owner of a property intends to hold an event on that property with the use of sound instruments to provide music beyond 10:00 p.m., the City may issue a Permit to extend the time limitations in this Ordinance until midnight without the need for a Special Variance as set forth in Section 134.06 of this Ordinance. The Mayor is vested with the authority to grant an exception solely for the purpose of extending the time limitation to midnight in cases where no objection is made. Upon the receipt of an Application under this exception, the City Clerk shall determine the nature and extent of the sound instruments to be so used and report to the City Council. The Clerk shall, upon receipt of the Application, mail written notice to all residents situated within 350 feet of the property upon which the event is to be held, stating the date and time limits within which the event is to be held, the nature of the event and the type of sound instruments to be used. The residents shall be notified that objections may be presented to the City Clerk within ten (10) days of the date of the notice. If no objection has been received within 10 days of the date of such Notice, the Mayor in his/her discretion may grant the extension of time limitation to midnight.

If the event an objection is received or the Mayor determines that the Application may be contrary to any other provision of the Noise Ordinance, the Application shall be referred to the City Council for consideration at its next regularly

scheduled meeting, and all residents residing within 350 feet of the Applicant's property shall be notified of the date and place of the meeting.
If any such property is subject to a Conditional or Interim Use Permit, the terms of the Permit shall control with respect to permissible noise levels.

134.07 ABATEMENT ORDER.

A. Abatement Order. In lieu of issuing a notice of violation or citation, the City Building Official or the Code Enforcement Officer or any law enforcement officer, may issue an order requiring the immediate abatement of any activity or any source of sound which is in violation of this Ordinance. The abatement order shall be in writing, describe the location and nature of the violation of this ordinance, establish a prescribed time for the abatement of the violation, notify of the appeal rights, and be served on the person violating this order or on its agent or on the owner or occupant of the property whereon the activity or source of sound has occurred, and ordering the person, agent, owner or occupant to abate and correct such violation. Such notice shall be deemed properly served if a copy is served personally, or sent by certified mail to the last known address of the person, or posted at a conspicuous place at the property involved. If any person to whom an abatement order is directed alleges that such order is based upon an erroneous interpretation of this ordinance or the facts, such personal may appeal to the City Clerk within five days after service of such order, such appeal shall be in writing and state with specificity the grounds for appeal. The City Clerk shall review the appeal and either grant or deny it. If denied, within five days after service of the City Clerk’s decision, the person may appeal such decision to the City Council sitting as a Board of Appeal, in writing specifying the grounds for appeal and accompanied by a filing fee of $60.00 in cash or certified funds. The filing of an appeal shall stay all proceedings for enforcement of this ordinance and the abatement order with respect to the action appealed from, unless such a stay would cause imminent peril to life, health, or property. The appeal to the City Council shall be heard within 30 days after such appeal is filed and the fee paid, and at least five days advance notice of the time and place of such hearing shall be sent to the person appealing. The City Council may affirm, modify, or reverse, in whole or in part, the abatement order. The Council will return all or a part of the filing fee if the appeal is upheld.

B. Violation. Except where a person is acting diligently and in good faith to comply with an abatement order, any violation of this ordinance shall be cause for a notice of violation or a citation to be issued by the City Building Official, or the Code Enforcement Official, or any other law enforcement officer. Any person convicted of a violation of this ordinance shall be guilty of a misdemeanor, and a separate offense shall be deemed committed for each day during or on which a violation occurs or continues.

C. Other Remedies. No provision of this Ordinance shall be construed to impair or limit exercise of any other available remedy at law or in equity by any person for injury or damage arising from a violation of this ordinance.

134.08 EXCEPTION TO VARIANCE REQUIREMENT.

In cases where the owner of a property intends to hold an event on that property with the use of sound instruments to provide music beyond 10:00 p.m., the City may issue a Permit to extend the time limitations in this Ordinance until midnight without the need for a Special Variance as set forth in Section 134.06 of this Ordinance. The Mayor is vested with the authority to grant an exception solely for the purpose of extending the time limitation to midnight in cases where no objection is made. Upon the receipt of an Application under this exception, the City Clerk shall determine the nature and extent of the sound instruments to be so used and report to the City Council. The Clerk shall, upon receipt of the Application, mail written notice to all residents situated within 350 feet of the property upon which the event is to be held, stating the date and time limits within which the event is to be held, the nature of the event and the type of sound instruments to be used. The residents shall be notified that objections may be presented to the City Clerk within ten (10) days of the date of the notice. If no objection has been received within 10 days of the date of such Notice, the Mayor in his/her discretion may grant the extension of time limitation to midnight. If the event an objection is received or the Mayor determines that the Application may be contrary to any other provision of the Noise Ordinance, the Application shall be referred to the City Council for consideration at its next regularly scheduled meeting, and all residents residing within 350 feet of the Applicant's property shall be notified of the date and place of such meeting. If any such property is subject to a Conditional or Interim Use Permit, the terms of the Permit shall control with respect to permissible noise levels.

134.09 EXCEPTION FOR GOLF COURSES.

Dellwood Country Club and the White Bear Yacht Club are excepted from the provisions in Section 2 of this Ordinance which prohibit generation of power equipment prior to 7:00 a.m. during the months of May through September inclusive. Those entities are allowed to operate power equipment on the golf courses and maintenance areas at 6:00 a.m. until 9:30 p.m. on weekdays, until 8:30 p.m. on Saturdays and until 6:00 p.m. on Sundays and State and Federal Holidays.

CHAPTER 135: FALSE ALARMS

Section:

135.01	Purpose
135.02	Definitions
135.03	Intrusion Alarm Systems
135.04	Audible Alarm System Requirements
135.05	Fire or Emergency Medical Alarm Systems
135.06	Penalty

135.01 PURPOSE.

The purpose of this Ordinance is to encourage security, fire and medical alarm users and alarm business (including, but not limited to, sales, installation and/or monitoring) to maintain the operational reliability and proper use of alarm systems so as to limit unnecessary policy, fire and emergency medical responses to false alarm and alarm malfunctions.

The Ordinance governs burglary, robbery, intrusion, fire and medical emergency false alarms, provides for service fees for excessive false alarms and provides for issuance of citations for violations thereof.

135.02 DEFINITIONS.

ALARM SITE means a single premises or location, or a multi-tenant location, served by an alarm system or systems.

ALARM SYSTEM means any mechanical, electrical, or radio controlled device or system which is designed to emit, transmit or relay a signal or message and which, when activated, is intended to summon, or that what would reasonably be expected to summon, police, fire or emergency medical services. Alarm systems do not include:

a. an alarm installed on a vehicle, unless the vehicle is permanently located at a site; or
b. All alarm designed to alert only the inhabitants of a premises, and which does constitute a local alarm.

FALSE ALARM means the activation of an alarm system signal or message which elicits notification to an or response by the Washington County Sheriff's

Office when there is no evidence of a crime, fire, medical emergency or other activity which warrants a call for immediate police, fire fighting or emergency medical assistance. This may include, but it not limited to, an alarm discovered by a police officer or firefighter before notification of an alarm from a monitor or from a local alarm system that is not monitored.

FIRE or EMERGENCY MEDICAL ALARM means a system or portion of a combination system consisting of components and circuits arranged to monitor and annunciate the status of fire or medical emergency or supervisory signal initiating devices which are intended to summon fire or emergency medical services of the Washington County Sheriff's Office.

INTRUSION ALARM means robbery, burglary, panic and other alarm intended to summon the police, which is designed either to be initiated purposely by or person or by an alarm system that responds to a stimulus characteristic of unauthorized intrusion.

LOCAL ALARM means an alarm system that emits a signal at an alarm site that is audible or visible from the exterior of the structure.

WARNING NOTICE means a notification provided to the owner or person in charge of an alarm site by the Washington County Sheriff's Office for false alarms due to system malfunction or when no reason can be determined for the false alarm. The warning notice will require that the alarm system be inspected and or services within five working days with written documentation submitted to the Sheriff's Office that the system is in working order.

AUDIBLE ALARM means a device designed for the detection of unauthorized entry onto the property and which when activated emits an audible sound on or near the property.

135.03 INTRUSION ALARM SYSTEMS.

A. Each time the Washington County Sheriff's Office responds to a false intrusion alarm due to system malfunction or when no reason can be determined for such false alarms, the Washington County Sheriff's Office shall issue a false alarm warning notice.

B. A service fee for excessive false intrusion alarms shall be charged as follows:
    1. No service fee shall be charged for the first three false alarms occurring within a twelve month period, calculated from the date of the first such alarm.
    2. Each false alarm in excess of three and up to and including six within a twelve month period shall result in a service fee of $50.00 per false alarm.

3. Each false alarm in excess of six within a twelve month period shall result in a service fee of $100.00 per false alarm.

C. No service fee shall be assessed if the false alarm is:
   1. Caused by an electrical storm, tornado or other act of God where there is clear evidence of physical damage to the alarm system.
   2. Caused by the intermittent disruption of telephone circuits beyond the control of the alarm site owner.
   3. Caused by electrical power disruption or failure in excess of two hours beyond the control of the alarm site owner.
   4. At a location where the Washington County Sheriff's Office has installed the Varda or other similar alarms.

D. All false alarm service fees shall be paid to the City of Dellwood within 30 days from the date of invoice. In the event fees are not received by the City as required by this Ordinance, the City may refer the matter to the City Attorney for appropriate legal action. The City may enforce payment of the fees by whatever means necessary, including a civil action against the person or persons responsible for payment of such fees or by certifying such fees to the County Auditor to be assessed against the property upon which the alarm system involved is situated and to be paid as a part of the property tax.

   An offense shall constitute a misdemeanor offense as provided in section 135.05 of this Ordinance.

E. A person commits an offense in violation of this Ordinance if such person suffers or permits false alarms in excess of three within a twelve month period, each false alarm constituting a separate offense.

135.04 AUDIBLE ALARM SYSTEM REQUIREMENTS.

A. All audible alarm systems shall meet the requirements of this section.

B. Every person maintaining an audible alarm shall post a notice containing the name and telephone number of the person to be notified to render repairs or service during any hour of the day or night. Each notice shall be posted at the main entrance to the premises near the alarm in position as to be clearly legible from the ground level adjacent to the building, or kept currently corrected and on file with the Washington County Sheriff's Office and Fire Marshall's Office.

C. Audible alarms which are similar in sound to police, fire or emergency vehicles are forbidden.

D. Audible alarms shall have an automatic disconnect which will silence the audible alarm within 20 minutes from activation of the alarm.

135.05 FIRE OR EMERGENCY MEDICAL ALARM SYSTEMS.

A. Each time the Washington County Sheriff's Office response to a false alarm due to system malfunction or when no reason can be determined for such false alarm, the Washington County Sheriff's Office shall issue a warning notice.

B. A service fee for excess false alarms shall be charged as follows:

1. No service fee shall be charged for the first three alarms occurring within a twelve month period, calculated from the date of the first such alarm.
2. Each false alarm in excess of three and up to and including six within a twelve month period shall result in a service fee of $100.00 per false alarm.
3. Each false alarm in excess of six within a twelve month period shall result in a service fee of $200.00 per false alarm.

C. No service fee shall be assessed if the false alarm is:

1. Caused by an electrical storm, tornado or other act of God where there is clear evidence of physical damage to the alarm system.
2. Caused by the intermittent disruption of telephone circuits beyond the control of the alarm site owner.
3. Caused by electrical power disruption or failure in excess of two hours beyond the control of the alarm site owner.

D. All false alarm service fees are due and payable within 30 days from date of invoice. In the event false alarm service fees are not paid as required by this Ordinance, the Washington County Sheriff's Office may refer the matter to the County Attorney for appropriate legal action.

135.06 PENALTY.

A person commits an offense in violation of this Section if such person suffers or permits false alarms in excess of three with a twelve month period, each false alarm constituting a separate violation. A violation of this Ordinance is a Misdemeanor punishable by law.

CHAPTER 150: GENERAL PROVISIONS

Section:

150.01	Minnesota Accessibility Code
150.02	Contractor's License Required
150.03	Display of Street/Road Address Numbers

150.01 MINNESOTA ACCESSIBILITY CODE.

A. The Minnesota Accessibility Code, established pursuant to M.S. 16B.59 to 16B.75, as they may be amended from time to time, and as provided for in Minn. Rules Ch. 1341, as it may be amended from time to time, is adopted as the building code for accessibility in this city.

B. No building subject to the provisions of the Minnesota Accessibility Code shall be constructed, reconstructed or substantially altered, or undergo a change in use within the city unless the building will comply with the Minnesota Accessibility Code after the construction or alteration is completed or the change in use occurs.

C. Any person who constructs, reconstructs or substantially alters any building subject to the Minnesota Accessibility Code, or changes the use of any such building shall, before construction or alteration begins, certify to the City Clerk that the applicable provisions of the Minnesota Accessibility Code will be complied with.

D. No person shall be issued a building, zoning or land use permit unless they certify that any structure to be located on the property shall be constructed or reconstructed in compliance with the handicapped accessibility provisions, if they apply to the structure to be constructed, substantially altered or reconstructed.

E. A violation of this section is a misdemeanor punished as provided by Minnesota law.

150.02 CONTRACTOR'S LICENSE REQUIRED.

No residential building contractor, residential remodeler, or other person who is required to be licensed by the state under the provisions of M.S. 326.83 to 326.991, as they may be amended from time to time, and no person employing a residential contractor, who is required to be licensed, shall be issued a building, zoning or land use permit unless that

contractor is licensed. Any person applying for a permit who is required to have a state license but who does not have a state license shall be reported to the State Commissioner of Commerce, who may begin an action against the person.

150.03 DISPLAY OF STREET/ROAD ADDRESS NUMBERS.

A. Purpose and Intent.
The purpose and intent of this Ordinance is to protect the health and safety of the public by requiring Street and/or Road addresses to be prominently displayed in a uniform manner, allowing easy identification of the property for emergency vehicles, City Inspectors, and other authorities.

B. Display of Street/Road Address Numbers.
Every owner of real property situated in the City of Dellwood shall display the official address numbers as follows:

1. Address numbers are to be displayed on the front of the home or main building facing the street or roadway.
2. Address numbers must be easily legible, a minimum of four (4) inches in height and in place at a point on the home or building which is clearly visible from the street or roadway and is not blocked from view by another building or vegetation, or any other object.
3. Address numbers must be set on a background of contrasting color.
4. In cases where the home or building is more than 50 feet from the travelled portion of the street or roadway, or is not clearly visible from the road, the address numbers shall be attached to a fence, gate, mailbox, entrance monument or other location which is clearly visible from the street or roadway and at a height which assures the numbers will not be obscured by snow accumulation or plowing.
5. Trees, shrubs and other vegetation shall be trimmed so that numbers remain to be clearly visible from the street or roadway.
6. Address numbers painted directly on a home or building or elsewhere under section (4) above are not acceptable.

Owners or occupants of homes or buildings which are not in compliance with this Ordinance may be cited under the Administration Citation Ordinance of the City.

CHAPTER 151: SUBDIVISION ORDINANCE

Section:

151.01 General Provisions
151.02 Conflict
151.03 Severability
151.04 Definitions
151.05 Prohibitions and Enforcement
151.06 Preliminary Plan
151.07 Final Plat
151.08 Design Standards
151.09 Required Improvements
151.10 Approval Procedure
151.11 Minor Subdivisions
151.12 Variances
151.13 Penalties

151.01 GENERAL PROVISIONS.

A. **Title.**
This Ordinance shall be known as the Sub-division Ordinance of the City of Dellwood.

B. **Purpose.**
Pursuant to the authority contained in Minnesota Statutes, Section 462.358, this Ordinance is adopted for the following purposes:
1. To provide for the orderly, economic and safe development of land and municipal services and facilities.
2. To promote the public health, safety morals and general welfare of the residents of the City of Dellwood.
3. To assure equitable consideration of all subdivision by uniform procedures.

C. **Scope.**
The provisions of this Ordinance apply to any division of land within the

City of Dellwood into two or more parcels, whether by platting, replatting, conveyance, registered land survey, or other means.

D. **Compliance.**
No land shall be subdivided as defined herein, and no permit shall be issued for the construction, repair, or alteration of any building or other improvement on such land, unless a plat thereof has been approved and recorded, and the improvements required by the City Council relative to subdivision have been constructed or guaranteed as provided herein.

E. **Required Approvals.**
No plat shall be recorded or be of any validity, until it shall have been first approved by the City Council by duly adopted resolution and then recorded in the office of the County Recorder of Washington County.

151.02 CONFLICT.

Whenever there may be a difference between minimum standards or dimensions expressed herein and those contained in any law, statute, ordinance, resolution or regulations of any governmental unit or agency having jurisdiction in Dellwood, then the highest or most restrictive standards or dimensions shall apply. It is not intended hereby to repeal, abrogate, annul or in any manner impair other governmental bodies, or interfere with private restrictions placed upon property by deed, covenant or other private agreements, except that the most restrictive shall apply.

151.03 SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance.

151.04 DEFINITIONS.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the text, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural. The word “shall” is always mandatory and not merely directory.

BUILDING. Any structure built or placed upon land for the support, shelter, or enclosure of persons, animals or property of any kind.

BUILDING SET-BACK. The minimum horizontal distance between a building and a lot line.

CITY. The City of Dellwood, Minnesota.

CITY COUNCIL. The Council of the City of Dellwood, Minnesota.

COMPREHENSIVE PLAN. The Comprehensive Plan adopted by the City and includes all plans of the City for land use, transportation, facilities, community facilities, shoreland and wetland regulations, septic sewer regulations, building code and all ordinances enacted pursuant to or in conjunction with said Plan.

EASEMENT. A limited right to or for the use of land for a specifically stated purpose such as, but not limited to roads, utilities, and drainage facilities.

LOT. A parcel or portion of land in a plat, separated from other parcels or portions by description.

OWNER-APPLICANT. The owner of the land proposed to be subdivided.

PLANNING COMMISSION. The Planning Commission of the City of Dellwood.

FINAL PLAT. The final map, drawing or chart on which the subdivider's plan of subdivision is presented to the Council for approval, and which, if approved, will be submitted to the County Recorder for recording.

PRELIMINARY PLAN. The preliminary map, drawing or survey indicating the proposed layout of the subdivision to be submitted to the Planning Commission, together with supporting data required by this ordinance.

PUBLIC IMPROVEMENT. Any drainage ditch, or conduit, street, sidewalk, bicycle or pedestrian way, parking area, park, tree, lawn, wall, fence, or other facility for which the City may ultimately assume the responsibility of maintenance and control, or which may affect an improvement for which local governmental responsibility is established. All such improvements shall be properly bonded in compliance with this Ordinance.

SEWAGE TREATMENT SYSTEM. A septic tank, seepage tile sewage disposal system, or any other approved sewage treatment device.

STREET. A way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place, or however otherwise designated.

The City Council shall determine when a given street is an "arterial street", "collector street", "cul-de-sac" or "minor street".

> ***ARTERIAL STREET*** is a fast or heavy traffic street of continuity and used primarily as a traffic artery for inter-communication among large areas.
>
> ***COLLECTOR STREET*** is a street which carries traffic from minor streets to arterial streets, including the principal entrance streets of a residential development and streets for circulation within such a development.

CUL-DE-SAC is a minor street with only one outlet, and having an appropriate terminal for the safe and convenient reversal of traffic movement and maintenance vehicles.

MINOR STREET is a street used primarily for access to the abutting properties.

STREET WIDTH is the shortest distance between the lines delineating the right-of-way of a street.

MINOR SUBDIVISION. A division of land into not more than three lots or parcels for the purpose of transfer of ownership or building development. The term includes replatting, rearrangement, resubdividing.

151.05 PROHIBITIONS AND ENFORCEMENT.

A. **Recording of Plat.**
No plat of any subdivision shall be entitled to record in the County Recorder's office or have any validity until it shall have been approved in the manner prescribed herein. In the event any such unapproved plat is recorded, it shall be considered invalid and the Council shall institute proceedings to have the plat stricken from the records of Washington County.

B. **Sale of Land.**
No owner or agent of the owner of any land shall transfer, sell, agree to sell, or negotiate to sell any land by reference to, exhibition of, or by the use of a plat before such plan or plat has been approved and recorded in the manner prescribed herein. The description of such lot or parcel by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of this Ordinance.

C. **Permits.**
1. The City Clerk shall not issue a building permit for any structure on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed herein.
2. The City Clerk shall not issue a permit for the installation of wells and septic tanks upon any lot not approved and recorded in the manner prescribed herein.

D. **Public Improvements and Services.**
The City hereby defines its policy to be that the City will withhold all public improvements and services, including the maintenance and plowing of streets, from all subdivisions which have not been approved, and from all areas

dedicated to the public, which have not been accepted by the Council in the manner prescribed herein.

E. **Revision of Plat After Approval.**
No changes erasures, modifications or revisions shall be made in any final plat after approval has been given by the Council, unless the said revision is approved by the Council.

151.06 PRELIMINARY PLAN.

A. **Data Required for Preliminary Plan.**

1. Scale. Scale shall be 1 inch to 100 feet.
2. Identification and Description.
    a. Proposed names of the Plat, which name shall not duplicate or be alike in pronunciation of the name of any plat heretofore recorded in the County.
    b. Location by section, town, range or by other legal description.
    c. Names and addresses of the Applicant, surveyor and designer of the plan. The Applicant shall submit a statement that he is the owner of the land being platted.
    d. Graphic scale.
    e. North-Point
    f. Date of preparation.
3. Existing Conditions in tract and in Surrounding Area to a Distance of 350 Feet:
    a. Boundary line of proposed subdivision, clearly indicated in relation to a known section, quarter section or quarter-quarter section lines, comprising a legal description of the entire property being platted.
    b. Total approximate acreage.
    c. Streets, railroad rights-of-way and utility easements, existing utilities.
    d. Boundary lines and ownership of adjoining unplatted land.
    e. Buildings and structures.
    f. Culverts or other underground utilities and facilities.
    g. Topography, showing lakes, watercourses, marsh areas, areas subject to flooding or overflow, wetlands and all other significant features, and contour map with vertical intervals of not more than two feet, except that contour lines shall be no more than one hundred feet apart. Contour lines shall be shown by means of dashed lines on the preliminary plan.

4. Subdivision Design Features:
    a. Layout of proposed streets, showing widths and the name of any street heretofore used in the City or its environs shall not be used unless the proposed street is an extension of an already named street, in which event that name shall be used.
    b. Location and widths of proposed pedestrian ways and utility easements.
    c. Layout, numbers, dimensions and acreage of each lot.
    d. Areas, other than streets, pedestrian ways and utility easements intended to be dedicated or reserved for public use, including the size of such area or areas in acres, common open space, and proposed means of maintaining common open space or park land.
    e. Street lighting and street signs.
    f. Proposed restrictive covenants, if any.
    g. Plans for water supply, sewage disposal, drainage and flood control, including a report by a registered Civil Engineer on the feasibility of individual on-site sewer and water systems on each lot, with soil boring analysis and percolation tests to verify conclusions.
    h. A plan for soil erosion and sediment control during construction and after development has been completed.
    i. A vegetation preservation and protection plan that shows those trees proposed to be removed, those to remain, the types and locations of trees and other vegetation that are to be planted.
    j. Such other information as may be requested by the City Engineer, Attorney, Surveyor, Planning Commission or City Council, including grading plans and staging plans for development, if any.
5. Submission of Preliminary Plan - The Applicant shall submit to the City Clerk the following:
    a. 12 Copies of the preliminary plan.
    b. A cash fee as established by resolution of the City Council. This fee will be used for the expenses of the City in connection with approval or disapproval of said preliminary plan and final plat.
    c. A list of all property owners' names and addresses located within 350 feet of the subject property.

B. **Clerk's Duties - The Clerk shall forthwith:**
1. Submit two copies of the preliminary plan to the Planning Commission, one copy each to the City Engineer and City Attorney, one copy to each of the companies providing telephone and electric service to the City; and if the subdivision requires access to a County road, one copy to the County

Engineer; and if the plat borders a Federal, State or State Aid Highway, one copy to the District Engineer of the Minnesota Highway Department.

2. Place the matter on the agenda of the next regular meeting of the Planning Commission occurring at least 14 days after the date of filing of the Preliminary Plan.

C. **Public Hearing.**
The Planning Commission upon receipt of said application shall set a public hearing upon the preliminary plan. Notice of said hearing shall include a legal property description, and be published in the official newspaper at least 10 days prior to the hearing, and written notification shall be mailed at least 10 days prior to the hearing to all owners of land situated within 350 feet of the boundaries of the subject property. The Planning Commission shall conduct the hearing, and report its findings and make recommendations to the City Council.

D. **Engineer's Report.**
The City Engineer shall submit his report to the Planning Commission at least 10 days before the hearing on the preliminary plan. This report shall address itself to the engineering problems presented and to the feasibility of street location and construction and to any drainage problems that might be encountered.

E. **Planning Commission Report.**
Upon completion of the Public Hearing, the Planning Commission shall prepare and submit its report together with a copy of the Preliminary Plan to the City Council. The Planning Commission has the authority to recommend approval, disapproval, or conditions which must be met prior to approval.

F. **Council Action.**
At its next regular meeting following receipt of the Planning Commission's report, the City Council shall review the report and the Preliminary Plan. The Council may hold another public hearing, although none is required, or take action to approve, disapprove, or specify conditions for approval of the Preliminary Plan. The Council's decision shall be furnished to the applicant.

151.07 FINAL PLAT.

A. **Data Required.**
The following data shall be shown on the final plat at the time of its submission to the City Clerk.

1. Name of subdivision.
2. Scale shall be 1 inch to 100 feet.
3. Identification system for all lots and blocks.
4. Area and dimensions of each lot and width and depth of building line as established by the zoning ordinance of the City.

5. True angles and distances tied to the nearest established street lines or official monuments (not less than three) which shall be accurately described in the plat.
6. Section lines accurately tied to the boundary lines of the plat by distances and angles.
7. Location of municipal, or township boundaries within or adjacent to the plat.
8. Accurate location of all monuments.
9. Complete curve data, including radius, internal angles, points and curvatures, tangent bearings, and lengths of all distances.
10. Any data required under supervision or regulation of the County Surveyor, including accurate angular and lineal dimensions for all lines, angles and curvatures used to describe boundaries, streets, easements and areas to be reserved for utilities and common open space.
11. Any supplemental data required by the City.
12. A complete and accurate legal description of the entire area embraced within the plat.
13. Certification by a registered land surveyor that the plat represents a survey made by him and that monuments and markers shown thereon exist as located and that all dimensions and geodetic details are correct, in the form required by Minnesota Statutes Section 505.03, as amended.

151.08 DESIGN STANDARDS.

A. **Streets.**
   1. General design. The design of all streets shall be considered in their relation to public safety, existing and planned streets, efficient circulation of traffic, topographical conditions, run-off of storm water, and proposed uses of the land to be served by such streets.
   2. Standards and Specifications. For the construction of roads or streets, as well as grading, surfacing, soil tests, and drainage, shall be those on file in the office of the City Clerk at the time of the submission of the final plat, as may be established from time to time by resolution of the City Council. Standards and specifications on file are considered minimum standards. Sufficient soils and engineering data must be provided to substantiate using these minimum standards or other appropriate standards.

B. **Easements.**
   1. Utilities. All utilities shall be placed underground. Easements at least 12 feet wide centered on lot lines, shall be provided for utilities where necessary. They shall have continuity of alignment from block to block.
   2. Drainage. Where a plat is traversed by a water course, drainage way, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such water course, together with such further width or construction or both, as will be

adequate for storm-water runoff. The easement shall include not only the stream channel, but also adjoining areas that have been or may be subject to flooding.

C. **Lots.**

1. Location. All lots shall front upon a publicly dedicated street.
2. Side Lot Lines. Side lot lines shall be substantially at right angles or radial to the street lines.
3. Water Courses. Lots abutting upon a water course, drainage way, channel, or stream, shall have an additional depth or width, as required under the provisions of the Shoreland and Wetlands regulations of the Zoning Ordinance of the City of Dellwood.
4. Features. In the subdividing of any land, due regard shall be shown for all natural features, such as tree growth, water courses, historic spots or similar conditions, which, if preserved, will add attractiveness and stability to the proposed development.
5. Lot Remnants. All remnants of lots below minimum size left over after subdividing of a larger tract must be added to adjacent lots, rather than allowed to remain as unusable parcels. However, outlots may be used if it can be demonstrated that future subdivision of adjoining land will absorb these outlots into standard lots.

151.09 REQUIRED IMPROVEMENTS.

A. Payment. Payment by applicant to the City of all expenses of staff and/or consulting time by City Engineer, City Attorney and City Planner.

B. Monuments. Monuments shall be placed at all block corners, angle points, points of curves in streets and at intermediate points as shown on the final plat, and as required by the City Engineer. Pipes or steel rods shall be placed at the corners of each lot and at each intersection of street centerlines. All U.S., state, county, or other official benchmarks, monuments or triangular stations in or adjacent to the property shall be preserved in precise position.

C. Streets. The streets shall be designed and constructed in accordance with the requirements of this Ordinance. The design shall be based on average daily traffic count of heavy commercial vehicles and passenger cars. The City Engineer will determine the design and traffic count for each street.

D. Drainage Facilities. Such facilities and easements shall be installed as will adequately provide for the drainage of surface water, as determined by the City Engineer.

E. Street Name Signs and Lighting Fixtures. These shall be placed at all locations as may be required by the City Council. Street names and design of street signs and lighting fixtures shall be subject to approval of the Council.

F. Stop Signs. Stop signs or yield right-of-way signs shall be placed on all streets intersecting a thoroughfare or collector street, if the City deems advisable, under direction of the City Engineer.

G. Specifications. All of the required improvements shall conform to the engineering standards and specifications of this ordinance, and those on file as described in Section 302.

H. Inspection. All improvements on site as described under engineering standards shall be inspected during construction by the City Engineer at the expense of the subdivider. This inspection shall include aggregate samples, bituminous mix samples, concrete samples and visual inspection of projects during the installation of work.

151.10 APPROVAL PROCEDURE.

A. **Submission of Final Plat.**
Unless an extension of time is requested by the applicant and granted by the Planning Commission, the Final Plat shall be submitted to the City Clerk within six months following approval of the documents shall be submitted to the Clerk.
   1. Six copies of the Final Plat, which shall conform to the Preliminary Plan approved by the Council, except for such revisions as may have been required or approved by the Council.
   2. An up-to-date certified abstract of title or registered property report, and such other evidence of title as the City Attorney may require showing title or control of the land to be in the applicant.

B. **Clerk's Duties.**
The City Clerk shall refer one copy of the plat to the City Engineer, one copy to the Secretary of the Washington County Plat Commission, and a copy each to the telephone, power and cable companies.

C. **Engineering and Legal Reports.**
The reports of the City Attorney and City Engineer shall be submitted to the Council within fifteen days after filing of the plat. The City Engineer shall state whether the Plat and the proposed improvements conform to the engineering standards and specifications established in this Ordinance.

D. **Burden on Applicant.**
The burden of establishing the suitability of land for subdivision shall be upon the applicant. It must be established that the land proposed to be subdivided is suitable with regard to the following conditions:

1. Adequate drainage of surface and sub-surface waters.
2. Adequate pure water supply. Each individual well shall produce at least 10 gallons per minute, have a well casing at least 14 inches in diameter and be grouted to provide a safe potable water supply.
3. Adequate soil conditions and sewage capacity to support the subdivision as to the maximum permissible density. All sewage disposal systems shall comply with the Standards of the Dellwood Sewer Ordinance, MPCA, and Minn. Dept. of Health.
4. Compliance with the policies and regulations of the Minnesota Environmental Quality Council, the Rice Creek Watershed District, the Minnesota Department of Natural Resources and the White Bear Lake Conservation District.
5. Ability to provide all public improvements reasonably necessitated by the subdivision.
6. Compliance with the purposes, objectives, and policies of the Comprehensive Plan.

E. **Financing, Bonding and Development Contracts.**

1. Prior to approval of a plat, the Council must be satisfied that all improvements required have been constructed, or that adequate guaranty has been furnished for their completion.
2. Surety Bonds. A bond executed by a surety company acceptable to the City, and based upon the estimate of the City Engineer, shall be furnished to the City by the applicant in an amount equal to one and one-half the estimated cost of construction of such improvements. The surety will be subject to the condition that the improvements will be completed within one year after approval of the Final Flat, and that in the event the required improvements are not so completed, the City may proceed with the work and hold the owner and the surety jointly and severally liable for the costs thereof.
3. Certified Check. In lieu of furnishing a surety bond, the applicant may deposit with the City Clerk a certified check payable to the City in the amount of one and one-half the estimated cost of the required improvements, on the condition that in the event the required improvements are not completed within one year after approval of the plat, the City may endorse and deposit said check in its account and apply the proceeds to the cost of completing the required improvements.
4. Development Contracts. In lieu of a surety bond or certified check as guaranty, the subdivider and the City, may prior to approval of a plat, enter into a secured development contract which shall provide for the design and construction of the required improvements by the City, upon such terms and conditions as the City and the subdivider may agree.
5. Surplus and Deficiency. In the event the funds available from the applicant surety, and/or certified check are not sufficient to complete the required

improvements, the additional cost to the City shall be assessed against the land in the subdivision. Any balance remaining in such funds after completion of the required improvements by the City shall be refunded to the applicant, or surety, as their respective interests may appear.

F. **Certification.** Each plat shall contain a notarized certification of the owner, and any mortgagee or other person in interest, of the adoption of the plat and the dedication of streets and other public areas, and a certification showing that all taxes currently due on the land subdivided have been paid in full.

G. The Council shall act on the Final Plat within 60 days of the date on which it was filed with the City Clerk. No Final Plat will be approved that:

1. Does not conform to the preliminary plan as approved or amended by the Council.
2. Does not meet the prescribed design standards and engineering specifications.
3. Does not conform to the Zoning Ordinance.

H. If the final plat is approved by the Council, the applicant shall record it with the County Recorder within 60 days after the date of approval; otherwise the approval shall be considered void.

I. The applicant shall, immediately upon recording, furnish the City Clerk with two prints of the final plat showing evidence of the recording, and film positive of the plat.

151.11 MINOR SUBDIVISIONS.

A. In the case of a subdivision resulting in three (3) or less parcels, situated in a locality where conditions are well defined, the City Council may exempt the applicant from complying with some of the requirements of these regulations. In the case of a request to subdivide a lot which is a part of a recorded plat, or where the sub-division is to permit the adding of a parcel of land to an abutting lot or to create not more than three (3) new lots, and the newly created property lines will not cause any resulting lot to be in violation of these regulations or the Zoning Ordinance, the division may be approved by the City Council, after submission of a survey by a registered land surveyor showing the original lot and the proposed subdivision. The newly created parcels shall meet all requirements of the Zoning Ordinance. Topographic data at ten (10) foot contour intervals, driveway access points, drainage plans, and soil tests for the installation of an on-site septic system shall be submitted for minor subdivision review. A Certificate of Survey shall be prepared by a registered land surveyor showing the boundaries of the newly created lots. Prior to approval of a minor subdivision, the

City Council reserves the right to require the dedication of streets, utility easements, or public park land or cash in lieu of land. In cases where the new lot and resulting lots created each exceed ten (10) acres and have five hundred (500) feet of frontage on a public road, subdivision approval is not required.

B. Any proposed minor subdivision which includes land abutting upon any existing or established trunk highway or proposed highway which has been designated by a centerline order filed in the office of the County Recorder shall first be presented to the commissioner of transportation for his written comments and recommendations. Where any minor subdivision includes land abutting upon an existing or established county or county state aid highway, it shall first be submitted to the county engineer for his written comments and recommendations. Minor subdivision involving both a trunk highway and a highway under county jurisdiction shall be submitted to the commissioner of transportation and the county highway engineer. The commissioner of transportation and/or the county highway engineer shall submit the written comments and recommendations to the city within 30 days after the receipt by them of such a plat. Final action on such plat shall not be taken until after these required comments and recommendations have been received or until the thirty (30) day period has elapsed. A legible preliminary drawing or print of a proposed minor subdivision shall be acceptable for purposes of review by the commissioner of transportation of the county highway engineer. To such drawing or print there shall be attached a written statement describing:
    1. The outlet for and means of disposal of surface waters from the proposed subdivided area;
    2. The land use designation or zoning category of the proposed subdivided area;
    3. The locations of ingress and egress to the proposed subdivided area; and
    4. A preliminary site plan for the proposed subdivided area, if one has been prepared.

    Failure to obtain the written comments and recommendations of the commissioner of transportation or the county highway engineer shall in no manner affect the minor subdivision of said lands.

C. Re-subdivision. In the case of a request to divide a lot which is a part of a recorded plat where the division is to permit the adding of a parcel of land to an abutting lot or to create two lots and the newly created property line will not cause the other remaining portion of the lot to be in violation with this regulation or the Zoning Ordinance, the division may be approved by the City after submission of a survey by a registered land surveyor showing the original lot and the proposed subdivision.

D. Land Division. No building permit shall be issued for any construction, enlargement, alteration, or repair, demolition or moving of any building or structure on any lot or parcel resulting from such division, until such division has been approved by the City. Prior to the consideration of such division by the City they shall require that a certified survey be submitted.

151.12 VARIANCES.

A. The City Council may grant a variance in any particular case where the applicant can show that by reason of the exceptional topography or other physical conditions the strict compliance to these regulations could cause an exceptional and undue hardship on the enjoyment of a substantial property right. Such relief may be granted provided there is no detriment to the of a substantial property right. Such relief may be granted provided there is no detriment to the public welfare and no impairment of intended purpose of this regulation.

B. Application for any such variance shall be made in writing at the time when the preliminary plan is filed for consideration. Such application shall state fully all facts relied upon by the applicant, and shall be supplemented with maps, plans or other additional data which may aid the City in the analysis of the proposed project. The Planning Commission shall make a finding of fact and recommend in writing such actions or conditions relating to the request as it may deem necessary to carry out the intent and purpose of the ordinance.

C. Council Action. The City Council shall serve as the Board of Adjustments and Appeal and shall not grant a variance until they have received a report and recommendation from the Planning Commission, or until 90 days has elapsed since the date of the first Planning Commission meeting at which the requested variance was considered, whichever is earlier.

D. Upon receiving the report and recommendation of the Planning Commission, the City Council serving as the Board of Adjustment and Appeals, shall place the matter on the agenda for the next regular meeting. The Council shall within 60 days thereafter make a written finding of fact and impose any conditions it considers necessary to protect the public health, safety and welfare. A Variance of this ordinance shall require a 4/5ths vote of the full Council. The Clerk shall promptly notify the applicant of the Councils decision in writing.

151.13 PENALTIES.

Any person, firm or corporation violating any provision of this ordinance shall be guilty of a misdemeanor, punishable by a fine or by imprisonment or both. Each day during which the violation continues to exist shall constitute a separate offense.

CHAPTER 152: ZONING ORDINANCE

Section:

152.01	General Provisions
152.02	Zoning Districts
152.03	Subdivision/Platting Provisions
152.04	Reserved
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152.01 GENERAL PROVISIONS.

A. **Title.** This Ordinance shall be known as “The Dellwood Zoning Ordinance.” It is referred to herein as “this Ordinance.”

B. **Intent and Purpose.** The intent of this Ordinance is to provide for an open, rural, low-density single family detailed residential dwellings and directly related complimentary uses to implement the City Comprehensive Plan which is on file at the City Office, and to protect the public health, safety and general welfare of the community and its people through the establishment of minimum regulations governing development and use. This Ordinance shall divide the City into use districts and establish regulations in regard to location, erection, construction, reconstruction, alteration, and use of structures and land. Such regulations are established to protect such use areas; to promote orderly development and redevelopment; to prevent congestion in the public right-of-way; to prevent overcrowding of land and undue concentration of structures by regulating land, buildings, yards and density of population; to provide for compatibility of land use;

to provide for administration of this Ordinance; to provide for amendments; to prescribe penalties for violation of such regulations; and to define powers and duties of the City Staff, the Board of Adjustment and Appeals, the Planning Commission, and the City Council in relation to the Zoning Ordinance.

C. **Jurisdiction.** This Ordinance shall apply throughout the entire City of Dellwood.

D. **Rules.**
   1. The singular numbers include the plural, and the plural, the singular.
   2. The present tense includes the past and future tenses, and the future the present.
   3. The word “shall” is mandatory while the word “may” is permissive.
   4. The masculine gender includes the feminine and the neuter.
   5. All distances, unless otherwise specified, shall be measured horizontally.
   6. Whenever the word or term defined hereinafter appears in the text of this Ordinance, its meaning shall be construed as set forth in such definition thereof.

E. **Application and Interpretation.**
   1. In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of public health, safety and welfare.

   2. Where the conditions imposed by any provision of this Ordinance are either more or less restrictive than comparable conditions imposed by any applicable law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.

   3. No structure shall be erected, converted, enlarged, reconstructed or altered, and no structure or land shall be used for any purpose or in any manner which is not in conformity with the provisions of this Ordinance.

   4. Except as herein provided, no building, structure or premises shall hereafter be used or occupied and no building permit shall be granted that does not conform to the requirements of this Ordinance.

   5. Compliance. The use of any shoreland of public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and waste treatment systems, the grading and filing of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this Ordinance and other applicable regulations.

6. Enforcement. The City of Dellwood is responsible for the administration and enforcements of this Ordinance. Any violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law. Violations of this Ordinance can occur regardless of whether or not a permit is required for a regulated activity pursuant to this Ordinance. Each day a violation occurs or continues constitutes a separate violation.

7. Severability. If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a Court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

F. **Definitions.** The following words or terms, wherever they occur in this Ordinance are defined as hereinafter stated below or as provided in the Minnesota Uniform Building Code.

ACCESSORY STRUCTURE OR FACILITY. Accessory structure or facility means any building or improvement subordinate to the principal use.

ACCESSORY DWELLING UNIT. A secondary dwelling unit located in an accessory building or a main building.

AGRICULTURAL. An area which is used for the purpose of growing produce including crops, fruit trees, shrubs, plants and flowers, vegetables, and the like provided such produce is intended solely for the use of residents on the property or sale away from the property.

ALTERATIONS. As applied to a building or a structure, means 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 the moving from one location or position to another.

ANIMALS, DOMESTIC PETS. Dogs, cats, birds and similar animals, commonly kept in a residence.

BASEMENT. Usually the lowest portion of a building; either partly or entirely below grade. Earth shelter houses that meet all other requirements of the Building Code shall not be considered basements.

BUILDING, DETACHED. A building having no party wall in common with another building.

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

BUILDING LINE. Building Line means the line of that face of the building nearest to the line of the lot.

CLUB, PRIVATE. A private club or a non-profit association of persons who are bona fide members paying annual dues.

COMMERCIAL USE. Commercial Use means the principal use of land or buildings for the sale, lease, rental or trade of products, goods and services.

CONDITIONAL USE. Conditional Use means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon finding that certain conditions as detailed in the Zoning Ordinances exist, the use or development conforms to the comprehensive land use plan of the community, and the use is compatible with the existing neighborhood.

DECK. Deck means a horizontal, unenclosed platform with or without attached railings, seats, trellises or other features, attached or functionally related to a principal use or site.

DWELLING SITE. Dwelling Site means a designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.

DWELLING UNIT. Dwelling Unit means any structure or portion of a structure, or other shelter designed as short or long term living quarters for one or more persons.

EASEMENT. A limited right to or for the use of land for a specifically stated purpose such as, but not limited to, roads, utilities and drainage facilities.

ESSENTIAL SERVICES. The erection, construction, alteration, or maintenance by public utilities or municipal departments or other governmental bodies, of gas, electrical, communication, transmission

systems, including wires, conduits, cables and other equipment and accessories in conjunction therewith, reasonably necessary for the furnishing of utility services.

EXTRACTIVE USE. Extractive Use means the use of land for surface or subsurface removal of sand, gravel, rock industrial material, other nonmetallic minerals, and peat not regulated under Minnesota Statutes, Section 93.44 and 93.51.

FAMILY. An individual, or two (2) or more persons each related by blood, marriage, adoption, or foster care arrangement living together as in a single housekeeping unit, or group of not more than four (4) persons not so related, maintaining a common householder, exclusive of servants.

FINAL PLAT. A drawing or map of any approved subdivision, meeting all requirements of the Subdivision Ordinance, in such form as required by the City for purposes of recording.

FLOOD PLAIN AND FLOODWAY. The areas adjoining a watercourse which have been or hereafter may be covered by regional flood.

GARAGE – PRIVATE. An accessory building or accessory portion of the principal building which is intended for use to store the vehicles of the family or families' resident upon the premises, and in which no habitation, business service, or industry is carried on, and in which no sanitary sewer facilities are located.

GARAGE – DETACHED. A garage which does not have a wall in common with the principal dwelling.

GUEST HOUSE. A structure used as a dwelling unit which may contain sleeping spaces and/or kitchen and bathroom facilities in addition to those located in the primary dwelling unit on a lot.

GRADING. Changing the natural or existing topography of the land.

HOME OCCUPATION. Any gainful occupation or profession engaged in by the occupant of a dwelling at or from the dwelling unit.

IMPERVIOUS SURFACE. Hard cover by roof tops, roads, parking areas, driveways, and/or other land alteration of a similar nature, rendering the land in such a condition that precipitation runs off rapidly with no or little infiltration.

KENNEL. Any place where four (4) or more of any single type of domestic pets, over four (4) months of age are owned, boarded, bred or kept.

LOT. Lot means a parcel of land designated by plan, metes and bounds, registered land survey, auditors plat, or other accepted means.

LOT AREA. The area of a horizontal plane within the lot lines lying above the ordinary high water mark.

LOT DEPTH. The shortest horizontal distance between the front lot line and rear lot line measured from a ninety (90) degree angle from the street right-of-way within the lot boundaries.

LOT–FRONTAGE. The front of a lot shall be, for purposes of complying with this Ordinance, the boundary abutting a public right-of-way or access road having the least width.

LOT–LINE. A property boundary line of any lot held in single or separate ownership; except that where any portion of the lot extends into the abutting street, the lot line shall be deemed to be the street right-of-way. Where any portion of a lot adjoins a lake, the lot line shall be deemed to be the normal high water mark.

LOT OF RECORD. The lot which is part of a subdivision, the plat of which has been recorded in the Office of the Recorder of Washington County, or a lot described by metes and bounds; the deed to which has been recorded in the Office of the Recorder of Washington County.

LOT – WIDTH. The horizontal distance between the lot lines of a lot measured at the setback lines.

NONCONFORMITY. Nonconformity means any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

ORDINARY HIGH WATER LEVEL. Ordinary high water level means the boundary of public waters and wetlands and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominately aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel.

OBSTRUCTION. Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, bridge, conduit, pole, culvert, building, wire, fill, other structure or matter in, along, across or projecting into surface waters or wetlands.

OWNER. Includes all persons interested in a property as fee simple owner, life estate holder, encumbrancer or otherwise.

PARKING SPACE. An area, enclosed in the main building, in an accessory building, or unenclosed, sufficient in size to store one (1) standard automobile, which has adequate access to a public street, alley or access road and permitting satisfactory egress and ingress for an automobile.

PLAT. A map, plan or layout of a subdivision indicating the location and boundaries of individual properties.

PRINCIPAL USE. The main use of land or buildings as distinguished from subordinate or accessory uses. A “principal use” may be either permitted or conditional.

PUBLIC WATERS. Public Waters means any waters as defined by Minnesota Statutes, Section 103G.005.

RESIDENTIAL PLANNED UNIT DEVELOPMENT. Residential Planned Unit Development means a development of land in conformity with the Planned Residential Development Ordinance of the City of Dellwood.

SENSITIVE RESOURCE MANAGEMENT. Sensitive Resource Management means the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding or occurrence of flora or fauna in need of special protection.

SETBACK. Setback means the minimum horizontal distance between a structure, septic sewer system, water well, or other facility and the ordinary high water level, a property line, sewage treatment system, roadway, street, highway or other specified facility.

SEWAGE. Any water carrying domestic waste, of any residence, private club, agriculture establishment whether treated or untreated, and includes the liquid wastes produced by bathing, laundry and culinary operations, and from toilets and floor drains. Raw sewage is sewage which has not been subjected to any treatment process.

SEWAGE DISPOSAL SYSTEM. A system other than a public or community system, which receives sewage from one or more establishments. (Unless otherwise indicated, the word “system” as it appears in this Ordinance means “Individual Sewage Disposal System”.)

SEWAGE TREATMENT SYSTEM. Sewage Treatment System means a septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated in Chapter 7080 Minnesota Rules.

SEWER SYSTEM. Sewer System means pipelines or conduits, pumping stations, and force main, and all other constructions, devices, appliances or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

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

STEEP SLOPE. Steep Slope means land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of these regulations. Where specific information is not available, steep slopes are lands having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.

STORY. That portion of a building included between the upper surface of a floor and upper surface of floor next above. A basement shall not be counted as a story.

STREET. A public thoroughfare which affords the principal means of access to abutting property.

STREET – PRIVATE. A street or roadway intended for the purpose of ingress and egress which has not been formally accepted by the City as a public street, but has been approved for use as a privately-owned street subject to conditions which may be imposed by the City.

STRUCTURE. Anything which is built, constructed or erected, an edifice or building of any kind; whether temporary or permanent in character (includes decks, pools, tennis courts, recreational facilities and patios) the term structure includes private septic sewage systems and all components thereof, wells and underground tanks. Buried irrigation systems and buried fences used to restrain household pets are excluded from the definition.

SUBDIVISION. The division of any parcel of land into two (2) or more parcels.

USE. The purpose of activity for which the land or building thereon is designated, arranged, or intended, or for which it is occupied, utilized, or maintained, and shall include performance of such activity as defined by the performance standards of the Ordinance.

VARIANCE. "Variance" means any modification or variation of official controls where it is determined that the strict enforcement of the official controls would cause practical difficulties as defined in Minnesota Statutes, 462.357, Subd. 6(2) as amended.

WETLAND. Wetland has the meaning given under Minnesota Rule 820.0111.

YARD. The open space on a lot or parcel of land which is unobstructed by a structure of any kind, except as expressly permitted in this Ordinance.

YARD – FRONT. A yard extending across the front of the lot between the inner side yard lines and lying between the front line of the lot abutting the public right-of-way and the nearest line of the building.

YARD – REAR. A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the building.

YARD – SIDE. A yard between the side line of the lot and the nearest line of the building extending from the front line of the lot to the rear yard.

152.02 ZONING DISTRICTS.

A. **Zoning Districts - Purpose.** The standards are intended and designed to assume compatibility of uses and to prevent deterioration and decay; and to enhance the health and safety and general welfare of the residents of the community.

B. **Zoning District Application.**

1. The boundary line of the districts listed in this Ordinance are hereby established as shown on that certain map entitled Zoning District Map of Dellwood, Minnesota, which map is properly approved and filed with the City Clerk. The Zoning District Map and all notations, references and other information shown thereon shall have the same force and effect as if fully set forth herein and is hereby made a part of this Ordinance by reference and incorporated herein as fully as if set forth herein in length.

2. Annexed Land. All lands which may hereafter become part of the City of Dellwood through annexation shall be automatically classified as “F/E”, Farm/Estate District until otherwise changed by the amendment procedures as prescribed in this Ordinance.

3. Land Divided by Zoning District Line. Where a lot in single ownership at the time of the adoption of this Ordinance is divided by a district boundary line as established in this Section and as shown on the Zoning Map the uses authorized thereon and the other requirements apply to the least restricted portion of such lot under this Ordinance shall be considered as extending to the entire lot.

C. **Zoning District Boundaries.**

1. Zoning district boundary lines as indicated in the zoning map follow lot

lines, roads, railroad right-of-way lines, the center of water courses or the corporate limit lines, all as they exist upon the effective date of this Ordinance. If the district boundary lines do not follow any of the above described lines, the district boundary lines are established as indicated in the zoning map.

2. Appeals from the Planning Commission's determination and questions of doubt concerning the exact location of a zoning district boundary line shall be heard by the City Council serving as the Board of Adjustment and Appeals.

D. **Establishment of Districts.** The following zoning districts are hereby established within the City of Dellwood:

SMD Shoreland Management Overlay District
F/E Farm/Estate District (5 acre minimum)
RR Rural Residential District (2.5 acre minimum)
PC Private Club District
A Agricultural District

E. **Shoreland Management Overlay District.** This District is an overlay district upon all other districts, and includes all land located within the City of Dellwood. Development within this District is governed by the provisions of this Ordinance and subject to the requirements in Chapter 153.

F. **Farm/Estate District (FE).**

1. Purpose. This District is to provide for the retention of open space, the conduct of agricultural use and the development of larger lot estate type residential activity.

2. Permitted Uses.
   a. Agriculture, domestic farm animals and agricultural related buildings and structures subject to Minnesota Pollution Control Standards but not including commercial feed lots or other commercial operations. Total farm animals may not exceed 1 animal unit per acre.
   b. Single family detached dwellings, together with attached or detached private garage on a minimum lot size of 5 acres.
   c. Essential services.

3. Accessory Uses.
   a. Garages.
   b. Operation and storage of such vehicles, equipment and machinery which are incidental to permitted or conditional uses allowed.
   c. Accessory Buildings.

d. Non-commercial greenhouses and conservatories.
e. Swimming pools, tennis courts and other recreational facilities.

4. Conditional Uses.
    a. Home occupations.
    b. Governmental and public utility buildings and structures necessary for the health, safety and welfare of the community.
    c. Accessory dwelling units.
    d. Stables and/or kennels.

5. Interim Uses.

6. Performance Standards.
    a. Lot Area. 5 acres.
    b. Lot Width. 150 feet at the front yard setback from a public right-of-way.
    c. Setbacks.
        i. Front. Minimum front yard depth of 40 feet and/or be equal in depth to be compatible with the depth of the front yard of the lots immediately adjacent thereto on either side, as established by the structures located thereon.
        ii. Rear. 40 feet.
        iii. Side. 30 feet.
    d. Impervious Surfaces/Lot Coverage. Maximum lot coverage by impervious surfaces is 10% of lot area.
    e. Maximum Building Height. Must not exceed 35 feet in height, chimney excluded.

G. **Rural Residential District.**
1. Purpose. The purpose of the RR District is to provide for low density single family residential uses with a rural estate character.

2. Permitted Uses.
    a. Single Family detached dwellings together with attached or detached private garage on a minimum lot size of 2.5 acres.
    b. Essential services.

3. Accessory Uses.
    a. Garages.
    b. Operation and storage of such vehicles, equipment and machinery which are incidental to permitted or conditional uses allowed.
    c. Accessory Buildings.
    d. Non-commercial greenhouses and conservatories.
    e. Swimming pools, tennis courts and other recreational facilities.

4. Conditional Uses.
    a. Home occupations.
    b. Governmental and public utility buildings and structures necessary for the health, safety and welfare of the community.

5. Interim Uses.

6. Performance Standards.
    a. Lot Area. 2.5 acres.
    b. Lot Width. 150 feet at the front yard setback from a public right-of-way.
    c. Setbacks.
        i. Front. Minimum front yard depth of 40 feet and/or be equal in depth to be compatible with the depth of the front yard of the lots immediately adjacent thereto on either side, as established by the structures located thereon.
        ii. Rear. 40 feet.
        iii. Side. 30 feet.
    d. Impervious Surfaces/Lot Coverage. Maximum lot coverage by impervious surfaces is 25%.
    e. Maximum Building Height. Must not exceed 35 feet in height, chimney excluded.

H. **Private Club District (PC).**
1. Purpose. This district is to provide for the use as a private club and shall not be subdivided, except upon the discontinuation of the private club use at which point it may be subdivided into 10 acre single family residential lots. Private Clubs operating in the City are required to have a Conditional Use Permit.

2. Permitted Uses.
    a. Single family residential uses on a minimum lot size of 10 acres.

3. Accessory Uses.
    a. Operation and storage of such vehicles, equipment and machinery which are incidental to permitted or conditional uses allowed.
    b. Accessory Buildings.
    c. Buildings and equipment necessary for the maintenance of the recreational facilities associated with a Private Club.
    d. Parking areas that are in compliance with this Ordinance.
    e. Signing that does not adversely impact adjoining property.
    f. Garages, accessory to residential uses.

4. Conditional Uses.
    a. Private non-profit clubs for primarily outdoor recreational use that restrict the use to members and their guests and the service and food and beverage in compliance with applicable Federal, State, and Municipal Ordinances including golf courses, tennis courts, swimming pools, and sailing related facilities for the members and their guests.
    b. Home occupations.
    c. Governmental and public utility buildings and structures necessary for the health, safety and welfare of the community.
    d. Stables and/or kennels.

5. Interim Uses.

6. Performance Standards.
    a. Lot Area. 10 acres.
    b. Lot Width. 150 feet at the front yard setback from a public right-of-way.
    c. Setbacks.
        i. Front. Minimum front yard depth of 40 feet and/or be equal in depth to be compatible with the depth of the front yard of the lots immediately adjacent thereto on either side, as established by the structures located thereon.
        ii. Rear. 40 feet.
        iii. Side. 30 feet.
    d. Impervious Surfaces/Lot Coverage. Maximum lot coverage by impervious surfaces is 25%.
    e. Maximum Building Height. Must not exceed 35 feet in height, chimney excluded.

I. **Agricultural District (A).**
1. Purpose. The purpose of this District is to provide for historical agricultural uses and allow for the continuation of such uses. This district requires a minimum lot size of 10 acres.

2. Permitted Uses.
    a. Agriculture, including farm dwellings, domestic farm animals and agricultural related buildings and structures subject to Minnesota Pollution Control Standards but not including commercial feed lots or other commercial operations with a minimum lot size of 10 acres. Total farm animals may not exceed 1 animal unit per acre.
    b. Single family residential uses on a minimum lot size of 10 acres.

3. Accessory Uses.
    a. Operation and storage of such vehicles, equipment and machinery which are incidental to permitted or conditional uses allowed.
    b. Accessory Buildings.
    c. Non-commercial greenhouses and conservatories.
    d. Swimming pools, tennis courts and other recreational facilities.

4. Conditional Uses.
    a. Home occupations.
    b. Governmental and public utility buildings and structures necessary for the health, safety and welfare of the community.
    c. Stables and/or kennels.

5. Interim Uses.
    a. Farm wineries, as defined by Minnesota Statutes 340a.315 as an interim use permit with a minimum lot size of 20 acres.
    b. Apple orchard as an interim use permit with a minimum lot size of 20 acres.

6. Performance Standards.
    a. Lot Area. 10 acres.
    b. Lot Width. 150 feet at the front yard setback from a public right-of-way.
    c. Setbacks.
        i. Front. Minimum front yard depth of 40 feet and/or be equal in depth to be compatible with the depth of the front yard of the lots immediately adjacent thereto on either side, as established by the structures located thereon.
        ii. Rear. 40 feet.
        iii. Side. 30 feet.
    d. Impervious Surfaces/Lot Coverage. Maximum lot coverage by impervious surfaces is 25%.
    e. Maximum Building Height. Must not exceed 35 feet in height, chimney excluded.

152.03 SUBDIVISION/PLATTING PROVISIONS.

A. **Land Suitability.**

1. Each lot created through subdivision, must be suitable in its natural state for the proposed use with minimal alteration. suitability analysis by the local unit of government shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potentials 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 sites, 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. All subdivisions must comply with the requirements of the Dellwood Subdivision Ordinance.

2. Each newly created or modified lot within a subdivision shall maintain a minimum area of 1 acre of contiguous buildable land within the minimum lot area for the District. Such land shall not include wetlands, floodplains, or slopes greater than 12%. Such land shall include a primary and alternate septic site on suitable soils, meeting the minimum standards of Chapter 51 of the Dellwood City Code. Such land shall also have soils with the structural capacity to support normal buildings and driveways.

B. **Consistency with Other Controls.** Subdivisions must conform to all official controls of this community. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. Each lot must meet the requirements of the Dellwood Zoning and Sewer Ordinances.

C. **Information Requirements.** Sufficient information must be submitted by the applicant for the community to make a determination of land suitability. The information shall include at least the following:

1. Topographic contours at two foot intervals or less from a certified survey, showing limiting site characteristics;

2. The surface water features required in Minnesota Statutes section 505.02, Subd. 1, to be shown on plats, obtained from United State Geological Survey quadrangle topographic maps or more accurate sources;

3. Adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;

4. Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation and proposed methods for controlling stormwater runoff and erosion, both during and after construction activities;

5. Location of 100-year flood plain areas and floodway districts from existing

adopted maps or data; and

6. A line or contour representing the ordinary high water level and the minimum building setback distances from the lake or stream.

D. **Dedications.** When a land or easement dedication is a condition of subdivision approvals the approval must provide easements over natural drainage or ponding areas for management of stormwater and significant wetlands.

E. **Platting.** All subdivisions shall be processed in accordance with the Dellwood Subdivision ordinance. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as part of a formal subdivision or as a minor subdivision, or a variance has been granted.

F. **Controlled Access or Recreational Lots.** Lots intended as controlled accesses to public waters or recreational use areas for use by nonriparian lots within a subdivision must meet or exceed the minimum lot size criteria of this Ordinance.

152.04 RESERVED.

152.05 RESERVED.

152.06 PLACEMENT, DESIGN AND HEIGHT OF STRUCTURES.

A. **Placement of Structures on Lots.**

1. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks.

2. The setback to a right-of-way line of Federal, State, or County Highway or Public Street shall be 40 feet.

B. **Building Requirements.** The following shall apply to all Districts:

1. All buildings shall be placed so that they will not obstruct future streets which may be constructed by the City in conformity with existing streets and according to the system and standards employed by the City.

2. Lawfully existing structures on the effective date of this Ordinance which do not conform to the provisions of the foregoing may be continued but shall not thereafter be changed so as to increase or enlarge the non-conformity. If at any time the non-conforming structure or use is destroyed, removed, abandoned, or declared to be unsafe or to constitute

a nuisance by the City, any repair or replacement thereof shall conform to the provisions of this Ordinance.

3. Usable Floor Space (Residential). Exclusive of porches, breezeways, garages and basements, usable floor space shall not be less than:

    a. One (1) story building – one thousand five hundred (1500) square feet.
    b. One and one-half (1-1.2) story building – one thousand two hundred (1200) square feet on the ground level and a total minimum floor space of two thousand (2000) square feet.
    c. Two (2) story building – one thousand (1000) square feet on the ground level and a total minimum floor space of two thousand (2000) square feet.

4. Lot Width Requirements:
    a. Reserved.
    b. 150 feet at the front yard setback from a public right-of-way.

5. Corner Lot Side Yard Requirement. Where the rear yard boundary line is a corner lot is part of the side yard boundary line of an adjoining residential lot, a distance equal to and requirements imposed upon a required front yard shall also be applicable to the corner lot adjacent to the side street.

6. Permitted Encroachments. The following shall not be considered encroachments into setback requirements: Chimneys, flues, belt courses, leaders, sills, pilasters, lintels, ornamental features, cornices, soffits, eves, gutters, and the like provided they do not extend more than two feet into any required setback. Projections for chimneys may not exceed nine (9) feet in width.

7. Maximum Height of Structures. All structures in the City's residential districts shall not exceed 35 feet in height, chimney excluded.

C. **Design Criteria for Structures.**

1. High Water Elevations. Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood proofed must be determined as follows:

    a. For lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the

ordinary high water level, whichever is higher;

b. Reserved.

D. **RESERVED.**

E. **RESERVED.**

F. **Placement and Design of Roads, Driveways, and Parking Areas.**

1. Reserved.

2. Reserved.

3. Access Driveways.

a. Each residential lot site shall have an access to a public roadway, either directly or by way of a recorded easement agreement. An exception can be made for a private street which has been approved as such by the City Council. Access Driveways to City streets shall require a Permit from the City. Permit fees shall be established by Resolution of the City Council.

b. Access Driveways to State Highways shall require a Permit from the State of Minnesota. Access Driveways to County roads or Highways shall require a Permit from Washington County.

c. Access Driveways to the City streets shall not be located closer than 10 feet from any side or rear lot line except for driveways which are shared by adjoining properties. The location of the access driveway shall be controlled and limited, if reasonably necessary, in the interests of public safety and efficient traffic flow.

d. More than one driveway access to a City street may be permitted by a Conditional Use Permit issued by the City.

e. Every driveway access to a public roadway shall be designed, constructed, and maintained to a width and base material depth to support access by emergency police, fire and rescue vehicles. All developed lots or parcels shall have direct adequate physical access to an existing public roadway or by way of a private easement access drive over adjacent land, which easement complies with the requirements of the Ordinance.

f. The location, type and size of a culvert under the driveway shall be determined by the City Building Inspector.

G. **Significant Historic Sites.** No structure may be placed on a significant historic site in a manner that effects the values of the site unless adequate information about the site has been removed and documented in a public repository.

H. **Steep Slopes.** The City must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.

I. **Reserved.**

J. **Reserved.**

152.07 USE & PERFORMANCE STANDARDS.

A. **Accessory Structures & Facilities.**

1. Garages. Garages are allowed as an accessory to a residential use subject to the following:

a. Attached garage means a garage design which shares one or more common walls with the principal dwelling.

b. The maximum allowable total garage space is limited to 1,200 square feet on lots less than 2 acres in size and 1,500 square feet on lots greater than 2 acres as measured by all interior wall space. The total garage footprint area shall not exceed the total footprint area of the house.

c. The maximum height of an attached garage shall not exceed the height of the principal dwelling and shall otherwise conform to the current requirements of the Zoning Ordinance and Shoreland Ordinance.

d. The maximum height of a detached garage shall not exceed twenty (20) feet measured from the average adjacent grade level to the highest point of the roof.

e. Detached garages shall not be designed, built or used for purposes of living quarters, temporary, or permanent.

f. These standards may be exceeded in the following manner:

i. In the case where a property has greater than two acres but less than 3 acres and an attached garage; there may be an additional detached garage up to 1,500 square feet in area placed on the property. In no case shall the total garage space exceed 3,000 square feet or exceed the footprint of the principal structure, whichever is less. In no instance shall there be more than two garages and no single garage attached or detached shall exceed 1,500 square feet in area.

ii. In the case where a property has greater than three acres and an attached garage, there may be an additional detached garage up to 1,800 square feet in area. In no case shall the total garage space exceed 3,300 square feet or exceed the footprint of the principal structure, whichever is less. In no case shall there be more than two garages or shall the attached garage exceed 1,500 square feet in area.

g. All garages shall match the architectural character of the principal structure in terms of exterior building materials, color, roof materials, and general roof pitch.

2. Accessory Buildings. Accessory buildings and uses are permitted accessory uses provided that no more than one accessory building may be constructed or placed upon any residential lot for purposes of household storage and/or workshop. No plumbing facilities are allowed in accessory buildings. An accessory building may not exceed 200 square feet in area or 10 feet in height from grade level.

3. Agricultural Buildings. Agricultural buildings may be permitted in the F/E and A Districts when in receipt of an interim use permit subject to the following standards:

a. The property is agricultural land as defined by Minnesota Statutes 273.13 Subd. 23 (e).

b. There is a principal structure on the property.

c. The total square footage of agricultural buildings shall not exceed 2.5% of the lot area or 12,500 square feet, whichever is less.

4. Setbacks.

    a. Setbacks for all accessory structures and facilities including garages and accessory buildings shall meet the standards found in the Zoning District except as may be specified in this section.

    b. Except on riparian parcels to lakes under Section 153.04.A.3, no accessory structure or facility shall be placed between the principal structure and a public right-of-way.

    c. In the RR District, the setbacks for accessory structures and facilities may be reduced to one half the required side and rear yard setbacks.

B. **Reserved.**

C. **Home occupations** are permitted in certain districts provided that:

1. The occupation is conducted by an occupant of the dwelling and no other than persons residing on the premises shall be employed.

2. The activity is conducted within the principal building only and is incidental and secondary to the residential use of the premises.

3. No more than one room is dedicated to the occupation.

4. No mechanical equipment is employed which is not customarily found in a dwelling.

5. There are no retail sales, manufacturing or repair operation involved.

6. There is no stock in trade kept or sold.

7. The activity does not require either internal or external alteration of the dwelling.

8. There is no exterior storage, display or signing.

9. No more than one (1) car for off-street parking is generated at any one point in time.

10. The provisions of this Ordinance are considered and satisfactorily met.

D. **Governmental and public utility buildings and structures** necessary for the health, safety and welfare of the community, are permitted in certain districts

provided that:

1. Conformity with the surrounding neighborhood is maintained.

2. Equipment is completely enclosed within a permanent structure with no outside storage.

3. Adequate screening and landscaping is provided to buffer adjoining residential activity.

4. The provisions of this Ordinance are considered and satisfactorily met.

E. **Accessory Dwelling Units.** Occupancy of an accessory dwelling unit is limited to employees of a family, related to residents of the principal building. Accessory Dwelling Units are allowed in F/E District only, and then only on the condition that the use and occupancy thereof is restricted to (1) the immediate family or person actually engaged in the course of employment on the property, or (2) occasional bona-fide temporary guests of the principal residents of the property. Bona-fide guest shall mean persons who have principal residence elsewhere.

F. **Stables and/or kennels** are permitted in certain zoning districts provided that:

1. Animals are the property of the property resident and intended for the private use of the residents, his family or guests.

2. Conformance with Minnesota Pollution Control Agency Standards is achieved and maintained.

3. The provisions of this Ordinance are considered and satisfactorily met.

G. **Fences.** Fences are allowed in all Districts subject to the provisions of the City Code, Chapter 93, and Section 152.10 (B) of this Ordinance.

H. **Excavation, Grading and Filling Operations.**

1. Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standard in this Section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.

2. A grading and filling permit will be required for:

a. The movement of more than ten (10) cubic yards of material on steep slopes or within shore impact zones; and

b. The movement of more than 50 cubic yards of material outside of steep slopes and shore impact zones.

3. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:

   a. Grading or filling in any wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland*:

      i. Sediment and pollutant trapping and retention;
      ii. Storage of surface runoff to prevent or reduce flood damage;
      iii. Fish and wildlife habitat;
      iv. Recreational use;
      v. Shoreline or bank stabilization; and
      vi. Noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.

      *This evaluation must also include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United States Army Corps of Engineers. The applicant will be so advised.

   b. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest period of time possible;

   c. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible;

   d. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;

   e. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the

local soil and water conservation districts and the United States Soil Conservation Service;

f. Fill or excavated material must not be placed in a manner that creates an unstable slope;

g. 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% or greater;

h. Fill or excavated material must not be placed in shore impact zones;

i. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minnesota Statutes, Section 105.42;

j. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and

k. Placement of natural rock riprap including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet.

l. Connections to public waters. Excavations where the intended purpose is connection to public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the Minnesota Department of Natural Resources has approved the proposed connection to public waters.

4. Excavation, Grading and Filling of natural materials done in conjunction with construction or replacement of a building structure or septic system, for which a permit has been approved, is allowed without a Conditional Use Permit, under the following conditions:

a. Excavation material is taken from one area lying within 75 feet of the building structure or system for which a permit has been issued.

b. A finished grade plan has been submitted and approved which in the opinion of the City Building Inspector will not adversely affect

the adjacent land or existing drainage patterns.

5. Excavation, grading or filling which takes place beyond the 75 foot area may be done by issuance of a Grading and Filling Permit by the City. Application for Permit may be made by the owner of the property or his authorized agent, designated in writing.

   Application shall be accompanied by a non-refundable fee as established by the City together with a finished grad plan which will not adversely affect adjoining properties or the existing drainage patterns.

   The Building Inspector may recommend approval of the grading/filling permit upon such conditions as may be appropriate to regulate the manner and times in which operations may take place, erosion control and access of equipment from public roadways.

6. Excavation, grading and filling operations for the purpose of land reclamation requires a Condition Use Permit.

7. The depositing of fill material, brought in from an outside source, for the purpose of elevating the grade to accommodate construction of a building, structure, or system shall be deemed to be land reclamation.

8. Application for a Conditional Use Permit shall be governed by this Ordinance. The Application shall be submitted by the owner of the property or his authorized agent designed in writing, accompanied by the fee established by the City and a finished grade plan. Conditions may be imposed governing the use of public roads for hauling operations, the days and hours during which hauling and grading operations may take place, load restrictions, and a road damage security deposit as established by the City.

I. ***Antennas and Towers.*** Antennas and Towers are allowed in all Districts subject to the provisions of Chapter 155 of the City Code.

J. ***Swimming Pools.***
   1. General Provisions
      a. Swimming pools and spas are deemed to be accessory structures under the zoning code of the City of Dellwood and must comply with the building codes of the City.

      b. A swimming pool is defined as any enclosure designed, intended, or used for the containment of water, whether

constructed above or below ground having a capacity of 1000 gallons or more and depth of 18 inches or more at any point, used for swimming, wading or other recreational use.

c. A spa is defined as a unit primarily designed for therapeutic and/or recreational use, which is not drained, cleaned or refilled for each individual use, including “whirlpools” and “hot tubs”.

d. The term “pool” when used in this Ordinance shall including swimming pools and spas.

2. Administration & Permit
   a. No pool may be constructed, placed, installed, renovated, altered or enlarged unless a Permit therefore is first obtained from the City.

   b. A separate permit, unless included in the pool permit, shall be required for any pump house, filter house, pool enclosure or other accessory structure erected or placed in conjunction with a pool. Such structures shall conform to all provisions of the Building Codes of the City. Safety fences will comply with the setback of the Zoning Ordinance except that in the alternative, the entire perimeter of the yard may be enclosed by a fence or other barrier which complies with the requirements of subdivision 4(c) of this Ordinance.

   c. Application for a pool/spa permit shall be made by the property owner on a form supplied by the City and shall be accompanied by plans and specifications of sufficient detail and scale to show:

   d. The proposed size and location of the pool and accessory structures and equipment to be used or installed in connection with the pool, including but not limited to, filter units, pumps, wiring, heating unit, backflush and drainage outlet and required fencing.

   e. The location of other structures on the lot including utility lines, poles and easements, and septic sewer system.

   f. A satisfactory drainage course.

3. There shall be a Permit fee, the amount of which shall be

established by City Council resolution, from time to time, to cover the cost of administration and inspection.

4. Construction Standards
    a. Utility Lines. No person shall build, construct, situate or install a pool beneath any overhead utility lines or easement, or over any underground utility line or easement.

    b. Setback Requirements.
        i. No pool may be located in any front yard.
        ii. The side and rear yard requirements for principal structures shall apply to pools and also accessory structures and equipment installed in connection with the pool including ground level pool decks.
        iii. No pool may be constructed or placed within 20 feet of any portion of any on-site septic sewer treatment system.

    c. Safety Fencing.
        i. All outdoor pools must be completely enclosed by a permanent fence, wall, or other barrier of at least five feet in height, with pattern openings or spacing through which a sphere 4.5 inches in diameter cannot pass. The space between the bottom of the fence and the ground may not be greater than 4.5 inches at any point.
        ii. All gates or points of entry to the pool area shall be equipped with self-closing and self-latching devices placed at the top of the gate or at a place otherwise inaccessible to small children. Fences and gates shall be constructed of non- corrosive material and the posts or supports shall be set in concrete bases or other suitable attachments which have been approved by the Building Inspector.
        iii. Pools may be equipped with a safety cover in lieu of fencing provided that the cover is ATSM F1346-23 compliant.
        iv. The owner or occupant of the property shall be responsible for:
            (a) Ensuring any gates in the structure or safety fencing are closed to prevent uninvited entry to the pool; or
            (b) Covering the pool with the safety cover when the pool is not actively in use.
            (c) Ensuring that the self closing and latching gates,

safety fencing, and/or pool cover is operable at all times.

5. Temporary Fence. No person shall introduce or cause to be introduced any water to a depth of more than 18 inches into the deepest portion of any swimming pool newly constructed or being constructed until such time as the Building Inspector authorizes the filling of such pool with water. Such authorization shall be withheld until, as a minimum, the permitee has caused such pool to be completely enclosed by a swimming pool construction fence. Said construction fence shall:
    a. Be of snow fence like or similar design and be securely anchored in place.
    b. Be constructed with its base flush to the ground.
    c. Be at least four (4) feet in height and have supportive posts placed no more than eight (8) feet apart.
    d. Remain in place until a permanent fence completely encloses the swimming pool is installed.
    e. The pool may not be used by any person until a permanent fence has been installed in compliance with Section 153.06 of this Ordinance. A permanent fence must be completely installed within 60 days of the date upon which construction of the pool was commenced.

6. Spa Fence. All outdoor spas shall have either a fence as described in this Section or a latchable cover. The cover should be constructed of a material impenetrable by toddlers and subject to inspection by the Building Inspector.

7. Inspection. The City shall have the authority to inspect all pools at any reasonable time to determine that the provisions of this Ordinance have been met. The Building Inspector may recommend denial of a pool permit if adjoining properties may be adversely affected because of the drainage patterns.

8. Miscellaneous Provisions.
    a. Nuisance. The conduct of the persons and operation of the pool and its equipment is the responsibility of the property owner or tenant, and such conduct of persons and operation of the pool shall be done in a manner so as to not create or cause a nuisance or to unreasonable affect the use and enjoyment of the adjacent property.

    b. Lighting. Lights used in connection with a pool shall be

designed and located so as to deflect light and glare away from adjacent property.

c. Drainage. All backflushing water or pool drainage water shall be directed onto the property of the owner or onto approved drainage ways. Water shall not drain onto public street or adjacent private property.

d. Electrical. All electrical installations made in conjunction with the pool shall meet State and City requirements.

K. **Pool Houses.** Detached pool houses and structures erected in connection with a swimming pool or spa are allowed as an accessory use for a property with a swimming pool subject to the following conditions:

1. The enclosed portion of the building may not exceed 240 square feet. The roof area may not exceed 576 square feet.

2. The height of the building at its top most peak may not exceed 16 feet from grade level.

3. The architectural style, color, roofing and facing material of the building shall be compatible with the main dwelling unit.

4. No such structure may be designed or used as a place of human habitation at any time, or for the harboring or keeping of domestic pets or animals of any kind.

5. The structure may contain plumbing facilities, a toilet, shower, storage area, and may accommodate the equipment used in connection with the pool or spa, including pumps, filters, water heater, pipes and wiring.

6. The structure together with the roof overhangs shall meet the setback requirements of the zoning district.

7. Attached cornices, canopies, and awnings shall be considered a part of the structure and must comply with the setback requirements.

8. No such structure may be located in a front yard, corner side yard, and shall be subject to the same setback standards as a swimming pool.

152.08 STORMWATER MANAGEMENT IN ALL DISTRICTS.

A. **General Standards.**

1. When possible, existing natural drainageways, wetlands, and vegetated

soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.

2. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potentials and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.

3. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and manmade materials and facilities.

B. **Specific Standards.**
   1. Impervious surface coverage of lots must not exceed 25% of the lot area.

   2. When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed arid installed consistent with the field office technical guide of the local soil and water conservation districts.

   3. New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

C. **Agriculture Use Standards.**
   1. General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore bluff impact zones are maintained in permanent vegetation or operated under approved conservation plan (Resource Management Systems) consistent with the field office technical guides of the local soil and water conservation districts or the United States Soil Conservation Service, as provided by a qualified individual or agency. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level.

   2. Animal Feed Lots are not permitted in the City.

D. **Forest Management Standards.** Harvesting of timber is not permitted in the City.

E. **Extractive Uses.** Extractive Use operations are not permitted within the City.

152.09 SANITARY PROVISIONS.

A. **Water Supply.** Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health, Minnesota Pollution Control Agency and the requirements of Dellwood Ordinances.

Private wells must be located, constructed, maintained, and sealed in accordance with or in a more thorough manner than the Water Well Construction Code of the Minnesota Department of Health.

B. **Sewage Treatment.** Any premises used for human occupancy must be provided with an adequate method of sewage treatment.

1. All private sewage treatment systems must meet or exceed the Minnesota Pollution Control Agency's standard for individual sewage treatment systems contained in Ordinance Number 51 of the Dellwood Sewer Ordinance.

2. On-Site sewage treatment systems must be set back from the ordinary high water mark in accordance with Chapter 153.

C. All proposed sites for individual sewage treatment systems shall be evaluated. It shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations.

1. Evaluation Criteria:
    a. Depth to the highest known or calculated ground water table or bedrock;
    b. Soil conditions, properties, and permeability;
    c. Slope;
    d. The existence of lowlands, local surface depressions and rock outcrops.

D. Nonconforming sewage treatment systems shall be regulated and upgraded in accordance with this Ordinance, and the Dellwood Sewer Ordinance.

152.10 PARKING AND FENCING REQUIREMENTS.

A. **Off Street Parking Requirements.**

1. Purpose. The purpose of off street parking spaces in these zoning regulations is to alleviate or prevent congestion of the public right-of-

way by establishing minimum requirements.

2. Off Street Parking Regulations. The regulations and requirements set forth herein shall apply in all zoning districts of the City.

3. Site Plan. All applications for a building permit must be accompanied by a site plan drawn to scale showing the size, location, number, surface material and drainage route of all off street parking areas and rives. This application shall be submitted to the Zoning Coordinator for review and approval.

4. Parking Spaces Required:
    a. Residential – four (4) spaces per unit.
    b. Private clubs serving food and/or drinks, golf courses – ten (10) parking spaces per hole or parking spaces shall be equal in number to 50% of the total seating capacity of the Club.

5. Off street parking facilities shall be utilized solely for the parking of licensed and operable passenger automobiles. Under no circumstances shall off-street parking facilities be used for the storage of commercial vehicles or equipment. All types of recreational vehicles parked on property more than thirty (30) days per calendar year must be concealed from all roads and adjacent residences by screening.

6. Curb Cuts. Curb cuts are allowed only by written permit from the City. Curb cut opening shall be a minimum of eight (8) feet in width and shall be located no closer than ten (10) feet from the side yard property line or as directed by the Zoning Coordinator or the Highway Department.

7. Surfacing. All areas intended to be utilized for parking space and driveways shall be surfaced with dustless all-weather material capable of carrying a wheel load of 4,000 pounds.

8. Repair and Service. No motor repair or service of any kind shall be permitted in conjunction with parking or driveway facilities.

9. Off Street Loading Spaces. Off street loading spaces must be located on the lot to be served and shall be screen by a wall or fence no less than eight (8) feet in height.

10. Lighting. Any lighting used to illuminate off street parking or loading area shall be directed away from adjoining residential and public streets.

11. Glare. All lighting shall be arranged as to deflect light away of any

adjoining residential use or from the public street.

12. Smoke, Dust and Odors. Smoke, dust and odors will be in compliance with and regulated by the State of Minnesota Pollution Control Standards.

13. Exterior Storage. Exterior Storage of Vehicles, recreational equipment and other personal property are governed by Chapter 95 of the City Code.

14. Parking is also regulated by Chapter 71 of the City Code.

B. **Fence Requirements.**

1. Fences. Fences are allowed in all Districts subject to the provisions of the City Code Chapter 93. No fencing other than a split rail or similar type fence which does not obstruct view shall be permitted within the required setback from the ordinary high water mark.

2. Corner Fencing and Screening. No fencing other than a split rail or similar fence which does not obstruct view and maintains 75% opening or screening (plant material) not to exceed 12 inches in height shall be permitted within 25 feet of any corner formed by the intersection of street property lines or the right-of-way of a railway intersecting a street. The twenty five (25) feet referred to above shall be in the form of a triangle with two (2) sides formed by the property lines and the third side formed by a straight line connecting the 2 twenty-five foot points on both sides of the corner.

3. Required Fencing, Screening and Landscaping. The fencing and screening required by this Ordinance shall be consistent with the definitions.
    a. Adequate screening is required for all public utility buildings and governmental buildings to provide a buffer to adjoining residential activity.
    b. Refuse containers for non-residential use shall be covered and shall be screened by either a screening fence or green belt planting strip.
    c. All areas where grading has occurred shall be landscaped within a period of one year after such grading. Landscaping shall consist at a minimum of a finished grade and a soil retention cover generally used in landscaping.

152.11 NON-CONFORMING BUILDINGS, LOTS AND USES.

A. **Purpose.** It is the purpose of this subsection to provide for the regulation and orderly control of non-conforming lots, buildings, structures and uses, and to specify those requirements, circumstances and conditions under which non-conforming lots, buildings, structures and uses will be operated and maintained. The Zoning Ordinance establishes separate districts, each of which is an appropriate area for the location of uses which are permitted in that district. It is necessary and consistent with the establishment of these districts that existing non-conforming lots, buildings, structures and uses not be permitted to continue without reasonable restrictions. The city may, by ordinance, variance or conditional use permit allow an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare or safety.

B. **Non Conformities.** As used in this Ordinance, the term “expansion” may be defined as follows:

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 under this chapter, may be continued, including through non-structural repair, and normal maintenance.

No non-conformity shall be enlarged, increased, expanded, extended or moved unless the resulting use is one permitted by the current Ordinance in effect at the time, accept as allowed by Variance.

Any increase, enlargement, intensification or expansion of a non-conforming use by any alternation, addition or improvement which would allow the property to be used in a more intensive manner than the existing non-conforming use. Increase in the dimensions, size, area or height of a structure situated upon the property, by itself, is not determinative of an expansion but may be a factor to be considered. An example of an expansion would be the replacement of a two bedroom/two bathroom home with a three or four bedroom / three or four bathroom home on a lot which does not conform to the minimum lot size, width, and setback requirements of the Zoning Ordinance, thereby creating the potential for expansion of the existing non-conforming use.

The underlying standard to be considered in all cases is whether the proposed construction is in keeping with the spirit and intent of the zoning regulations and Comprehensive Plan of the City, and will not unreasonably interfere with the rights of others in the use and enjoyment of their properties.

1. Structural alterations required by government resolutions shall be allowed only when any nonconforming use is destroyed accidently to the extent of

greater than 50% of its estimated market value, as indicated in the records of the county assessor at the time of damage. The City may impose reasonable conditions upon a zoning or building permit in order to mitigate any impact on adjacent property or water body. When a nonconforming structure with less than 50% of the required setback from the ordinary high water mark is destroyed to an extent greater than 50% of its estimated market value, as indicated in the records of the Washington County Assessor at the time of the damage, the structure setback may be increased in order to mitigate impact upon the adjacent property or water body.

2. The City shall regulate the repair, replacement, maintenance, improvement or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

3. Section 152.11.C through 152.11.I apply to lots of record in the office of the county recorder on the date of adoption of local controls that do not meet the requirements of the Ordinance. The City shall regulate the use of nonconforming lots of record and the repair, maintenance, improvement or expansions of nonconforming uses and structures.

C. **Construction on Non-Conforming Lots.** A nonconforming single lot of record may be allowed as a building site without variances from lot size requirements provided that:
   1. All structure and septic system setback distance requirements can be met;

   2. A Type I sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed, and

   3. The impervious surface coverage does not exceed 25% of the lot.

D. **Contiguous Substandard Lots.** In a group of two or more contiguous lots or parcels of land of record under common ownership or controls, an individual lot or parcel cannot be considered as a separate parcel of land for the purpose of sale or development, unless it meets the following requirements:

   1. The lot must meet all of the dimensional standards for lot width, area and setbacks of the Zoning and Shoreland Management Ordinance.

   2. The lot must be suitable for the installation of a Type I sewerage treatment system consistent with Minnesota Rules chapter 7080 and local

government controls.

3. Impervious surface coverage must not exceed 25% of each lot; and

4. Development of the lot must be consistent with the City's Comprehensive Plan.

E. Contiguous nonconforming lots of record under a common ownership maybe 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 the Dellwood Septic System Ordinance and Minnesota Rules, chapter 7080 and Minnesota Statute 115.55 as amended.

F. In evaluating all variances, zoning and building permit applications, or conditional use requests, the city 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.

G. A portion of a nonconforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot dimensions and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

H. All uses unless otherwise designated by official zoning controls are single-family residential dwelling.

I. The City Sewer Inspector must inspect the lot site plans, and sewage treatment system design plans, and shall provide a written report to the City stating whether the proposed use will not have an adverse effect on the public health, safety or welfare.

J. **Dwelling Unit Restrictions.**

1. No basement, garage, tent or accessory building not so designated shall at any time be used as an independent residence or dwelling unit temporarily or permanently.
2. Basements may be used as living quarters and rooms as a portion of residential dwellings.

3. Tents, playhouses or similar structures may be used for play or recreational purposes when used by the residents of the dwelling located on the property.

K. **Unbuildable Lots.** A lot or parcel of land which because of the nature of the soils and/or topography of the land render it unsuitable for an on-site septic system, shall not be deemed a buildable lot.

L. **Nonconforming Sewage Treatment Systems.**

1. A sewage treatment system not meeting the requirements of this ordinance must be upgraded or replaced any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.

2. The governing body of the City of Dellwood has by formal resolution notified the commissioner of its program to identify nonconforming sewage treatment systems. The City of Dellwood will require upgrading or replacement of any nonconforming system identified by this program within a reasonable period of time which will not exceed 2 years. Sewage systems installed according to all applicable local shoreland management standards in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems using cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the Minnesota Pollution Control Agency's Chapter 7080 for design of on site sewage treatment systems, shall be considered nonconforming.

152.12 ADMINISTRATION AND ENFORCEMENT.

A. **Zoning and Building Coordinator.** The zoning and building coordinator or his designated agent shall enforce this Ordinance and shall:

1. Issue building permits and make and keep records thereof.

2. Conduct inspections of buildings and use of land to determine compliance with the terms of this Ordinance.

3. Keep permanent records of this Ordinance, including maps, amendments, conditional uses, variances and applications.

B. **Administration of Application Procedures.**

1. Decision Process. The City Council, acting as the Board of Adjustment and Appeals under Minnesota Statutes 462.357(6), 462.359(4), and 15.99, shall make the decisions within the legislative and executive

framework of the City on applicable development applications.

2. Application Procedure. An application for a Zoning Ordinance text or map amendment, conditional use permit, interim use permit, and/or variance shall be processed in accordance with the following procedure:

    a. Timeline. Pursuant to Minnesota Statutes 15.99, an application for an amendment shall be approved or denied within sixty (60) days from the date of its official and complete submission unless extended by the City pursuant to statute or a time waiver is granted by the applicant.

    b. Application. Applications shall be filed with the Zoning Coordinator on an official application form from the City, accompanied by a fee as established by City Council ordinance. The application shall also be accompanied by detailed written and graphic materials fully explaining the proposed change, development, or use. The number of copies to be provided and any additional data shall be determined by the Zoning Coordinator. Applications shall be complete before they are accepted. A complete application shall include the following information:

        i. A City application form(s) relating to the request signed by all persons with an interest in the subject property affected by the request. A copy of an Owner's Duplicate Certificate of Title or other approved documentation of interest shall also be submitted with the signed application form(s).
        ii. All supporting information required by this Ordinance.
        iii. Payment of all fees associated with the applicable application(s). Applicants shall be responsible for all costs incurred by the City and/or employed consultants. Expenses shall be charged against the required escrow accounts in the fee schedule.
        iv. An application will be deemed complete unless the applicant is sent written notice within fifteen (15) business days of its submission indicating it is not complete and indicating what information is missing. This notice shall be considered sent by its deposit in the U.S. Mail, first class postage prepaid, addressed to any listed applicant at the address given on the application form.

    c. Additional Data. The City Council, Planning Commission, and City staff may request additional information from the applicant concerning the application or may retain expert opinions at the

expense of the City or may require as a condition of proceeding with its consideration of any matter, that the applicant furnish expert opinion and data at the expense of the applicant.

d. Technical Reports. The Zoning Coordinator shall instruct the appropriate staff persons to prepare technical reports where applicable and provide general assistance in preparing a recommendation on the action to the Planning Commission and City Council. The technical reports are to be entered in and made part of the record of the Planning Commission and forwarded to the City Council.

e. Notice of Hearing. For applications involving zoning amendments, conditional, or interim use permits, and variances, the Zoning Coordinator shall set a date for a public hearing. Notice of such hearing shall consist of a legal property description, a general description of the property location, and a description of the request to be published in the official newspaper at least ten (10) days prior to the hearing. Written notices shall be mailed not less than ten (10) days nor more than thirty (30) days prior to the hearing to all owners of property, according to the records available to the City, within three-hundred fifty (350) feet of each parcel included in the request.

f. Notice Not Received. Failure of the City to send, or a property owner to receive notice shall not invalidate any proceedings under this Ordinance, provided that a bona fide attempt has been made to comply with the requirements of this Ordinance.

g. Hearing. After receipt of the report of the Zoning Coordinator, the Planning Commission shall conduct the public hearing and consider the application.

h. Recommendations of Planning Commission. The Planning Commission shall recommend such actions or conditions relating to the application as deemed necessary or desirable to carry out the intent and purpose of this Ordinance and the Comprehensive Plan. Such recommendation shall be recorded either in the minutes or by written resolution and forwarded to the City Council.

i. Record Before City Council. The Zoning Coordinator shall place the report and recommendation of the Planning Commission and the City staff on the agenda for the next regular City Council meeting after Planning Commission action, or the expiration of sixty (60)

days after the first consideration by the Commission, whichever is earlier, subject to the limitations of Minnesota Statutes 15.99. Such reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting.

j. City Council Review. Subject to the limitations of Minnesota Statutes 15.99, the City Council shall act upon an application after it has received the report and recommendation from the Planning Commission. If upon receiving the reports and recommendations of the Planning Commission and Zoning Coordinator, the City Council desires further consideration, or finds that inconsistencies exist in the review process, data submitted, or recommended action, the City Council may, before taking final action, refer the matter back to the Planning Commission with a statement detailing the reasons for referral.

k. City Council Action.
   i. Approval of a proposed Zoning Ordinance text or map amendment, conditional or interim use permit, or variance shall require a three-fifths (3/5) vote of all members of the City Council.
   ii. Denial of applications shall be accompanied by written findings of fact of the City Council, including supporting data setting forth the reasons for the denial in terms of the ways in which the proposed use fails to meet the standards and intent of the Comprehensive Plan and/or this Chapter and is otherwise injurious to the public health, safety, and welfare.

l. Notice to Applicant. The City Clerk shall notify the applicant of the decision of the City Council in writing, including any relevant resolution and findings which may have been passed by the City Council.

m. Filing of Notice of Action. A certified copy of any Zoning Ordinance amendment, conditional use permit, interim use permit, or variance authorized shall be filed with the Washington County Recorder.

n. Reconsideration. Whenever an application has been considered and denied by the City Council, a similar application affecting substantially the same property shall not be considered again by the Planning Commission or City Council before the expiration of six (6) months from the date of its denial and any succeeding denials. However, a decision to reconsider such matter may be made by a majority vote of all members of the City Council at any time, according to the rules of order adopted by the Council.

3. Expiration of Zoning Approvals. Unless otherwise specified by the City Council at the time it is authorized, a conditional use permit, interim use permit, variance, or site and building plan approvals, shall be null and void and expire if the applicant fails to implement such approvals and fulfill each and every condition attached thereto within one (1) year from the date of its authorization.

4. Performance Agreement. Upon approval of a conditional use permit, interim use permit, variance, site plan, administrative permit, grading permit, and wetland permit, the City may require the applicant to enter into a performance agreement prior to the issuing of building permits or initiation of work on the proposed improvement or development. Said agreement shall guarantee conformance and compliance with the conditions of the approval and the codes of the City.

C. **Conditional and Interim Use Permits.** The purpose of a conditional use permit is to provide the City with a reasonable degree of discretion in determining the suitability of certain designated uses upon the general welfare, public health and safety. A conditional use is a use which because of certain characteristics cannot be properly classified as a permitted use in the zoning district within which it is proposed. Conditional use permits are designed to meet the problem which arises where certain uses, although generally compatible with the basic use classification of a particular zone, should not be permitted to be located as a matter of right in every area included within the zone because of hazards inherent in the use itself or special problems which its proposed location may present. An interim use permit is intended to be the same as a conditional use, however, an interim use is intended to have a specific termination date.

1. Conditional or Interim Use Permit Procedure. An application for a conditional use permit requires a public hearing and is to be processed in accordance with the procedures outlined in Section 152.12 of this Ordinance.

2. Conditional Use Permit Review Criteria. The Planning Commission and City Council shall consider possible effects of the proposed conditional or interim use. Its judgment shall be based upon, but not limited to, the following factors:

    a. The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the Official City Comprehensive Plan.

    b. The proposed use is or will be compatible with present and future land uses of the area.

c. The proposed use conforms with all performance standards contained in this Ordinance.

d. The proposed use can be accommodated with existing public services and will not overburden the City's service capacity.

e. Traffic generation by the proposed use is within capabilities of streets serving the property.

3. General Performance Standards. As may be applicable, the evaluation of any proposed conditional or interim use permit request shall be subject to and include, but not be limited to, the following general performance standards and criteria:

a. The use and the site in question shall be served by a street of sufficient capacity to accommodate the type and volume of traffic which would be generated, and adequate right of way shall be provided.

b. The site design for access and parking shall minimize internal as well as external traffic conflicts.

c. Adequate off-street parking and off-street loading shall be provided.

d. Loading areas and drive-up facilities shall be positioned so as to minimize internal site access problems and maneuvering conflicts, to avoid visual or noise impacts on any adjacent residential use or district.

e. Whenever a non-residential use is adjacent to a residential use or district, a buffer area with screening and landscaping shall be provided.

f. All exterior lighting shall be so directed so as not to cast glare toward or onto the public right of way or neighboring residential uses or districts.

g. Potential exterior noise generated by the use shall be identified and mitigation measures, as may be necessary, shall be imposed.

h. The site drainage system shall be subject to the review and approval of the City Engineer.

i. The architectural appearance and functional design of the building and site shall not be so dissimilar to the existing or potential buildings and area so as to cause a blighting influence. All sides of the principal and accessory structures are to have essentially the same or coordinated, harmonious exterior finish materials and treatment.

j. The hours of operation may be restricted when there is judged to be an incompatibility with a residential use or district.

k. The use complies with all applicable performance standards of the zoning district in which it is located and where applicable, any non-conformities shall be eliminated.

l. All additional conditions pertaining to a specific site are subject to change when the Council, upon investigation in relation to a formal request, finds that the general welfare and public betterment can be served as well or better by modifying or expanding the conditions set forth herein.

4. Revocation. The Planning Commission may recommend, and the City Council may direct, the revocation of any conditional or interim use permit for cause upon determination that the authorized conditional use is not in conformance with the conditions of the permit or is in continued violation of this Ordinance, City codes, or other applicable regulations. The City Council or Planning Commission shall initiate an application and the Zoning Coordinator shall notify the responsible person that they have an opportunity to show cause why the permit should not be revoked. The revocation shall be processed and considered pursuant to Section 152.12 of this Ordinance. The Zoning Coordinator shall provide the responsible person a copy of the proceedings and findings of the Planning Commission and City Council.

5. Permit Modifications. Conditional and Interim Use Permits must be maintained consistent with the terms of their approval. Modifications and amendments shall be processed and reviewed consistent with the terms of this Chapter.

D. **Variances and Appeals.**

1. The City Council shall act as a Board of Adjustment and Appeals. The Board shall have the powers set forth in Minnesota Statutes, Section 462.357, subdivision 6 and Section 462.359, subdivision 4, and as the same may be amended or revised. Decisions of the Board of Adjustments and Appeals shall be final, and no further appeal may be taken, subject to

judicial review.

2. Variances may be granted when it has been demonstrated that such actions will be in keeping with the spirit and intent of this Ordinance and meeting the following criteria:

    a. A variance shall only be granted when it is in harmony with the general purposes and intent of the ordinance.
    b. A variance shall only be granted when it is consistent with the comprehensive plan.
    c. A variance may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. Economic considerations alone do not constitute a practical difficulty. In order for a practical difficulty to be established, all of the following criteria shall be met:

        i. The property owner proposes to use the property in a reasonable manner. In determining if the property owner proposes to use the property in a reasonable manner, the board shall consider, among other factors, whether the variance requested is the minimum variance which would alleviate the practical difficulty and whether the variance confers upon the applicant any special privileges that are denied to the owners of other lands, structures, or buildings in the same district.
        ii. The plight of the landowner is due to circumstances unique to the property not created by the landowner.
        iii. That the granting of the variance will not alter the essential character of the neighborhood in which the parcel of land is located.

    d. The variance does not involve a use that is not allowed within the respective zoning district.
    e. The Board of Adjustment and Appeals shall designate any conditions that will secure substantially the objectives of the regulations or provisions to which the variance is granted.

E. **Information Requirements.** The information required for all applications for variances, conditional or interim use permits, zoning or comprehensive plan amendments generally consists of the following items:

1. Site Development Plan. A survey with a site development plan, which shall include:

a. The location of all buildings on lots, including both existing and proposed structures;
b. The location of all adjacent buildings located within 200 feet of the exterior boundaries of the property in question;
c. The location and number of existing and proposed parking spaces;
d. Vehicular circulation;
e. Architectural elevations (type and materials used in all external surfaces);
f. The location and candle power of all luminaries;
g. Curb cuts, driveways, and number of parking spaces.

2. Dimension Plan. A dimension plan, which shall include;
   a. Lot dimensions and area;
   b. Dimensions of proposed and existing structures;
   c. A “typical” floor plan and a “typical” room plan;
   d. Setbacks of all buildings located on the property in question;
   e. Proposed setbacks;
   f. A sanitary sewer and water plan with estimated use per day.

3. Grading Plan. A grading plan, which shall include:
   a. Existing contours;
   b. Proposed grading elevations;
   c. Drainage configurations;
   d. Storm sewer catch basins and invert elevations;
   e. Contours at 2 foot intervals.

4. Landscape Plan. A landscape plan, which shall include:
   a. The location of all existing trees, their type and diameter, and which trees will be removed;
   b. The location, type, and diameter of all proposed plantings;
   c. The location of and material used for all screening devices.

5. A legal description of the property under consideration.

6. Proof of ownership of the land.

152.13 ESCROW DEPOSIT PROCEDURE AND FEE SCHEDULE RELATED TO ZONING AND LAND USE APPLICATIONS.

A. **Fees.** The costs of the City for receiving, analyzing, processing, hearing and final process for requests of changes, modification, or special consideration

under this Ordinance, such as requests for amendments (map or text), site and building plan reviews, Conditional Use Permits, Interim Use Permits, and Variances are considered to be unique to the Applicant requesting such consideration, and it is the intent of this Section to provide that all costs of the City occasioned by such requests shall be borne by the Applicant. The reimbursement to the City shall be limited to actual costs of the City. Actual costs shall include all engineering, legal, planning, or other consultant fees or costs paid by the City for other consultants for expert review of a development application.

1. Base Zoning Fee. To defray administrative costs of processing of requests for Conditional Use Permits, Interim Use Permits, Amendments, Variances, Appeals, or any other land use or zoning permit application, a base fee as determined from time to time by Resolution of the City Council per application shall be paid by all Applicants. Each Applicant shall pay a non-refundable base zoning fee at the time an application is presented to the City for a zoning change of any nature, site and building plan review, a conditional use, an interim use, variance, or land use request of any kind. The fee is intended to reimburse the City for its costs for administrative processing an application. If this fee proves to be insufficient to cover such costs, such additional costs shall be charged as a part of the Escrow Deposit, or the Supplemental Zoning Deposit.

2. Escrow Deposit. In addition to the non-refundable Base Zoning Fee, each Applicant shall pay an escrow deposit in an amount established by the City Council as of the time of application. All actual costs including, but not limited to, planning, engineering, legal, or other consultant fees or costs, incurred by the City in the processing of the application and not fully paid or reimbursed from the Base Zoning Fee shall be paid or reimbursed from this Escrow Deposit or Supplemental Deposit.

3. Supplemental Deposit. At any time while the application is pending and before its final conclusion, if the City Clerk determines that the amount of the Escrow Deposit required is or is estimated to be insufficient to pay for present or anticipated actual costs of the application, a supplementary deposit shall be required by the City Clerk to be paid by the Applicant. The one (1) or more Supplemental Deposits shall be in an amount sufficient to pay all actual costs of the City.

4. Refunds – Administrative Costs. The Base Zoning Fee, intended to cover administrative costs, is non-refundable.

5. Refunds – Direct Costs. If the direct costs of the City in processing the application are less than the amount of the Escrow Deposit and any

Supplemental Deposit, any such unexpended amount shall be refunded to the Applicant upon the conclusion of the proceedings; and any such costs in excess of the Supplemental Deposits on hand with the City Clerk shall be paid by the Applicant prior to completion of the proceedings by the City.

6. Assessment. In order to recoup the additional cost of processing Zoning Applications, the City shall have the option of assessing all Applicants the total excess cost of staff and/or consulting time spent exclusively in review, consideration, research or production of materials for the Applicant's request, and all materials for such request not covered by the Application Fee or other collections.

7. Costs incurred by the City are payable whether or not the application is approved, modified, or denied.

CHAPTER 153: SHORELAND ORDINANCE

Section:

153.01 Statutory Authorization And Policy

153.02 General Provisions and Definitions

153.03 Administration

153.04 Shoreland Classification System and Land Uses

153.05 Special Land Use Provisions

153.06 Dimensional and General Performance Standards

153.07 Performance Standards For Public And Private Facilities

153.08 Vegetation and Land Alterations

153.09 Subdivision/Platting Provisions

153.10 Planned Unit Developments (PUDs)

153.01 STATUTORY AUTHORIZATION AND POLICY.

A. Statutory Authorization. This shoreland ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103F, Minnesota Rules, Parts 6120.2500 - 6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 394 (for counties) or Chapter 462 (for municipalities).

B. Policy. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the City of Dellwood.

153.02 GENERAL PROVISIONS AND DEFINITIONS.

A. Jurisdiction. The provisions of this ordinance apply to the shorelands of the public water bodies as classified in Section 153.04.1(A) of this ordinance, and to the shorelands of public water bodies greater than 10 acres in unincorporated areas in which the city has, by ordinance, extended the application of its zoning regulations as provided by Minnesota Statute, Chapter 462.357 Subd 1. Pursuant to Minnesota Rules, Parts 6120.2500 - 6120.3900, no lake, pond, or flowage less than 10 acres in size in municipalities or 25 acres in size in unincorporated areas need be regulated in a local government's shoreland regulations. A body of water created by a private user where there was no previous shoreland may, at the discretion of the governing body, be exempt from this ordinance.

B. Enforcement. The City of Dellwood is responsible for the administration and enforcement of this ordinance. Any violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses constitutes a misdemeanor and is punishable as defined by law. Violations of this ordinance can occur regardless of whether or not a permit is required for a regulated activity listed in Section 153.03 (B) of this ordinance.

C. Severability. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

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

E. Definitions. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the same meaning they have in common usage and to give this ordinance its most reasonable application. For the purpose of this ordinance, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.

Accessory structure or facility. Any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks. Examples include: swimming pools, saunas, detached garages, and storage sheds.

Animal feedlot. A facility as defined by Minnesota Rules, part 7020.0300.

Bluff. A topographic feature such as a hill, cliff, or embankment having the following characteristics:

a. Part or all of the feature is located in a shoreland area;

b. The slope must drain toward the waterbody;

c. The slope rises at least 25 feet above the ordinary high water level; and

d. The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater (see Figure 1), except that an area with an average slope of less than 18 percent over a distance of at least 50 feet shall not be considered part of the bluff (see Figure 2).

Figure 1. Illustration of Bluff

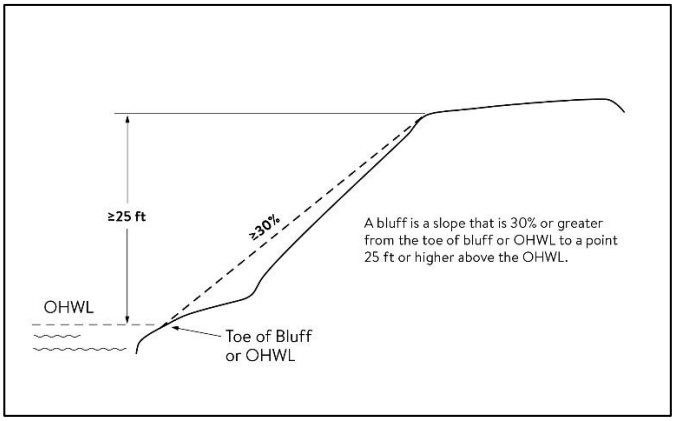
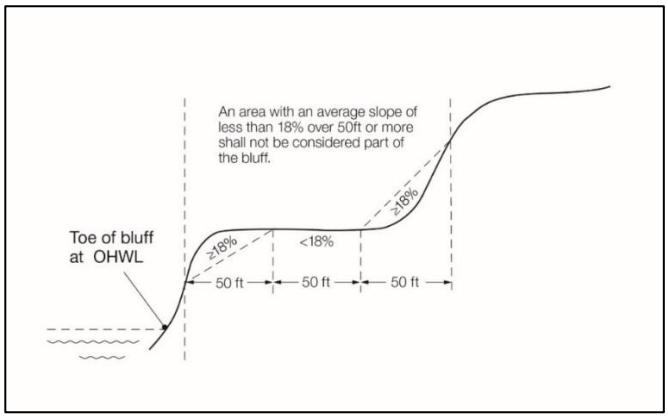
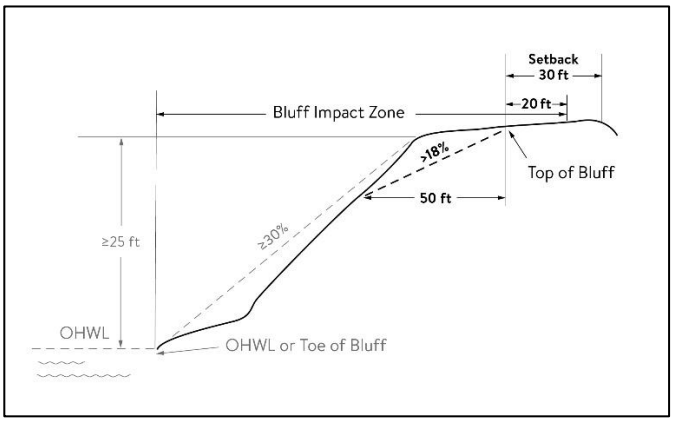


Figure 2. Exception to Bluff



Bluff impact zone. A bluff and land located within 20 feet of the top of a bluff. See Figure 3

Figure 3. Bluff Impact Zone and Top of Bluff



Bluff, Toe of. The lower point of a 50-foot segment with an average slope exceeding 18 percent or the ordinary high water level, whichever is higher.

Bluff, Top of. For the purposes of measuring setbacks, bluff impact zone, and administering vegetation management standards, the higher point of a 50-foot segment with an average slope exceeding 18 percent. See Figure 3.

Boathouse. A facility as defined by Minnesota Statutes, Section 103G.245.

Buffer. A vegetative feature as defined by Minnesota Statutes, Section 103F.48.

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.

Controlled access lot. A lot used to access public waters or as a recreation area for owners of nonriparian lots within the same subdivision containing the controlled access lot.

Commercial planned unit developments. Developments that provide transient, short-term lodging spaces, rooms, or parcels and their operations are essentially service-oriented. For example, hotel/motel accommodations, resorts, recreational vehicle and camping parks, and other primarily service-oriented activities are commercial planned unit developments.

Commercial use. The principal use of land or buildings for the sale, lease, rental, or trade of products, goods, and services.

Commissioner. The commissioner of the Department of Natural Resources.

Conditional use. A land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions upon a finding that certain conditions as detailed in the zoning ordinance exist, the use or

development conforms to the comprehensive land use plan of the community, and the use is compatible with the existing neighborhood.

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

Duplex, triplex, and quad. A dwelling structure on a single lot, having two, three, and four units, respectively, attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

Dwelling site. A designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.

Dwelling unit. Any structure or portion of a structure, or other shelter designed as short- or long-term living quarters for one or more persons, including rental or timeshare accommodations such as motel, hotel, and resort rooms and cabins.

Expansion. Any increase in a dimension such as number of units or size, area, volume, or height of an existing structure or accessory structure or facility.

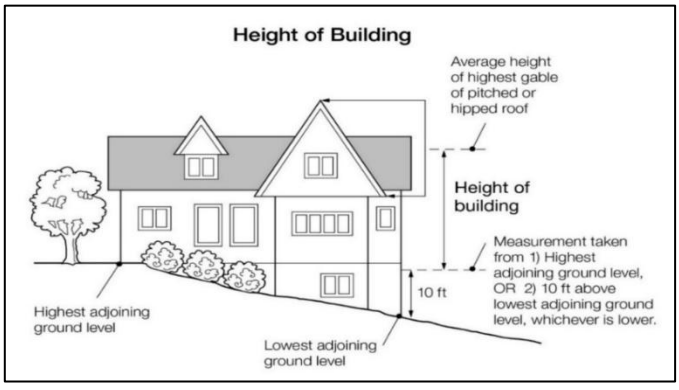
Extractive use. The use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other nonmetallic minerals, and peat not regulated under Minnesota Statutes, Sections 93.44 to 93.51.

Forest land conversion. The clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.

Guest cottage. A structure used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling unit on a lot.

Height of building. The vertical distance between the highest adjoining ground level at the building or ten feet above the lowest adjoining ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof (see Figure 3).

Figure 3. Height of Building



Impervious* surface**. A constructed hard surface that prevents or retards entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development, including rooftops; decks; sidewalks; patios; swimming pools; parking lots; concrete, asphalt, gravel driveways, or permeable pavers; and other similar surfaces.***

Improvement. Making an existing structure or accessory structure or facility of better quality, more efficient, or more aesthetically pleasing, that does not replicate what pre-existed, but does not include an expansion, enlargement, or intensification.

Industrial use. The use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items.

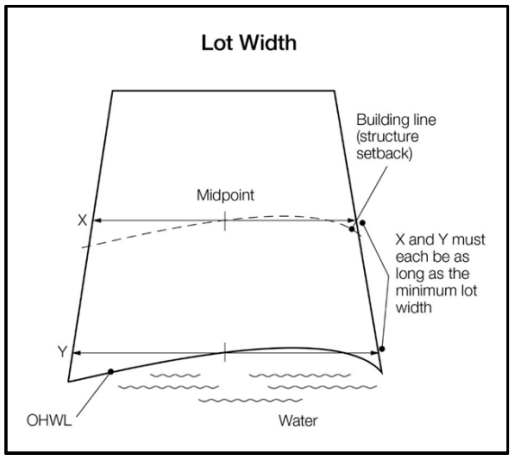
Intensive vegetation clearing. The complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

Lot. A parcel of land designated by plat, metes and bounds, registered land survey, auditors plot, or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease, or separation.

Lot width. The minimum distance between:

1. Side lot lines measured at the midpoint of the building line; and
2. Side lot lines at the ordinary high water level, if applicable (see Figure 4).

Figure 4. Lot Width



Maintenance and repair. Upkeep or preservation of an existing structure or accessory structure or facility against normal wear and tear or degradation over time that does not change exterior dimensions. Examples include the rehabilitation or replacement of windows, siding, a roof, or exterior finishes such as paint or stain.

Metallic minerals and peat. "Metallic minerals and peat" has the meaning given under Minnesota Statutes, Sections 93.44 to 93.51.

Nonconformity. Any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments to those controls that would not have been permitted to become established under the terms of the official controls as now written.

Ordinary high water level. The boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Planned unit development. A type of development 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 open space, density increases, and a mix of structure types and land uses. These developments may be organized and operated as condominiums, time-share condominiums, cooperatives, full fee ownership, commercial enterprises, or any combination of these, or cluster subdivisions of dwelling units, residential condominiums, townhouses, apartment buildings, dwelling grounds, recreational vehicle parks, resorts, hotels, motels, and conversions of structures and land uses to these uses.

Public waters. Any water as defined in Minnesota Statutes, Section 103G.005, Subd. 15, 15a.

Replacement and restoration. Reconstruction of part or all of an existing structure or accessory structure or facility that closely matches or replicates the preexisting structure or facility.

Residential planned unit development. 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, time-share condominiums, townhouses, cooperatives, and full fee ownership residences would be considered as residential planned unit developments. To qualify as a residential planned unit development, a development must contain at least five dwelling units or sites.

Resort. "Resort" has the meaning in Minnesota Statute, Section 103F.227.

Semipublic use. The use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

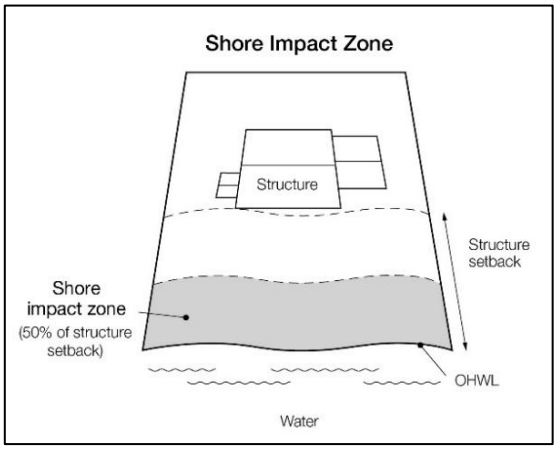
Setback. The minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top of a bluff, road, highway, property line, or other facility.

Sewage treatment system. “Sewage treatment system” has the meaning given under Minnesota Rules, part 7080.1100, Subp. 82.

Sewer system. Pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

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 percent of the structure setback (see Figure 5).

Figure 5. Shore Impact Zone

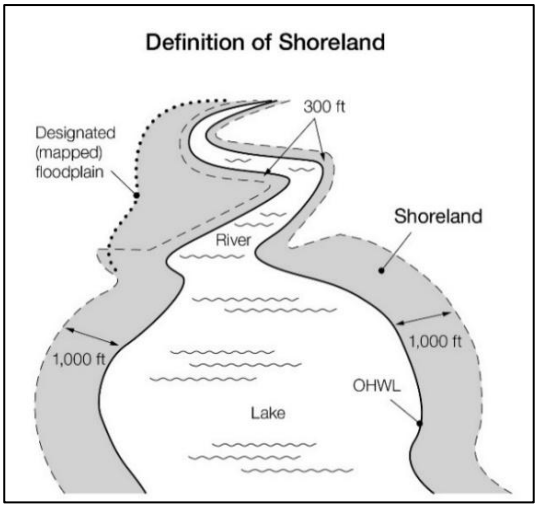


Shoreland. “Shoreland” means land located within the following distances from public waters:

a. 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and

b. 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater (see Figure 6).

Figure 6. Definition of Shoreland



Shore recreation facilities. Swimming areas, docks, watercraft mooring areas and launching ramps and other water recreation facilities.

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

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

Structure. Any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities.

Subdivision. Land that is divided for the purpose of sale, rent, or lease, including planned unit developments.

Suitability analysis. An evaluation of land to determine if it is appropriate for the proposed use. The analysis considers factors relevant to the proposed use and may include the following features: susceptibility to flooding; existence of wetlands; soils, erosion potential; slope steepness; water supply, sewage treatment capabilities; water depth, depth to groundwater and bedrock, vegetation, near-shore aquatic conditions unsuitable for water-based recreation; fish and wildlife habitat; presence of significant historic sites; or any other relevant feature of the natural land.

Variance. "Variance" means the same as that defined in Minnesota Statutes, Section 394.27 Subd. 7 *(for counties)* or Section 462.357 Subd. 6 (2) *(for municipalities).*

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 surface water, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include, watercraft and watercraft equipment storage structures, gazebos, screen houses, fish houses, pump houses, patios, and detached decks. Boathouses and boat storage structures given the meaning under Minnesota Statutes, Section 103G.245 are not a water-oriented accessory structures.

Water-dependent use. The use of land for commercial, industrial, public or semi-public purposes, where access to and use of a public water is an integral part of the normal conduct of operation. Marinas, resorts, and restaurants with transient docking facilities are examples of uses typically found in shoreland areas.

Wetland. "Wetland" has the meaning given under Minnesota Rule, part 8420.0111.

153.03 ADMINISTRATION.

A. **Purpose.** The purpose of this Section is to identify administrative provisions to ensure the ordinance is administered consistent with its purpose.

B. **Permits.**

1. A permit is required for the construction of buildings or building additions (including construction of decks and signs), the installation and/or alteration of sewage treatment systems, and those grading and filling activities not exempted by Section 153.08 (C) of this ordinance.

2. A certificate of compliance, consistent with Minnesota Rules Chapter 7082.0700 Subp. 3, is required whenever a permit or variance of any type is required for any improvement on or use of the property. A sewage treatment system shall be considered compliant if the only deficiency is the system's improper setback from the ordinary high water level.

C. **Application materials.** Application for permits and other zoning applications such as variances shall be made to the *City Clerk* on the forms provided. The application shall include the necessary information so that the *City Clerk* can evaluate how the application complies with the provisions of this ordinance.

D. **Certificate of Zoning Compliance**. The *City Clerk* shall issue a certificate of zoning compliance for each activity requiring a permit as specified in Section 153.03 of this ordinance. This certificate will specify that the use of land conforms to the requirements of this ordinance. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this ordinance and shall be punishable as provided in Section 153.02 of this ordinance.

E. **Variances.** Variances may only be granted in accordance with Minnesota Statutes, Section 394.27 *(for counties)* or Section 462.357 *(for municipalities)* and are subject to the following:

1. A variance may not circumvent the general purposes and intent of this ordinance; and

2. For properties with existing sewage treatment systems, a certificate of compliance, consistent with Minnesota Rules Chapter 7082.0700 Subp. 3, is required for variance approval. A sewage treatment system shall be considered compliant if the only deficiency is the system's improper setback from the ordinary high water level.

F. **Conditional Uses.** All conditional uses in the shoreland area are subject to a thorough evaluation of the waterbody and the topographic, vegetation, and soil conditions to ensure:

1. The prevention of soil erosion or other possible pollution of public waters, both during and after construction;

2. The visibility of structures and other facilities as viewed from public waters is limited;

3. There is adequate water supply and on-site sewage treatment; and

4. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercrafts.

G. **Mitigation.** In evaluating all variances, conditional uses, zoning and building permit applications, the zoning authority shall require the property owner to address the following conditions, when related to and proportional to the impact, to meet the purpose of this ordinance, to protect adjacent properties, and the public interest:

1. Advanced storm water runoff management treatment;

2. Reducing impervious surfaces;

3. Increasing setbacks from the ordinary high water level;

4. Restoration of wetlands;

5. Limiting vegetation removal and/or riparian vegetation restoration;

6. Provisions for the location, design, and use of structures, sewage treatment systems, water supply systems, watercraft launching and docking areas, and parking areas; and

7. Other conditions the zoning authority deems necessary.
8. In evaluating plans to construct sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes, conditions to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters assuming summer, leaf-on vegetation shall be attached to permits.

H. **Nonconformities**.
1. All legally established nonconformities as of the date of this ordinance may continue, but will be managed according to Minnesota Statutes, Sections 394.36 Subd. 5 *(for counties)* and 462.357 Subd. 1e *(for cities)* and other regulations of this community for alterations and additions; repair after damage; discontinuance of use; and intensification of use.
2. All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, lowest floor elevations, and other requirements of Sections 153.05 to 153.08 of this ordinance. Any deviation from these requirements must be authorized by a variance.

I. **Notifications to the Department of Natural Resources.**
1. All amendments to this shoreland ordinance must be submitted to the Department of Natural Resources for review and approval for compliance with the statewide shoreland management rules. The City of Dellwood will submit the proposed ordinance amendments to the commissioner or the commissioner's designated representative at least 30 days before any scheduled public hearings.
2. All notices of public hearings to consider variances, ordinance amendments, or conditional uses under shoreland management controls must be sent to the commissioner or the commissioner's designated representative at least ten (10) days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.
3. All approved ordinance amendments and subdivisions/plats, and final decisions approving variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance shall also include the summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.

4. Any request to change the shoreland management classification of public waters within City of Dellwood must be sent to the commissioner or the commissioner's designated representative for approval, and must include a resolution and supporting data as required by Minnesota Rules, part 6120.3000, subp.4.
5. Any request to reduce the boundaries of shorelands of public waters within City of Dellwood must be sent to the commissioner or the commissioner's designated representative for approval and must include a resolution and supporting data The boundaries of shorelands may be reduced when the shoreland of water bodies with different classifications overlap. In these cases, the topographic divide between the water bodies shall be used for adjusting the boundaries.

J. **Mandatory EAW.** An Environmental Assessment Worksheet consistent with Minnesota Rules, Chapter 4410 must be prepared for projects meeting the thresholds of Minnesota Rules, part 4410.4300, Subparts 19a, 20a, 25, 27, 28, 29, and 36a.

153.04 SHORELAND CLASSIFICATION SYSTEM AND LAND USES.

A. **Shoreland Classification System.**

1. **Purpose.** To ensure that shoreland development on the public waters of City of Dellwood is regulated consistent with the classifications assigned by the commissioner under Minnesota Rules, part 6120.3300.

2. The shoreland area for the waterbodies listed in Sections 153.04 are defined in Section 153.02 and are shown on the Official Zoning Map.

3. Lakes are classified as follows:

a. General development (GD);

General Development Lake Name	DNR Public Waters I.D. #
White Bear Lake	82016700

b. Recreational development (RD); and

Recreational Development Lake Name	DNR Public Waters I.D. #
Long	82013000
Pine Tree	82012200

c. Natural environment (NE).

Natural Environment Lake Name	DNR Public Waters I.D. #
Echo	82012900

d. Water Basins

Water Basin Name	DNR Public Waters I.D. #
Unnamed	82032000W
Unnamed	82032600W
Unnamed	82033800W
Unnamed	82034100W

B. **Land Uses.**

1. **Purpose.** To identify land uses that are compatible with the protection and preservation of shoreline resources in order to conserve the economic and environmental values of shoreland and sustain water quality.

2. Shoreland district land uses listed in Sections 153.04 are regulated as:

   a. Permitted uses (P). These uses are allowed, provided all standards in this ordinance are followed;

   b. Conditional uses (C). These uses are allowed through a conditional use permit. The use must be evaluated according to the criteria in Section 153.03(F) of this ordinance and any additional conditions listed in this ordinance; and

   c. Not permitted uses (N). These uses are prohibited.

3. **Land uses for lake classifications:**

Land Uses	General Development	Recreational Development	Natural Environment	Water Basins
Single residential	P	P	P	P
Parks & historic sites	C	C	C	C
Residential PUDs	C	C	C	C
Public	P	P	C	C

153.05 SPECIAL LAND USE PROTECTIONS.

A. **Commercial, Industrial, Public, and Semipublic Use Standards.**

1. Water-dependent uses may be located on parcels or lots with frontage on public waters provided that:

   a. The use complies with provisions of Section 153.07.

   b. The use is designed to incorporate topographic and vegetative screening of parking areas and structures;

   c. Uses that require short-term watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need; and

   d. Uses that depend on patrons arriving by watercraft may use signs and lighting, provided that:

      i. Signs placed in or on public waters must only convey directional information or safety messages and may only be placed by a public authority or under a permit issued by the county sheriff; and

      ii. Signs placed within the shore impact zone are:

         (a) No higher than ten feet above the ground, and no greater than 32 square feet in size; and

         (b) If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination across public waters; and

      iii. Other lighting may be located within the shore impact zone or over public waters if it is used to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination across public waters. This does not preclude use of navigational lights.

2. Commercial, industrial, public, and semi-public uses that are not water-dependent must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, must either be set back double the ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

B. Agriculture Use Standards.

1. Buffers.

   a. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level.

   b. General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if

steep slopes and shore and bluff impact zones are maintained in perennial vegetation or operated under an approved conservation plan consistent with the field office technical guides of the local soil and water conservation district or the Natural Resource Conservation Service, and as approved by the local soil and water conservation district.

2. New animal feedlots are not allowed in shoreland. Modifications or expansions to existing feedlots or resumption of old feedlots are conditional uses and must meet the following standards:

   a. Feedlots must be designed consistent with Minnesota Rules, Chapter 7020;

   b. Feedlots must not further encroach into the existing ordinary high water level setback or the bluff impact zone and must not expand to a capacity of 1,000 animal units or more; and,

   c. Old feedlots not currently in operation may resume operation consistent with Minnesota Statutes, Section 116.0711.

153.06 DIMENSIONAL AND GENERAL PERFORMANCE STANDARDS.

A. **Purpose.** To establish dimensional and performance standards that protect shoreland resources from impacts of development.

B. **Lot Area and Width Standards.** After the effective date of this ordinance, all new lots must meet the minimum lot area and lot width requirements in Section 153.06, subject to the following standards:

1. Only lands above the ordinary high water level and excluding right-of-way can be used to meet lot area and width standards;
2. Lot width standards must be met at both the ordinary high water level and at the building line;
3. Lake Minimum Lot Area and Width Standards shall meet the minimum standards of the underlying zoning district and the following:
4. General Development Lake

Lot Type	Riparian Lot Width (ft)	Nonriparian Lot Width (ft)
Single	150	150

5. Recreational Development Lake

Lot Type	Riparian Lot Width (ft)	Nonriparian Lot Width (ft)
Single	150	150

6. Natural Environment Lake

Lot Type	Riparian Lot Width (ft)	Nonriparian Lot Width (ft)
Single	200	200

7. Water Basin

Lot Type	Riparian Lot Width (ft)	Nonriparian Lot Width (ft)
Single	150	150

C. Special Residential Lot Provisions.

1. Controlled access lots are permissible if created as part of a subdivision and in compliance with the following standards:

a. The lot must meet the area and width requirements for residential lots, and be suitable for the intended uses of controlled access lots as provided in item D;

b. If docking, mooring, or over-water storage of more than six (6) watercraft is to be allowed at a controlled access lot, then the width of the lot (keeping the same lot depth) must be increased by a percentage of the requirements for riparian residential lots for each watercraft beyond six, consistent with the following table:

Ratio of lake size to shore length (acres/mile)	Required percent increase in frontage
Less than 100	25%
100 – 200	20%
201 – 300	15%
301 – 400	10%
Greater than 400	5%

c. The lot must be jointly owned by all purchasers of lots in the subdivision or by all purchasers of nonriparian lots in the subdivision who are provided riparian access rights on the access lot; and

d. Covenants or other equally effective legal instruments must be developed that;

i. Specify which lot owners have authority to use the access lot;

ii. Identify what activities are allowed. The activities may include watercraft launching, loading, storage, beaching, mooring, docking, swimming, sunbathing, or picnicking;

iii. Limit the total number of vehicles allowed to be parked and the total number of watercraft allowed to be continuously moored, docked, or stored over water;

iv. Require centralization of all common facilities and activities in the most suitable locations on the lot to minimize topographic and vegetation alterations; and

v. Require all parking areas, storage buildings, and other facilities to be screened by vegetation or topography as much as practical from view from the public water, assuming summer, leaf-on conditions.

2 Access Easements. Easements providing access to boat docking and mooring facilities to non-riparian property owners are prohibited.

D. Placement, Height, and Design of Structures.

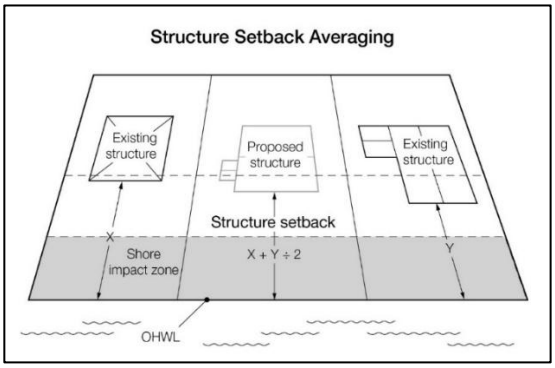
1. OHWL Setback for Structures and Sewage Treatment Systems. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks, and comply with the following OHWL setback provisions. The structure setback standards for sewered properties can only be used if publicly owned sewer system service is available.

Waterbody Classification	Structures	Sewage Treatment Systems
Natural Environment Lakes	150	150
Recreational Development Lakes	100	75
General Development Lakes	75	75
Water Basins	75	75

2. OHWL Setbacks. Structures, impervious surfaces, and sewage treatment systems must meet setbacks from the Ordinary High Water Level (OHWL), except that one water-oriented accessory structure or facility, designed in accordance with Section 153.07(C) of this ordinance, may be set back a minimum distance of ten (10) feet from the OHWL:

a. Setback averaging. Where principal structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining principal structure setbacks from the OHWL, provided the proposed structure is not located in a shore impact zone or in a bluff impact zone (see Figure 7);

Figure. 7 Structure Setback Averaging



b. Setbacks of decks. Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria are met:

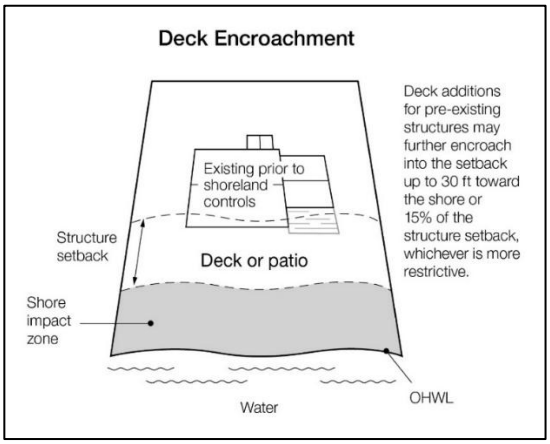
   i. The structure existed on the date the structure setbacks were established;

   ii. A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;

   iii. The deck encroachment toward the ordinary high water level does not exceed 15 percent of the existing setback of the structure from the ordinary high water level or is no closer than 30 feet from the OHWL, whichever is more restrictive; and

   iv. The deck is constructed primarily of wood, and is not roofed or screened (see Figure 8).

Figure 8. Deck Encroachment



c. Additional structure setbacks. Structures must also meet the following setbacks, regardless of the waterbody classification:

Setback from:	Setback (ft)
Top of bluff	30
Unplatted cemetery	50
Right-of-way line of federal, state, or county highway	50
Right-of-way line of town road, public street, or other roads not classified	20

d. Bluff Impact Zones. Structures, impervious surfaces, and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

3. Height of Structures. All structures in residential districts must not exceed 35 feet in height.

4. Lowest Floor Elevation.

   a. Determining elevations. Structures must be placed at an elevation consistent with the applicable floodplain regulatory elevations. Where these elevations are not known, the lowest floor, including basement, must be placed or flood-proofed at an elevation determined using the following methodology:

   b. For lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher (see Figure 9);

   c. For rivers and streams, by placing the lowest floor at least three feet above the highest known flood elevation. If highest known flood elevation is not available, by placing the lowest floor at least three feet above the ordinary high water level (see Figure 9), or by conducting a technical evaluation to establish a flood protection elevation. Technical evaluations must be done by a qualified engineer or hydrologist consistent with Minnesota Rules, parts 6120.5000 to 6120.6200.

5. Methods for placement.

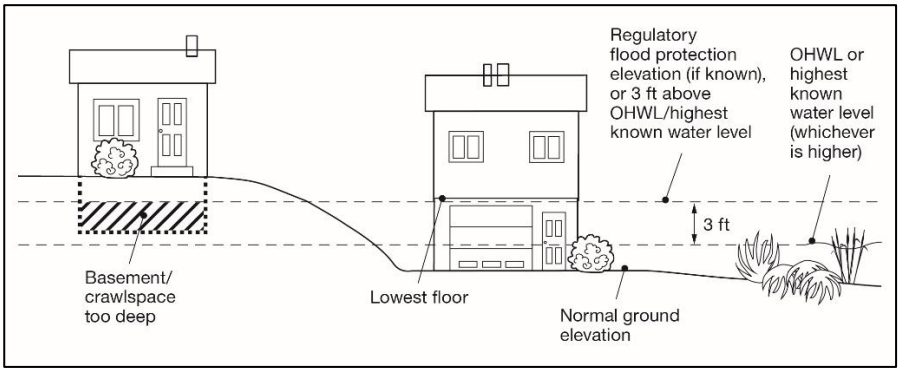
   a. In addition to the lowest floor, all service utilities must be elevated or water-tight to the elevation determined in Section 153.06.D.4.a.

   b. If elevation methods involving fill would result in filling in the SIZ, then structures must instead be elevated through floodproofing methods in accordance with section 153.08.D.3 below;

   c. If the structure is floodproofed, then it must be built to resist hydrostatic pressure through elevation methods such as blocks, pilings, filled stem walls, elevated concrete pad, internally flooded enclosed areas, or through

other accepted engineering practices consistent with FEMA technical bulletins 1, 2 and 3.

Figure 9. Lowest Floor Elevation



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

E. **Water Supply and Sewage Treatment**.

1. Water supply. 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 Minnesota Pollution Control Agency.

2. Sewage treatment. Any premises used for human occupancy must comply with Minnesota Rules, Chapters 7080 – 7081.

153.07 PERFORMANCE STANDARDS FOR PUBLIC AND PRIVATE FACILITIES

A. Placement and Design of Roads, Driveways, and Parking Areas. These facilities must be designed to take advantage of natural vegetation and topography to achieve maximum screening as viewed from public waters. They must be constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local SWCD and comply with the following standards:

1. Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts;

2. Watercraft access ramps, approach roads, and access-related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subpart are met;

3. Private watercraft access ramps, approach roads, and access-related parking areas are prohibited.

4. For public roads, driveways and parking areas, documentation must be provided by a qualified individual that they are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.

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, lifts, and landings must meet the following design requirements:

1. Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public recreational uses, and planned unit developments;

2. Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public-space recreational uses, and planned unit developments;

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 landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical; and

6. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, if they are consistent with the dimensional and performance standards of sub items 153.07.B.1 to 153.07.B.6. and the requirements of Minnesota Rules, Chapter 1341.

C. Water-oriented Accessory Structures or Facilities. Each residential lot may have one water-oriented accessory structure or facility if it complies with the following provisions:

1. The structure or facility must not exceed ten feet in height, exclusive of safety rails, and cannot occupy an area greater than 250 square feet. The structure or facility may include detached decks not exceeding eight feet above grade at any point or at-grade patios;

2. The structure or facility is not in the Bluff Impact Zone;

3. The setback of the structure or facility from the ordinary high water level must be at least ten feet;

4. The structure is not a boathouse or boat storage structure as defined under Minnesota Statutes, Section 103G.245;
5. The structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions;
6. The roof may be used as an open-air deck with safety rails, but must not be enclosed with a roof or sidewalls or used as a storage area;
7. The structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities;
8. As an alternative for general development and recreational development waterbodies, water-oriented accessory structures used solely for storage of watercraft and boating-related equipment may occupy an area up to 400 square feet provided the maximum width of the structure is 20 feet as measured parallel to the shoreline; and
9. Water-oriented accessory structures may have the lowest floor placed lower than the elevation specified in Section 153.06.D.4 if the structure is designed to accommodate internal flooding, constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

C. Fences. Fences between principal structures and the waterbody are allowed if fences are:
1. Not higher than six feet.
2. Not located within the SIZ and BIZ, except for farm fences.
3. Not located in the regulatory floodplain, except for farm fences.

D. Lighting. Within the OHWL setback:
1. Lighting shall be fully shielded and directed away from the water.
2. Uplighting viewable from the water is prohibited.

153.08 VEGETATION AND LAND ALTERATIONS

A. **Purpose.** Alterations of vegetation and topography are regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, sustain water quality, and protect fish and wildlife habitat**.**

B. **Vegetation Management.**
1. A vegetation permit is required prior to vegetative clearing in the shore impact zone and bluff impact zone and on steep slopes. No clearing is allowed until a

plan is submitted and approved consistent with these vegetation management provisions.

2. 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 Section 153.07.A of this ordinance;
    c. Forest management uses consistent with Section 153.05.B.4 of this ordinance; and
    d. Agricultural uses consistent with Section 153.05.B of this ordinance.
3. 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 in Section 153.08.B.4 of this ordinance.
4. 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. Vegetation be maintained to screen structures, vehicles, or other facilities by at least 50% as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced. The maximum view corridor shall be less than 50 feet or one-third of the parcel width, whichever is less;
    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.
    e. Picnic areas, access paths, livestock watering areas, beaches and watercraft access areas are prohibited in bluff impact zones.
5. Removal of trees, limbs, or branches that are dead, diseased, dying, or pose safety hazards is allowed without a permit.
6. Fertilizer and pesticide runoff into surface waters must be minimized through use of vegetation, topography or both.
7. Violations of the vegetation standards shall be subject to a Restoration Order including vegetation restoration plan and a three-year maintenance plan prepared by the land owner and approved by the zoning administrator. Near

shore or highly erodible locations are to be restored with a mix of deep-rooted woody and herbaceous vegetation with high stem-density, suitable for the location.

C. **Grading and Filling.**

1. 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 Section 153.07. A of this ordinance.

2. Permit Requirements.

   a. Grading, filling and excavations necessary for the construction of structures, sewage treatment **systems, and** driveways, if part of an approved permit, do not require a separate grading and filling permit. However, the standards in Section 153.08.C of this ordinance must be incorporated into the permit.

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

      i. the movement of more than 10 cubic yards of material on steep slopes or within shore or bluff impact zones; and

      ii. the movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.

      iii. placement of retaining walls, including boulder walls within the SIZ and BIZ provided that:

         (a) if the project includes work at or below the OHWL, the commissioner has already approved or permitted the project.

         (b) the structures are used only to correct a documented existing erosion problem and not for aesthetic reasons.

         (c) the height and length are the minimum necessary to control the erosion problem and are not higher than 4 feet or longer than 10 feet, unless the zoning administrator determines that a larger wall is necessary to correct the erosion problem; and

         (d) walls are screened by vegetation to not be visible from the waterbody.

      iv. Placement of natural rock rip rap, including associated grading of the shoreline and placement of a filter blanket is permitted if:

         (a) if the project includes work at or below the OHWL, the commissioner has already approved or permitted the project;

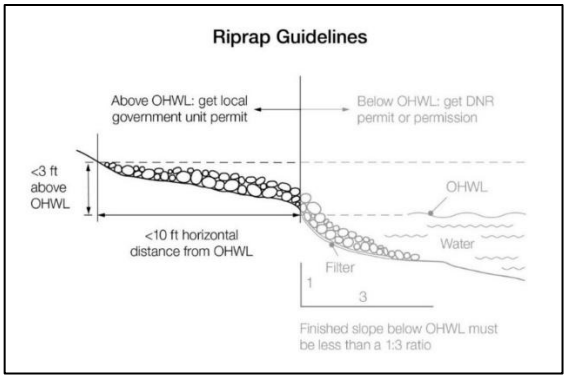
         (b) the finished slope does not exceed three feet horizontal to one-foot vertical;

(c) the landward extent of the riprap is within ten feet of the ordinary high water level; and

(d) the height of the riprap above the ordinary high water level does not exceed three feet (see Figure 10).

(e) A vegetative buffer, consisting of deep rooted and woody vegetation, is to be established at a distance no less than ten feet from the landward extent of the riprap.

(f) Figure 10. Riprap Guidelines



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:

      i. Limiting the amount and time of bare ground exposure;

      ii. Using temporary ground covers such as mulches or similar materials;

      iii. Establishing permanent, deep-rooted and dense vegetation cover as soon as possible;

      iv. Using sediment traps, vegetated buffer strips or other appropriate techniques;

      v. Stabilizing altered areas to acceptable erosion control standards consistent with the field office technical guides of the soil and water conservation district;

      vi. 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;

vii. Fill or excavated material must not be placed in bluff impact zones;

viii. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minnesota Statutes, Section 103G; and

ix. Alterations of topography are only allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties

4. Connections to public waters. Excavations to connect boat slips, canals, lagoons, and harbors to public waters require a public waters permit and must comply with Minnesota Rules, Chapter 6115.

D. **Stormwater Management**.

1. General Standards:

a. When possible, existing natural drainageways, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.

b. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized as soon as possible and appropriate facilities or methods used to retain sediment on the site.

c. When development density, topography, soils, and vegetation are not sufficient to adequately handle stormwater runoff, constructed facilities such as settling basins, skimming devices, dikes, waterways, ponds and infiltration may be used. Preference must be given to surface drainage, vegetation, and infiltration rather than buried pipes and man-made materials and facilities.

2. Specific Standards:

a. Impervious surfaces of lots must not exceed 25 percent of the lot area.

b. When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation district or the Minnesota Stormwater Manual, as applicable.

c. New constructed stormwater outfalls to public waters must be consistent with Minnesota Rules, part 6115.0231.

153.09 SUBDIVISION/PLATTING PROVISIONS.

A. **Purpose.** To ensure that new development minimizes impacts to shoreland resources and is safe and functional.

B. **Land suitability.** Each lot created through subdivision, including planned unit developments authorized under Section 153.10 of this ordinance, must be suitable in its natural state for the proposed use with minimal alteration A suitability analysis must be conducted for each proposed subdivision, including planned unit developments, to determine if the subdivision is suitable in its natural state for the proposed use with minimal alteration and whether any feature of the land is likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.

C. **Consistency with other controls.** Subdivisions and each lot in a subdivision shall meet all official controls so that a variance is not needed later to use the lots for their intended purpose.

D. **Water and Sewer Design Standards.**

1. A potable water supply and a sewage treatment system consistent with Minnesota Rules, Chapters 7080 – 7081 must be provided for every lot.
2. Each lot must include at least two soil treatment and dispersal areas that support systems described in Minnesota Rules, parts 7080.2200 to 7080.223 or site conditions described in part 7081.0270, subparts 3 to 7, as applicable.
3. Lots that would require use of holding tanks are prohibited.

E. **Information requirements.**

1. Topographic contours at ten-foot intervals or less from United States Geological Survey maps or more current sources, showing limiting site characteristics;
2. The surface water features required in Minnesota Statutes, section 505.021, Subd. 1, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more current sources;
3. Adequate soils information to determine suitability for building and sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;
4. Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling stormwater runoff and erosion, both during and after construction activities;
5. Location of 100-year flood plain areas and floodway districts from existing adopted maps or data; and

6. A line or contour representing the ordinary high water level, the “toe” and the “top” of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream.

F. **Dedications.** When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage or ponding areas for management of stormwater and significant wetlands.

G. **Platting**. All subdivisions that cumulatively create five or more lots or parcels that are 2-1/2 acres or less in size shall be processed as a plat in accordance with Minnesota Statutes, Chapters 462.358 Subd. 3a *(cities)* and 505. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after the adoption of this ordinance unless the lot was previously approved as part of a formal subdivision.

H. **Controlled Access Lots.** Controlled access lots within a subdivision must meet or exceed the lot size criteria in Section 153.06.C.1 of this ordinance.

153.10 PLANNED UNIT DEVELOPMENTS (PUDs).

A. **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.

B. **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 153.06 of this ordinance is allowed if the standards in this Section are met.

C. **Processing of PUDs.** Planned unit developments in the shoreland district must be processed as a conditional use and comply with the provisions of this section in addition to those standards outlined elsewhere in the zoning and subdivision regulations. When there is a conflict in requirements, the more stringent of the requirements shall be applied. 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 153.10. Approval cannot occur until all applicable environmental reviews are complete.

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

1. Site plan and/or plat showing:

    a. Locations of property boundaries;

    b. Surface water features;

c. Existing and proposed structures and other facilities;

d. Land alterations;

e. Sewage treatment and water supply systems (where public systems will not be provided);

f. Topographic contours at ten-foot intervals or less; and

g. 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).

2. A property owner's association agreement (for residential PUD's) with mandatory membership, and consistent with Section 153.10 of this ordinance.

3. 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 153.10 of this ordinance.

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

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

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

1. 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:

Waterbody Classification	No Sewer (ft)
General Development Lakes – 1st tier	200
General Development Lakes – all other tiers	267
Recreational Development Lakes	267
Natural Environment Lakes	400

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

3. 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.

   b. 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.

   c. All PUDs with densities at or below the base density must meet the design standards in Section 153.10.

4. 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 153.10 are allowed if the design criteria in Section 153.10 of this ordinance are satisfied as well as the standards:

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

   b. Structure setbacks from the ordinary high water level:

      i. Are increased to at least 50 percent greater than the minimum setback; or

      ii. 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.

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

1. 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 153.10 of this ordinance. Sewage treatment systems must meet the setback standards of Section 153.06.A 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 153.06.

e. Shore recreation facilities:

i. Must be centralized and located in areas suitable for them based on a suitability analysis.

ii. 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).

iii. 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.

h. Water-oriented accessory structures and facilities may be allowed if they meet or exceed design standards contained in Section 153.07 of this ordinance and are centralized.

2. Open Space Requirements.

a. Open space must constitute at least 50 percent of the total project area and must include:

i. Areas with physical characteristics unsuitable for development in their natural state;

ii. Areas containing significant historic sites or unplatted cemeteries;

iii. 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.

b. Open space may include:

i. 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;

ii. Subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems; and

iii. Non-public water wetlands.

c. Open space shall not include:

i. Dwelling sites or lots, unless owned in common by an owners association;

ii. Dwelling units or structures, except water-oriented accessory structures or facilities;

iii. Road rights-of-way or land covered by road surfaces and parking areas;

iv. Land below the OHWL of public waters; and

v. Commercial facilities or uses.

3. 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:

i. Commercial uses

ii. Vegetation and topographic alterations other than routine maintenance;

iii. Construction of additional buildings or storage of vehicles and other materials; and

iv. Uncontrolled beaching of watercraft.

b. 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:

i. Membership must be mandatory for each dwelling unit or dwelling site owner and any successive owner;

ii. Each member must pay a pro rata share of the association’s expenses, and unpaid assessments can become liens on units or dwelling sites;

iii. Assessments must be adjustable to accommodate changing conditions; and

iv. The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.

4. Erosion Control and Stormwater Management.

a. Erosion control plans must be developed and must be consistent with the provisions of Section 153.08 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. Impervious surface for the entire project site must not exceed 25%.

CHAPTER 154: POOL HOUSES

Section:

154.01 General Provisions

154.01 GENERAL PROVISIONS.

Detached pool houses and structures erected in connection with a swimming pool or spa are allowed as a Condition Use subject to the following conditions:

1. The enclosed portion of the building may not exceed 240 square feet. The roof area may not exceed 576 square feet.

2. The height of the building at its top most peak may not exceed 16 feet from grade level.

3. The architectural style, color, roofing and facing material of the building shall be compatible with the main dwelling unit.

4. No such structure may be designed or used as a place of human habitation at any time, or for the harboring or keeping of domestic pets or animals of any kind.

5. The structure may contain plumbing facilities, a toilet, shower, storage area, and may accommodate the equipment used in connection with the pool or spa, including pumps, filters, water heater, pipes and wiring.

6. The structure together with the roof overhangs shall meet the setback requirements of the zoning district.

7. Attached cornices, canopies, and awnings shall be considered a part of the structure and must comply with the setback requirements.

8. No such structure may be located in a front yard or corner side yard.

CHAPTER 155: ANTENNAS AND TOWERS

Section:

155.01	Purpose
155.02	Definitions
155.03	Interpretation and Applicability
155.04	Inspections and Violations
155.05	Conditional Use Permit
155.06	Communication Towers – Residential
155.07	Communication Towers – Non Residential
155.08	Construction Requirements
155.09	Lights and Attachments
155.10	Removal of Abandoned or Damaged Towers
155.11	Co-location of Personal Wireless Communication Service Equipment
155.12	Interference with Public Safety Telecommunications
155.13	Additional Submittal Requirements
155.14	Variances
155.15	Wind Energy Conversion Systems (WECS)
155.16	Small Cell Wireless Facilities in the Public Right-of-Way

155.01 PURPOSE.

To accommodate the communication needs of residents and business while protecting the public health, safety and general welfare to the community. The Dellwood City Council finds that these regulations are necessary to:

A. Facilitate the provisions of the wireless telecommunications services to the residents and businesses of the City.

B. Require tower equipment to be screened from the view of persons located on properties contiguous to the site and or to be camouflaged in a manner to complement existing structures.

C. Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements.

D. The following requirements shall be followed when selecting sites:

1. Structure location requirements for wireless communications equipment as permitted uses:
    a. Sides and roofs of buildings or structures over two stories.
    b. Existing power or telephone pole corridors.
    c. Light poles or towers at outdoor recreational facilities.
    d. Parking lots may be used to locate monopoles where the structure replicates, incorporates or substantially blends with overall lighting standards and fixtures of the parking lot.

2. Land use areas for towers requiring conditional use permits:
    a. Commercial.
    b. Golf Courses, when compatible with the nature of the course.
    c. Property owned by the city or under city control by easement or otherwise.

155.02 DEFINITIONS.

The following words and terms, when used in this section or ordinance shall have the following meaning unless the context clearly indicates otherwise:

ACCESSORY STRUCTURE. A use or structure subordinate to the principal use of the land or building with a tower or antenna.

ANTENNA. Any structure or device used for the purpose of collecting or radiating electromagnetic wages, including but not limited to directional antennas, such as panels, microwave dishes and satellite dishes, and omni directional antennas, such as whips.

PERSONAL WIRELESS COMMUNICATION SERVICES. Licensed commercial wireless communication services including cellular, personal communication services (PCS), enhanced specialized mobilized radio (ESMR), paging and similar services.

PUBLIC UTILITY. Persons, corporations, or governments supplying gas, electric, transportation, water, sewer, or land line telephone service to the public. For this ordinance, commercial wireless telecommunication sources shall not be considered public utility uses.

TOWER. Any pole, spire, or structure, or combination thereof, including supporting lines, cables, wires, braces or masts, intended primarily for the purpose of mounting an antenna, meteorological devise, or similar apparatus above grade.

UBC. UNIFORM BUILDING CODE. Published by the International Conference of Building Officials and adopted by the State of Minnesota to provide jurisdictions with building related standards and regulations.

155.03 INTERPRETATION AND APPLICABILITY.

A. It is not the intention of this Ordinance to interfere with, abrogate, or annul any covenant or other agreement between parties. However, where this ordinance imposes greater restrictions upon the use or premises for antennas or towers than are imposed or required by other ordinances, rules, regulations and permits, or by covenants or agreements, the provisions of this Ordinance shall govern.

B. This Ordinance does not apply to use or location of private, residential citizen band radio towers, amateur radio towers or television antennas.

155.04 INSPECTIONS AND VIOLATIONS.

A. All towers, antennas and supporting structures must obtain a building permit and are subject to inspection by the City Building Inspector to determine compliance with UBS construction standards. Deviations from the original construction for which the permit is obtained, other than antenna adjustments, is a misdemeanor.

B. Notice of violations will be sent by registered mail to the owner and the owner will have 30 days from the date of the notification to make repairs. The owner will notify the Building Inspector that the repairs have been made, and as soon as possible after that, the Building Inspector will make another inspection and the owner notified of the results.

155.05 CONDITIONAL USE PERMIT.

A. In reviewing an application for a conditional use permit for the construction of antennas, towers and accessory structures, the City Council shall consider:

    1. Standards in the City Code.
    2. Recommendations of the Planning Commission.

3. Effect of the proposed use upon the health, safety, convenience and general welfare of residents or surrounding areas.
4. Effect on property values.
5. Effect on the proposed use on the comprehensive plan.

B. The applicant shall provide at the time of application sufficient information to show that construction and installation of the antenna or tower will meet or exceed the standards and requirements of the UBC.

C. Conditional Use Permits will not be required for:

1. Repair or replacement or adjustment of the elements of an antenna array affixed to the tower or antenna, if the repair or replacement does not reduce the safety factor.
2. Antenna mounted on sides or roof of an existing structure and on existing towers, power, light, or telephone poses as described in section 155.01.

D. The initial fee to be paid for the conditional use permit shall be $1,000.00 plus consultant's fees, or in such amount as may be established by resolution of the City Council.
E. The annual fee to be paid during the term of the conditional use permit shall be $300.00 or such other amounts as may be established by the City.

155.06 COMMUNICATION TOWERS IN RESIDENTIAL DISTRICTS PROHIBITED.

No person, firm or corporation shall build or install a tower in a residential zone.

155.07 COMMUNICATION TOWERS PROPOSED IN NON-RESIDENTIAL DISTRICTS.

A. The applicant shall demonstrate by providing a coverage/interference analysis and capacity analysis, that location of the tower as proposed is necessary to meet the frequency reuse and spacing needs of the communication service system, and to provide adequate coverage and capacity to areas that cannot be adequately served by locating the towers on an existing structure.

B. If no existing structure that meets the height requirements for the antennas is available for mounting the antennas, such antennas may be mounted on a tower not to exceed 75 feet in height.

C. Transmitting, receiving and switching requirements shall be in an existing structure whenever possible. If a new equipment building is necessary for

transmitting receiving or switching, the owner or operator shall locate it at least 40 feet from any property line and shall landscape and screen it. The Planning Commission shall review such a building and the landscaping and screening.

155.08 CONSTRUCTION REQUIREMENTS. SETBACK AND HEIGHT RESTRICTIONS.

A. No part of any tower or antenna shall be constructed, located or maintained at any time, permanently or temporarily in or upon any required setback area for the district in which the antenna or tower is to be located.
B. All antennas, towers and accessory structures shall meet all applicable provisions of this Code and this Section.
C. Antennas and Towers shall meet the following requirements.
    1. The antennas may be mounted on a single pole or monopole not to exceed seventy-five (75) feet in height. The poles shall be setback at least the height of the pole plus 25 feet from the property line.
    2. Metal towers shall be constructed of, or treated with corrosive resistant material.
    3. The use of guyed towers is prohibited.
    4. Tower locations should provide the maximum amount of screening possible for off site views of the facility.
    5. Existing on site vegetation shall be preserved to the maximum practical extent.
    6. The installation shall be designed to be compatible with the underlying site plan. The owner or operator shall landscape the base of the tower and any accessory structures. Accessory structures and equipment buildings shall be designed to be architecturally compatible with the principal structures on the site. The Planning Commission shall review the design of any accessory structures, equipment buildings and site landscaping.
    7. Towers shall be a light blue or gray or other color shown to reduce visibility. No advertising or identification visible off site shall be placed on the tower or buildings.
    8. Antennas placed upon the tower shall comply with all state and federal regulations about non-ionizing radiation and other health hazards related to such facilities.
    9. Wireless telephone antennas, where located on an existing structure shall not extend more than 15 feet above the structure to which they are attached.
    10. Towers with antennas shall be designed to withstand a uniform wind loading as prescribed by the UBC.
    11. Telecommunications equipment located on the side of existing structures or on a roof of a structure need not be screened.

12. Any proposed wireless communications service antenna or tower shall be designed, structurally, electrically, and in all respects to accommodate the applicant's antenna and for comparable antenna for as least 3 additional users. Towers must be designed to allow for future rearrangements of antenna upon the tower and to accept antenna mounted at varying height.
13. Prior to commencement of construction, applicant shall deposit security in the form of a performance bond, cash deposit, or letter of credit in an amount determined by the City to protect the City against the cost of damage to public property or facilities, and the cost of removal or abandoned or damaged towers.

155.09 LIGHTS AND OTHER ATTACHMENTS.

A. No antenna or tower shall have affixed or attached to it any lights, reflectors, flashers, daytime strobes or steady night time light or other illuminating devises except:

    1. Those needed during time of repair or installation.

    2. Those required by the Federal Aviation Agency, the Federal Communications Commission or the City.

    3. For towers in parking lots, lights associated with the parking lot lighting.

B. In addition, no tower shall have constructed thereon, or attached thereto, in any way, any platforms, catwalk, crow's nest, or like structure, except during period of construction or repair.

155.10 REMOVAL OF ABANDONED OR DAMAGED TOWERS.

Any tower and/or antenna that is not used for one year shall be deemed abandoned and may be required to be removed in the same manner and pursuant to the same procedures as for dangerous or unsafe structures established by Minnesota Statutes, Section 463.15 through 463.26.

155.11 CO-LOCATION OF PERSONAL WIRELESS COMMUNICATION SERVICE EQUIPMENT.

A proposal for a new personal wireless service tower shall not be approved unless it can be documented by the applicant to the satisfaction of the City Council that the telecommunication equipment planned for the proposed tower cannot be

accommodated on an existing structure within a five (5) mile radius, transcending municipal borders, of the proposed tower due to one or more of the following:

1. The planned equipment would exceed the structural capacity of the existing structure.
2. The planned equipment would cause interference with other existing or planned equipment at the structure.
3. Existing or approved structures and buildings within a five mile radius cannot or will not reasonably accommodate the planned equipment at a height necessary to function as required.

155.12 INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATIONS.

All new or existing telecommunications service and equipment shall meet or exceed all Federal Communication (FCC) standards and regulations and shall not interfere with public safety telecommunications.

155.13 ADDITIONAL SUBMITTAL REQUIREMENTS.

Besides the information required elsewhere in this Code, building permit applications for towers shall include a report and plans from a qualified and registered engineer or other that:

1. Describes the tower height and design including a cross section and elevation.

2. Documents the height above grade for all potential mounting positions for co-located antennas and the minimal separation distances between antennas.

3. Describes the tower's capacity, including the number and type of antennas that it can hold.

4. Includes the engineer's stamp and registration number, if applicable.

5. Includes all other information necessary for the City to evaluate the request.

155.14 VARIANCES.

The City Council may grant variances to the requirements of this Ordinance. All variances must follow the provisions of Minnesota Statute Chapter 462.

155.15 WIND ENERGY CONVERSION SYSTEMS (WECS).

A. Purpose.

The purpose of the Ordinance is to provide for the regulation of the location, construction, operation, maintenance and removal of Wind Energy Conversion Systems in Dellwood, subject to reasonable conditions that will protect the environment, public health, safety and welfare.

B. Definitions.

WECS – WIND ENERGY CONVERSION SYSTEM. An electrical generating facility comprised of one or more wind turbines and accessory facilities, including, but not limited to: power lines, transformers, substations and metrological towers, that operation by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.

WECS. SMALL (MAY BE ROOF MOUNTED). A single system designed to supplement other electricity sources as an accessory use to existing buildings or facilities, wherein the power generated is used primarily for on-site consumption. A small wind energy conversion system consists of a single wind turbine, a tower or roof mounted system, and associated control or conversion electronics, which has a total rated capacity of less than 50 kW.

SUBSTATION. The apparatus that connects the electrical collection system of the WECS(s) and increases the voltage for connection with the utility's transmission lines.

WIND POWER. The conversion of wind energy into another form of energy.

WIND TURBINE. A wind turbine is any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy through the use of airfoils or similar devices to capture the wind.

WIND TURBINE HEIGHT. The distance measured from grade at the center of the tower to the highest point of the turbine rotor or tip of the turbine blade when it reaches its highest elevation.

ROTOR DIAMETER. The diameter of the circle described by the moving rotor blades.

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

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

C. Conditional Use.

Wind Energy Conversion Systems shall be allowed as a conditional use in the zoning districts listed below.

District	Small WECS (roof mounted)	Large WECS/Meteorological Tower
RR	Not Permitted	Not Permitted
F/E	Conditionally permitted	Conditionally Permitted
A	Conditionally permitted	Conditionally Permitted
PC	Conditionally permitted	Conditionally permitted

D. Application Procedures.

Application for WECS shall be reviewed and processed in accordance with the conditional use permit procedures established in the Dellwood Zoning Ordinance. The following information is required in addition to the information required for a site plan or conditional use permit application:

1. The names of project applicant
2. The name of the property owner
3. The legal description and address of the property.
4. A description of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
5. Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale.
6. Evidence that the applicant can obtain and maintain adequate liability insurance for the WECS and subject property.
7. Documentation of land ownership or legal control of the property
8. Location of wetlands, scenic, and natural areas (including bluffs) within 1320 feet of the proposed WECS. or natural areas within 500 feet of the proposed WECS.
9. FAA Permit Application
10. Location of all known Communications Towers within 2 miles of the proposed project. Provide proof that all the WECS will not interfere with emergency or other microwave transmissions.

11. A noise study, prepared by a qualified professional, that demonstrate that the WECS shall not emit noise in excess of the limits established by the Minnesota Pollution Control Agency.
12. A shadow flicker model that demonstrates that shadow flicker shall not fall on, or in, any existing residential structure.
13. Decommissioning Plan. Each WECS shall have a Decommissioning plan outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a competent party; such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable experience or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities, which shall be a cash deposit with the City, a Letter of Credit or a Surety Bond in an amount to be determined by the City.
14. Description of potential impacts on nearby WECS and wind resources on adjacent properties.
15. The Application shall be accompanied by evidence that the local utility company providing electric services to the City has been notified of the Application for a WECS and requested to submit written consents or objections directly to the City of Dellwood.
16. Payment of the Application Fee in an amount established by the City from time to time. The initial Application Fee is $200.00. Applicant shall be responsible for payment of all expenses incurred by the City in processing the Application including legal and engineering consulting fees and costs, which are payable whether or not the Permit is approved.

E. Size and Height Regulations; Compliance.

1. Rotors:
    a. No WECS other than roof mounted small WECS shall have rotors that are longer than twenty-six (26) feet in diameter.
    b. The minimum height of the lowest extent of any WECS rotor shall be fifteen (15) feet above the ground.
2. Height:
    a. Freestanding wind turbine maximum height limits in all Districts is 100 feet.
    b. Roof mounted wind turbines must not exceed fifteen (15) feet above the height limited established for the principal or accessory structure, chimneys excluded.
3. Compliance with Regulations:
   All WECS shall comply with federal aviation administration notification requirements and any other applicable regulations.

F. Installation and Design.

1. Towers:
    a. All WECS tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Minnesota State Building Code. Indication of compliance may be obtained from the manufacturer's engineering staff or a State licensed professional engineer.
    b. The compatibility of the tower structure with the rotors and other components of the WECS shall be certified by the manufacturer's engineering staff or by a State licensed professional engineer.
    c. WECS towers shall either have tower climbing apparatus located not closer than twelve feet (12') to the ground or be unclimbable by design for the first twelve feet (12').
2. Safety Wires:
   Safety wires shall be installed on the turnbuckles or guy wires of guyed WECS towers.
3. Over-Speed Controls:
   Every WECS shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer's engineering staff or by a State licensed professional engineer.
4. Electrical Requirements:
    a. All electrical components of the WECS shall be in compliance with the applicable requirements of the National Electrical Code as currently adopted by the Minnesota State Building Code Division and shall be inspected by a qualified electrical inspector. The interconnection between the WECS and the electrical utility shall be in compliance with the most recent edition of the National Electrical Code. Certification will be supplied in writing that the WECS will automatically disconnect from the utility when there is no power output from the utility. This certification can be supplied by the manufacturer of the WECS.
    b. The interconnection of the WECS with the local electrical utility shall comply with all applicable Federal and State regulations. Every applicant for a WECS permit must notify his electrical utility in advance of his installation plans.
    c. Every battery storage unit associated with a WECS shall be in compliance with the National Electrical Code as currently adopted by the Minnesota State Building code Division and shall be inspected by a qualified licensed electrical inspector.

d. The WECS, including the blades, shall be grounded and shielded to protect against natural lightning strikes in conformance with the National Electrical Code.
e. No WECS shall have affixed or attached lights, reflectors, flashers or any other illumination, except for those devices required by the Federal Aviation Administration.

5. Structural Components:
   a. The safety of structural components of every WECS and the compatibility of the rotors with the towers of WECS shall be certified by a State licensed engineer. The safety of electrical components of every WECS shall be certified by a State registered electrical engineer or individual with sufficient technical training on WECS.
   b. The safety of all modifications to any WECS shall be certified by a State registered professional engineer. Certification of safety is required before the permit is granted for medications made prior to installation. Certification of the safety of modifications made after the WECS is installed and the permit is granted is also required. Failure to have the safety of modifications certified after the permit has been granted shall result in revocation of the permit until certification has been obtained.
6. Signs Required:
   At least one sign shall be posted at the base of the WECS tower and shall contain the following information:
   a. Notice of no trespassing; and
   b. Warning of High Voltage.
   c. The identification of the manufacturer, owner and operator of the WECS, together with the address of each.
7. The visual appearance of WECS shall at a minimum:
   a. Be a non-obtrusive color such as white, off-white or gray; and
   b. Not display advertising (including flags, streamers or decorative items).

G. Siting.

1. The base of the tower of any WECS shall be set back from any property line a minimum of:

District	***Small WECS***	***Large WECS***
RR	N/A	N/A
A, F/E, PC	1.1 times the WECS height	1000 feet

2. No part of a WECS shall be located within or over drainage, utility or other established easements.
3. No part of a WECS shall be located on or over property lines.
4. The base of a WECS or the guy wire anchors of a guyed WECS tower shall not be within any required minimum front, side or rear yard setback.
5. Clearance between a WECS and electrical lines shall be in compliance with the requirements outlined in the most recent edition of the National Electrical Code.
6. A wind turbine must not be within 500 feet from any conservation easements or public parks.
7. Siting on Top of Buildings. Every WECS sited on top of a building shall comply with applicable provisions of the Minnesota State Building Code. Certification of compliance by a State licensed professional engineer is required. The WECS must be less than 10kW and not extend higher than 15 feet above the maximum height allowed for the structure the WECS is mounted on, chimneys excluded.

H. Nuisance Concerns.

1. Noise Control. Noise area classification. (NAC1, NAC2, etc.) established by the Minnesota Pollution Control Agency shall be used to evaluate and regulate notice from every WECS. The audible sound from a WECS will be measured at the property boundary line. Every owner of a WECS that is found to be in violation of Minnesota Pollution Control Agency's noise standards shall be required to perform mitigating measures.
2. Electrical or Radio Frequency Interference. All WECS and any components used in connection therewith, including electric generators, shall be designed, constructed and located in such a manner so as to not cause or create electrical or radio frequency interference with the reception of communication signals. All complaints received by the City with regard to electrical or radio frequency interference shall be directed to the Federal Communications Commissioner.
3. Communication Interference. Each WECS shall be sited in a location which will not result in the blocking or reflecting television or other communication signals. If signal interference occurs, both the WECS owner and the individual receiving interference shall immediately resolve the problem. If the problem cannot be eliminated or reduced to a reasonable level, the WECS shall be shut down.

I. Other Regulations.

1. Supplying More Than One Structure. A WECS that supplies energy to two (2) or more structures may be allowed as long as the proposed WECS complies with all applicable zoning regulations.

2. Wind Access. Adequate wind access is essential to the safe and efficient operation of a WECS, and the City encourages the use of private and restrictive covenants to protect wind access.
3. Maintenance Requirements; Abandonment; Nuisance:
    a. It shall be a public nuisance if any of the following conditions exist:

A. A WECS is not maintained in operational condition and poses a potential safety hazard, or
B. A WECS is not maintained and operated in compliance with applicable zoning provisions and State and Federal laws, or
C. A WECS has not generated electricity for a period of six (6) consecutive months and the Wind Energy Facility Owner has failed to remove the WECS or make it operational within thirty (30) days after the City has given written notice to remove the WECS.

    b. The City has the right to abate a public nuisance under the procedures set forth below. If adequate action to correct problems with the WECS is not taken within sixty (60) days, the City reserves the right to abate any hazardous situation and to pass the cost of abatement on to the owner or operator of the WECS.
    c. Within the sixty (60) day period after notice has been given, the WECS owner or operator has the right to appeal to the governing body of the City for additional time to correct the situation.
    d. If the hazardous condition or violation of regulations is not remedied by the WECS owner or operator, the City reserves the right to revoke the WECS permit. After the permit has been revoked, a public hearing will be held on the need to remove the WECS. If the WECS is removed, the cost of doing so shall be passed on to the owner or operator of the WECS.
    e. If the WECS has not been operating for six (6) consecutive months after installation, the WECS shall be considered abandoned. A public hearing will be held on the need to remove an abandoned WECS. If removal is deemed necessary, abandoned equipment and machinery shall be removed within thirty (30) days of written notice to the owner or operator of the WECS. If the WECS is not removed within thirty (30) days, the City shall remove the equipment and machinery and pass the costs onto the owner or operator of the WECS.
4. Inspections. Each WECS shall be inspected yearly by the City Building Official, to verify that the WECS is operational and that all requirements of installation continue to be met. The property owner shall be responsible for payment to the City of an inspection fee in an amount to be established from time to time by the City Council. The initial fee shall be $100.00 per inspection.

5. Interference. The WECS shall be designed, constructed and located in such a manner so as to not cause or create any interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all affected existing communication tower operators of the proposed WECS location upon application for permits. No WECS shall be constructed so as to interfere with County or Minnesota Department of Transportation or law enforcement microwave transmissions.
6. Right of Entrance. By the acceptance of the Conditional Use Permit, the owner/operator grants permission to the City of Dellwood to enter the property to remove the WECS pursuant to the terms of the Conditional Use Permit and to assure compliance with other conditions set forth in the permit.

   All wind turbines shall comply with all applicable state and federal regulatory standards, including the Uniform Building code as adopted by the State of Minnesota; National Electrical Code as adopted by the State of Minnesota; and Federal Aviation Administration (FAA) requirements; and Minnesota Pollution Control Agency (MPCA) / Environmental Protection Agency (EPA) regulation (hazardous waste, construction, storm water, etc. Violation of any provision of this Section is grounds for revocation of a Conditional Use Permit for a WECS.

   Complaint Resolution. The owner/operator of the WECS shall develop a process to resolve complaints from nearby residents. The process shall use an independent mediatory or arbitrator and include a time frame for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint. The cost thereof shall be paid by the owner/operator.

7. Liability Insurance Requirements. Before any Conditional Use Permit is issued, the owner/operator of the WECS shall file with the City a Certificate of Insurance certifying that the owner/operator has general liability insurance coverage with limits of not less than $500,000.00 for large WECS and $100,000.00 for small WECS, naming the City of Dellwood as an additional insured under the policy of insurance.

155.16 SMALL CELL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

A. Small cell wireless support structures, antennae, or facilities, as defined in Chapter 56 of the City Code may be placed in the right-of-way in the manner permitted by Chapter 56 and this Section.

B. Any small cell wireless support structure, antenna, or facility intended to be placed within the public right-of-way adjacent to any property within the F/E, A, or RR Districts shall require a Conditional Use Permit provided:
    1. The support structure, antenna, and/or facility shall meet all performance standards set forth in Section 56.11 Subsection C.
    2. The use shall not emit radio frequency interference or noise in a manner that is a nuisance or out of conformance with any City, State, or Federal regulation.
    3. The support structure, antenna, and/or facility shall have an appearance that is camouflaged, concealed, and in harmony with the adjacent area.
    4. Any new support structure shall be located no more than five feet from a side lot line extended into the street.
    5. New support structures shall be constructed from earth-tone fiberglass or similar materials.
C. Small cell wireless facilities on private property shall adhere to the standards in Sections 155.01 through 155.14.

CHAPTER 156: FLOODPLAIN MANAGEMENT ORDINANCE

Section:

156.01	Statutory Authorization, Findings of Fact and Purpose
156.02	General Provisions
156.03	Conflict with Pre-Existing Zoning Regulations and General Compliance
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156.01 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE.

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

B. **Statement of Purpose.**
The purpose of this Ordinance is to maintain the Community's eligibility in the National Flood Insurance Program and to minimize potential losses due to periodic flooding including loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public

expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

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

D. **National Flood Insurance Program Compliance.**
This Ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the Community's eligibility in the National Flood Insurance Program.

156.02 GENERAL PROVISIONS.

A. **Adoption of Flood Insurance Study and Flood Insurance Rate Map.**
The Flood Insurance Study for City of Dellwood and the Flood Insurance Rate Map Panel for Washington County Minnesota and Incorporated Areas numbered 27163C023OE dated February 3, 2010 is hereby adopted by reference as the Official Floodplain Zoning District Map and made a part of this ordinance.

B. **Lands to Which Ordinance Applies.**
This Ordinance shall apply to all lands designated as Floodplain within the jurisdiction of the City of Dellwood. Floodplain areas within the City of Dellwood shall encompass all areas designated as Zone A, Zone AE, Zone AO or Zone AH as shown on the Flood Insurance Rate Map adopted in Section 156.02 A of this Ordinance.

C. **Interpretation.**
The boundaries of the Floodplain district shall be determined by scaling distances on the Official Floodplain Zoning District Map. Where interpretation is needed as to the exact location of the boundaries of the Floodplain district, the Dellwood Building Inspector shall make the necessary interpretation based on the ground elevations that existed on the site at the time the community adopted its initial floodplain ordinance or the date of the first National Flood Insurance Program map that placed the site in the floodplain if earlier and the regional (100-year) flood profile, if available. If 100-year flood elevations are not available, the community shall:

1. Require a Floodplain evaluation consistent with Section 156.04 C of this Ordinance to determine a I 00-year flood elevation for the site; or
2. Base its decision on available hydraulic/hydrologic or site elevation survey data which demonstrates the likelihood the site is within or outside of the Floodplain.

D. **Definitions.**
Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application.

ACCESSORY USE OR STRUCTURE. A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

BASEMENT. Means any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

FLOOD FRINGE. That portion of the Floodplain outside of the floodway.

FLOODPLAIN. The channel or beds proper and the areas adjoining a wetland, lake or watercourse that have been or hereafter may be covered by the regional flood.

FLOODWAY. The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining Floodplain that are reasonably required to carry or store the regional flood discharge.

LOWEST FLOOR. The lowest floor of the lowest enclosed area (including basement).

MANUFACTURED HOME. A structure, transportable in one or more sections and designed to be used as a dwelling with or without a permanent foundation when connected to the plumbing, heating, air conditioning and electrical systems contained therein. Manufactured homes are not allowed in the Floodplain area and none exist on the date of the enactment of this Ordinance.

OBSTRUCTION. Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, dredged spoil, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, stockpile of sand or gravel or other material, or matter in, along, across, or projecting

into any channel, watercourse, lake bed, or regulatory Floodplain which may impede, retard, or change the direction of flow, either in itself or by catching or collecting debris carried by floodwater.

RECREATIONAL VEHICLE. A vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this Ordinance, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.

REGIONAL FLOOD. A flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristics of what can be expected to occur on an average frequency in magnitude of the l00-year recurrence interval. Regional flood is synonymous with the term “base flood” used on the Flood Insurance Rate Map.

REGULATORY FLOOD PROTECTION ELEVATION. The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the Floodplain that result from designation of a floodway.

STRUCTURE. Anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, travel trailers/vehicles not meeting the exemption criteria specified in Section 156.12 of this Ordinance and other similar items.

SUBSTANTIAL DAMAGE. Means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
2. Any alteration of an “historic structure,” provided that the alteration will not preclude the structure’s continued designation as an “historic structure.” For the purpose of this Ordinance, “historic structure” shall be as defined in 44 Code of Federal Regulations, Part 59. 1.

E. **Annexations.**
Newly annexed floodplain lands shall be immediately subject to the provisions of this Ordinance.

156.03 CONFLICT WITH PRE-EXISTING ZONING REGULATIONS AND GENERAL COMPLIANCE.

A. **The Floodplain District as Overlay Zoning District.**
The Floodplain zoning district shall be considered an overlay zoning district to all existing land use regulations of the Community. The uses permitted in Sections **156.04** and **156.05** of this Ordinance shall be permitted only if not prohibited by any established, underlying zoning district. The requirements of this Ordinance shall apply in addition to other legally established regulations of the Community and where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall apply.

B. **Compliance.**
No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, repaired, maintained, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway and Flood Fringe, all uses not listed as permitted uses in Section 156.04 shall be prohibited. In addition, a caution is provided here that:
1. Recreational vehicles are subject to the general provisions of this Ordinance. Recreational vehicles are also subject to the provisions of the Dellwood City code, chapter 71, 73 and 95.
2. Modifications, repair and maintenance, additions, structural alterations or repair after damage to existing nonconforming structures and

nonconforming uses of structures or land are regulated by the general provisions of this Ordinance and specifically Section 156.09; and

3. As-built elevations for elevated structures must be certified by elevation surveys as stated in Section 156.07 of this Ordinance.

156.04 PERMITTED USES, STANDARDS, AND FLOODPLAIN EVALUATION CRITERIA.

A. Permitted Uses in the Floodplain.

The following uses of land are permitted uses in the Floodplain district:

1. Any use of land which does not involve a structure, a fence, an addition to the outside dimensions to an existing structure (including a fence) or an obstruction to flood flows such as fill, excavation, or storage of materials or equipment.
2. Any use of land involving the construction of new structures, a fence, the placement or replacement of manufactured homes, the addition to the outside dimensions of an existing structure (including a fence) or obstructions such as fill or storage of materials or equipment, provided these activities are located in the flood fringe portion of the Floodplain. These uses shall be subject to the development standards in Section 156.04 B of this Ordinance and the Floodplain evaluation criteria in Section 156.04 C of this Ordinance for determining floodway and flood fringe boundaries.
3. Recreational vehicles are regulated by Section 156.12 of this Ordinance.

B. Standards for Floodplain Permitted Uses.

1. Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
2. Storage of Materials and Equipment:
    a. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
    b. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood

warning or if placed on fill to the regulatory flood protection elevation.

3. No use shall be permitted which will adversely affect the capacity of the channels or floodways of any tributary to the main stream, or of any drainage ditch, or any other drainage facility or system.
4. All structures, including accessory structures, additions to existing structures and manufactured homes, shall be constructed on fill so that the lowest floor, including basement floor, is at or above the regulatory flood protection elevation. The finished fill elevation must be no lower than one foot below the regulatory flood protection elevation and shall extend at such elevation at least 15' beyond the limits of the structure constructed thereon.
5. All Uses. Uses that do not have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation to lands outside of the Floodplain shall not be permitted unless granted a variance by the Board of Adjustment. In granting a variance, the Board of Adjustment shall specify limitations on the period of use or occupancy of the use and only after determining that adequate flood warning time and local emergency response and recovery procedures exist.
6. Commercial and manufacturing uses are not allowed in the floodplain.
7. On-site Sewage Treatment and Water Supply Systems:
    a. On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and
    b. New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.
8. Manufactured homes are not allowed in the floodplain.

C. Floodplain Evaluation.

1. Upon receipt of an application for a permit for a use or other approval within the Floodplain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the floodway or flood fringe.
    a. A typical valley cross-section(s) showing the channel of the stream, elevation of land areas adjoining each side of the

channel, cross-sectional areas to be occupied by the proposed development, and high water information.

b. Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.
c. Photographs showing existing land uses, vegetation upstream and downstream, and soil types.
d. Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.

2. The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
    a. Estimate the peak discharge of the regional flood.
    b. Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
    c. Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than .5' shall be required if, as a result of the additional stage increase flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
3. The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Governing Body. The Governing Body must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application. The Governing Body, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the Floodway and Flood Fringe District Boundaries have been determined, the Governing Body shall refer the matter back to the Zoning Administrator

who shall process the permit application consistent with the applicable provisions of this Ordinance.

156.05 UTILITIES, RAILROADS, ROADS AND BRIDGES IN THE FLOODPLAIN DISTRICT.

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

156.06 SUBDIVISIONS.

A. No land shall be subdivided where the site is determined to be unsuitable by the Dellwood City Building Inspector for reason of flooding, inadequate drainage, water supply or sewage treatment facilities. The Dellwood City Building Inspector shall review the subdivision proposal to insure that each lot or parcel contains sufficient area outside of the floodway for fill placement for elevating structures, sewage systems and related activities.
B. In the Floodplain district, applicants for subdivision approval shall provide the information required in Section 156.04 C1 of this Ordinance. The City Building Inspector shall evaluate the proposed subdivision or development in accordance with the standards established in Sections 156.04 B & C and 156.05 of this Ordinance.
C. For all subdivisions in the Floodplain, the floodway and flood fringe boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.
D. Removal of Special Flood Hazard Area Designation: The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

156.07 ADMINISTRATION.

A. **Permit Required.**
A Permit issued by the *Dellwood City Clerk* shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair),

or alteration of any building or structure or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system, prior to the change or extension of a nonconforming use, prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source, and prior to the placement of fill, excavation of materials or the storage of materials or equipment within the Floodplain.

B. **State and Federal Permits.**
Prior to granting a permit or processing an application for a variance, the *Dellwood City Clerk* shall determine that the applicant has obtained all necessary state and federal permits.

C. **Certification of Lowest Floor Elevations.**
The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. The *Dellwood City Clerk* shall maintain a record of the elevation of the lowest floor (including basement) for all new structures and alterations or additions to existing structures in the Floodplain district.

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

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

156.08 VARIANCES.

A. A variance means a modification of a specific permitted development standard required in an official control including this Ordinance to allow an alternative

development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship, practical difficulty or unique circumstance as defined and elaborated upon in a community's respective planning and zoning enabling legislation and this Ordinance.

B. The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this Ordinance, any other zoning regulations of the Community, and the criteria specified in the respective enabling legislation which justified the granting of the variance. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:
    1. Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
    2. Variances shall only be issued by a community upon:
        a. A showing of good and sufficient cause,
        b. A determination that failure to grant the variance would result in hardship to the applicant, and
        c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
    3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

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

D. The Board of Adjustment shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variance sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing. A

copy of all decisions granting a variance shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

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

F. **Flood Insurance Notice and Record Keeping.**
The zoning administrator shall notify the applicant for a variance that:
1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage and
2. Such construction below the 100-year or regional flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions. This Community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

156.09 NONCONFORMITIES.

A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 156.02 D of this Ordinance, shall be subject to the provisions of Section 156.09 A-C of this Ordinance.

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

B. A structural alteration within the inside dimensions of a nonconforming use or structure is permissible provided it utilizes flood resistant materials so as not to result in increasing the flood damage potential of that use or structure. A structural addition to a structure must be elevated to the regulatory flood protection elevation in accordance with Section 156.04 B5 of this Ordinance.

C. If any nonconforming use of a structure or land or nonconforming structure is substantially damaged, as defined by Section 156.02 D of this Ordinance, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The City of Dellwood may issue a permit for reconstruction if the use is located outside the floodway and, upon reconstruction, is adequately elevated on fill in conformity with the provisions of this Ordinance.

D. If a substantial improvement occurs, as defined in Section 156.02 D of this Ordinance, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of Section 156.04 of this Ordinance for new structures, depending upon whether the structure is in the floodway or flood fringe, respectively.

156.10 PENALTIES FOR VIOLATION.

A violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variance) shall constitute a misdemeanor.

A. In responding to a suspected ordinance violation, the Zoning Administrator and the Community may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The Community must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

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

C. The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other Official Controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the Community. If the construction or development is already completed, then the Zoning Administrator may either
    1. Issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls, or

2. Notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30-days.

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

156.11 AMENDMENTS.

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

156.12 TRAVEL TRAILERS/TRAVEL VEHICLES.

Travel trailers, motor homes, and recreational vehicles are subject to the provisions of the Dellwood City Code. They are not allowed in the floodplain areas, and none exist on the date of the enactment of this Ordinance.

CHAPTER 157: REGULATING SOLAR ENERGY SYSTEMS

Section:

157.01 Solar Energy Systems

157.02 Conditional Uses

157.01 SOLAR ENERGY SYSTEMS.

A. The installation and construction of a roof-mounted solar energy system shall be subject to the following development and design standards:
   1. May be mounted on either a principal or accessory building.
   2. Height limitations of the respective Zoning District shall apply.
   3. On a flat roof, the panels must be set back 6 feet from the edge of the roof. On all other roof types, panels may not extend past the roofline.
   4. All lines and accessory equipment shall be located internally or otherwise hidden from view.
   5. All residential systems must be roof-mounted. Residential roof-mounted systems must be flush mounted on pitched roofs.

B. The installation and construction of a ground-mounted solar energy systems is not allowed in the City of Dellwood.

C. Roof-mounted systems reflection angles shall be oriented away from neighboring principal structures. Should glare with an intensity sufficient to cause annoyance, discomfort or loss in visual performance and visibility result, screening may be required.

D. No solar energy system may be used to display permanent or temporary advertising, such as signage, or other displays. The manufacturers and equipment information, such as UL listing info, safety warnings, or indication of ownership shall be allowed on any equipment of the solar energy system provided they comply with the current sign regulations.

E. A solar energy system shall not be installed until a Building Permit has been approved and issued. A survey may be required to show compliance with the above-stated regulations.

157.02 CONDITIONAL USES.

The following are conditional uses in all Zoning Districts and require a conditional use permit based upon procedures and provisions set forth in and regulated by applicable regulations contained in this Ordinance and other Ordinances and Statutory Regulations: Solar energy systems, roof-mounted.